

The ABC's of CRT's

**Estate Planning Council of Delaware, Inc.
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Agenda

1. Charitable Planning Income Tax Primer
2. CRT Primer
 - a) History
 - b) Private Foundation Rules
 - c) IRC 7520
 - d) FLIP Provision and its purpose (Introduced in 1997)
3. Non-cash Assets to fund charitable gifts / CRTs
 - a) Real Estate
 - b) Closely held business interests – C corp., S corp.
 - c) Art or collectibles
4. Case studies – staying out of line of title, income for family members
5. Testamentary CRTs funded with IRAs and other tax-deferred plans
6. Early termination of CRTs (and CGAs, PIFs)
7. Closing (Q&A)

INCOME TAX PRIMER FOR GIFTS TO PUBLIC CHARITIES

Itemize?

**S.566 –
“Charitable Act”**
Bipartisan
Legislation that
is very
important.

Gifts to “public” charities of cash 50% of AGI (See IRC section 170(b)(1)(A))

Gifts to “public” charities of appreciated real property held long-term

30% of AGI (See IRC section 170(b)(1)(C))

Excess contributions may be carried forward for up to five subsequent tax years.

(See IRC section 170(b)(1)(D))

The interplay of the 50% and 30% is as follows:

1. Current gifts subject to the 50% limit are taken into account first.
2. Current gifts subject to the 30% limit are taken into account second.
3. Carried-over gifts subject to the 50% limit are taken into account third.
4. Carried-over gifts subject to the 30% limit are taken into account fourth.

See IRC sections 170(b)(1)(A), (b)(1)(C), (b)(1)(D)

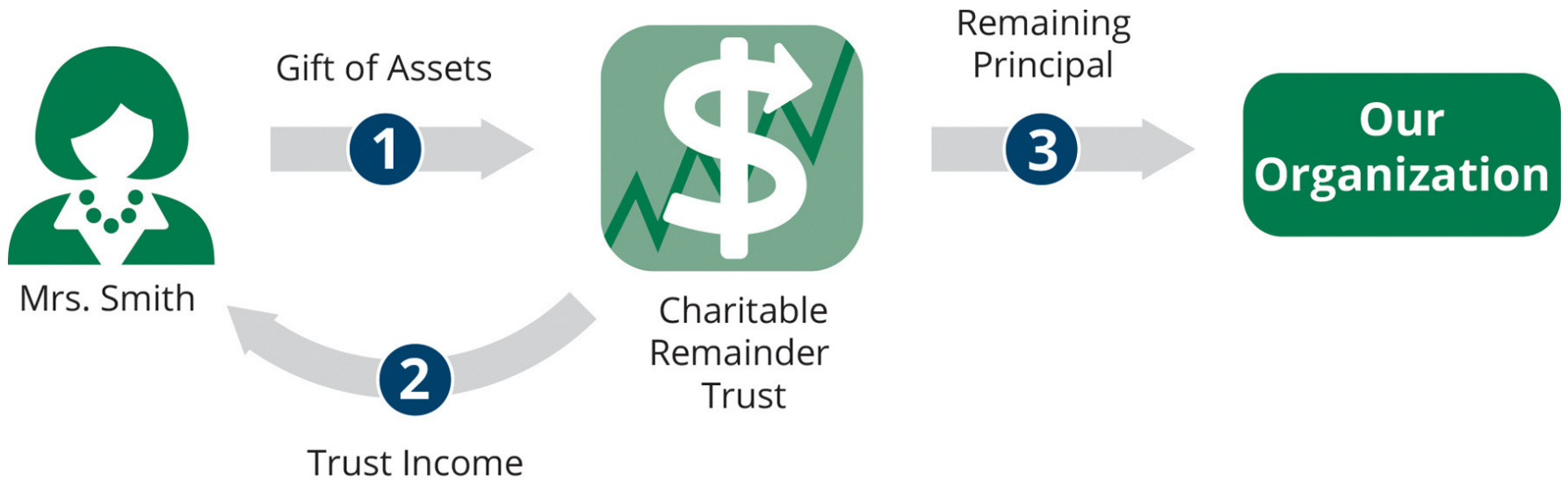
APPRAISAL

- Other than cash, and publicly traded securities, if the claimed value of the property is greater than \$5,000, the donor must obtain a qualified appraisal to support his or her claim of an income tax charitable deduction with respect to the gift. (See Part B IRS Form 8283 and instructions and Reg. section 1.170A-13(e))
- If a deduction of more than \$500,000 is claimed, the qualified appraisal must be attached to the return when filed. (See Code section 170(f)11(C) and (D))

Qualified CRT Primer

"BIC"

IRC 664



TYPES OF CHARITABLE REMAINDER TRUSTS

Charitable Remainder Annuity Trust

Charitable remainder annuity trusts (CRATs) distribute a fixed annuity amount each year, and additional contributions are not allowed.

