PROBATE LAW & CIVIL COMMITMENT
David Elliot, Atty

by Phyllis Frye:

David Elliot was a Charter Member of the Houston Bar Association for Human Rights. He also helped in formulating by-laws that included "gender identification". David has offered several continuing legal education programs on Probate Law. I've asked him to chair this project area and develop a report advising you on how to protect your loved ones upon your death and how to prepare yourself for the threat of civil commitment.

By David Elliott

Thank you Phyllis. It's really an honor for me to be here and have Phyllis to have invited me to come to participate in this first conference. It's always fun to talk about probate because I enjoy it so much. A lot of my colleagues think it's deadly dull and they just don't want to have anything to do with it. They don't understand that helping people with what they want to do with their property, provide for their loved ones and look after their loved ones when they are no longer available to give that support and comfort is fun.

I think we all realize that there's a great necessity for leaving a will, whether we have a little property or even almost no property or have vast sums of estates totaling millions of dollars. We all want to be sure that our property goes to those persons or institutions that we support and feel and care for. There's some people that may not agree with me and those are probably Howard Hughes' heirs. You recall that there was a lot of litigation over Howard Hughes' estate when he died about 10 years ago or so. I think it may have been longer than that now, but in any event there were wills coming out of the woodwork. People were claiming they had a will that left his entire fortune to them. Medical centers were receiving copies of wills in the mail giving part to them and part to other people who drafted these proported wills. But at the final end it came down to the State of Texas, to determine who Howard Hughes' heirs were, and they all love to say where there's no Will, there's a way. Because without Howard Hughes dying without a Will none would have the great wealth they now have. But we don't know whether Howard intended it that way or not but we're not going to take Howard's approach to life or to death for that matter.

In all states that I am aware of, wills transfer property to the beneficiary. These are your probate assets as opposed to assets like your IRA account, your life insurance, your private retirement accounts. All of those things are what we call contract oriented. Those items, like life insurance products, have a beneficiary clause and that beneficiary clause determines where the proceeds of that life insurance will go. If your beneficiary clause says to my spouse or to my children, it's going to go there and whatever you write in your will is going to have no control whatsoever. However, if that clause should fail and there's not an alternative in your insurance policy or your IRA beneficiary designation then it will go into your estate and be governed either by your will or, if you don't have one, by the laws of the jurisdiction in which you live.

Obviously, I am most familiar with Texas probate laws and if you talk about having no will in Texas there are two classes of distributions that can be made with your property. If you are married in a traditional, for lack of a better term, government sanctioned marriage, and all the property is acquired during your marriage, then it's all going to be considered community property. In Texas, half the community property, and you look at it as a whole, is owned by both parties. Half of the community property goes to the surviving spouse. The other half of the community property falls to the children, if there are any. Hopefully, if you have children, that's where you want it to go if you don't have a will.

But in many cases where there is, what we are now looking at, a non-traditional marriages or marriages that are not government sanctioned, then community property does not exist. It's separate property which is the other classification under Texas law. Separate property does not provide much help to the surviving non-traditional spouse, if you had one. In Texas you would have no surviving spouse in a non-traditional life. I think for many people, whether it be gay or even heterosexual, such a non-typical living arrangement is just living together or having a long-term relationship where they continue to maintain their separate identities and don't put themselves off as husband and wife. Texas is one of those weird places that still has a common law marriage, although we're trying to do away with it.

It's important to know that if you don't have a typical marriage you can plan for your spouse by doing a will. But as I said, Texas law does not provide for that person without a will. Everything would go to your heirs. Your heirs are going to be determined by State Law in Texas and in most other jurisdictions with which I am aware.

Texas law would give your estate to your children first or their descendants. If there aren't any children, it would give it to your parents. If your parents are deceased, your brothers and sisters, if any, would get it. If you don't have any brothers and sisters and you don't have any lineal descendants, i.e. your children and grandchildren, then it goes upward to your grandparents and great grandparents and then laterally at each level until they find a living heir. We've had numerous cases where an individual has died and was an only child of an only child. You go upward to a great grandparent and then laterally, and you can end up with literally hundreds of descendants because it falls to the level where there's the first surviving heir and then comes down again through their families. It's very complex and very difficult and you don't want to deal with that, or you don't want your heirs to have to deal with that so make a will; that's the simple solution.

There are alternatives to having wills during your lifetime if you feel that you want to be sure that it goes where you want it to go. I'll touch on these briefly as I go along. They include things like gifts and trusts and contracts.

One problem that you have to deal with or that many people have to deal with, and it's not limited to our community, is where an ancestor, a parent, or a grandparent has decided to disinherit us because of our lifestyle. These are difficult to deal with. They are painful, and it's, I think, important during our lives to try to overcome that if we can at all. That's as Judge Andel said the other day on his address this is where we get into bridge building. I think it's important to deal with these family matters in a different context.

One of the things that you do with a will is you transfer property, as I've said. You resolve the issues about certain properties going to certain places rather than having one person end up with your property or two different people ending up with the same piece of property -- with interest in the same piece of property. You can avoid that partitioning problem.

There are tax considerations if you have a taxable estate. Under current federal laws, $600,000 is exempt; the first $600,000 of your estate is exempt from federal tax. There are numerous state jurisdictions, however, who do impose inheritance taxes that are in addition to the amount that would be relieved by federal law.

Some of the issues that came up in our committee meeting are generally involving name changes and gender identification problems. I think the name change issue is the easiest issue to be dealt with. When you are in your alter ego and you are operating, perhaps living, as two individuals, and if you are in a traditional marriage as many are, the name change issue I think is best handled by not causing any problem to your estate by not having any property in that alternate ego's name. If you have in fact changed your identity and you only live in your second ego, it's important to have all your property changed to that name, and this should be done during your lifetime of course. However, in will planning I would suggest that you confide in your attorney. You're going to build an attorney-client relationship there. If you are still maintaining a secret identity as to this, he or she can put this issue in your will by just stating simply that you were formerly known as another name. If he just stated that if you've been known formerly as Jack and you are now Jill, just stating that Jill's will leaves everything to her friends and family, the loved ones that she wants to protect and care for, property that may have been missed during Jill's lifetime and still remain in Jack's name is going to be out there. And it's going to be difficult to transfer without further litigation. You want to avoid that. Be sure you either transfer or have it in the will that Jill was also known as Jack and make some statement, and it can be a very benign statement so that you don't inflict a lot of pain on your family. We know that that's one of the issues that we have to deal with.

Texas law is unique I think. In the United States, we have a combination of Spanish civil law and English common law, and I like to think we picked the best of both. It gives us the community property rights which we enjoy as married couples, but it also protects our separate property rights from claims of others who are not involved in our families. But most jurisdictions don't work that way. No one knows what law Louisiana laws does because no one has the ability to comprehend their French laws. But, in dealing with Texas law you want to, or in dealing your own law from whatever jurisdiction you're in, you want to be sure of titling your property properly and planning your will and estate.

One of the problems that we have is the threat of a will contest to our estate after we've died. Perhaps we have had an untraditional family living arrangement. We have our own family, whether it be same sex or heterosexual, and we know that other family members -- siblings, parents or whoever -- may contest the will that we've left because we have not provided for them and they think we should have. Well, you want to plan for that kind of eventuality and there are ways to do that. One is what we call interim clauses which can be added to wills and say if you

contest the will, even if your successful in contesting the will, you won't get anything because there are other clauses that will take the property and give it to someone else. These are things you want to think about when you start planning your will with your attorney. And I say with your attorney because I think it's important to have these issues addressed by an attorney who is familiar with our problems. We want to give particular care to our loved ones and our organizations that we want to provide for. Structuring your will and structuring your plan can avoid a lot of the problems with the help of a competent attorney.

