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WINGS Global Fund for Community Foundations

Legacies to Community Foundations

Supported by
The Charles Stewart Mott Foundation
and Global Fund for Community Foundations

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Introduction

Working with legacies usually means working long-term. This is very likely the reason why European community foundations have had substantially less experience with legacy fundraising compared to their Canadian, UK or US colleagues.

With somewhat of a license, we could say that the existence of a developed legacy fundraising program distinguishes mature and established community foundations from the emerging and developing ones. There is yet another significant reason – at least in the CEE region – why community foundations hesitate to raise fund from legacies: lack of understanding or outright moral (ethical) rejection of the idea of philanthropic bequests on behalf of the public at large, ensuing from the dilapidated "giving" culture destroyed over the decades of communist regimes.

At the same time, most people involved would probably agree that there is no other type of philanthropic gift closer to the idea of permanent giving, i.e. closer to the very heart of permanent sustainability of community foundations, as well as to the nature of relationships between community foundations and their donors, in which community foundations are not beneficiaries, but executors of their donors' will, regardless of whether living or deceased.

If this is so, why do we make it an issue in the Czech Republic only now?

Every idea requires its own time.

I recall the situation as if it happened yesterday: Prague, June 2007, meeting of Czech community foundations with Peter Hero (for many years the CEO of the Community Foundation of Silicon Valley). Among many other things, Peter mentioned the issue of legacies to benefit community foundations, a common thing in the US. We have all heard that so many times over. Only this time, something happened – our colleagues from the NETT think tank were researching issues of declaratory legal action which also concern philanthropic bequests, representatives from the emerging community foundations wanted to know more about it and the Association of Community Foundation in the Czech Republic (A.K.N. – občanské sdružení) was formulating its long-term goals.

Immediately after this meeting, members of the Association of Community Foundations decided to devote systemic attention to this issue and to bring it home from across the sea. Within two months, the initial idea was transformed into a project, which later (in early 2008) received funding support from WINGS Global Fund for Community Foundations and from The Charles Stewart Mott Foundation – i.e. from institutions that promote community philanthropy development worldwide. At that point, we were able to start working extensively on a project with the aim of exploring the potential of philanthropic legacies to benefit community foundations as well as the legislation and the overall social context, of raising awareness about the issue – primarily among the expert public and of developing suitable tools that would make this type of philanthropy possible in our country. You will be able to learn about on-going outcomes from our project in the following compilation.

Project implementation has been organically enhanced by a new element – in August 2008, the Community Foundation of Euroregion Labe, a member of the Transatlantic Community Foundations Network (TCFN) held the TCFN Peer Exchange (i.e. a meeting of 25 community foundations' leaders from ten countries of the world) focused specifically on legacies. Thanks to their contribution, this compilation also contains the Part II – entitled Legacies? Depends… and part III, which contains several case studies related to legacy philanthropy.

Tomáš Krejčí, Chairman of the Association of Community Foundations of the Czech Republic,
CEO of the Community Foundation of the Euroregion Labe

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PART I.
Reality Comprises Realizations

The issue of philanthropic legacies came forth from a discussion about declaratory legal action, or better yet about unilateral acts of formative nature such as a promise, public declaration or obligation, legacy, including setting up a legal entity, an institution or a system.

As our present times have been increasingly more focusing on bilateral action – i.e. on contracts and the line of thought subjected to contracts – it is ever more important to keep our attention on and awareness of themes that are being omitted or marginalized compared to the general trend. To us, one of the most significant among such issues is the unilateral nature of formative action, even action of legal consequences.

In the past 15 years, community foundations have flourished literally around the globe. It is no secret, however, that the idea was born prior to WWI in the US, in a country which is – in some respects – rather distant from our legal tradition, both in terms of public administration, its structure and operation as well as of some legal bases and procedures. If community foundations are to thrive in a favorable environment in this country, it is necessary to understand some of the context they have sprang from. And this is why Nett – the Civil Society Think Tank became involved in the Association of Community Foundations in the Czech Republic in the first place.

When we speak of a gift, we – for the most part – regard it as a bilateral act, for if anyone wants to apply tax benefits to gifts made to registered charities, a Donor Contract has to be executed in writing by both parties. It looks very much like any other contract, stating what both the donor and the beneficiary "shall be obliged to." This pushes aside one rather important fact: there is no equality between the donor and the beneficiary. They are not equal partners as far as the content of the contract is concerned. It is the donor who decides about all matters of importance: time, place, amount, purpose… The beneficiary demonstrates his/her will only in accepting or refusing the gift as it is.

By accepting the gift, however, the beneficiary assumes no responsibility towards the donor – only towards the gift. If, for instance, the beneficiary is obliged to provide information regarding the use of the gift, it is no donor "service," but a service to the issue in question, about which the donor is informed. With the exception of a thank you, the donor gains nothing on basis of the contract itself – and should it be so, it is not a gift we are speaking of, it is a contract of some sort (regardless of whether entitled Donor Contract or something else) – most typically of advertisement or promotional nature.

In a similar manner, we speak of a declaration. In our specific case, the testator and the benefiting community foundation declare how the gift will be used, for there is no legal way to control its use in the future – there is no entity that could enforce the property being really used as declared. This is not a contract, though it is signed by the donor (the testator/legator) who declares to have stipulated the manner of using his/her property in his/her testament on one side and by the benefiting community foundation on the other who publically declares to comply with and to respect the will of the donor. A promise and a declaration complement one another as two unilateral legal actions. The person who voluntarily promises to do something without directly gaining something in exchange, other than a public declaration that his/her will shall be complied with. This is not a contract, for actions of neither party may be legally enforced.

It is no coincidence that this theme is so close to community foundations. Just as much as it is no coincidence that US contact legislation is based on understanding interests and objectives of contracting parties. In this concept, any contract is preceded by a declaration of a sort: a description of what contracting parties intent to do and why, making their actions understandable to others and – at the same time – enabling to judge in the future, if necessary, whether one of the contracting parties will have not failed to comply with what they declared prior to having executed the contract.

Many actions that are based in an interaction of several entities tend to gain the standardized format of a written contract, stipulating obligations of contracting parties. Often enough, however, no contract is needed: it is sufficient that we mutually understand our declared goals. This is what formative experiences consist of and it is far more important than any contract or contracts ensuing thereafter. This is what forms grounds for what we call community or social life, for our identity and our shared future.

Community foundations are entities that clearly state what their goals are and how they intent to achieve them. They do not serve any particular "eternal" goal or specific "public good." They enable individual stakeholders to declare how they themselves wish to participate in public affairs and community life, whether they choose to contribute to an existing fund with a clearly declared purpose or to set up a new fund, formulating – and declaring – an entirely new purpose and goal.

This is an important legacy in and of itself and a key message carried forward by community foundations. Our goal is to transplant this message into Czech Republic, where the Association of Community Foundations is just currently beginning to operate.

Nett, o.s. – the Civil Society Think Tank
www.nett.aid.cz

Legal Issues

Czech legislation in effect is rather "unfavorable" as far as options of leaving a legacy are concerned. This is due to two principle limitations imposed on the testator. First, the right to disinherit is limited, i.e. heirs of direct descent usually have to inherit certain portion of the property, inheritance "rights" of immature children being particularly protected. Second, legislation does not allow the testator to include in the testament any conditions concerning the use of the inheritance in his/her testament – or more precisely, legislation states that any condition of such nature shall be disregarded and that inheritance proceedings shall take place as if no such condition had ever been formulated.

These two provisions are rather contradictory as to their context. The law protects direct heirs against being disinherited, which represents a residue of the older concept of "family property," i.e. of property a direct successor cares for in order to "hand it down to the next generation." Property of such nature is viewed as immobile and socially grounded – just as the role of the given family in community. In contrast to that, the second provision is substantially more "socialist" in nature, restricting the obligation to respect the "will" of the testator. This provision understands people in the civic sense – inheritance as a transfer of property from one person onto another is perceived from the legal positivism point of view: at the moment of death there is no one who has the right to claim that the stipulated conditions ought to be complied with. In legal terms, both the testator and heirs are perceived as replaceable stakeholders in civic legislation and it is the good will of the state (i.e. of a particular interest lobby) whether the inheritance will or will not be taxed, whether there will be tax breaks for direct descendants, other relatives or other legal entities.