Charitable Remainder Unitrust

Charitable remainder unitrusts (CRUTs) distribute a fixed percentage based on the balance of the trust assets (revalued annually), and additional contributions can be made.

Self-Dealing (IRC § 4941)	Minimum Distribution Requirement (IRC §4942)	Excess Business Holdings (IRC §4943)
Jeopardizing Investment (IRC §4944)	Taxable Expenditures (IRC §4945)	Excise Tax on Investment Income (IRC §4940)

Private Foundation Rules

PRESENT VALUE OF REMAINDER INTEREST



IRC 7520 Rate



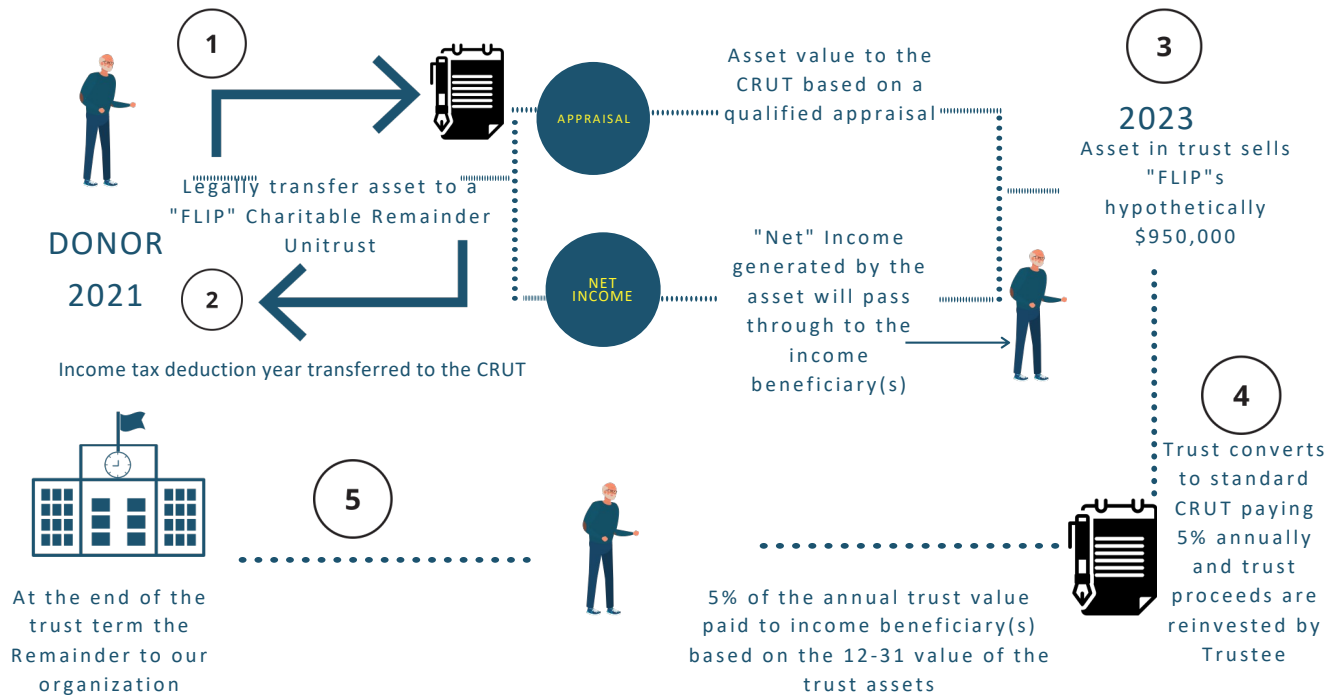
"Split-Interest"
Charitable Gifts



Allocation between
income & remainder
beneficiaries

DONATING ASSETS TO A CHARITABLE REMAINDER TRUST (CRUT)