I think if you come from other jurisdictions other than Texas you probably get a lot more advertisements about in novo trust, lifetime trust, management trust. They are the same vehicle, they just have different names for it. These allow you to avoid probate in your jurisdiction. This is where you are transfer all your assets. You have to be careful about transferring all of your assets or as much of your property that is advised that you transfer. Some things you shouldn't transfer but those I think depend upon the various jurisdictions as you may reside in. Basically speaking, you want to put all your assets in this trust. The trust is in place for a number of years, or even a short period of time, in most jurisdictions. It's very difficult to overcome the dispositive provisions of that trust. The Trustee that you've appointed to take over after your death, because you'll probably be the Trustee during your lifetime, can only follow the terms of the trust. If the trust says, "Leave all my property to George," George is going to get all your property because the Trustee has no other authority other than to transfer that property to George. He owns the property and he must transfer it to George or any other person or entity that you have chosen to leave it to in your trust agreement. Whereas in a will if you've left everything to George and a parent or a sibling comes along and says, "George had undue influence over this person," and can show that but for George's influence this will would have never been drafted. It's a heavy burden for the contestant to overcome and there are numerous other ways to contest a will as well but generally undue influence is the most prevalent contest in this arena.

If the will is totally invalid and you've left no other will that can be brought in and proved up under certain circumstances, then the State's going to determine who get your property. That sibling may, in fact, inherit your estate and George or your other loved ones may get nothing. It's difficult to think about these things, but it's important for your well being during your lifetime and for those you love.

It's also important to select the proper fiduciary, the executor of your will, or the Trustee of your trust. These are persons that you need to be able to rely on to carry out your wishes in a independent executorship under a will in Texas. The independent executor steps literally, or figuratively, into the shoes of the decedent, carries forth his business as though he were the decedent. You move forward. The only difference is obviously he's just going to wind up the affairs for the decedent and pass that property as the decedent wished in his will. And that's why the selection is important because you don't want him or her tying up your property for any length of time. You want to be sure that he doesn't actually have pressure put on by other family members who didn't get what they call their share or didn't get anything. This selection is very important.

Phyllis asked me to talk about the guardianship issues in Texas. The jurisdiction of Texas really has a very progressive guardianship plan, I feel. Guardians can be appointed, after a hearing that shows that the person is incompetent. Incompetency, to my mind, is not getting caught for crossdressing. It's not getting caught for having activities of being involved in transgender activities. Those I believe do not rise to a level of incompetency in Texas.

In Texas you can be committed for behavior generally that is either dangerous to you physically or dangerous to someone else. I guess the most serious issue here would be considerations of suicide, but I think even here a short-term commitment is all that would be permitted. It's certainly not, I don't believe in Texas, illegal to try to commit suicide from the point of view of a jail term. In some jurisdictions I know that it is and we must keep these matters in the forefront, if this is a problem. We need to deal with it and the best place to do that is with professional care.

Guardianships in Texas allow you to designate who you want to be your guardian in the event of incompetency. If there is a fear of incompetency or being judged incompetent in Texas -- from the point of view from having a catastrophic illness or an injury that leaves you such that you are unable to look after yourself or your business -- during your planning with your attorney, have designated a guardian. A written designation, properly executed, can choose the person you want to be your guardian.

If you fail to do that, Texas has an agenda of persons that are first choices. The first choice is a spouse. The second choice would be parents. Then siblings. If these persons are not the persons you would feel comfortable as your personal guardian over

either you as an individual or your estate, then you must select and designate your guardian. While this is not absolutely bearing upon the courts in Texas, the judge takes it very seriously. Unless there is some reason that is not in the best interest of the Ward, he will appoint your selection as your guardian. I think it's important to do this with your attorney.

I briefly touched about will contest. One of the things you want to do, and I think we are more susceptible to that kind of challenge to our estate planning than any other, is to go through the things that are important to avoid. You want to draft the will as tightly as possible. You want to be sure that you have the proper number of witnesses. If there's any indication, because of an illness or something, that may leave you partially incompetent or occasionally incompetent, your attorney should be cognizance of the fact of having numerous witnesses that could testify to their belief that you are competent at the time you executed the will. It doesn't matter that you were incompetent 2 minutes ago. The question is, are you competent right at the instance you sign your will. Do you know the objects of your bounty? Do you know who you want to leave your property to? Do you know the extent of your property? Do you know the affect of what you're doing? These are the issues that they have to address right at the instance of will execution. This is what we call testamentary capacity.

I know of a case in Houston where there was a lawyer who had had severe bouts with depression was taking some medication. Occasionally or even frequently, he was not cognizant of what was going on around him. But in those recent moments he knew what he wanted to do. He had a lawyer in his law firm draft his will and this law firm of 15 partners all signed his will as witnesses. He had an unusual lifestyle. He left his will, he left his property to non typical or atypical beneficiaries, by that I mean not family members. He was fearful that there will be a contest over his estate. Well, if you have 15 witnesses who are going to be paraded up to that witness stand to testify that this person is competent, you're going to be deterred from having that will contested successfully on the basis of incompetency.

Another basis for contest is insane delusion. Well maybe this is an area where we might get caught. But in Texas the main thing they have to prove is that you're unaware of the effect of your actions. And it's up to the contestant to prove that you were unaware. Let's say the will was admitted to probate, it was done very quickly after death, and somebody now comes in within a period of time after the will has been probated and an executor is in place and says, "Well he was totally unaware of his actions, he didn't know what he was doing." Well, the contestant

has the burden to prove that you didn't know what you were doing. That's a tough burden to overcome because you have to get into all these other issues of competency and testimony capacity and proper execution and all those things.

I spoke earlier about undue influence. In Texas the undue influence is evidenced by the person who, or someone, who has control or access to the testator and could show that that access leaded to an action by the testator to leave his property in a matter which would otherwise have not been written. The testator leaves all of his estate to one charitable institution, for instance, it may not even be what we would call a charitable institution, but someone has gotten to him and has supported him and influenced him to draft a will leaving it this way. That's not to say that this happens very often. Or he leaves it all to one person because he befriended him late in life and said, "Well, John, you've got to leave your entire estate to me because I have taken care of you the last 2 months of your life and I've been good -- I've cared for you and you have to leave it all to me." He gets the lawyer in, and he tells the lawyer what to draw. This is undue influence. This doesn't happen very often that we catch, but I think it happens more than we would like to acknowledge.

Now to general planning of your estate, you should plan to give your estate to your loved ones, to those institutions that you care about, and you want to support. I know you're all familiar with the well known ones. In addition to those there are foundations that support our own interests, including the Winslow Street foundation and others, and all these other institutions that are bona fide and need our support. But these are our own personal decisions that we have to make in planning our estate as well as what we want to give to our families.

Two other planning documents that we are using these days that you should discuss with your attorney are a general durable power of attorney. In the event of incompetency or even in your absence during your lifetime, the power holder under the general durable power of attorney can carry out your business affairs for you and in your best interest. Now a lot of people say, "Well I don't want to give anybody power over my estate or over my property." The alternative to giving someone that you trust power over your property is having an estate court managed guardianship. Sure, you've designated your guardian, but it's still burdensome to both the guardian and to the estate of the individual to have to go to the court every time you want to do something. Whereas with a general durable power you can usually avoid that kind of court supervised guardianship. Here again you have to be careful about who you select as your power holder.

Usually it's your spouse, your loved one, some family member that you have a great deal of trust or an advisor whom you trust.