As such, the current tax legislation concerning inheritance in the Czech Republic is more or less a lobbying product striving to prevent the possibility of retrospective monitoring of property transfers (gifts among relatives), rather than a product of legislatively consistent line of thought. Current deliberations about the extensive changes to our legislation – to follow after the redrafted Civil Code – also include amendments that would enable an institute similar to a "gift at the moment of death," allowing the testator to decide about his/her property by stipulating conditions as to its future use. Nonetheless, at this point, the actual future legislation can be but speculated about.

In practice, we are presented with two sets of issues faced by a community foundation who wishes to be active in this respect and to work with potential donors. First set of issues involves the manner of declaring (even though it may not be enforced by law) the intent to respect the wishes of the donor. Second set of issues is how to prepare for actual inheritance proceedings, including all the scenarios that may arise. The first set of issues is primarily a matter of changing the overall social and cultural climate, the legislation in effect forming only the background upon which it may be addressed.

As far as preparing for the actual inheritance proceedings goes, it is the unpleasant fact that wherever there are "lawful heirs" – i.e. direct descendants – it is always better to negotiate an agreement with them during such proceeding, for such "inheritance" agreement may prevent much trouble, such as property appraisal to begin with. This step, however, may appear contradictory to the overall approach of community foundations to promote the donor as having the title to decide about his/her property. For this reason, we should emphasize that this is a purely technical matter which can prevent a number of formal problems, which are very difficult to resolve in practice – particularly in cases when (without such an agreement) the inheritance proceeding would result in the property being co-owned by all heirs including the foundation. Shared ownership effectively prevents the property of being used in accordance with wishes of the donor.

In course of the project, an expert working group devised procedures for how to respond to various possible situations when negotiating about the options of inheriting a legacy or when a foundation finds out to be a legatee. Designed materials also include a complex legal analysis which is too large to form part of this publication. For this reason, we present a shortened version bellow, not presenting all the details, but offering the general picture of the legal environment for bequests and inheritance related decision-making.

Expert Working Group of the Project:
Jiří Bárta, Jan Kroupa, Jiří Kučera and Petr Svoboda,
Supervised by Josef Štogr

Who Can Inherit – Lawful Heirs, Testament and Legacy

According to legislation in effect, any entity with a capacity to have rights and obligations can inherit. From this point of view, heir can be a natural person or a legal entity (including the state). If a legal entity is to inherit, it is necessary that it exists at the moment of testators' death (with the exception of a foundation set up by the testament - compare § 477 section 2 of the Civil Code, and the Act No. 227/1997 of Coll. on Foundations). A legal entity can be invited to inherit only on basis of a valid testament, not by law. The state can inherit either from a testament or in case there are no legal heirs (§ 462 of the Civil Code).

Inheritance Claims – Conditions for Existence, Extent
Testator may stipulate in a valid testament that a legal entity shall inherit, unless excluded from inheritance

proceedings due to inheritance incapacity as stipulated in § 469 of the Civil Code as follows:
A) He, who committed an intended crime against the testator, his/her spouse, children or parents, and/or committed other indecent action against the last will of the testator, may not inherit. Nonetheless, he/she may inherit, if the testator forgave him/her.
B) The amount of inheritance specified in the testament may not interfere with inheritance that should be inherited by lawful heirs, i.e. by direct descendents of the testator who have not been disinherited during the lifetime of the testator. In accordance with § 469a of the Civil Code, testator may disinherit his/her descendent if:
a) He/she – contrary to decency – failed to provide the testator with adequate help and assistance when ill, growing old or in other serious circumstances;
b) He/she permanently shows no sincere interest in the testator, as a descendant should;
c) He/she was convicted for an indented crime and sentenced to prison for at least one year; and
d) He/she permanently lives a disorderly life.
If the testator clearly stipulates this in a disinheritance document which has to comply with similar requirements as a testament to be valid, the consequences thereof shall apply not only to direct descendants, but equally to their successors.

Immature descendents have to inherit from testament at least what would their lawful share amount to, mature descendents have to inherit at least half of their lawful share. Testament shall be invalid to the extent to which it does not respect claims of all lawful heirs.

Procedure of Writing and Disestablishing a Testament
Testator may either write his/her testament in hand, or he/she may issue it with witnesses or at a notary public. Any testament has to state the day, month and year of when it has been written and it has to be signed in order to be valid. Joined testaments of more testators shall be invalid.
Holographic will has to be written and signed by own hand of the testator, otherwise it shall be invalid. Testament which was not written by the testator has to be signed thereby in front of two present witnesses, clearly declaring his/her will and stating that the document presented contains his/her last will. Witnesses have to sign the testament.

Testator who cannot read or write, may declare his/her last will in front of three present witnesses in a document that has to be read and signed by all present witnesses. He/she also have to confirm to all witnesses that the document contains his/her last will. Both the writer and the reader of the testament may be witnesses, but the writer cannot be the reader. The document has to also state that the testator may not read or write, who wrote the document, who read it aloud and how the testator confirmed that this document contains his/her true and authentic will. Witnesses have to sign the document.

Testator may also declare his/her last will at a public notary; a special act stipulates when the action has to be taken in front of witnesses and when it has to be authenticated by a notary. For instance, immature children over 15 years of age can declare their last will only at a notary. People with impaired sight may declare their last will in presence of three witnesses in a document that has to be read aloud. People with impaired hearing who cannot read or write may declare their last will at a notary or in presence of three witnesses who can use the signing language in a document that has to be read aloud and translated into signing language. The document has to state that the testator may not read or write, who wrote the document, who read it aloud and how the testator confirmed that this document contains his/her true last will. Having been read, the content of the document has to be translated into signing language, which also has to be stated in the document. The document has to be signed by all witnesses.

A witness may only be a person empowered to take legal action. Witnesses may not be people with severely impaired sight or hearing, nor mute people or those who do not speak the language in which the last will is declared and those who are to benefit from the testament as heirs.

Testimonial nor lawful heirs or persons close to them may not act as authorities, witnesses, writers, translators or readers of the testament.
In the testament, the testator shall stipulate his/her heirs, possibly designating their shares of the inheritance or specific things or rights they are to inherit. In case the testament does not stipulate individual shares, such shares shall be equal.
Testator may establish a foundation or an endowed fund in his/her testament. In such eventuality, the testament has to contain all necessary requirements such as the statutes (for details see Act No. 227/1997 of Coll. on Foundations).

Any conditions stipulated by or amended to a testament are of no legal consequence; this does not invalidate provisions of § 484, second sentence of the Civil Code about the option of calculating in all property received by the heir during the lifetime of the testator.
Testament is invalidated by a valid testament of a later date, unless both can be effectively applied at the same time, or by recalling the testament which has to be of a format required for a valid testament. Testator may also invalidate the testament by destroying the document as such.

Expert Working Group of the Project:
Jiří Bárta, Jan Kroupa, Jiří Kučera and Petr Svoboda,
Supervised by Josef Štogr

Quit Confiscation

What happens to property of a man who dies without relatives? The state takes it all. According to the Civil Code in effect in the Czech Republic, property that has not been appropriated by any other heir, goes to the government. This means that people work their entire lives, they pay taxes, they acquire property and if they have no relatives, the government simply takes their property after they die, confiscates it.
In 2006, the Czech national government made CZK 140 million (approximately EUR 5.6 million) by selling off property of people who died without a heir. In addition, the amount of property annually gained this way keeps incresing.

Year	Number of people deceased without a heir	Proceeds from sales of their property (in millions of CZK)
2005	1426	108
2006	2168	140
2007 (first two quarters)	1109	74

(source: Office for Representing the State in Matters of Property)

Abroad, it is rather common that people who have no heirs leave their property to a charity of their choice in their testament. Research in the UK showed that nearly 90 % of people who are aware of this option do not wish that the state inherited their property. But in the UK, only 13 % of people dies intestate, i.e. without having written their last will.

Czech legislation also allows for leaving legacies to a foundation or a charity, thereby deciding what shall the use and purpose of the property be in the future. What we lack, however, is the tradition of philanthropic legacies as well as the tradition of writing a testament as a natural expression of our will to make decisions about our property and to settle our affairs – in this case – after we die. And so, foundation inherit rather sporadically and they do not really talk about it much. "These are individual cases. For instance, we received about a million Crowns from a Czech immigrant to Germany," says Eva Ksiazcak of the Charter 77 Foundation.

