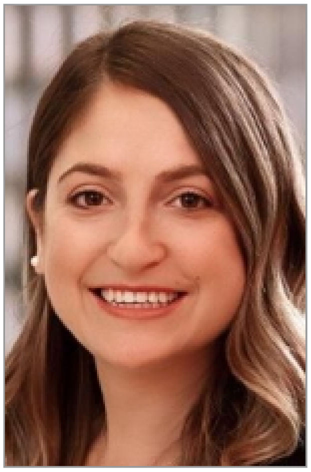
THE LAWYER'S DAILY

The Lawyer's Daily | 111 Gordon Baker Road, Suite 900 | Toronto, ON M2H 3R1 | www.thelawyersdaily.ca

Wills, Trusts & Estates

Charitable foundations: Choosing the right structure

By **Marly Peikes**



Marly Peikes

(June 24, 2021, 1:43 PM EDT) -- Charitable foundations are structures for long term, flexible and customized philanthropy. Both private and public foundations enable donors to make long term gifts and have various benefits, including: creating a lasting legacy, involving family members in the giving process and charitable tax credits. These structures may be attractive for donors who are interested in creating gifts that will have a lasting impact on charitable causes that are important to a donor and his or her family.

When deciding which option to take, it's important to understand the difference between public and private foundations.

A donor-advised fund (commonly referred to as a "DAF") is a fund established with a public foundation. A public foundation is comprised of DAFs from multiple donors, and a donor can contribute to an existing DAF or establish his or her own. There are various community foundations in Ontario and it is possible to set up a fund at many financial institutions.

A private foundation is established by a donor, generally with the help of professional advisers. A charitable trust or corporation is established or created and then an application for charitable status is made to the Canada Revenue Agency. Our recent advisory, *Charitable Giving Through a Private Foundation*, provides an overview of the benefits and considerations in establishing, donating through and operating a private foundation.

Some of the advantages and disadvantages of these two giving vehicles are highlighted below.

Private foundations: Advantages

- The donor retains control over decision-making for the private foundation, including how foundation assets are invested, which charities are supported, amounts and timing of distributions.
- The donor can be more involved in the operations of the private foundation (if established while he or she is alive).

Private foundations: Disadvantages

- The donor is responsible for set-up and ongoing maintenance costs, as well as ongoing administration and tax compliance.
- Although there is no minimum, there should be enough funds contributed to the private foundation to justify the costs and also to meet the annual disbursement quota of 3.5 per cent without having to encroach on capital (typically, at a minimum $1,000,000).

Public foundations: Advantages

- The public foundation is responsible for the administration, investment and maintenance of the various DAFs.
- The donor can choose to be as involved as he or she desires.
- The donor does not have any direct tax compliance obligations.

Public foundations: Disadvantages

- The donor can advise on the charities that he or she wishes to support, but the public foundation has the ultimate control over the distribution of funds.
- Annual administrative fees.

The type of philanthropic plan will be different for each donor and will depend on the donor's personal and family objectives, financial circumstances and desired level of engagement and control. This article only scratches the surface on the differences between these two types of foundations and some of the advantages and disadvantages of each.

If considering a more structured giving plan or your philanthropic objectives generally, it's important to understand the different options, including the tax and non-tax benefits, and how it fits into your overall giving plan.

Marly Peikes is an associate lawyer at O'Sullivan Estate Lawyers LLP*. Her practice includes all aspects of estate and trust planning, estate administration and estate dispute resolution.*

Photo credit / PeterSnow ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily*, contact Analysis Editor Richard Skinulis at* Richard.Skinulis@lexisnexis.ca *or call 437- 828-6772.*