The other is a power of attorney for health care. Recent legislation has mandated powers of attorney for health care on a federal level and most hospitals require you have to have one when you check in to make sure that if something happens to you that you are unable to direct your own medical care that you have appointed someone to make those decisions when you are unable to do so. So your will, your general durable power of attorney for health care, your general durable power of attorney, and your designation of guardian generally make up your estate planning package. Some of us also include what we call a directive to physicians. This directive to physicians is for those of us who have decided that we don't want any heroics to maintain our lives. This tells our physician, "Look, if you're fairly certain that it's going to take all this medical treatment to keep me alive and I'm not going to recover from this illness and it's only going to prolong my life unnecessarily, pull the plug." That's generally what we do with directive for physicians.

I recently had a client come to me who is very religious. She believes that some day, it could be tomorrow or it may be years from now, for whatever catastrophe she may suffer they'll find a cure for it. She wants the doctors to prolong her life for as long as possible. We don't see that very often because I think that's the standard -- the standard in the medical profession is keep trying to save them. This one was giving the doctor direction, "Please try to save my life as long as you can in the hopes that you could find a cure." That's an individual decision that each of us has to make.

So, generally to wrap up, I think, we want to make our gifts designate our beneficiaries properly under our wills and in our other assets, our insurance policies, our retirement accounts, our keough plans, any of those things that we have, you want to be sure your designation is correct as to your beneficiaries so that you don't get caught by having someone contest it.

It's important that you also keep in mind, if you have children, that you designate a guardian in the event of your early demise. You don't want the Court awarding that guardianship of your minor child to someone who does not espouse your beliefs. You want your children to know that they're going to be cared for much the same way as you would care for them if you were alive.

If you're doing an estate planning and you have a large estate, then you make lifetime gifts, you set up trusts for yourself and for your children. You also make charitable gifts; you do all of these sorts of things; and you have a lot of fun picking out who you want and what organizations you want to benefit.

That basically gives you a view of probate. I know it's dull, and I know it's difficult for a lot of people to talk about and even think about because it talks about our mortality, but I tried in my practice to try to get my clients to look at it from a point of view that, "I have 2 estates." It's a little mind game I play. If I could give everything I own away today, but still be able to maintain my lifestyle the way I live now who, would I give everything to? What gifts would I make that would please not only me but the recipient? It's an easy way to make a decision and it makes you feel good. When you walk out of that lawyer's office having made that plan, you ought to feel good about it because you've taken care of yourself and you've taken care of your family and loved ones. Thank you.

By Phyllis

David, you just did a wonderful job and I appreciate it. You know he talked a little bit about -- really talked quite a bit about will contest. As transgendered persons that's something that we should really be careful and protect ourselves against. As he said, get yourself an attorney.

The other thing that I want to emphasize that he said is be honest about your gender self with your attorney. You have attorney-client privilege. Some people in our communities have very deep closets, that's their business. I'm not going to pass judgement, that's their business. But they have got to be open and up front and honest with their attorney. If it is a family attorney, and they don't want the family attorney to know because it's a family friend, then find another attorney to do your will and let the family attorney do everything else. But you've got to be up front about your gender self in case, after you are gone, some issue comes up. If it comes up and it's thrown into disarray, all of your wishes to protect all of your loved ones, could be thrown in such serious jeopardy that they'll all go down the toilet. Besides no matter how deep your closet, is when you're dead, you're dead. Give up the closet.

The Bible says you're going to give up the ghost, give up your closet when you give up the ghost.

As to will contest, one of the strategies that I use on a will contest is that, as an attorney I always have to suspect there's going to be a will challenge. In the remainder portion of the will, if there's a will challenge and it's successful, then I always direct that the remainder be given to a legal corporation for our community. I'm going to give you the Winslow Street Fund and their address because some family member may hate the fact that you've had SRS or you're going to have SRS or you wear your little panties when you are at home or whatever you do.

I just loved what David said about being an independent executor stepping into the shoes of the other person. As a male independent executor for a female person, you can legally step into her shoes.

If family is going to contest the will because they don't like who you were or who you left it to or whatever, and they're sitting down with their lawyer trying to come up with a way to do that, then the lawyer will say, "Well, I think we can do this, but you know what happens if we do this. All of that money, all of that property, all of those assets are going to XYZ

Corporation." In this case the Winslow Street Fund. In the case whenever I do lesbian/gay clients, it goes to the AIDS Foundation Metropolitan Community Church of the Resurrection or whatever the MCC church is in the neighborhood, or to gay/lesbian political caucus or the gay/lesbian switchboard. The point is there is no way to contest that. Well, there's always ways to contest it, there's no way to contest it successfully. It's going to be damn difficult.

So instruct your attorneys that in your will contest provisions that they put in the following. The Winslow, W-I-N-S-L-O-W Street Fund. And the Winslow Street Fund, as I said last night, is the transgender community personally endowed fund and is a cash sponsor of this conference. After they found out this conference was coming off, Winslow Street awarded to us, their very first grant. We not only received the first grant, we received the largest grant. The Winslow Street Fund, No. 6 Cushing, C-u-s-h-i-n-g, Street, Suite No. 200, Waltham, Massachusetts 02154, area code (617) 899-2212 and fax is (617) 899-5703. Make sure that whenever you do get your will made, and by the way they are 501 foundation, that a copy of that will is faxed or mailed to the Winslow Street Foundation. That is to protect your loved ones. And it wouldn't hurt if you gave them a little money as a primary beneficiaries.

The last thing David spoke of and I want to emphasize, in most jurisdictions it is very difficult to commit you civilly. Do not fall into that myth. Do not fall into a stereotype. Do not fall into that intimidation by your so-called loved ones. Do not fall into that trap that they're going to lock you into a locked room. I had an occasion where a member of our community was filing for a divorce and the female spouse prepared the proper affidavits and had my client picked up by constable. This person was taken to the mental health facility of our county, and I got a call the next day. In this jurisdiction you must be evaluated by two doctors. Within either 3 or 4 days I don't recall there had to be a hearing. By law there has to be a hearing on probable cause: essentially it was "had the law been followed." Not whether it had merits, but has the law been followed. That is important. It keeps any old law bubba from picking you up if the proper affidavits weren't filled out and the proper doctor's reports aren't done and everything is not just right. Know that you're going to see a judge at some time with an attorney or if you can't afford an attorney you will have an appointed attorney.

Then within 3 to 4 days after that there has to be a hearing on the facts. It can be a hearing and if you demand, it can be a jury trial. So the worse thing that can happen is that you may spend 7 days locked away but that's all. I've hoped that

empowers you to know that, that's the worst. Back to wills, usually unless they have spent a hell of a lot of money to contest it, everybody's going to follow your instructions. Usually what I tell my clients, especially if they're terminally ill and they kind of see the end coming, is to get copies of that will and to make sure that the hospital has them on file and to make sure that the funeral home has them on file. Be sure at that time the hospital knows who to call in the case of your death. Put in your will instructions as to how you're going to be buried and in your proper name. Otherwise, your so called loved ones might bury you in drab and have you be prayed over with the name that they gave you and it's not who you are. My way, if so called family wants to change the funeral, the hospital and funeral home says to them, "but we've got a copy of the will and you're going to have to get yourself a lawyer and you're going to have to go to court to get a temporary restraining order and other stuff." Usually by the time they get all their stuff together your body already left the hospital on the way to the funeral home and is being prepared the way you want. The next procedures they ain't going to do without a hearing. Usually by the time it's all done you're in the ground. Okay.

By David:

The only comment that I would have in regard to what Phyllis said is put it in your will. Not only put it in your will, do a separate document. Give it to the one you love the most, who you know will follow your instructions. Take it, if you're going to be hospitalized and there's catastrophe illness or something like that, and give it to the hospital. And give it to the funeral home. Make a separate document. Not only put it in your will, make a separate document. It can be kept out because often that will is locked away in your safety deposit box and it can't be retrieved until sometime, even weeks after your death. Go ahead and get that separate document as well, and that will help just in addition to what Phyllis said.