On the other hand, the state is rather active. A large Office for Representing the State in Matters of Property is in charge of dealing with inheritance from people who have died without heirs and without a testament. Finding out that a deceased person has no heirs sometimes take many years, but it pays off. In addition, the state actively files lawsuits – in 2006 there were over 2,500 of them, most commonly in cases when state officers felt that a testament is not valid. Gained property is either transferred to another state institution (sometimes a municipality) or sold in a public auction. "If no other state institutions are interested, we auction the property publically," says Jana Lysá from this office. Insofar, the state gained the most when property of a deceased man was – after three years of inheritance proceedings – appraised at more than CZK 35.2 million in large real estate, a farm with farmland and stocks. What a shame! Private Czech foundations that would have so much in their endowment could be counted on fingers of both hands.

Jan Kroupa

PART II.

Bequests? Depends…
How Community Foundations get legacies in 10 countries around the world?

During a working meeting of the Transatlantic Community Foundation Network in Prague entitled the TCFN Peer Exchange, representatives of community foundation from around the world shared information regarding legislative frameworks concerned with philanthropic bequests. This provided a wide overview of a rich array of various legal provisions stipulated by national legislation in the individual participating countries – often enough vastly varied. Nonetheless, we are not after a legislative comparison. Regardless of how different legislative circumstances of different countries may be, we strive to identify links between a potential donor, a testator and a specific community foundation.

Transatlantic Community Foundations Network (TCFN) is a platform focused on sharing experiences and expertise among community foundation on both sides of the Atlantic. It was set up in 1999 by Bertelsmann Foundation with support from The Charles Steward Mott Foundation (www.tcfn.efc.be).

We asked TCFN participants several questions, their answers forming an array of samples showing some of the circumstances community foundations in other countries have to work with. These include both general legislative conditions as well as historical attitudes, specific tools the government and state administration have developed to work with NGOs (when there are such) and relations to tax legislation, etc.

List of Respondents (thank you!):
Bulgaria
Monika Pisankaneva (CEE Trust)
Canada
Sandra Richardson (Victoria Foundation), Barbara McInnes (Community Foundation Ottawa), Rick Frost (Winnipeg Foundation)
Czech Republic
Expert Working Group of the Association of Community Foundation in the Czech Republic
Mexiko
Lourdes Sanz (Cemefi – Centro Mexicano de Filantropía)
Germany
Fritz Morgenstern, Klaus Rollin, Nina Spallek, Nikolaus Turner
Poland
Iwona Olkowicz (Academy for development of Philanthropy in Poland)
Slovakia
Katarína Minárová (Community Foundation Prešov)
UK
Andrew Beeforth (Community Foundations Cumbria)
USA
Helmer N. Ekstrom (Ekstrom & Associates, Consultancy for Community Foundations)
USA, Texas
Mary M. Jalonick (The Dallas Foundation)
USA, Virginie
Andy Morikawa (New River Valley Community Foundation)

Limiting Possibilities of Inheriting from a Testament

First, we were interested in comparison between legislative provisions in the 10 selected countries where the participating community foundations operate.

Question: In your country, are there any limitations to the rights of an individual when it comes to making decisions on his/her bequest? i.e. who will inherit the property (such as the rights of direct heirs to receive a portion of the testator's property regardless of the last will, etc.)

Some countries clearly support the right of the owner to make his mind up and to decide:

USA

There are no federal limitations.

Texas, USA

In Texas, there are no limitations as noted above. Property owned by the individual (not in trust or corporation or partnership) can be left to anyone he/she wants. For comparison, in Louisiana, there are rules that cause heirs to receive certain property no matter what the person puts in his will.

United Kingdom

There are no limits I am aware of. It is possible to decide to leave all of your estate/possessions to charity and disinherit your children.

In other countries, the state plays an important role in distributing the inheritance – both in case of passing away intestate or having written the last will:

Canada

Where an individual dies "intestate" - without having made a legally valid Will - the assets will be distributed according to provincial estate administration legislation. An administrator is appointed by the court to deal with the assets and distribute them according to a formula which is inflexible and may not reflect the wishes of the deceased or the needs of their loved ones.
Any charitable intentions will not be met unless there is provision in a valid will or through a giving vehicle that operates outside the estate, such as a gift of life insurance or a charitable trust. Where an individual has made a legally valid Will, he or she may exercise his or her testamentary freedom by making provision in the Will to dispose of assets to those individuals or organizations they choose through gifts of specific property, cash legacies or all or a portion of the residue of the estate.
The limit on this testamentary freedom is provincial dependant's relief legislation which permits the courts

to vary the terms of the Will, in certain situations, if an eligible party (generally child or spouse) objects to being disinherited or believes that the amount given in the Will is insufficient. Legislation differs from province to province. Generally the court reviews the facts and either varies the Will or not. The court takes into consideration the moral obligation of the deceased toward the family member; the reasons for not providing for a particular beneficiary; the claimant's financial needs; and whether the claimant received any gifts during the lifetime of the deceased or outside the Will on the deceased's death, such as a gift of life insurance. Some provinces limit the age of the "child", however, in British Columbia, adult children may apply. The charity named as a beneficiary of the estate cannot make a claim against the estate under this legislation. Any claim for redistribution by the child or spouse can have a significant impact on the entitlement of the charity and legal advice should be sought.

In some places, spouses are preferred as heirs in connection to families being perceived as economic units:

Virginia, USA

Yes, there are some limitations. Most states, including Virginia, provide that one cannot disinherit one's spouse. A surviving spouse is usually entitled to 1/3 to ½ the estate, even if will gives all to someone or something else.

Most European countries prefer children, in some cases also spouse to inherit in accordance with the traditional perception of family as a generation unit, both in the sense of property ownership and to relationships ensuing from real estate ownership:

Germany

Close relatives (close and direct heirs as wife/husband, descendants (children, grandchildren ETA.) or parents have a lawful share (compulsory portion, „Pflichtteils-Recht") and cannot be completely kept out of an inheritance. A complete disinheriting is only possible within very strict limitations. The disposition depriving somebody of his compulsory portion is very limited, such as ingratitude or violation of duty defined by law. Close relatives remain an inalienable portion of inheritance (= 50 % of their ordinary share of the legal inheritance). Another limitation are regulations against indecent decisions in the testament that are not in accordance with morality.

Mexico

We do have legislation that protects the rights of direct heirs. When a person does not have heirs, the state receives all assets. The law does not impose any limitation regarding bequests.

Bulgaria

Bequests in Bulgaria are regulated by the "Law on Heritage" developed in 1949 and last revised in July 2007. According to this law, there are two types of ancestry: heritage based on the law and heritage based on the bequest, written by the donor before his/her death. When there is no written bequest and no live heirs of the deceased person, the heritage goes to the state or the municipality.

Every person who is over 18 and mentally sane is able to write a bequest about his/her property to be executed after his/her death. The bequest concerns only that part of the property of the person, which does not belong to his/her direct heirs on the basis of the law. According to the Law on Heritage, a certain part of the property of the person, called "reserved part" belongs to his direct heirs, children, parents and spouse, or to other relatives if there are no direct heirs. The rest of the property, called "free part" can be allocated by will to a third party, including a non-profit organization.

A bequest which allocates more than the free part of the property to third parties can be easily revoked by the living heirs. In order to be able to annul a bequest, the living heir should have accepted the part which belongs to him/her by law.

The bequest can carry certain conditions on the use of the property, postulated by the donor, and be executed only after they are fulfilled. The law does not forbid a person who has no living heirs to bequest all of his property to a third party, such as a non-profit organization working in public benefit.

Similar legislative framework may be found in Poland, Slovakia and in other European countries.

Conditions for Writing a Will

Question: In your country, are there any conditions defined by law or the state that impose limitations as to when the testament will be regarded as valid? (For instance: the testament needs to be written by a notary, by one's own hand, etc.)

Conditions for writing a will are quite similar in most countries, even in countries otherwise known for their "legislative inventiveness." The only fundamental difference is whether a holographic will (i.e. handwritten) is valid and under what circumstances:

Canada

Provincial legislation governs the validity of Wills. For example, in British Columbia, the Wills Act provides for strict adherence to certain rules to ensure the Will is valid. The Will must be in writing. The testator (person who makes the will) must be an adult and have testamentary capacity (i.e. they must know what a Will is, they must know generally the nature of their assets, they must know to whom they owe a moral duty and they must be free from delusions).

