



MANAGING FOUNDATIONS *and* CHARITABLE TRUSTS



ESSENTIAL KNOWLEDGE,
TOOLS, AND TECHNIQUES FOR
DONORS AND ADVISORS

ROGER D. SILK
JAMES W. LINTOTT

Additional Praise for ***Managing Foundations and Charitable Trusts***

“This is an outstanding book. I have been practicing law for 50 years, and have been involved with foundations and other tax-exempt organizations throughout the entire time, and I have never seen a publication that is as well written and covers this area as completely and succinctly.”

—Thomas L. Norris, Jr., Of Counsel, Poyner Spruill LLP

“After nearly four decades of counseling wealthy families with respect to their tax planning, I have finally found the perfect tool for my clients in the implementation and maintenance of their charitable giving. . . . This well written book has all the key characteristics that I have been seeking for my clients; it is comprehensive, easy to read, and skillfully addresses all of the questions that philanthropically inclined individuals and families routinely ask of their advisors.”

—Robert D. Borteck, Partner, Borteck, Sanders and Torzewski, LLP

“This is the best resource I have yet seen on [private foundations]. It is sufficiently detailed to be useful to attorneys, accountants, and others who seek to advise clients regarding private foundations, yet it is still quite readable and should be very helpful to the interested layperson.”

—Eric N. Holk, Law Office of Eric Holk

“The book includes a clearly written overview, simple and succinct explanations about donations, differing methods of giving to charities, and forceful descriptions of the difficulties in giving money away. . . . Technical issues and philosophical discussions are helpful.”

—Eileen Sharkey, President, Sharkey, Howes & Javer

“I have been an estate planning attorney for over twenty five years. I wish that I had this book to refer to earlier on in my career. I find that it was well written for the experienced practitioner as well as those lacking experience in this field and wanting a resource to help them.”

—Gregory C. Hamilton, Esq., Hamilton & Associates, PLLC

“This book has merit to those who are already operating a private foundation and those who are considering the establishment of a private foundation. . . . I will keep this book for reference to be available when clients consult me on the issue of a private foundation.”

—John W. Cooper, Of Counsel, Lindabury, McCormick, Estabrook & Cooper, P.C.

“This will be a great resource for anyone involved with charities including foundations, whether they serve on the board, work as an officer or staff or are a professional guiding a charity.”

—Jean Carter, Partner, Hunton & Williams LLP

"This book is a must have resource for all professionals who practice in the area of charitable giving, including private foundations. It is thorough for the professional but it is also written in an understandable and readable style for the layperson. I plan to give a copy to every client for whom we create a private foundation or charitable trust."

—David J. Harowitz, David J. Harowitz, P.C.

"This is a terrific book. It is more than a textbook, it is a guidebook for those interested and involved in charitable planning. It has a wealth of information and educational stories. I will be happy to recommend it to all of my charitable planning professionals and high net worth clients."

—Jim Van Houten, CLU, ChFC, MSFS, CFP, Stonegate Financial Group, LLC

"*Managing Foundations and Charitable Trusts* by Silk and Lintott is an excellent source for the seasoned professional or those new to this field. The book concisely sets forth the various charitable tools available to the practitioner/advisor and administrator alike. This resource clearly explains the charitable mindset, the techniques to reach a particular client's goals and the possible pitfalls of one method over another."

—Brian Kirby, Partner, Bangs, McCullen, Butler, Foye and Simmons, LLP

"I [found] this text [to be] a very good balance between the technical and informative such that that it would be useful for the practitioner community, as well as individuals considering the concept of a foundation. For the donor it summarizes in a readable and understandable fashion the technical aspects of operating a foundation, as well as the social good that a family foundation can provide to the community at large. It was an enjoyable read."

—Kimon P. Karas, Principal, McCarthy, Lebit, Crystal & Liffman Co., L.P.A.

"The combination of stated principles and story-based support is effective, avoiding the sluggishness of too much detail. It enables an energetic reading pace and a sense of productivity on the part of the reader."

—Dennis Branconier, Senior Vice President, M Advisory Group

"Silk and Lintott have done it again!"

—Marc Lane, President, Marc J. Lane Wealth Group

"Great work on how foundations can influence family development and functionality."

—Peter Brown, Partner, Lathrop & Gage LLP

"Every person who wants to become an intentional philanthropist should read it. It is not only very readable, but it is comprehensive and full of generalized advice. . . . I want to have copies available to give to seriously motivated clients."

—Chris Johnson, Of Counsel, Buchanan & Stouffer, P.C.

"Bravo to the authors of an intelligent yet fast-reading primer on charitable giving."