SPECIAL REPORT:

CHARITABLE GIVING

and

METHODS AND TAX BENEFITS

for the benefit of:

'IFGE' and the 'WINSLOW STREET FUND'

prepared by:

Laura Smiley, J.D., Attorney at Law

International Foundation for Gender Education
Fund Raising Committee

Members: Joni Chrissman (Chair), Yvonne Cook (Treasurer), Catherine Ashley, Dana Lynn Houston, Michelle Moore, Laura Smiley

Note: Winslow Street Fund may be contacted at
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INTRODUCTION:

> *"To give away money is an easy matter and in any man's power. But to decide to whom to give it, and how large and when, and for what purpose and how, is neither in every man's power nor an easy matter."*
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> *-- Aristotle (344 BC)*

Aristotle's words are as true today as they were 2,300 year ago. I am sure every one of us has given money to a charitable organization at some point in our lifetime. Perhaps it was to the United Way, the Heart Fund, or hopefully to IFGE.

As you know, IFGE is a non-profit tax exempt organization. The members of its Board of Directors are democratically elected volunteers, and its employees are trained professionals. IFGE's objectives are to build a better future for all people, and to provide ongoing and effective service to our community. IFGE is achieving those objectives through its professionally managed business office, its publications, through programs such as the 'Coming Together' convention, through the Congress of Representatives (our community's communications and mutual support system), and through its cooperative action committees such as the Educational Resources committee. IFGE is an educational resource, and the primary means through which cooperative action can occur.

IFGE is at the heart of our community's growth, and our Fund Raising Committee has been working hard to lay the foundation to meet its current and long term financial needs. Those needs include providing a living wage to our employees which will give us a trained labor pool, and guarantee we will always be able to serve our community. Those needs also include a source of funding for scholarships, leadership training programs, grant money for research and other educational projects, supporting walk-in and outreach centers, and our community's marketing needs.

Currently IFGE is funded almost exclusively by the sale of publications. If we are going to support salaries, and scholarships, and grants, and walk-in centers, then we have to build another source of funding. We have done that with the creation of the Winslow Street Fund (named in honor of the historical Winslow Street meetings of 1981 and 1990).

The Winslow Street Fund is a permanent endowment fund. The income from this fund will enable IFGE to meet its current and long term financial needs. By donating to the Winslow Street Fund you will be assured that your gift will always be used wisely by IFGE to help you and our community, both today and in the years to come.

This two-part article will focus on the "how" and "when". My purpose is to introduce you to the various methods, tools, and instruments available for donating to IFGE; which will provide many benefits to both IFGE and the donor, as well as significant tax savings to the donor.

Traditionally, there have been a number of tax and financial benefits available to donors through thoughtful charitable planning and giving. Among these benefits are:

1) Current income tax savings through the charitable tax deduction for the value of the gift, since all contributions to IFGE are tax deductible.

2) The ability to avoid capital gains tax on contributions of appreciated property with certain types of gifts.

3) The elimination of federal estate tax on the value of cash or property passing to IFGE upon the donor's death.

4) The ability to retain the right to receive income from the donated property for the life of the donor and/or other named beneficiaries.

5) The possibility of increasing your spendable income with certain charitable planning arrangements.

In Part I of this article we will examine outright gifts of cash or property to IFGE and naming IFGE. as the owner and/or beneficiary of a life insurance policy. In Part II we will also examine the benefits and tax savings available to donors through the use of life income plans, primarily Charitable Remainder Trusts and its associated Wealth Replacement Trust, Charitable Lead Trusts, and the use of wills to donate money or other property to IFGE.

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Part I: OUTRIGHT GIFTS, LIFE INSURANCE

OUTRIGHT GIFTS:

CASH:

Donations of cash are the most popular type of charitable gifts. For tax purposes, gifts of cash are considered made on the date it is hand delivered, or mailed. The Internal Revenue Code allows a current tax deduction for the amount of cash donated, up to 50% of the donor's adjusted gross income. Any excess may be carried forward on your tax return for five years.

The Tax saving value of the charitable deduction depends on the donor's tax bracket. In other words, a donor in the 30% tax bracket will realize more tax savings from a cash donation to IFGE than a donor in the 20% tax bracket.

GIFTS OF APPRECIATED PROPERTY:

Appreciated property is property that is worth more today than what you originally paid for it. Very favorable tax benefits are available to one who donates appreciated, long term (owned for more than one year) capital gain property, such as real estate or securities. The IRC allows for a tax deduction of up to 30% of the donor's adjusted gross income, with any access carried forward on your tax return for five years. The primary tax benefits are:

1) A current charitable tax deduction for the full fair market value of the property donated on the date of the gift. The amount of the tax deduction from a gift of appreciated real estate or securities is limited to 30% of the donor's adjusted gross income, with a five year carry-forward of any excess.

2) No capital gains tax on the gift of appreciated property to IFGE at the time of the gift; and no capital gains tax when and if the property is sold by IFGE.

This can best be illustrated by the following examples:

Example 1:

Ms. A. is in the 25% tax bracket and wants to make a donation to IFGE. She owns stock with a current fair market value of $10,000, which she purchased for $2,000 more than one year ago. If she sells the stock she will have an $8,000 capital gain, subject to the 33% capital gains tax (28% after 1/1/91). Ms. A. pays $2,640 in federal capital gains tax and has $7,360 ($10,000 - $2,640) left to

donate to IFGE, for which she will receive a current income tax deduction subject to the 50% of adjusted gross income limitation (since she is donating cash).

Her tax savings are $1,840 (25% times $7,260).

Now lets examine the increased benefits to both Ms. A. and IFGE, and the increased tax savings to Ms. A., by having Ms. A. donate the stock to IFGE and IFGE sell the stock.

Example 2:

Ms. A. donates stock with a fair market value of $10,000 to IFGE and receives a charitable tax deduction of $10,000 (subject to the 30% of adjusted gross income limitation on charitable donations of appreciated property). She pays no capital gains tax on her gift. Her tax savings are $2,500 (25% times $10,000) plus $2,640 (compared to tax savings of $1,840 in the first example). IFGE now sells the stock and realizes $10,000 (compared to $7,360) to be used to benefit our community.

As you can see, example 2 is a win, win, win situation. Ms. A. realizes substantially increased tax benefits by donating her stock to IFGE rather than selling the stock and then donating the remaining proceeds to IFGE. IFGE receives a $10,000 gift rather than $7,360, and our community wins because IFGE has more resources available to help meet its primary objective.

Examples 1 and 2 have assumed that Ms. A. owned publicly traded stock. The same results are obtained with appreciated real estate as well as other publicly traded securities. In example 3 we will discuss a donation of closely held stock to IFGE and the possible tax benefits that might be available with a carefully planned arrangement.

Example 3:

Ms. A. is like many members of our community who either own their own business or are involved in a family business, and thus own closely held stock, that is, stock which is not publicly traded. Ms. A. donates closely held stock with an appraised value of $10,000 to IFGE. Ms. A. originally invested $2,000 in her closely held stock. She receives a $10,000 charitable tax deduction (subject to the 30% of adjusted gross income limitation). She also avoids paying capital gains tax on the $8,000 appreciation in the value of the stock.

Assume Ms. A. and/or her business partners do not want to give up control of the closely held stock or business. Also, because the market for closely held stock is limited, IFGE would rather have cash or publicly traded stock that is easily converted to cash or more secure long term investments. A possible solution to both problems is for the closely held corporation to buy the stock from IFGE for cash at a later date. As long as the transaction is not pre-arranged and IFGE is not obligated to sell the closely held stock to the corporation, there should be no adverse tax consequences to Ms. A., the closely held corporation, or IFGE. While IFGE must not be under a legal obligation to sell the closely held stock to the corporation, clearly the corporation is the most natural market for the closely held stock.