The Will must be signed at its end by the testator, and signed by 2 witnesses, present at the same time, who attest that the document is the Will of the testator and bears his or her signature. The witnesses to the Will must be of legal age and cannot be beneficiaries of the Will or a spouse of a beneficiary. A Holograph Will is written entirely in the handwriting of the person making the Will and only signed by the person making it. There are no

witnesses. Some provinces, such as British Columbia, do not recognize these Wills. Others, such as Ontario and Manitoba, allow Holograph Wills.

USA

There must be two witnesses who are not beneficiaries and 18 years of age or older. But it is varied by state.

Virginia, USA

Some states, including Virginia, allow holographic wills (written entirely in testator's handwriting). Most states require 2 witnesses to sign, and so does VA if will is printed or typed.

Texas, USA

A will in Texas, to be valid must be typed and witnessed by two people (unrelated and competent and at least 14 years of age), preferably with a notary. The testator must sign and the witnesses must sign all in the presence of each other, the testator has to declare the document to be his will and initial the pages and sign in front of the witnesses. Also the testator must be over 18 years of age and of sound mind and not under duress from someone else. Any comments written on the typed document, whether initialed or not, will generally be ignored.
Holographic wills are also admissible in Texas, with or without witnesses, but they are just hotbeds leading to litigation issues as they are usually woefully incomplete. So right before someone gets on a plane, they can write one out, but it will probably be just as much trouble and expense to administer as a person's estate who dies without a will.

United Kingdom

A will does not have to be written by a solicitor, however there may grounds on which a will can be contested by the family, so we always recommend to have wills drawn up professionally.

Mexico

Wills need to be written by a notary to be valid, but the law contemplates self written wills as valid under certain circumstances.

Slovakia

Format of the last will in Slovakia must meet all conditions defined by law, otherwise it will be deemed incomplete and thus invalid. The will must written and signed by one's own hand. In case the will is typed, the procedures are as follows: the testator has to declare the document to be his or her will. In presence of two witnesses, the will has to be signed by all three. Any person who will benefit from the will (as a heir) may not serve as a witness.
A will hand-written by the testator is also perfectly admissible in Slovakia, with or without witnesses.

Bulgaria

Two types of testaments are considered to be valid:

Handwritten testament must be dated and signed by the donor, and kept in a sealed envelope by the donor, or by a person nominated by the donor, or by a private notary. The person who keeps the will should inform a notary or the regional judge as soon as he/she learns about the donor's death. Then the will is announced by the notary or the regional judge.

Testament written by a notary at the will of the donor must be issued in presence of 2 witnesses. The latter should also be signed by the donor in front of the notary and the witnesses, and is usually deposited at the notary. When the testament is written by a notary, the latter should contain a certificate for tax evaluation of the property which is bequeathed.

Handwritten testament is valid only if it strictly follows all legal requirements concerning its format. The regional court is authorized to request a handwriting evaluation by an expert in order to prove that the will had been written by the donor himself/herself and signed by him/her.

Germany

A last will has to be written completely by one's own hand (in full, including headline/title, content, date, place and name as well as signature) or made by a notary. Exceptions are only possible in cases of immediate urgency.
In addition not everybody can write or define ones own will. So you have to be at least 16 years of age (§ 2229 BGB), within 16 to 21 years of age a will has to be written by a notary. Individuals younger than 16 or mentally ill people cannot make their own will at all.

Poland

Polish law provides several types of testaments. Standard testament can be: written by hand (holograph), i.e. prepared entirely in testator's handwriting, signed by the testator and dated; made in the presence of a notary (not necessarily in a notary office) at testator's expense and allograph, i.e. demanding presence of a civil servant (e.g. mayor, president of voivodeship, municipal secretary, etc.) and two additional witnesses (they could not be beneficiaries or beneficiaries' close relatives). Witnesses may not be minor, sightless, deaf, voiceless or not able to speak in testator's language, they have to be able to write and read, a person condemned for perjury in the past cannot be the witness. The protocol should be dated and signed by testator, civil servant and all witnesses.

Non-standard testament can be made only if apprehension of devisor's sudden death exists or, if in consequence of particular conditions, it is impossible or difficult to make an ordinary will. When apprehension of sudden death or these particular conditions are terminated the testament within six months loses its validity. Non-standard will can be verbal (in presence of three witnesses); the law stipulates special conditions for testaments written on a ship, on the plane or in the army during mobilization, at war or in case of captivity.

Thus, issues related to testimonial legislation still reflect feature of law ruling non-standard situations. After this introduction into general local conditions, we focused on the situation of community foundations as heirs of testimonial legacies.

Last Will Execution

Question: Does the foundation have to pay a tax on the inherited property?

"Philanthropic legacy" is tax exempt in most countries. However, there are two circumstances that should be taken into account: in some countries, the law sets forth specific types of property that are always taxed upon any ownership transfer, in other countries, the entity has to prove to be a "publically beneficial entity" or even that the inherited property shall be used for purposes of public benefit.

Canada

As a not for profit beneficiary, the community foundation does not pay tax on the inherited property. Any debts, income taxes, other taxes and fees will be paid by the estate before the gift is distributed to the foundation. These may include probate fees, executor's fees, legal fees and accounting or other professional fees for the administration of the estate.

Poland, Virginia, USA

Generally, no.

Texas, USA

Generally, a community foundation which is classified as a public charity by the Internal Revenue Service does not have to pay taxes on inherited property. There are however several exceptions: Property that is donated which is not used to promote the mission and services of the organization; Property taxes would need to be paid on a house that is donated until the house can be sold; Certain types of stock such as S Corp Stock where there are UBIT (Unrelated Business Income Tax);
and any other property where there is UBIT.

United Kingdom

No, all will gifts to charity are exempt from tax.

Slovakia

Community foundations (which are classified as public charities) do not pay taxes on inherited property.

Bulgaria

In Bulgaria, non-profit organizations working for public benefit are exempt from paying taxes on property acquired on the basis of a bequest. Community foundations fall in this group.

Germany

Legal tax exemptions for not-for-profit institutions apply to community foundations as well, as long as they have a non-profit status, i.e. they serve common good. Legal conditions of the duty-free-status are set by provisions of the tax law. Community foundations apply for this status at the time of their being founded and have to prove their non-profit status every three years when checked by the local tax authority.

Mexico

Anyone who inherits need to pay tax, but the amount is not high.

Inheritance Fees

Question: Do foundations have to pay any fees to inherit and if so, to whom and how is the amount calculated (for instance, is it based on the value of the property)?

There are two groups of countries. A fee for inheritance transfer based on property value is specific to countries of central and eastern Europe. In other countries, only common fees are paid, such as for the entry into ownership registry, for the appraisal etc.

USA

Probate court fees are deducted, plus the executor may get paid.

Virginia, United Kingdom

No.

Texas, USA

Typically, there are no fees associated with receiving property. There however may be attorney fees that are charged for services completed. Additionally, there could be other fees depending on unique assets, such as art, and the process involved in disposing of the asset.

Mexico

Foundation has to pay a fee for the property being registered under its name.

Germany

In general, no fees are paid for the inheritance of a bequest. However there are fees for legal actions one might have to go through in order to become a lawful owner, such as the proceedings you have to go through to be entered into the land register as owner of the inherited real estate.

Poland

In Poland common courts and notaries can confirm the receipt of the bequest - only when there are no doubts who are the beneficiaries and what are their portions. In both cases beneficiaries have to pay a fee. Court fee is 50 zloty (approx. EUR 15).

If a list of inventory needs to be compiled, the cost is increased by bailiff's salary. Value of the bequest has no influence on amount of this fee.

Slovakia

Foundations as the heir will pay a fee to a notary. The amount is defined by a separate state ordinance for notaries. It ranges between 400 Slovak Crowns minimum (EUR 13.27) up to 2 % of the value of the property maximum.

Czech Republic

When inheriting, a foundation in the Czech Republic does not pay taxes, it – nonetheless – pays a fee to the notary public processing the will. The amount is derived from the value of the inherited property.

Bulgaria

Foundations have to pay a notary fee for certifying its material interest as the recipient of the bequest at the time when the will is publicly announced and the

foundation acquires the right of ownership, or the right of use. The notary fee is based on the market value of the inherited property.

Appraisal of Bequeathed Property

Question: Does the foundation have to provide an independent expert appraisal of the value of the property it is to inherit?

