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**Ethics in Charitable Planning**

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## **ETHICS IN CHARITABLE PLANNING**

**By: Heather J. Rhoades\* and Conrad Teitell\*\***

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### **I. Hypo-Ethicals**

#### ***Hypo-Ethical No. 1***

**William (Bill) Able is a triple threat — lawyer, CLU and financial planner.** He is hardworking (friends call him Billable), a meat-and-potatoes guy, enjoys watching sports on television and going to football games and NASCAR races. When he see movies (not films), he likes them packed with action — car chases and shooting. He is divorced.

Sarah Sensitive is a poet (unpublished). When she goes to the cinema, she sees films (subtitles, of course). A vegetarian, she frequents health-food stores and restaurants. When not taking long walks in the rain along the beach, she enjoys sitting in front of the fire. She has never married and lives off a comfortable inheritance from her father.

Bill and Sarah met on Disharmony.com — the dating site whose motto is “Opposites Attract.”

Although Bill and Sarah have been “dating” for over two years, their relationship is still platonic.

One day warming up in front of the fire (after a long walk along the beach in the rain), Sarah told Bill of her deep love for the environment and her concerns about greenhouse gases. She planned on making a major gift to a new charity, GreenhouseGases-B-Gone. Bill questioned whether she should make a sizeable gift. “You might need those assets for a rainy day” — and he wasn’t talking about a walk along the beach.

Bill suggested that Sarah create a net-income-with-makeup charitable remainder unitrust (NIM-CRUT) that would pay her income for life with remainder to her charity.

Sarah: “But I really don’t need any income.”

Bill: “That’s why I have suggested a net-income-with-makeup trust. The trust will be funded with a deferred payment commercial annuity. No payments will be made to you. However, if you do need income, you can draw down on the annuity — not just for payments in the future but to make up some or all deficits from past years.”

Sarah asks Bill to draft the trust and obtain the annuity. Biting on a celery stalk, he tells her that he will not charge her for drafting the trust. But he will get the annuity and receive the same commission that any other CLU would receive. Talking a puff on one of Bill’s Camel cigarettes, she says that will be just fine.

Bill drafts the trust and it is a beauty — follows all the provisions of the IRS's safe harbor specimen trusts. Bill, after purchasing the annuity for the trust, contributes 10% of the commission (without telling Sarah) to GreenhouseGases-B-Gone.

Any issues?

Hypo-Ethical No. 2

**Alice's revocable living trust provides that on her death one-third of the residue is to be paid to Major University to be added to its endowment and the income be used for scholarships.**

Bank of Banks (BoB) has been managing the assets of Alice's revocable living trust. One of its trust officers suggests to Alice that she now create an irrevocable inter vivos CRUT with one-third of her revocable trust's assets. The trust would pay a unitrust amount to Alice for life. BoB would be the trustee of the CRUT. On her death, the CRUT assets would continue to be held in trust, in perpetuity, with the annual income to be paid to Major University, to be used by it for scholarships.

Alice discussed this plan with her own lawyer, he drafted the CRUT, and she signed and funded the trust.

Alice died earlier this year.

Any issues?

Hypo-Ethical No. 3

**Donor is a dealer in and a collector of works of art. He wants to contribute a painting to Charity. The painting has a \$100,000 basis and he believes it is worth \$500,000.**

Charity's Development Officer tells Donor that he will be deemed to have contributed \$500,000 for income tax purposes and that he won't have to report any capital gain.

Donor's lawyer prepares a deed of gift; the painting, together with the deed of gift, are then delivered to Charity. Before making the gift, Donor had requested that if Charity decides to sell the painting, it will wait until more than three years. Development Officer gave his handshake on this request.

Donor's CPA advises that a qualified appraisal will be needed to claim the charitable deduction. An appraisal is obtained from an appraiser recommended by the development officer. It is timely filed with Donor's income tax return, together with a properly executed Form 8283.

The appraiser had asked Donor whether he needed an appraisal for claiming an income tax charitable deduction or for filing a gift tax return for a gift to a non-charity. Donor said that he was making a charitable gift.