Assuming Ms. A. is in the 25% tax bracket, the benefits, tax and otherwise, are the same as in Example 2.

LIFE INSURANCE:

Many of you probably own some form of life insurance. An important but frequently overlooked role of life insurance is the one it can play in planned charitable giving. Life insurance can be the funding tool for a direct gift to IFGE. Also, life insurance can be used to replace the value of property given to IFGE.

IFGE AS BENEFICIARY:

In this situation a donor names IFGE as the primary beneficiary of a life insurance policy. The donor retains ownership of the policy and would have access to any cash value. The face value of the policy will be included in the donor's estate at her death, but no federal estate tax liability will result because the estate would have a charitable deduction equal to the face value of the policy. Since the donor retains ownership, no current income tax charitable deduction is allowed for naming IFGE as beneficiary or for subsequent premium payments.

IFGE AS OWNER:

More immediate tax benefits are available to a donor who irrevocably assigns ownership of a life insurance policy to IFGE. Upon assignment, the donor is allowed a current income tax charitable deduction for the lesser of the policy's fair market value or the net premiums paid. In order to obtain this deduction, the donor must not retain any rights in the policy. A charitable deduction is also allowed for contributions to enable IFGE to pay subsequent premiums.

Example 4:

Ms. A. owns a $25,000 whole life insurance policy with a fair market value of $15,000, and net premiums paid of $12,000. Ms. A. irrevocably assigns ownership and all rights in the policy to IFGE. She receives a $12,000 charitable tax deduction and in her 25% tax bracket realizes an immediate tax savings of $3,000 (25% times $12,000). In future years she donates $500 to IFGE to pay the premiums and realizes an annual charitable tax deduction of $500.

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Part II: LIFE INCOME PLANS

CHARITABLE REMAINDER TRUSTS (CRT):

Charitable Remainder Trusts were introduced by the Tax Reform Act of 1969. Significant financial and estate planning flexibility is available through the use of a Charitable Remainder Trust (CRT). The CRT is similar to other types of trusts except that it has a charitable beneficiary, for example, the Winslow Street Fund of the IFGE.

The person creating the CRT is called the 'grantor'. The CRT generally has one or more income beneficiaries (the grantor is usually one of the income beneficiaries who receive the income earned by the assets of the CRT for life. The CRT also has one or more charitable beneficiaries that receive the assets of the CRT on the death of the income beneficiary(s).

The use of CRTs enable one to realize significant capital gain, income, and estate tax savings. By donating appreciated assets such as real estate, publicly traded stock, stock in a privately owned closely held corporation, art collections, etc. to a CRT, the grantor of the trust will avoid the capital gain tax he or she would otherwise have paid if the asset was sold; realize a current income tax deduction in the year the assets are donated to the trust; and, at the income beneficiary's death, the trust assets pass directly to the Winslow Street Fund of the IFGE without any federal estate tax liability.

The avoidance of capital gain tax and federal estate tax, coupled with a current federal income tax deduction can substantially reduce the cost of a transfer of appreciated assets to a CRT. While the income earned by the CRT is not subject to federal income taxes, the income distributions to the income beneficiaries are taxable to the income beneficiary(s) as ordinary income.

The tax laws set forth specific requirements that all CRTs must meet. One is that the CRT must be irrevocable, that is, once you create the CRT and transfer assets to it, you cannot get them back. If the CRT is going to sell the assets donated to it, a special independent trustee must be appointed by the grantor to negotiate the sale; and there must not be a prearranged agreement between the grantor and the ultimate purchaser. On the other hand, the tax laws do allow the grantor to maintain some control over the CRT. Specifically, the grantor may determine how the trust assets are to be invested, when and how the trust income is to be distributed, and, which qualified charitable organizations are to receive the trust assets at the death of the income beneficiary(s).

The use of a CRT is ideal for someone who owns appreciated real estate, publicly traded stock or their own business and is looking to sell these assets and reinvesting for higher income yields. In addition to the requirements mentioned above, the CRT must conform to the requirements of a unitrust, annuity trust, or pooled income fund in order to obtain the desired capital gain, income, and estate tax savings.

CHARITABLE REMAINDER UNITRUST:

A primary feature of the Charitable Remainder Unitrust is that it provides for payment to the named income beneficiary(s) in an amount which may vary from year to year. The payment must equal a fixed percentage of the net fair market value of the trust assets, valued annually. The grantor determines the fixed percentage upon creation of the unitrust. The law requires that it must be at least 5%. Depending on the grantor's financial planning objectives, a choice may be made to emphasize a larger current charitable income tax deduction (by choosing a lower percentage rate) or the annual income paid to the income beneficiary(s) (by selecting a higher percentage rate).

The law requires payments be made annually or in more frequent intervals to either the grantor and/or other named beneficiary(s) for life. If one does not want to set the unitrust up for life, the law allows a unitrust for a term of years not exceeding 20. The variable nature of the unitrust payments may provide a hedge against inflation if the rate of growth of the CRT assets exceeds the rate of inflation.

The amount of the current charitable income tax deduction allowed is equal to the present value of the remainder interest in the unitrust which will pass to the Winslow Street Fund of the IFGE upon termination of the trust at the death of the income beneficiary(s). The actual amount of the deduction is determined by reference to I.R.S. regulations and is based on the fair market value of the asset transferred on the date of transfer, the payout percentage rate chosen, and the age and number of income beneficiaries.

A slight variation of the standard unitrust is the Income Only Unitrust. An Income Only Unitrust provides for distribution to the named income beneficiaries of either the net income of the trust or a fixed percentage (at least 5%) specified in the trust agreement, whichever is less. It also may contain a 'catch-up' provision which allows the trust in any subsequent year in which income exceeds the stipulated percentage to distribute such excess income to make up for any deficiencies which may have occurred in prior years.

In addition, the trust instrument of all unitrusts may include a provision to permit additional contributions. This means that a grantor need not establish a new CRT each time she wishes to make an additional gift.

CHARITABLE REMAINDER ANNUITY TRUST:

The principle difference between a Charitable Remainder Annuity Trust and Charitable Remainder Unitrust is the manner of calculating the payment to the income beneficiary(s). Whereas the unitrust provides for a payout that may very, the Annuity Trust provides for a fixed payout, which must equal

a sum certain of not less than 5% of the initial fair market value of the assets transferred to the trust. The other primary difference is that an Annuity Trust cannot permit additional contributions after the trust is established.

The Charitable Remainder Annuity Trust provides for the same type of charitable income tax deduction in the year the assets are transferred to the trust, the avoidance of capital gain tax on the transfer of appreciated assets, and the avoidance of federal estate tax at the death of the income beneficiary(s). The fixed payout feature of the Charitable Remainder Annuity Trust make it particularly suitable to meet the financial needs of older grantors and/or income beneficiaries.

POOLED INCOME FUND:

A Pooled Income Fund is a specific kind of trust which allows irrevocable gifts from several separate donors to be co-mingled for investment purposes. Each named income beneficiary receives a proportionate share of the net income earned by the fund each year. Upon termination of the income interest at the death of the beneficiary, a portion of the pooled income fund representing the value of the assets assigned to that income beneficiary will be distributed to the Winslow Street Fund of the IFGE. Otherwise, the features of the pooled income fund are similar to those of the CRT.

(At this time the IFGE is investigating the possibilities of creating its own pooled income fund in order to make the income and estate tax benefits of CRTs available to those with more modest balance sheets.)