Property appraisal is for the most part not required by legislation concerned with inheritance, but by other laws, usually by tax legislation. Differences in answers are due to the extent to which answers have included obligations of the beneficiary as an accounting and tax entity.

Canada

Gifts other than cash and publicly traded securities generally require an independent valuation. Gifts in kind with a value of $1000 or more require an independent appraisal. Depending on the circumstances the cost for this appraisal may be paid by the donor, the estate or the foundation.

USA generally

No, the beneficiary might choose to do so in case of a non-liquid asset, e.g. real estate or tangible personal property.

Texas, USA

The Dallas Foundation has a Gift Acceptance Policy and in the policy it states: In general, when a donor or estate of a donor contributes property (other than publicly traded securities) for which a charitable deduction in excess of $5,000 is claimed, in order to obtain the benefit of a charitable deduction, the Internal Revenue Service will require the donor or the estate of the donor to (1) complete IRS Form 8283, (2) obtain a "qualified appraisal" of the property from a qualified appraiser, (3) attach a fully completed appraisal summary to the tax return in which the deduction is first claimed, and (4) maintain records of certain information. These obligations rest upon the donor or the estate of the donor and do not affect The Dallas Foundation's acceptance of the donated property. Upon presentation and acceptance of the gift, however, The Dallas Foundation will sign the Donee Acknowledgment for the gift contained in Form 8283, if requested to do so by the donor or the estate of the donor.

United Kingdom

The Foundation does not, however this expense is normally met from the estate prior to the remaining funds being transferred to the Community Foundation.

Slovakia

No. This may only be the case when the property will be shared by more than one heir. Then, if the heirs are not willing to agree on its value to have it divided between them, the value needs to be appraised by an independent expert.

Mexico

No, it does not.

Czech Republic

Court appraiser to appraise the property may be appointed by the notary processing the inheritance as well as by the heir (or heirs, including legal entities). Property that becomes the subject of inheritance should always be appraised.

Bulgaria

Foundations need to provide an independent expert appraisal of the value of the property at the time when they gain ownership rights to it. The value of the property is calculated in accordance with rules stipulated by law. The value of liabilities in the inheritance are determined in the same manner.

Germany

It is not required in order to become the official owner of the property. Nonetheless, it might be necessary to appraise the exact or average value – one way or another – to be able to define taxes, fees, rates or charges, and in addition it might be a good idea for one's own safety (as trustee of the foundations endowment) and to provide solid and correct figures to the annual report and to auditing. In case of selling the property it might be required as an obligation.

Poland

Neither foundation nor other beneficiaries of a bequest are obliged to do so.

Limitations of Types of Bequeathed Property

Question: Can a community foundation in your country inherit any type of property whatsoever - all property rights and receivables (including intangible assets, royalties, copyrights, etc.)?

Canada

Generally, yes, although there may be circumstances where the foundation wishes to decline a gift. This may include gifts of private company shares or business interests, gifts where the valuation of the property is not ascertainable, where the gift cannot be realized (i.e. illiquid real estate property) or where the gift exposes the foundation to debt.

USA, United Kingdom, Mexico

Yes.

Texas, USA

Any type of property can be received as long as it complies with the Gift Acceptance Policies of the organization.

Slovakia

Yes. Any type of property can be inherited unless it is the property of the Slovak Republic (specified in the Constitution).

Czech Republic

All types of property that became involved in inheritance proceedings may be inherited by a foundation (in a will, a foundation is regarded as the same heir as any other person). Nonetheless, foundation may not own certain

types of property, and should such property form part of the inheritance assigned to a foundation, this foundation would have to transfer it onto another type of property (for example by selling it).

Bulgaria

The law does not present limitations on any type of property that can be inherited by a non-profit organization working for public benefit.

Germany

It is not regulated. One should, however, consider the amount of debt, adequacy of administration requirements and other important (financial) consequences that may be attached, unless covered by the foundations statutory legal purposes and with a risk limited liability.

Poland

According to the inheritance law all deceased wealth can be released to beneficiaries. Ownership of a car or financial aspects of copyrights (e.g. royalty on a music piece) can be a part of a bequest as well. Only rights and duties strictly connected to deceased person cannot be inherited. In case of copyrights it would be all non-financial personal copyrights.

Testimonial Conditions

With respect to the nature of community foundations, we have paid special attention to whether it is possible to stipulate testimonial conditions for executing the will, i.e. to oblige the beneficiary to use the property for a defined purpose or in a defined manner. In practice, we wanted to know whether a testator may decide and stipulate how and for what purpose will the bequeathed property or proceeds thereof be used.

Question: When a foundation receives a bequest, does the foundation have to accept and respect conditions for the use of the bequest defined in the will (for example, a very specific target group benefiting from the bequeathed funds), or does the foundation not have to take into account any such specifications? Should the foundation not respect the stipulated conditions, what happens?

Responses show that testimonial conditions are taken into account in nearly all countries. Czech and Slovak legislation is an exception in this respect.

Canada

As a charitable beneficiary, the foundation has obligations unique to its position as a steward of public funds. The foundation owes obligations to the testator, the foundation's donor constituency and the people who rely on the services provided by the organizations funded by the community foundation. These obligations include safeguarding the foundation's interest in the estate; ensuring that the appropriate financial benefit is derived from the estate gift; utilizing the gift in accordance with the testator's direction in the Will; and conducting itself in a reasonable and fair-minded manner having regard to the testator's explicit and implicit wishes, if any, and the particular circumstances surrounding the estate. If the community foundation is not able to accept the gift on the terms provided in the Will, it should be declined. What happens next will depend on the terms of the Will – the gift may pass to another named beneficiary, may fall into the residue of the estate or may be the subject of an application to the court for a determination. The foundation may accept gifts for a specific organization, but may not accept gifts that benefit specific individuals.

Texas, USA

If the foundation accepts the asset as outlined in the bequest and conditions of the bequest, they are obligated to fulfill the wishes of the donor as long as the conditions are within U. S. or State laws. The foundation can refuse the asset and thus it would be returned to the estate of the donor.

Virginia, USA

Some conditions are not permitted, such as the right of the testator's family to select which charities receive the distributions from the gift. If the CF accepted such a gift, it could endanger its tax exempt status. The CF has the right to refuse such a gift. If the CF accepted a gift with an impermissible condition, the Donor's estate could probably sue if the condition was ignored.

USA

It must follow the donor's wishes, but retains the right of variance power to change the purpose if in the judgment of the foundation board it believes the original purpose is no longer possible, practical, or necessary.

If the foundation does not respect the conditions, it might be legally challenged by interested parties, including family, named beneficiary groups, government authorities, etc.

United Kingdom

We must accept the terms of a gift, as long as they are legal and fall within our powers. We would only accept a gift if they were within our powers. The Charity Commission and our auditors should identify if we spend funds for a purpose for which they were not given. Ultimately we could lose our charitable status, but it would be highly unlikely.

Mexico

Yes, the foundation has to respect the conditions stated on the will.

Bulgaria

According to Article 18 of the Law on Heritage, every interested person may require the heir to respect conditions for use of the bequest defined in the will. However, according to the same Article, disrespecting such conditions does not result in annulling the particular legacy. Monitoring of the use of bequests falls under the jurisdiction of the regional court when an interested person files a lawsuit against the heirs.

Germany

The defined purpose of a bequest is obligatory. Therefore,

it is up to the benefactor (including a foundation) to accept the bequest or to decline to accept it – within a legally defined deadline. A community foundation as every other owner might lose its ownership. Upon incompliance with the defined specifications, other heirs may file a lawsuit against the foundation for misusing the bequest and claim the property as true proprietor, having the alternative right of possession. In addition to other heirs (including the neglected ones), authorities monitor legal aspects of the day-to-day work of the foundation. They, however, only inspect the legal aspects of the work, just as the tax authority review fiscal matters.

Poland

Devisor can order the devisee to perform or to restrain from an action (for example to spend money on orphans or not to expel the aunt from the donated house). Every beneficiary and executor of the testament can demand fulfilling such specific conditions. If the testimonial instructions concerns social welfare purposes the state can claim to respect it as well. The Civil Code does not provide any sanctions when the last will is not respected.

Slovakia

No. All conditions for the use of the bequest are not considered valid by law. Once the foundation has the money, it does not need to respect the donor's wishes. It is a matter of ethics and good will rather than a duty.