"FLIP" CRUT



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Factors for the donor to consider when contributing real estate to a CRT (Charity should have a “Gift Review and Acceptance Committee” for review)

1. **Type of flip CRUT**. Begin as NICRUT or NIMCRUT? Based on donor goals.
2. **Type of property** – commercial – operating business use or rented to business? Farm or unimproved land? Oil, gas, minerals? Personal residence?
3. **Is the property marketable**? Gift to Charity / CRT is NOT a magical solution.
4. **Are there existing or potential environmental hazards** on the property?
5. **Has the donor owned the real estate for longer than one year**? LTCG? Flipping?
6. **Mortgage / debt on the property**? = UBIT is 100% taxable for a CRT
7. **Restrictions on the property**? Easements, right of way, zoning?
8. **Is the donor under a legally binding commitment to sell the property?**
9. **Who / What owns the property**? Individual / H&W, C- or. S-corp, LLC, LP?

Closely Held Business Interests

1. Sole Proprietorship – assets (only)... maybe

2. C Corp shares – no UBIT issue; sale options; if IPO – pre- or post-gift, (QES possible?)

3. S Corp – forfeits S status; UBTI, may gift assets to a term flip CRUT. Also CGA options

4. LLC – complex – single member, debt free real estate, operating business contribution = UBIT (no sale back to LLC), PLRs LLC to CRT with quick sale

5. LP – publicly traded? Monitor distributions which can be UBTI. PLR = LP established CRT for LP.

Case Studies

The “Swiss Army Knife of Planning”

**Environmentally
suspect property**

**CRAT used to
ensure
premiums are
paid on a second
to death life
insurance policy**

**CRUT set up to
provide life
income for Adult
Children of the
Donor**

Art or Collectibles to a CRT

- (1) Highly appreciated asset?
- (2) Inherited, Investment, Artist?
- (3) Avoids 28% capital gain at sale
- (4) Deduction based on cost basis;
not deductible until sale date
- (5) Collectibles – Aston-Martin,
Corvette, comics, memorabilia



Testamentary CRTs funded with IRAs and other tax-deferred plans

Incredible opportunities in light of the SECURE Act, the 2022 proposed Regs and SECURE "2.0".



The SECURE Act does not amend or replace § 401(a)(9)(B) or any of the existing regulations.

It does not change the definition of a designated beneficiary. Changes the "Life Expectancy Rule."

The SECURE Act adds a new section to 401(a)(9) and § 401(a)(9)(H).

401(a)(h)(ii)Exception for eligible designated beneficiaries.—
Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary."

THE 5 CATEGORIES OF ELIGIBLE DESIGNATED BENEFICIARIES:

1. Owner's Surviving Spouse
2. Owner's Minor Child
3. An Individual Who is Disabled
4. An Individual Who is Chronically Ill
5. Any Other Person Who is Less Than 10 Years Younger than the Decedent

Planning has become more complicated by adding five categories of eligible designated beneficiaries who aren't subject to the 10-year rule.

Those five categories have four sets of minimum distribution rules that will be described throughout the e-book.

Example:

REQUIRED MINIMUM DISTRIBUTION

If the decedent died before their required beginning date (April 1 after the participant becomes age 73), designated beneficiaries could delay their minimum distribution payments until the 10th anniversary of the participant's death. Full distribution by the end of the calendar year that includes the tenth anniversary of the death (e.g., 2023 deaths= 12/31/33 liquidation)