WEALTH REPLACEMENT TRUSTS (WRT):

The Wealth Replacement Trust (WRT) is also an irrevocable trust which will contain an asset designed to replace the value of the property transferred to the CRT or pooled income fund. This asset (usually permanent life insurance) will generally be purchased with the income tax savings generated by the donation to a CRT. If the WRT is properly drafted, its assets will pass estate tax free to the grantor's heirs at her death.

The grantor of an irrevocable life insurance WRT makes a gift for gift-tax purposes both when she transfers an insurance policy to the trust and when she makes annual contributions to the WRT to allow the WRT to pay the premiums on the policy. The use of a Crummey type withdrawal provision should qualify any gift to the WRT for the gift tax annual exclusion.

In general, the value of the insurance proceeds in the WRT will be excluded from the grantor's estate unless she retained certain prohibited rights and powers, such as the right to receive income from the WRT for life, the power to change the beneficiary, cancel the policy, or borrow against the policy. However, if the policy itself is transferred to the WRT within three years of the grantor's death, the entire death proceeds will be included in her gross estate for federal estate tax purposes.

By using a CRT combined with a WRT a grantor will be able to make a substantial gift to the Winslow Street Fund of the IFGE, realize a significant current income tax deduction in the year the asset is transferred to the CRT (with a five year carry forward until used), still provide for her heirs after her death, and avoid federal estate tax on both the assets in the CRT as well as the WRT.

The following example illustrates the advantages of using the CRT and WRT combination.

Example 5:

Ms. "A" owns appreciated assets with a current appraised value of $500,000.00. Assume her basis in these assets (which might be real estate, publicly traded stock or closely held stock) is zero. Thus, if she were to sell these assets she would pay capital gain tax of 33% (28% after 1-1-91) on $500,000.00

or $165,000.00 ($140,000.00). She invests the remainder at 8% to produce an annual income from this investment of $26,800.00 ($28,000.00). Assuming she consumes her entire annual income, she will have an estate of $335,000.00 ($360,000.00) to pass to her children or other heirs.

Ms. "A" desires to avoid capital gain taxes, provide herself n annual income, provide a substantial estate for her children at her death, generate an income tax deduction, and provide a substantial donation to the Winslow Street Fund. She can accomplish all of this by establishing a CRT, donating her appreciated assets to the CRT, establish a WRT and fund the WRT with life insurance purchased with the tax savings generated by the donation to the CRT.

Ms. "A" establishes an 8% Charitable Unitrust and donates the appreciated assets worth $500,000.00. This donation will generate a current income tax deduction, the actual amount will depend on her life expectancy, based on the present value of the gift to the unitrust. Let's assume that the income tax charitable deduction is $175,000.00. Ms. "A" can use this deduction against current taxable income (subject to the 30% of AGI limitation) and carry forward any unused portion for 5 years. Assuming Ms. "A" is in the 33% tax bracket and is able to use all of the deduction in the current year, her net tax savings from the donation is $57,750.00.

Assume Ms. "A" is the only income beneficiary of her CRT and the Winslow Street Fund is the charitable beneficiary. The trustee sells the assets for $500,000.00 and invests the proceeds at 8%. Since the CRT is not subject to federal income taxes, no capital gain tax is paid. At 8% the CRT earns $40,000.00 per year and all of that is paid to Ms. "A".

With the tax savings of $57,750.00 Ms. "A" purchases a life insurance policy on herself in the amount of $500,000.00 and donates this policy to her WRT. The beneficiaries of her WRT are her children (they could also include her spouse and/or grandchildren). At her death $500,00.00 worth of income producing assets pass directly to the Winslow Street Fund estate tax free. Also, assuming Ms. "A" lives for at least 3 years after purchasing the life insurance policy, the $500,000.00 proceeds pass directly to her children estate tax free.

Thus, by using the CRT and WRT combination, Ms. "A" was able to avoid all capital gain taxes, generate a current income tax deduction, increase her annual income, provide a substantial gift to the Winslow Street Fund, and provide a larger estate for her children.

As you can see, this is a complicated area of estate planning, tax law, and charitable giving. The CRT and WRT tools available are quite flexible and can be adopted to almost any fact situation. Computer software is available to help determine the income percentage rate that should be used in order to maximize the amount of the current income tax charitable deduction consistent with a person's estate planning and charitable giving objectives. The author is available to discuss the use of CRTs and WRTs in more detail.

Finally, some mention should be made of the alternate minimum tax. When appreciated property is donated to a CRT or a pooled income fund, only a fraction of the gain will be treated as a tax preference item under the alternate minimum tax. That fraction is equal to the remainder interest factor, which will usually be in the 40% to 80% range, depending on the ages of the income beneficiaries and the life income plan being used. Generally, this amount will be minimal, especially when compared to the tax savings generated by the use of a CRT.

CHARITABLE LEAD TRUSTS:

The charitable lead trust is the reverse of the CRT in that it provides for a gift of an income interest from property to charity (Winslow Street Fund) for a term of years, after which the property either reverts to the donor or passes to a non-charitable beneficiary designated by the donor.

Contingent Bequest:

In anticipation of an unexpected occurrence, or if there should be certain other specific conditions that apply, a contingent bequest will insure that your property will pass to the Winslow Street Fund Rather than unintended beneficiaries.

Example: If _____(*insert name*) is not living on the sixtieth day after the day of my death, I give all the rest of the property I own at my death to the Winslow Street Fund to be used for its exempt purposes.

Restricted Bequest:

The examples given above are designed to provide unrestricted gifts. However, you may prefer to restrict your bequest for a specific purpose. For example, you may wish to provide for the publication of a certain book or document, or to aid a local organization, or to supplement staff salaries, or to fund another of the IFGE's established funds, etc. A restricted bequest should be made in the broadest terms possible consistent with your intent. This guards against the possibility of the purpose of your gift becoming obsolete.

Example: I give _____(*insert dollar amount*) to the Winslow Street Fund. This gift shall be held as a permanent endowment to be known as 'The Tapestry Fund', only the income of which may be used to support the publication of the Tapestry. If the IFGE Board of Directors determine that it is not feasible nor economical to use the income of the Tapestry Fund for the purposes stated above, the income of the fund may be used for such exempt purposes of the Winslow Street Fund as the Board of Directors direct.

LIFE INCOME FOR A BENEFICIARY:

A charitable bequest can be arranged to provide a life income for a selected beneficiary by directing that the bequest be used to establish a CRT, unitrust, a charitable gift annuity, or be invested in a pooled income fund. If such a gift is made by will, the principal will pass to the Winslow Street Fund only after both the donor and the life income beneficiary have died.

A trust established by a will is called a Testamentary Trust. In creating a testamentary trust, it is necessary to specify:

1. The amount of property to be placed in the trust.
2. The type of vehicle to be used, i.e., a CRT, unitrust, annuity trust, etc.
3. The income payments to be made and their frequency.
4. The beneficiary(s) of the trust.
5. The provisions for the eventual distribution of principal.

Definite tax benefits can be realized from the creation of a testamentary CRT as well as reduced estate settlement costs. If the testamentary bequest is to a CRT, the estate will be allowed charitable remainder interest. In addition, if you create a testamentary CRT and the only non-charitable income beneficiary is your spouse, your estate will be allowed a martial deduction for the value of your spouse's income interest and a charitable deduction for the value of the Winslow Street Fund's remainder interest. Thus, no federal estate tax will be imposed.

QUALIFY TERMINABLE INTEREST PROPERTY (QTIP):

The Economic Recovery Tax Act of 1981 created a powerful new estate planning tool. This law revised the traditional rule that terminable interests will not qualify for the marital estate tax deduction by providing the availability of the marital deduction for certain Qualify Terminable Interest property (QTIP).