Czech Republic

Czech legislation does not take into consideration any conditions set forth as to property use, nor other conditions stipulated by a will. Last will is effective only in that it determines the heir of the property or a group thereof, assigning specific property to specific heirs (as long as this does not conflict with rights of lawful heirs).

Monitoring Compliance with Testimonial Conditions

Question: In your country, are there any legal procedures or mechanisms to monitor whether the benefiting foundation uses the property in compliance with the will of the donor?

Responses range on a scale, where on one side, there is public control, in the middle, there is the board of trustees and its responsibility and on the other side there is the state and government control – through specially devised authorities or bodies reminiscent of a "Ministry for NGOs" (in Canada):

USA

Community foundations must periodically file a report with the court that oversees processing of wills and the compliance with their provisions. This varies from state to state.

However, the court of public opinion is the biggest and best insurer of complying with donors wishes.

Virginia, USA

The public in general has access to much information. The Donor's estate could also sue to compel the CF to account for how the gift has been used and sue to enforce any condition.

Texas, USA

There are no legal procedures or mechanism to monitor that the wishes of the donor are fulfilled. The donor himself however may put into place checks and balances to assure that their wishes are fulfilled. There have been cases within some institutions where family members came back and claimed that the organization did not fulfill the wishes of the donor. This often results in drawn out legal battles where there are no winners.

Slovakia

There are no legal procedures or mechanisms to monitor that wishes of the donor are fulfilled. The donor himself may ask his family members to check that his wishes are fulfilled. Nevertheless, even in case family members think that the money is not being used according to donor's wishes, it does not constitute a reason to have the money taken back from the foundation as one of the heirs.

Mexico

Foundations are committed to report annually all their income and expenditure (grants and expenses). They must have the valid receipt for each income and a valid receipt for each expense or grant made. They are also obliged to order an external audit and report its outcomes both to the authorities and to the general public. Normally it is published as part of the annual report.

Czech Republic

Since the intent of the donor as to the use of the property by the benefiting foundation is views as a condition stipuated in his/her will, it is not taken into consideration, so strictly by the book, there is no one (not even the state) who could rightfully contest that the foundation has not been using the inherited property in compliance with the intent of the donor. On the other hand, the foundation can declare that it will respect the intent and the will of the donor, even though it is not legally enforceable – assuming its own moral (ethical) obligation.

Bulgaria

When there is a legal claim against any heir, mechanisms of monitoring how the bequest has been used fall in the jurisdiction of regional court. There are no recent examples of bequests made under certain conditions to a foundation to be used as illustration how such procedure works.

Germany

First of all, the trustees, the organizational boards and institutional control are to be mentioned. It's their duty to control as well as to guarantee compliance with donors' will.

In addition there are legal and fiscal regulations and restrictions. The rest is controlled by transparency or competition in the non-profit sector.

United Kingdom

There are no legal procedures I am aware of. However, remaining family members may choose to monitor what the foundation does and inform the Charity Commission.

Canada

Community foundations are governed by a Board of Directors which oversees the acceptance and receipting of all gifts. The Board ensures that the directions or wishes of the donor are fulfilled through the investment of the gift in permanence and the granting of the annual distributable returns to the charitable organizations or fields of interest described in the Will. In turn, the charitable organizations provide an evaluation report on completion of the funded project or programs funded by the community foundation.

An annual audit of the activities of the foundation and of its financial statements is carried out by an independent auditor. An annual report is published and shared with the public.

The charitable sector is also governed by the Charities Directorate of the Canada Revenue Agency which provides rules and guidelines for all aspects of the operation of a charity including: the acceptance of gifts, receipting, investment management, fundraising expenses, granting and annual reporting.

Question: Are there any other important tax or legal issues concerning bequests in your country?

Poland

There is another possibility of donating a legacy/bequest to a foundation. The testator can order to one of the beneficiaries to pass on some money or goods from his/her portion to the foundation. As far as the execution of such order goes, it can be requested by any beneficiary from the executor of the will, including the foundation itself.

Summary

Legislative frameworks for inheritance, testaments and legacies show different lines of legal thought as well as local exceptions, yet we can characterize opportunities for legacies made to community foundations as open. Democratic countries generally respect private property on one hand and the option to make a philanthropic gift on the other. As a result, an appropriate format of leaving a legacy to a community foundation may always be found, no matter how different the applicable legal forms. Furthermore, it is clear that it makes sense for staff of community foundations to share international experience – even though specific tools and steps will always have to be adapted to local legislation and circumstances.

PART III.
CASE STUDIES
Bequests Left to a Community Foundation

SOCIETY FOR BLIND PEOPLE CARE (TOWARZYSTWO OPIEKI NAD OCIEMNIAŁYMI) IN LASKI - STUDY CASE

Róża Czacka, sightless nun, founded Society for Blind People Care in 1911 in Warsaw. In the 20's the new Center in Laski (near Warsaw) was built, where Society has its seat till nowadays. In the educational center Society prepares to independent life sightless children and youth. Half of them suffer also from other diseases. Around 300 children from the whole country study every year in Laski. They have here also excellent treatment and rehabilitation. In Laski young blind people can acquire massagist or IT technician professions and can develop their passions as well.

From the beginning Society was able to perform thanks to public collections. In difficult situation it had been supported by donors passing on money or bequests. After the Second World War Polish diaspora in the United States was particularly supportive. Laski Center received many donations and bequests from Polish people living mostly in NY. Collection among poor Polish citizens in the country seemed to be ineffective.
Recently amount of donations from the country is growing. The number of bequests left to the Society is increasing as well. Although it is difficult to provide exact data, it can be said, that the Society receives even few bequests every year (about 2-5). For instance last year Society inherited 2-3 apartments. The next 5 persons have already included Society into their last wills.

Society doesn't have any special offer for such potential donors. On the website, among others ways of supporting, a possibility to leave a legacy is mentioned. But the Center doesn't have any special initiatives or campaigns to promote this mode of donating. Therefore it seems to be interesting that not all of the testators are related to the Center during their lifetime. Some of them are regular donors in the course of years, but it's not a rule. Some of potential devisors get in touch with the Society for the first time only when they want to donate a bequest. Mrs. Elżbieta Morawska-Sawa from Donations Office of the Society supposes that is the result of reputation earned by 100 years of existence. The Center's mission is well known in Poland and appreciated by Polish society. According to Mrs. Morawska-Sawa very important for donors is the fact that the Center is a catholic institution, where among others also nuns work. Maybe for elderly people that is the reason to think that their money left to the Society will be spent in proper way.

The Society in particular cares to acknowledge all their donors (not only devisors). In so called Friends' House there are special commemorative tablets with names of all persons that have donated to the Society. In the chapel of the Center special prayers for all of them take place. What concerns testators - sometimes happens that Society provides medical support if needed. But as a rule bequests conditioned by care before death are not accepted. Such a kind of care would be inconsistent with statutory goals of the Society.

Recently Society for Blind People Care has received a house nearby Warsaw. An elderly lady, unknown previously to the Society, contacted Donations Office and invited them to visit her at home. In the presence of the Society's representatives she had written by hand her last will (so called holographic will). She preferred that form of testament than notary one, because she let strangers into her house unwillingly. She didn't feel comfortable with thought of possible visit of a notary at her place. Before she died two years later, she went to visit (maybe once) the center for blind children care and education.
The devisor didn't have close relatives: neither children nor siblings. This is the most common characteristic of the Society's testators: they are elderly and they have no family.

After death of the abovementioned devisor there were two lawsuits in court: during the first one the will was announced and during the second the bequest was passed on to the Society. According to the Society's experience this procedure lasts usually about 6-12 months.
The Society has a long-term cooperation with the attorney, who usually represents the organization in the court. They proceed this way in general, but, as Mrs. Morawska-Sawa says, it is not indispensable. It happened once for example that she was representing the Society in court in another case and it did not provide any complications.

As regards costs of overtaking bequest - the Society due to its special status of public benefit organization is released from paying any court fees. Moreover the Society is not obliged to pay inheritance tax, because all incomes are purposed to fulfill statutory goals.

What happens next to bequests acquired by Society for Blind People Care? In the case described above there are plans to sell the apartment and to spend obtained money for refurbishment in deaf-and-sightless pupils' house in the Center. Usually Society sells inherited properties and invests money in renovation of existing buildings or construction of new ones. Nevertheless some of apartments are kept by the Society with purpose of renting them to particularly requested employees.

