

## Donor Advised Funds: Issues, Challenges, Opportunities

Melanie Schnoll Begun

Managing Director & Head of Philanthropy Management, Morgan Stanley

Jonathan Blum

Shareholder, Polsinelli

### Donor Advised Funds

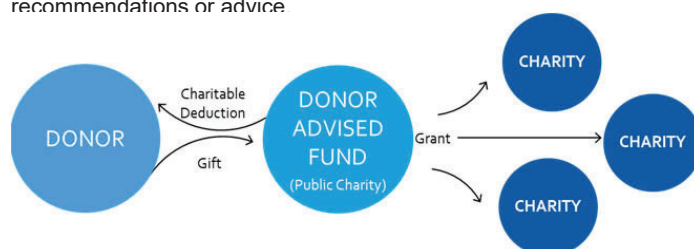
#### How Do They Work?

The donor receives a charitable deduction for a gift to a donor advised fund. The maximum deduction for a gift to a donor advised fund, as a public charity, is limited to 60% of adjusted gross income (AGI) for contributions of cash and is limited to 30% AGI for contributions of many other types of property; deductions exceeding AGI limits may be carried forward for up to five years.

#### Donor Advised Fund

A donor advised fund (DAF) is a private fund administered by a third party and created for the purpose of managing charitable donations on behalf of an organization, family or individual. Gifts to DAFs can be in the form of cash, marketable securities and other assets deemed acceptable to the DAF.

A donor makes an irrevocable gift to the parent charity. The gift is used to open an account – the donor advised fund – in the donor's name, a different name created by the donor, or anonymously. The charity manages the gifts and distributes grants from the fund to specific charitable organizations in response to the donor's recommendations or advice.



## Donor-Advised Funds: Powerful Tools for Good

Donor-advised funds provide a simple charitable solution for donors with complex families, financial situations, and objectives

- Fastest growing charitable vehicle
- Enable donors to be strategic with their giving during large taxable moments
- Alternative solution to traditional private foundations
  - More time and cost efficient
- Payout rate remains above 20% for every year on record<sup>2</sup>
  - 2 to 3 times higher than private foundation payout rates
- NPT projects consistent high growth in grantmaking from DAFs in years ahead

### Donor-Advised Fund Growth<sup>1</sup>



**\$37.12 billion**

Total contributions in 2018, up 20% y/y



**\$23.42 billion**

Total grants to charities in 2018, up 19% y/y



**\$121.42 billion**

In charitable assets, up 8.3% y/y

<sup>1,2</sup> Source: <https://www.nptrust.org/reports/daf-report/>

## Donor-Advised Funds in Practice

### Complex Assets

#### Ideal Charitable Giving Assets:

- High market value
- Low cost basis
- No debt
- No legal commitment to sell when gifted
- No unrelated business income

#### Recent examples from Morgan Stanley GIFT:

##### Real Estate:

- Hotel property
- Residential real estate
- Farm land

##### Business interests:

- Tech
- Organic foods
- Restaurant chains
- Private equity

##### Art:

- Collections
- Antiques

## Donor-Advised Funds in Practice

### Complex Assets

#### Getting In

- Complete the Due Diligence Process
- Liability Shield for Charity
- Title Transfer
  - ROFR waivers/Consent of other shareholders may be required

#### Owning the Asset

- Monitor and React to Company Activity
- UBIT Calculations, reserves and estimated payments
- Tax Returns
- Excess Business Holdings
- Cash Flow Needs

#### Getting Out

- UBIT
- IRS Form 8282
- Terms of Sale – over time, all cash, other forms of payment, i.e. stock

## Donor-Advised Funds in Practice

### Challenges and Opportunities

#### Consider implementing policies and procedures to mitigate risk:

- How will the DAF handle recommendations of grants in direct conflict with the organization's charitable purpose?
- Which complex assets will be accepted?
  - Are there contributions that are off limits?
    - ex. JUUL, tobacco, weapons, ivory
- Will the DAF conduct program related investments?
- Is there a policy on dormant accounts?
  - Combatting the "parking lot" perception

#### Innovative models provide solutions, build communities, and magnify impact:

- Donor collaboratives
  - Morgan Stanley GIFT Cures
- Jewish Values Toolkit
- Mission Align 360°

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Donor Advised Funds: Issues, Challenges, Opportunities

Also available as part of the eCourse

[2020 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the 37<sup>th</sup> Annual Nonprofit Organizations Institute session "Donor Advised Funds: Issues, Challenges, Opportunities?"