The main requirement of QTIP property is that the surviving spouse must be entitled to at least all the income payable at least annually for life. If so, then the entire value of the property qualifies for the marital estate tax deduction.

This allows one the flexibility to create an estate plan that provides for the potential needs of the surviving spouse while providing a contingent remainder for the Winslow Street Fund without any increased estate tax burden. This is accomplished by creating a testamentary trust know as the QTIP Trust. The use of a QTIP trust allows one to set aside sufficient assets to meet the potential needs of the surviving spouse, while at the same time allowing one to make binding provisions for the Winslow Street Fund in the event the need to invade the trust's principal does not arise.

Example: Ms. "A" has a gross estate valued at $1,000,000.00. She would like to make a significant gift to the Winslow Street Fund through her will. However, she is concerned that her spouse may need access to the entire principal of their estates for her spouse's care after her death. In drafting her will, Ms. "A" decides to create a QTIP trust and place $250,000.00 in it. Her spouse will have the right to all of the income for life plus, the right to invade the principal for any amount needed for health reasons or to maintain the current standard of living. At her spouse's death, the value of the QTIP trust will pass to the Winslow Street Fund.

Under this example, Ms. "A"'s estate receives a marital deduction for the entire value of the QTIP trust, which eliminates any estate tax at her death attributable to that property. The amount remaining, if any, at her spouse's death will qualify for the charitable deduction and pass free of the estate tax at that time to the Winslow Street Fund.

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CONCLUSION:

This report is by no means intended to be an exhaustive discussion of the methodology and tax ramifications of charitable giving.

The intent of Part I has been to give you a brief introduction to some of the various methods and tools available for donating cash or other property to IFGE, and naming IFGE as an owner or beneficiary of a life insurance policy. In Part II we also examined the benefits and tax savings available to donors through the use of life income plans, primarily Charitable Remainder Trusts and its associated Wealth Replacement Trust, Charitable Lead Trusts, and the use of wills to donate money or other property to I.F.G.E. These are more complicated and more exciting charitable giving plans that provide greater tax benefits to the donor and greater long term benefits to IFGE and our community.

Yvonne Cook in the IFGE office has information available on how you can make a charitable contribution to IFGE, including suggested language for wills and trusts. In addition, you may want to contact your own attorney or tax advisor for advice before proceeding with any charitable giving plan. All donations to IFGE will be kept confidential and receipt gratefully acknowledged.

[END]

Sample Language For A Lifetime Gift Directly To The International Foundation for Gender Education Or One Of Its Designated Funds

_____, 19__

The International Foundation for Gender Education
P.O. Box 367
Wayland, MA 01778

Re: The _____ Fund

Ladies and Gentlemen:

I am/We are herewith delivering to IFGE, a Massachusetts nonprofit corporation (IFGE), as a gift, the property described on Schedule A attached hereto. This gift, together with any additional gifts which hereafter may be made by me/us or other donors to the fund herein described, shall be held as a separate fund (the "Fund") within IFGE and administered and distributed as follows:

1. The Fund shall be known as The _____ Fund.

[Alternative 1: General Purposes]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes of the IFGE.

[Optional additional language for Alternative 1 that suggests but does not mandate particular charitable purposes or uses, or organizations to be supported]

In determining the charitable purposes to which the income of the Fund is to be applied, it is my/our wish, though not my/our direction, that the Trustees give special consideration to the support of _____ [insert the particular charitable purpose[s] or use[s] or organizations[s] to be supported. This expression of my/our preferences is precatory in nature and shall not be construed to limit the unrestricted nature of this gift or otherwise limit the discretion of the Trustees to use or distribute the income and principal of the Fund in their discretion.

[Alternative 2: Restricted to Field of Interest]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [designate particular charitable purpose[s].

[Alternative 3: Designated Recipient]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [insert name[s] of particular related charitable organizations[s] to be supported] for the purpose of _____ [describe particular purpose[s], if any].

[Alternative 4: Advised Fund]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes of IFGE, after taking into consideration any recommendations made in writing to IFGE by _____ in accordance with IFGE'S guidelines for advised funds in effect from time to time. It is understood that any such recommendations shall be advisory only, will not be binding upon IFGE, and will not be the sole criteria used by IFGE in determining whether to make such distributions. If no recommendations have been received by IFGE at the time of considering distributions or if IFGE, in its discretion, determines not to follow any such recommendations, the income of the Fund shall be distributed for such of the general charitable purposes of IFGE as the Trustees, in their sole discretion, shall determine.

3. Distributions from the Fund ordinarily shall be made out of income only, so that the principal of the Fund may be preserved and maintained as an endowment. However, the Trustees may also authorize distributions from time to time from the principal of the Fund for the purposes set forth in paragraph 2, if they determine that such distributions are advisable under the circumstances.

4. Notwithstanding anything herein to the contrary, the Fund shall at all times be held and administered in accordance with the provisions of IFGE'S Constitution and By Laws as it now exists or may be hereafter amended (the By Laws), all of which are hereby accepted and agreed to by the undersigned, including those provisions relating to the amendment or termination of directions from donors. The undersigned acknowledges that under the provisions of the By Laws and applicable tax regulations, the Trustees shall have the power and the duty to modify or eliminate any designation, restriction or condition on the distribution of funds for any specified charitable purposes or designated organizations if in its sole judgment (without the necessity or the approval of any participating trustee, custodian or agent) such designation, restriction or condition becomes, in effect, unnecessary, undesirable, impractical, incapable of

fulfillment or inconsistent with the charitable needs served by IFGE.

If the terms of this letter are acceptable to IFGE, please so indicate by dating and signing the enclosed copy of this letter in the space provided below and returning it to me/us. Upon such acceptance, this letter will constitute our entire agreement with respect to the Fund, merging and superseding all prior discussions and agreements.

Very truly yours,

_____
(Donor)

_____
(Spouse)

Accepted this _____ day of

_____, 19___

IFGE

BY:_____
Executive Director

_____, Trustee

By: _____

Schedule A

(Attached to letter dated

_____, 19___

from _____

and _____
to IFGE

**Sample Language For A Lifetime Gift
In Trust For The International Foundation
For Gender Eduction**

_____, 19___

The International Foundation
For Gender Education
P.O. Box 367
Wayland, MA 01778

_____, Trustee

_____

_____, Massachusetts _____

Ladies and Gentlemen:

I am/We are herewith delivering to _____ (the "Trustee"), in trust, as a gift to the International Foundation For Gender Education (IFGE) the property described on Schedule A attached hereto. This gift, together with any additional gifts which hereafter may be made by me/us or other donors to the fund herein described, shall be used to establish and maintain a component fund (the "Fund") of IFGE to be held and administered by the Trustee as follows:

1. The Fund shall be known as The _____ Fund.

[Alternative 1: General Purposes]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes of the IFGE.

[Optional additional language for Alternative 1 that suggests but does not mandate particular charitable purposes or organizations to be supported]

In determining the charitable purposes to which the income of the Fund is to be applied, it is my/our wish, though not my/our direction, that the Trustees give special consideration to the support of _____ _____ [inset the particular charitable purpose[s] or organization[s] to be supported]. This expression of my/our preferences is precatory in nature and shall not be construed to limit the unrestricted nature of this gift or otherwise limit the discretion of the Trustees to use or distribute the income and principal of the Fund in their discretion.

[Alternative 2: Restricted to Field of Interest]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [designate particular charitable purposes[s]].

[Alternative 3: Designated Recipient]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time t time for the support of _____ [insert name[s] of particular charitable organization[s] to be supported] for the purpose of _____ [describe particular purpose[s], if any].