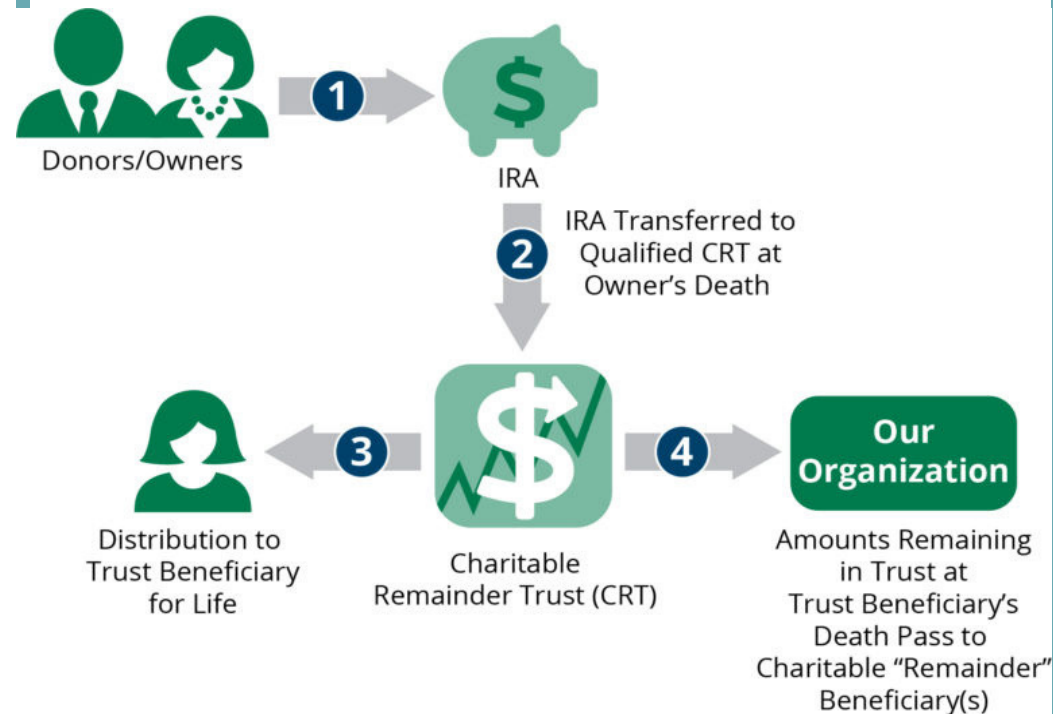
Because SECURE didn't repeal rules, if a decedent dies after RBD, a regular designated beneficiary must begin taking life expectancy payout for the first nine years and 100% final distribution in year 10. (IRC 401(a)(9)(B)(i))



TESTAMENTARY CHARITABLE REMAINDER TRUST

- Name the trust as the primary beneficiary of Donor's IRA
- Review Your States "Dry Trust" Rules
- Letter Ruling's 9237020, 9253055

RETIREMENT ASSETS



Assumptions

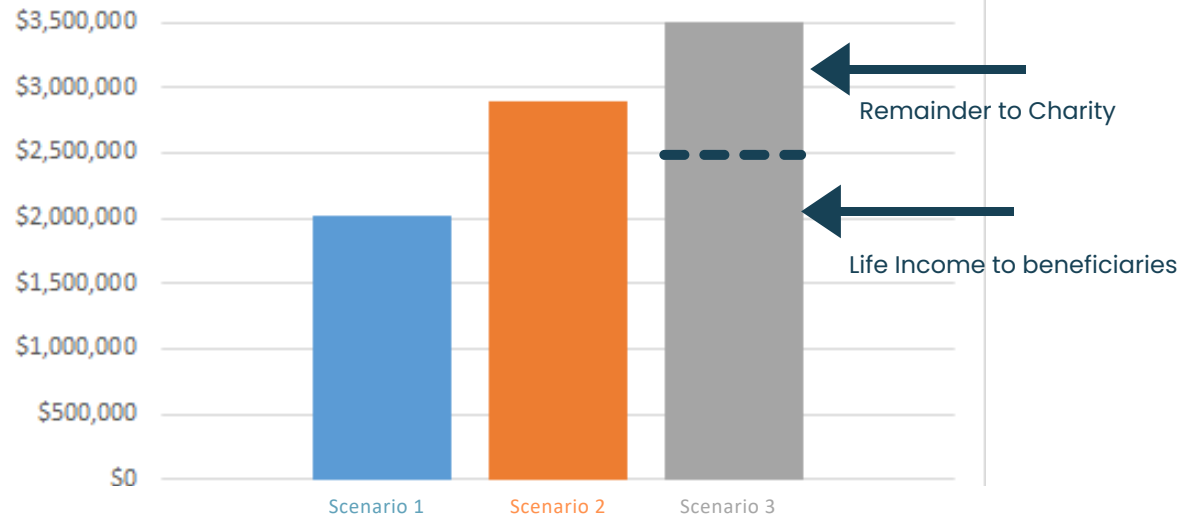
Tax rate: 37% on Lump Sum Withdrawal
 Tax rate: 22% assessed ongoing

Scenario 1: Inherits \$500K IRA. No rollover to inherited IRA; immediate withdrawal. Amount invested after taxes.

Scenario 2: Inherits \$500K IRA. Rollover to inherited IRA, 10-year deferral then withdrawn.

