



# NONPROFIT ADVISOR

For DAV Departments and Chapters

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BEQUEST MARKETING

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Beware the Trojan Horse

Charities like bequests. They accept bequests. They spend bequests. Sometimes, they even ask for bequests. Like the biblical “manna from heaven,” bequest dollars often appear to be a providential intervention to assist a struggling organization. However – like most gifts – bequests are not always an unmixed blessing.

## 1. SEEKING AND RECEIVING BEQUESTS

Bequests arrive by accident or by design. The accidental bequest is the one that shows up without the slightest effort on the charity’s part. In such a case, the charity is naturally jubilant, but must still be careful to mitigate the risks described in sections 2 through 5 below.

The designed bequest is the one that results from a conscious program of seeking to advise one or more donors to include the charity in his/her estate plans. This form of supporter cultivation, also called “bequest marketing” can be done in a number of ways. Many bequests are cultivated by in-person meetings with potential decedents\*. Estate gifts can also be encouraged by direct mail, telemarketing, website notations and just about any other method of fundraising that exists.

One problem that a charity must immediately confront is that in almost every state, the solicitation of a gift by any method at all triggers a host of registration, permitting and disclosure obligations. These requirements are not to be taken lightly. Virtually all applicable statutes impose heavy penalties on illegal fundraising, and a fundraising enforcement action can cripple a charity.

A veteran-related organization on the West Coast is still reeling in the wake of an enforcement action of about a year ago and has certainly spent tens of thousands of dollars in legal and related fees in defending itself.

**Those familiar with DAV’s Bylaws are aware that no department could undertake a full-throttle bequest marketing program without the approval of the National Executive Committee, as well as the consent of the chapters in the state. No department has sought approval for such a program. Historically, the NEC has disfavored local fundraising programs that are in conflict with national efforts. DAV’s recently-announced program of sharing bequest revenue with departments will, in almost every case, provide a department with more net income than a bequest marketing program. In addition, the sharing program will not affect a department’s ability to accept – and keep – 100% of so-called “accidental bequests,” which are sometimes quite substantial.**

## 2. THE GIFT THAT KEEPS GIVING

An increasing number of bequest gifts are in the form of real estate. Vacation homes, vacant lots, burial plots, timeshares – all these and more can turn up in an estate. A charity needs to be quite careful in accepting real estate. There are several reasons for caution. Real estate can be notoriously difficult to sell and, depending upon the property, a charity can be responsible

*\*This bit of gallows humor is intended to point out the delicacy of bequest marketing. The fundraiser seeking a post-mortem gift must be especially careful to avoid any appearance of enthusiasm or impatience for the donor’s demise.*



for taxes, maintenance and insurance until the sale is made. Even worse, a charity can be responsible for the costs of environmental cleanup of a property, even if it had nothing to do with causing the pollution! It is not unheard of for a charity to spend a million dollars for remediation of a property worth far less than that. Industrial properties, farms and inner-city lots are especially notorious environmental risks.

### **3. BEING BOUND BY A RELEASE**

Although not legal in most states, many executors demand that charities execute releases in order to receive funds to which they are entitled from an estate. Some of these releases are routine and harmless. Others are not. DAV routinely sees proposed releases that would obligate a charity to bear the cost of any negligence by the executor in the handling of the estate. This obligation can easily exceed the amount that the charity receives. Releases that are more than routine receipts need to be reviewed by counsel.

### **4. WINDFALL WOES**

Relatively large bequests can put a charity in an awkward position in two ways. First, if the amount is large and the charity's budget is small, the organization may run afoul of internal or external standards limiting the amount that can be kept "in reserve." Donors, generally, expect charities to spend money and to have prudent but not enormous reserves. Second, believe it or not, it may be very difficult to find a way to use a large bequest quickly.

It takes a lot of planning to start a new program and a lot of money to keep it running. More than one charity has found itself in the bitter position of refusing a bequest because it had no practical way to use it.

### **5. RESTRICTED BEQUESTS**

The larger the bequest, the more likely it is that the testator (donor) will have specified exactly how it is to be used. "I leave \$500,000 to DAV Chapter 16 with the restriction that the money is to be used only in support of Korean War veterans living within a sixteen mile radius of the chapter home." Such a restriction is not a suggestion – it is a mandate. The charity is not free to substitute its judgment for the expressed intention of the deceased.

There are many cases in which a charity has ignored a restriction and spent the money on some other purpose, only to be sued by some interested party. The interested party is usually a disappointed family member who was hoping for the money themselves. The result in such cases is always the same: the court orders the charity to return the money to the estate. The problem is that the money has already been spent. In that case, the charity is often required to declare bankruptcy. Depending upon the circumstances, the court may seek to attach the personal assets of the charity officials who permitted misuse of the funds.

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