Society for Blind People Care hadn't experienced any difficulties related to acquired bequests. Sometimes just a part of legacy is adjudged, not the whole property. For instance one of testators recently had assigned her apartment to the Center. After she died it turned out she had a sister, who hadn't been included in the last will. It is difficult to foreseen the result of this case- it is still in progress. Anyway Mrs. Morawska-Sawa considers legal issues concerning bequests quite simple and treats this kind of donation as "unexpected over" for the Society. Reduction of the initial value then is not perceived as a problem.

Iwona Olkowicz

Cancer League Slovakia

Cancer League Slovakia (CLS) was founded as of January 19, 1990 in Bratislava and during the same year accepted as a member of the European Cancer Leagues Association (ECL), of the International Union against Cancer (UICC) of Geneva and of other organizations worldwide. The principal mission of CLS is to local the burden of cancer at national level on basis of public participation and to fulfill its vision through activities and projects in the three areas:
1. Training, education and awareness raising;
2. Care for patients and their families; and 3. Clinical and other research projects.

CLS annually runs its successful fundraising campaign the Day of Tiger Lilies. In the course of last four years, the CLS benefitted from two legacies, specifically real estate, as an appreciation for activities it carries out, both towards its target group, i.e. oncology patients, as well as towards the public at large.

The first legacy gift came from an 80 year old lady from Sliač. After she died, a notary public from Zvolen contacted the organization to inform them about the inherited property and about the commencing inheritance proceedings. Given the fact that the donor had no living relatives who could inherit and allocated no other testimonial heirs, proceedings went rather smoothly. The property involved a two room apartment in Sliač, requiring renovation. Following a self-help renovation, the apartment began to be used as a respite accommodation for organizational staff of CLS, in particularly for members of the association who go through revitalization stays in Kováčovo or elsewhere close to Sliač. Apartment is offered to members (and their close relatives) for a symbolic fee.

The donor has not contacted any part of the CLS when writing its will. When renovating the apartment, however, documents were found (newspaper clippings and articles), showing that the donor has monitored activities of CLS long-term.

Very similar care occurred approximately a year later. In the second case, the donor was also an elderly widow living alone (nearly 80 years of age), a former medical nurse. She donated a two room apartment in Košice to CLS and 1,000,000 Slovak Crowns in cash to the Children of Slovakia Foundation. CLS sold this apartment and used gained cash to fund some of its core activities.

All communication as well as the inheritance proceedings were rather similar to the prior case. The donor had no relatives with legal heritage title and designated no other testimonial heirs (aside from small gifts to friends, such as pieces of furniture etc.), inheritance proceedings ran smoothly and without complications. This donor also did not inform CLS about its intent (nor the Children of Slovakia Foundation). Having interviewed friends of the donor, it became evident that the donor showed long-standing interest in activities of CLS.

Designating the Purpose of a Legacy

Given the fact that neither of the donors contacted CLS, they both failed to specify the use of their gift. For this purpose, CLS decided on the use of the legacy itself. The apartment in Sliač will continue to be used for respite stays of staff and members of CLS. The organization has no intent of selling it. In using the Košice gift, a different strategy was selected: the apartment was sold, half of the money was used for training programs in the region of Košice and the other half to cover overheads of the Košice office – i.e. this funding was used in the region where the donor lived.

Processes

There was no direct contact between the organization and the donor. Yet, it may be assumed that both donors decided to make a legacy to CLS on basis of long-standing interest and the recognition of CLS in society. Organization is generally known to the public thanks to its national fundraising campaign the Day of Tiger Lilies. Currently, CLS runs no targeted legacy campaign, for the most part due to lack of HR capacity. Nonetheless, it regards this type of fundraising to be of strategic importance in the future.

Summary in Conclusion

Current legislation in effect does not stipulate limitations as to potential donors bequeathing their property to a chosen NGO. The only disadvantageous provision for people who have made their mind up as to leaving a philanthropic legacy is the institute of lawful heirs, i.e. the obligation not to disinherit children (the situation is different for immature and mature descendants). These issues are still extremely sensitive in Slovakia and hardly discussed. Vast majority of people (for objective or subjective reasons) does not realize they could leave a legacy to a publically beneficial organization – it simply does not occur to them.

Organizations that wish to pursue legacy fundraising should primarily target people living alone who show some interest in public affairs and issues of public benefit. This means that they are inform as to what they can choose from in the arena of potential legacy beneficiaries, at the same time not having any relatives with a heritage title, i.e. those who could claim their property.

Straightforward mission and clear field of operation help organizations be better understood by the public. CLS is an easy to understand organization (the name in and of itself reveals what it does). Its activities are recognized by and visible to the public at large and implemented throughout the country, producing national reputation among prospects.

Katarína Minárová, Community Foundation Prešov
Source: Cancer League Slovakia
www.lpr.sk

MANAGING THE ISSUES – THE WAR STORIES

By Barbara McInnes, CEO of the Community Foundation of Ottawa, Canada

In this paper I present three stories from the Community Foundation of Ottawa to illustrate what can go wrong with bequest gifts. Though they happened in our community, they are broadly illustrative of things that could happen anywhere and have been chosen for their potential relevance to situations that might be faced by any community foundation. In each case the sums involved were quite modest.

1. THE ISSUE: Daughter questions donor's competence

THE STORY:

A lawyer, well known to the Community Foundation, introduced us to an elderly woman who was revising her will and looking for a charity to be the primary beneficiary. The lawyer recommended using the bequest to establish a fund at the Foundation and suggested that we get directly in touch to develop the gift and work out the details.

The Foundation staff met several times with the donor at the nursing home she had recently moved in to. During these meetings, the donor made it very clear that she did not trust her only child and her son in law. For this reason, she wanted to ensure that very little of her estate would go to her daughter because it would, she thinks, be squandered. Instead, she wanted to leave the bulk of her (fairly modest) estate to charity.

After many visits to the nursing home and many conversations, she felt comfortable with the Foundation and with the idea of leaving her bequest to establish a permanent fund that would honour her late husband and some of his charitable interests. During these visits, much of the conversation was about the daughter and the donor's very negative feelings about her. In the end we developed a formal agreement, which she signed, expressing relief about having found a solution to her concerns about her daughter. Everything was shared with the lawyer who approved the formal Fund Agreement and then proceeded to finalize the Will.

Only a year or two later, the donor died. After her death, the daughter was shocked to discover that she had been left out of the estate. She hired a lawyer to dispute the will, claiming her mother was mentally incompetent when she signed it and that she was a loving and caring daughter. She claimed that the animosity exhibited by her mother was an early symptom of dementia that eventually became worse.

The donor's lawyer was convinced that the mother was competent at the time of signing the will. Foundation staff agreed but thought there were some legitimate questions. This presented a dilemma: we were given clear instructions by the donor and we needed to make some attempt to defend them. However, we did not want this story to attract any negative media attention and the daughter's claim seemed to have some legitimacy.

Solution:

We called in another lawyer, independent of either party, as arbiter to examine the situation, interview everyone concerned and make a recommendation. Everyone agreed on which lawyer to choose and to support whatever recommendations were made.

Decision:

The independent lawyer concluded that the mental competence of the donor was unclear at the time of the signing of the will. However, it was clear that her competence had declined rapidly thereafter. In accordance with the lawyer's recommendation, the estate was divided half and half between the daughter and the Community Foundation. At the request of the daughter, the resulting Fund at the Foundation was for unrestricted purposes and no donor name attached.

LESSONS LEARNED:
1. Document everything. Keep careful notes of every conversation and every visit.
2. If you feel any suspicion that mental competence is in question, probe more deeply, ask questions and don't make assumptions.
3. Normally close family should be aware of what is in the will and be prepared to support it. If that is not the case, be sure you know why and that there are good reasons.
4. Media love negative stories. If they are about philanthropy, this hurts all of us. Avoid this but not at the expense of standing up for the core philanthropic principles.
5. Don't just cave in at the first sign of dispute. Avoid confrontation if possible but remember that you are defending the donor's interests when he or she is no longer able to do so. This is a sacred trust that should not be taken lightly. Respect and defend the donors' instructions unless evidence proves otherwise.
6. Use a trusted arbiter when disputes arise and agree in advance to go with the recommendations.
7. Compromise can sometimes be the best solution.