Scenario 3: \$500K into Testamentary CRUT. 5% annual payout based on the beginning principal balance.

Rate of return: 7%
 Term of Years: 35
 Principal: \$500,000




Scenario 1:
 Total after 35 years: \$2,024,805
 Growth: \$1,524,805
 PV (Beg. Yr 1): \$315,000

Scenario 2:
 Total after 35 years: \$2,897,986
 Growth: \$2,397,986
 PV (Yr 10 to Beg. Yr 1): \$498,290

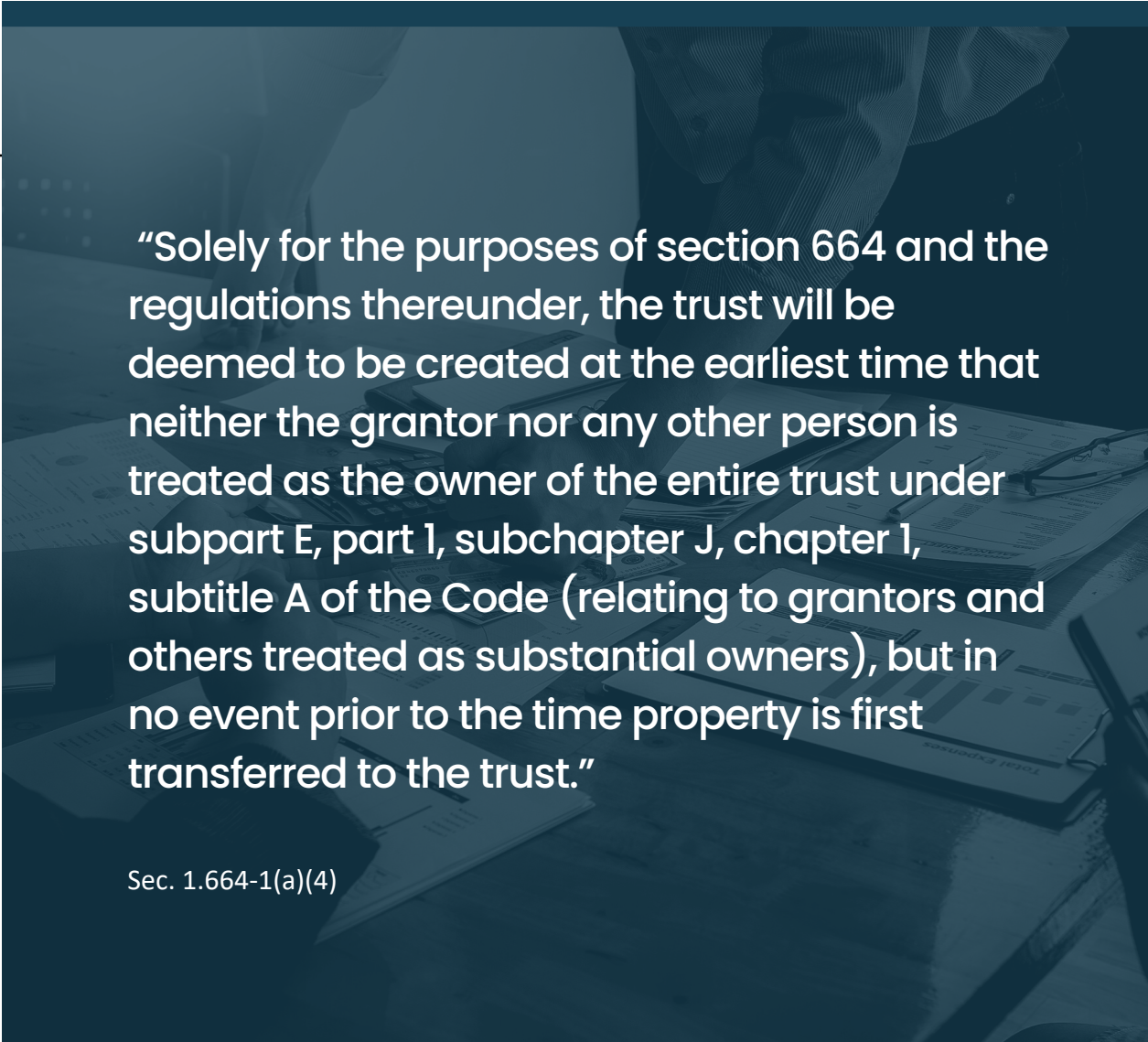
Scenario 3:
 Remaining Principal
 Total after 35 years: \$999,939
 Growth: \$499,939
 PV: \$93,657
 Lifetime Income
 Total after 35 years: \$2,495,565
 Growth: \$2,495,565
 PV: \$388,237

WHERE SHOULD A TESTAMENTARY CRT DOCUMENT "LIVE"?