[Alternative 4: Advised Fund]

2. The income of the Fund shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes of IFGE, after taking into consideration any recommendations made in writing to IFGE by _____ in accordance with IFGE'S guidelines for advised funds in effect from time to time. It is understood that any such recommendations shall be advisory only, will not be binding upon IFGE, and will not be the sole criteria used by IFGE in determining whether to make such distributions. If no recommendations have been received by IFGE at the time of considering distributions or if IFGE, in its discretion, determines not to follow any such recommendations, the income of the Fund shall be distributed for such of the general charitable purposes of IFGE as the Trustees, in their sole discretion, shall determine.

3. Distributions from the Fund ordinarily shall be made out of income only, so that the principal of the Fund may be preserved and maintained as an endowment. However, the Trustees may also authorize distributions from time to time from the principal of the Fund for the purposes set forth in paragraph 2, if they determine that such distributions are advisable under the circumstances.

4. Notwithstanding anything herein to the contrary, the Fund shall at all times be held and administered in accordance with the provisions of IFGE'S Constitution and By Laws as it now exists or may be hereafter amended (By Laws), all of which are hereby accepted and agreed to by the undersigned, including those provisions relating to the amendment or termination of directions from donors. The undersigned acknowledges that under the provisions of the By Laws and applicable tax regulations, the Trustees shall have the power and the duty to modify or eliminate any designation, restriction or condition on the distribution of funds for any specified charitable purposes or designated organizations if in their sole judgment (without the necessity or the approval of any participating trustee, custodian or agent) such designation, restriction or condition becomes, in effect, unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs of IFGE.

If the terms of this letter are acceptable to both IFGE and the Trustee, each should so indicate by dating and signing the enclosed copy of this letter in the spaces provided below and returning it to me/us. Upon such acceptance, this letter will constitute our entire agreement with respect to the Fund, merging and superseding all prior discussions and agreements.

Very truly yours,

_____
(Donor)

_____
(Spouse)

Accepted this _____ day of

_____; 19 __

IFGE

By: _____
Executive Director

_____, Trustee

By: _____

Title: _____

Schedule A

(Attached to letter dated

_____, 19___

from _____

and _____
to IFGE.

and _____, Trustee

Sample Language For a Testamentary Gift Directly To The International Foundation For Gender Education

1. General Testamentary Gift Language:

I give, devise and bequeath to the International Foundation for Gender Education, a Massachusetts nonprofit corporation ("IFGE"), _____ _____ [amount or description of property]. This gift shall be held, administered and distributed by IFGE as a separate fund (the "Fund") to be known as The _____ _____ Fund.

or

UNRESTRICTED - to be used where needed most

I give, devise and bequeath to the IFGE, (insert sum or description of property) which shall be knows as the (insert name) Fund, the principal and income to be used for such charitable purposes as the Trustees may determine.

or

I give _____ insert dollar amount or description of property) to the (insert name of the fund) Fund of IFGE to be used for its exempt purposes.

2. Alternative Provisions Regarding Use Of Gift:

[Alternative 1: General Purposes]

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees, shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes, including operating expenses, of the IFGE.

[Optional additional language for Alternative 1 that suggests but does not mandate particular charitable purposes or organizations to be supported]

In determining the charitable purposes to which this gift is to be applied, it is my wish, though not my direction, the Trustees of IFGE give special consideration to the support of _____ [insert the particular charitable purpose[s] or organization[s] to be supported]. This expression of my preferences is precatory in nature and shall not be construed to limit the unrestricted nature of this gift or otherwise limit the discretion of the Trustees to use or distribute the income and principal of this gift in their discretion.

[Alternative 2: Restricted to Field of Interest]

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees, shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [designate particular charitable purpose[s]]. However, if at any time in the sole judgment of the Trustees, such use becomes, in effect, unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs served by IFGE, the Trustees shall have the power to modify or eliminate the restriction to such use and to use or distribute the income and principal of the Fund for the general charitable purposes of IFGE.

[Alternative 3: Designated Recipient]

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees, shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [insert name[s] of particular charitable organization[s] to be supported] for the purpose of _____ [describe particular purpose[s], if any]. However, if at any time in the sole judgment of the Trustees, such use becomes, in effect, unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs of the geographic area served by IFGE, the Trustees shall have the power to modify or eliminate the Fund for the general charitable purposes of IFGE.

Sample Language For a Testamentary Gift In Trust for The Foundation

1. General Testamentary Gift Language:

I give, devise and bequeath to _____ (the "Trustee"), in trust, for the benefit of International Foundation for Gender Education, a Massachusetts non-profit corporation (IFGE), _____ _____ [amount or description of property]. This gift shall be held, administered and distributed by the Trustee as a component fund (the "Fund") of IFGE, to be known as The _____ Fund, in accordance with the provisions of the Constitution and By Laws of IFGE as it exists on the date of my death and as it

thereafter may be amended.

2. Alternative Provisions Regarding Use Of Gift:

[Alternative 1: General Purposes]

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees of IFGE, shall be used or distributed as the Trustees shall determine from time to time for the general charitable purposes of IFGE.

[Optional additional language for Alternative 1 that suggests but does not mandate particular charitable purposes or organizations to be supported]

In determining the charitable purposes to which this gift is to be applied, it is my wish, though not my direction, that the Trustees of IFGE give special consideration to the support of _____ [insert the particular charitable purpose[s] or organizations[s] to be supported]. This expression of my preferences precatory in nature and shall not be construed to limit the unrestricted nature of this gift or otherwise limit the discretion of the Trustee to use or distribute the income and principal of this gift in its discretion.

[Alternative 2: Restricted to Field of Interest].

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees of IFGE, shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [designate particular charitable purpose[s]]. However, if at any time in the sole judgement of the Trustee, such use becomes, in effect, unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs served by IFGE, the Trustees shall have the power to modify or eliminate the restriction to such use and to use or distribute the income and principal of the Fund for the general charitable purposes of IFGE.

[Alternative 3: Designated Recipient]

The income of the Fund, and the principal of the Fund when deemed advisable by the Trustees of IFGE, shall be used or distributed as the Trustees shall determine from time to time for the support of _____ [insert name[s] of particular charitable organization[s], if any]. However, if at any time in the sole judgement of the Trustees, such use becomes, in effect, unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs served by IFGE, the Trustees shall have the power to modify or eliminate the restriction to such use and to use or distribute the income and principal of the Fund for the general charitable purposes of IFGE.

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Note Regarding Forms Of Charitable Remainder Trusts And Other Planned Giving Techniques

The charitable remainder trust described in section 664 of the Internal Revenue Code and discussed in this booklet, permits flexibility of design where such flexibility is necessary to accomplish the donor's objectives. A charitable remainder trust may retain the specific assets contributed by the donor, and may invest in tax-exempt securities.

As indicated, there are two permissible types of charitable remainder trusts. The first is the charitable remainder annunity trust, which pays an unvarying annunity each year to the income beneficiaries. The second is the charitable remainder unitrust, which pays an unvarying percentage of the net worth of trust assets from year to year to the income beneficiaries. Becuase the net worth of trust assets may vary from year to year, payments from the unitrust version of a charitable remainder trust may very from year to year.

The preparation of a charitable remainder trust involvs a number of additional planning considerations and, therefore, usually involves an element of custom drafting. Sample charitable remainder trust forms that address various circumstances are available upon request from IFGE.

Finally, in addition to charitable remainder trusts, prospective donors to IFGE may wish to consider the potential financial and tax benefits of several other planned giving techniques, including the charitable lead trust, the charitable gift annunity and the gift of a remainder interest in a personal residence, a ranch or a farm. We welcome the opportunity to discuss any of these techniques and to assist a prospective donor and his or her consel with appropriate documentation and implementation of such gifts.