

## I. Gifts Made Through Wills

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Wills are a popular vehicle for donors to make gifts to charities. The key to a successful gift in a Will is to be aware of the different ways the gift can be structured.

Some of the possibilities are:

1. **Give a fixed sum to the Community Foundation in any and all events.** The advantage of this technique is that it gives the Foundation no standing to oversee the executor's conduct of the estate administration, and is simple to administer.
2. **Give a proportionate share to the Foundation in any and all events.** This allows the value of the donation to stay in proportion to the size of the estate.
3. **Give a contingent gift.** For example, the donor may designate that the Foundation receive the gift if a primary beneficiary predeceased the donor and the donor is less anxious to benefit secondary beneficiaries.
4. **Make a gift of a particular asset,** such as the proceeds of insurance payable on death or the rights to oil well royalties. (See Section K: *Gifts of Life Insurance and Annuities*).
5. **Identify the Community Foundation as the residual beneficiary.** This allows the donor to make specific bequests to family and friends with whatever remains in the estate left to the Foundation.
6. **Think of the estate as a series of layers of value.** Give the first layer to the immediate family to ensure they are well provided for. But then, if there is some left over, give a layer to the Community Foundation to address community needs.
7. **Create a Testamentary Trust in the Will.** This is a type of charitable remainder trust. Instead of making an outright gift to a person who primarily requires income, a Trust is created to provide income to that person, with the capital to be distributed to the Foundation when he or she dies. The benefit to the donor is that the charitable purpose is pre-established, and a charitable receipt is applied to the year of the donor's death, thus benefiting the estate. From a tax-planning standpoint, care must be taken in drafting such a provision as the tax receipt will be for the value of the capital adjusted for the life expectancy of the beneficiary.
8. **Identify the Community Foundation as a beneficiary of last resort,** if all those whom the donor primarily wanted to benefit, die.

(Sample clauses for inclusion in Wills are attached in Section O of this Handbook)



To its credit the Will is marvelously flexible. It can be changed at any time up until death, provided the donor has testamentary capacity, and the donor feels no pain while alive. However, it is worth remembering the obvious fact that the Will, and the terms of the gift made by the Will to the Community Foundation, cannot be changed after the donor's death. If the donor plans a gift other than a general gift or a gift for generally defined objectives, he or she should discuss this with the Community Foundation. Further, the donor may want to enter into an agreement to create a fund at his or her death, which will ensure the gift can be practicably applied. In that manner, the Will can simply direct payment to the Community Foundation in accordance with the agreement.

A charitable donation made at death is now subject to a limit of 100% of income that can be carried back for only one year (subject to the same 100% of income limit in the taxation year prior to death) and cannot be carried forward at all. However, a substantial donation could still exceed 100% of income in both the year of death and the year preceding death, which would result in any excess being wasted in a tax sense. (See Section G: *Gifts of Cash, Including Memorial Funds*; Section J: *Gifts Made Through An Inter Vivos Trust*; and Section K: *Gifts of Life Insurance, Annuities, RRSPs and RRIFs*.)