- CRT provisions into a revocable living trust document
"100% to ABC Charity, trustee of a charitable remainder trust described in Clause X of a trust document executed by me on Month, Day, Year."
- The "Dry" Trust
Draft as revocable "fund with \$10" and irrevocable at the death of Grantor. There is no intent that the trustee actually invests the \$10, make payments to the income beneficiaries, or file tax returns.
- Create a "Fund" a Qualified CRT Today
Irrevocable, non-grantor trust. EIN and tax reporting annually.



Recommend the retention of a right to revoke. This ensures the trust is NOT a qualified CRT until the grantor/donor's death.



“Solely for the purposes of section 664 and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (relating to grantors and others treated as substantial owners), but in no event prior to the time property is first transferred to the trust.”

Sec. 1.664-1(a)(4)

T-CRT CHECKLIST



Choosing the trustee and the charity



Choosing the Best Type of CRT - CRAT, CRUT, FLIPCRUT, or NIMCRUT



- Minimum 10% charitable deduction
- No use of the IRD Deduction
§ 1.691(c)-2(a)(3)



No Pecuniary Bequest With Retirement Assets, Especially From a Trust

Early CRT termination or partial assignment of income

- Additional charitable income tax deduction for gift of lifetime income
- Appraisal typically required
- Make an immediate charitable impact – enjoy seeing during life
- Uncertain economy / recent market appreciation = CRT's can be the first step in making a principal gift. “Cleaning out my financial closet”

Conclusion

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Planned Giving
Document Creation Solutions

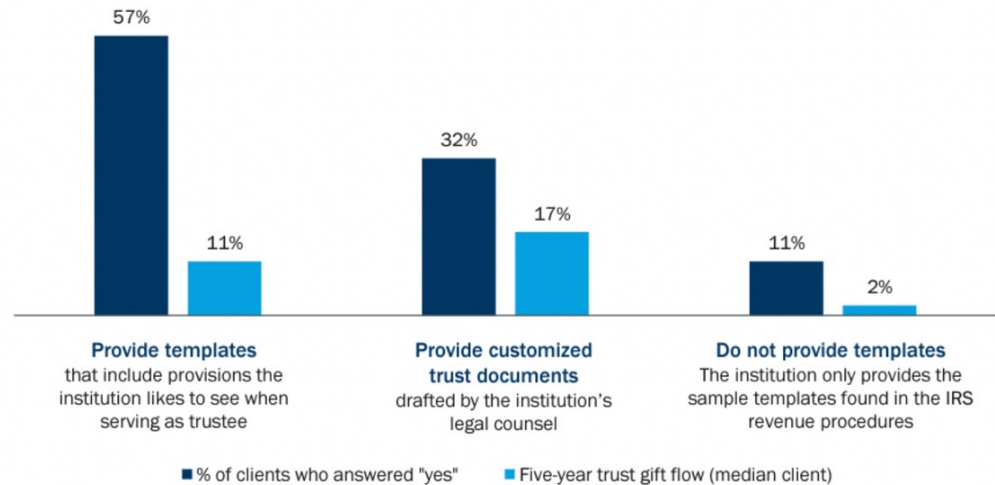
Save Hours of Time Drafting Docs

“Your mind is for having ideas, not holding them.” -David Allen

Why use CRT Drafting Software?

- Reduce typos and mistakes
- Protect trustee
- Protect beneficiaries
- Avoid "Dry" Trust Issues
- Save hours of time
- Includes unique alternate provisions

Most clients provide template trust documents to donors to help make establishing a new trust simpler



The five-year trust gift flow percentage is defined as the total new trust funding for the last five calendar years (2017 – 2021) divided by the institution's total market value of trusts at the beginning of the period (2017). Clients that provide template trust documents experience higher levels of trust gifts.

Please reach out to your relationship manager if you need assistance reviewing trust templates or specific trust instruments.

Note: Survey data are from our 2021 Program Analytics Report.

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Thank You

QUESTIONS?