2.THE ISSUE: Crooked lawyer

THE STORY:
An elderly widow without children drew up a will naming the Community Foundation as a major beneficiary of her modest estate. Because she knew the President, she mentioned this informally but there was nothing in writing and we were not given a copy of the will. The Community Foundation set up a donor file and began acknowledging the gift in its annual reports.
Through friends and neighbours, the Community Foundation learned that a young lawyer had befriended the widow and helped her sell her house, which was her main asset, and move to a nursing home. Family and friends started finding it difficult to see or speak with her as the

lawyer started screening her calls and discouraging visits. After about a year, the nursing home barred the lawyer from its premises after determining that he was developing inappropriate relationships and seemed to be preying on some of the elderly residents.
A year or two later, the widow died. To the surprise and dismay of her family, she had updated her will while in the nursing home, leaving everything to the lawyer. A nephew, who was in the original will as the beneficiary of a very small amount, decided to dispute the new version. The case finally went to court. Even though, by this time the lawyer had been thoroughly discredited and, in fact, was disbarred, the case still needed to go through a costly legal process. The nephew was pursuing it as a matter of ethics, not in hopes of any financial gain. The Community Foundation was notified of the legal proceedings but decided not to get involved since the costs were likely to consume whatever remained of the estate.

LESSONS LEARNED:
1. There are people who prey on the vulnerable, sometimes our donors, especially as they age.
2. It is extremely difficult to protect anyone from this.
3. The most credible people to confront the situation are those who do not have a beneficial interest.
4. Sometimes the amount is not worth the effort.
5. A Community Foundation can rarely afford to pursue a case on principle alone.

3. THE ISSUE: They left everything to the Community Foundation. Really. Everything.

THE STORY:

A couple with no children left their entire estate to the Community Foundation, on the advice of their financial advisor. They felt that their only close relative, a nephew, is well established and did not need the money. However, he was a lawyer so they named him as the Executor of their will.

The Community Foundation learned about the gift only after the couple had both died. The Executor notified us that we had been left a small amount of cash, a modest investment portfolio and a little bungalow full of absolutely everything. He invited representatives of the Foundation to come and look over the house and its contents. He seemed disappointed that nothing was left to him and was, therefore, not inclined to be of much help in figuring out how to liquidate the estate. We called in a reputable auction house but their recommendation was to dispose of the contents in a garage sale since there was nothing of value.

Foundation staff remembered that the local Rape Crisis Centre had recently moved to new premised and asked for a grant to help them buy new furniture and equipment because their new landlord had refused to let them bring their vermin infested belongings. Instead of making a grant, the Foundation invited representatives of the Centre to come and choose whatever they needed from the house they had been left. They happily left with a truckload of useful furniture and other household items.

Following that, a neighbour bought the car and snow blower. The house was sold to another neighbour. We then hired a reputable individual who specializes in garage sales. Whatever didn't sell was donated to the Salvation Army or put in the garbage and the house was cleaned out. The proceeds of all these transactions were used to establish a significant, unrestricted fund at the Foundation, bearing the names of these generous people.

LESSONS LEARNED:
1. Executors who had hoped to be beneficiaries can be decidedly unhelpful.
2. Creative thinking can help fulfill grant requests when events coincide.
3. Small amounts can add up.
4. The expense and effort sometimes required to liquidate a gift is especially worthwhile if the resulting fund has no restrictions.

Philanthropic Bequests, The Via Foudation, Czech Republic

The Via Foundation was established in 1997 as the successor to the Czech office of the American Foundation for a Civil Society, which had operated in the country since 1990. The Via Foundation's work focuses on revitalization of community life, development of philanthropy and development of independent NGOs in the Czech Republic.
Since its establishment, the Via Foundation has supported more than 2,100 charitable projects worth CZK 200 million, making it one of the largest and most active foundations in the Czech Republic. The Via Foundation is supported in its work through the income earned on its endowment, gifts from international foundations, a number of corporate donors from at home as well as abroad, and – to our great delight – generous gifts from individuals.
Connecting donors to Via Foundation's mission through Giving options
A couple of years after Via came into existence it became evident that – considering our funding picture – our future was far from sustainable. Why was that?
1. most foreign foundations and governmental programs had begun to conclude their active role in the Czech Republic;
2. we had focused mostly on re-granting for foreign nstitutional donors and had devoted very little energy and resources to fostering new donors; in other words we were slicing pieces from the existing philanthropy pie but we didn't know how to make the pie bigger;
3. we hadn't developed contacts in the business world that would enable us to successfully initiate fundraising from corporate donors;

4. we had no individual donors, we were not sufficiently well-known and our community development focus was not easily comprehendible in the Czech Republic in the late 1990's;
5. with practically no contacts in the business world and a non-existent base of individual donors our potential to fundraise to our endowment was at ground zero.

Thus we devoted the early months of 2000 to deliberating various future paths for the Via Foundation and as a result, we adopted the following strategic direction: to build an independent foundation with a diversified and thus healthy portfolio of donors.
There was a very important component to this new strategic direction of Via: Communicating to donors what Via's giving options are in a comprehensible way, and offering easy to identify with options for philanthropic giving.

We used the inspiration of the US Community Foundation model which resulted in new giving options for our donors. As of 2001 we began offering our donors the following options:
- permanent, pass-through, as well as sinking funds
- named funds and designated funds
- the following field of interest funds:
    NGO development
    community development
    children and youth
    environment
    cultural heritage

In search of new donors

We actively promoted these new giving options and during 2002 and 2003 began working with many large Czech Republic-based corporate donors who decided to set up named pass-through grant-making funds. However, we were still in search of individual donors who would set up a similar example for others to follow.

It was the end of 2004 when we received a phone call from a lawyer. She was assisting a Prague-based couple who was considering setting up a foundation to benefit children in Sub-Carpathian Ukraine (the western part of Ukraine that used to be part of pre-WW2 Czechoslovakia). She asked us to meet with this couple in order to provide them with our assistance and expertise.

Soon we learnt more about the situation. Mrs. Horová was born in Sub-Carpathian Ukraine and moved to Prague at the age of 17, just before WW2 began. Throughout her adult life in Prague both she and her Czech husband became very active members of various Sub-Carpathian related Prague-based membership organizations. In 2004, they were both over 85 years old and did not have any children. They decided to sell their house (under the condition that they could live there for a few more years) and began considering setting up a foundation with a mission to benefit children in Sub-Carpathian Ukraine. That was why they had gotten in touch with the attorney.

After the attorney had researched all the administrative as well as financial considerations related to setting up a new foundation, she decided to suggest a different possibility to Mr. and Mrs. Hora: find a foundation that would offer them a giving option which suits their charitable interests while sparing them from the administrative and financial difficulties related to setting up a new foundation. Coincidentally, she learnt about Via and its giving options through word of mouth.

As soon as we knew enough about the charitable interests of Mr. and Mrs. Hora, our Board of Directors carried out a very important discussion (can we / should we serve the charitable interests of donors who live in the Czech Republic but want to steer their philanthropic giving outside the Czech Republic?). As a result, we talked to Mr. and Mrs. Hora about setting up a named sinking grant-making fund. After a couple of weeks of discussions, as well as drafting a Fund Statute, we were finally ready to reach an agreement. We accepted a financial gift of CZK 400,000 (i.e. USD 24,000) and began making grants to support charitable projects to benefit children and youth in the Sub-Carpathian Ukraine.

Since 2005, we have supported 12 charitable projects. Mr. and Mrs. Hora made a second gift to the fund (CZK 100,000) and a new donor joined their philanthropic work with an annual CZK 100,000 contribution.

In 2007, Mrs. Horová made it clear to us that she and her husband have decided to make a bequest to their Fund with the Via Foundation.

What lessons did we learn thanks to generosity of Mr. and Mrs. Hora?
1. have your giving options ready and communicate them as widely as possible;
2. while communicating your giving options, do not forget to share them with various professional advisors, such as lawyers, tax advisors etc.;
3. be ready to cultivate long-term relationships with your major individual donors. Chances are your foundation literally become a „member of their family" and donors may consider making a bequest
4. before your donors make a commitment for a planned gift (bequest) your foundation needs to gain their absolute trust and needs to keep proving itself during their lifetime;
5. do not promise your donors what you cannot deliver and deliver what you have promised, if you don't, you will lose your donors' trust and eventually even their support;
6. we did not ask for the planned gift (bequest), it was Mr. and Mrs. Hora's idea to put Via and their named fund into their will.

Jiří Bárta, Via Foundation, Prague