

March 11, 2011

Dear Estate Planners,

I have recently run across an issue in the administration of a trust estate and wanted to share it with you for consideration when counseling clients. Our decedent was a very generous individual with limited family and both during life and at death gave generous gifts to charities. When he unexpectedly passed, the decedent had outstanding "pledges" to some of the non-profits named as beneficiaries in his trust. The pledges included cash gifts over a number of years and donations of weeks at timeshares he owned. Understandably, the charities would like the pledges to be honored.

The charities have presented commitment letters evidencing the pledges. I asked the trust attorney who is advising us on this trust for an opinion which I am including below. I thought the practice point at the end is worth thinking about. Your opinion is very welcome!

"Generally a charitable pledge must have all of the elements of a contract (offer, acceptance and consideration). Consideration is typically the missing element and that would appear to be the case in this instance. Consideration has been found when the charity agrees to name a building after the donor in exchange for the pledge or where the pledge will be used to secure gifts from others. And California Civil Code Section 1614 does provide that "a written instrument is presumptive evidence of consideration." However, in a trust context the debt must be enforceable and despite the presumption, it is my opinion that if [the charity] attempted to enforce the pledge that the obligation could be successfully avoided. If the pledge were a larger amount, I would recommend evaluating the feasibility of seeking instructions. However, the cost of that procedure is not warranted by the amount at issue.

This is an excellent example of why charities [and estate planners] should advise their donors of the need to provide for the satisfaction of any outstanding pledge in their estate planning documents.

My final comment is that we don't know whether [our client] took the balance of the pledge into account in his determination of the gift made to [charity] because there was no discussion about it."

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