—Roy A. Krall, Partner, Weston Hurd LLP

MANAGING FOUNDATIONS AND CHARITABLE TRUSTS

Since 1996, Bloomberg Press has published books for financial professionals on investing, economics, and policy affecting investors. Titles are written by leading practitioners and authorities, and have been translated into more than 20 languages.

The Bloomberg Financial Series provides both core reference knowledge and actionable information for financial professionals. The books are written by experts familiar with the work flows, challenges, and demands of investment professionals who trade the markets, manage money, and analyze investments in their capacity of growing and protecting wealth, hedging risk, and generating revenue.

For a list of available titles, please visit our web site at www.wiley.com/go/bloombergpress.

MANAGING FOUNDATIONS AND CHARITABLE TRUSTS

Essential Knowledge, Tools, and Techniques
for Donors and Advisors

Roger D. Silk
James W. Lintott

BLOOMBERG PRESS

An Imprint of



Copyright © 2011 by Roger D. Silk and James W. Lintott. All rights reserved.

Published by John Wiley & Sons, Inc., Hoboken, New Jersey.
Published simultaneously in Canada.

This book is a revised edition of *Creating a Private Foundation: The Essential Guide for Donors and Their Advisers* published by Bloomberg Press in 2003.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as permitted under Section 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the Publisher, or authorization through payment of the appropriate per-copy fee to the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400, fax (978) 646-8600, or on the Web at www.copyright.com. Requests to the Publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, (201) 748-6011, fax (201) 748-6008, or online at www.wiley.com/go/permissions.

Limit of Liability/Disclaimer of Warranty: While the publisher and author have used their best efforts in preparing this book, they make no representations or warranties with respect to the accuracy or completeness of the contents of this book and specifically disclaim any implied warranties of merchantability or fitness for a particular purpose. No warranty may be created or extended by sales representatives or written sales materials. The advice and strategies contained herein may not be suitable for your situation. You should consult with a professional where appropriate. Neither the publisher nor author shall be liable for any loss of profit or any other commercial damages, including but not limited to special, incidental, consequential, or other damages.

For general information on our other products and services or for technical support, please contact our Customer Care Department within the United States at (800) 762-2974, outside the United States at (317) 572-3993 or fax (317) 572-4002.

Wiley also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books. For more information about Wiley products, visit our web site at www.wiley.com.

Library of Congress Cataloging-in-Publication Data:

Silk, Roger D.

Managing foundations and charitable trusts: essential knowledge, tools, and techniques for donors and advisors / Roger D. Silk and James W. Lintott.

p. cm. — (Bloomberg financial series)

Includes index.

ISBN 978-1-118-03826-0 (hardback); ISBN 978-1-118-09349-8 (ebk);

ISBN 978-1-118-09350-4 (ebk); ISBN 978-1-118-09351-1 (ebk)

1. Nonprofit organizations—Management. 2. Charitable uses, trusts, and foundations—Management. I. Lintott, James W. II. Title.

HD62.G.S5575 2011

658.'048—dc22

2011006384

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1



To Janie Block, z'l, Susan Pohl, and Susan Maher.

Contents

Preface	xiii
Acknowledgments	xvii
CHAPTER 1	
The Basics of Charitable Giving	1
Direct Gifts	2
Supporting Organizations	6
Donor-Advised Funds	8
Private Foundations	12
Conclusion	18
CHAPTER 2	
Tax Incentives and Limitations	21
Four Powerful Tax Incentives	21
Details on Tax Deduction Limits	25
Finding the Best Giving Strategy	27
The \$1.6 Trillion Loss	28
Estate Taxes	29
Conclusion	30
CHAPTER 3	
Charitable Planning and Taxes	33
Giving Approach	34
Tax Planning Complexity	37
Guidelines for Analytical Expenditure: Or Is Analysis Worth It?	39
What to Do When Tax Rates Are Uncertain	40
Timing of Gain Realization	41
Charitable Remainder Trusts and Deferral	42
Conclusion	42

CHAPTER 4**Planning with Charitable Lead Trusts and Charitable Remainder Trusts 43**

Charitable Lead Trusts 43

Charitable Remainder Trusts 47

Flexibility and Irrevocability 52

CHAPTER 5**Foundations and Children 53**

Affluenza 54

Bringing Families Closer 56

Transmitting Values 56

Providing Valuable Skills 56

Conclusion 59

CHAPTER 6**Benefits of Giving While You're Still Alive 61**

Personal Satisfaction 61

Create a Legacy 62

The Problem with Waiting 63

From the Grave: Control—But Not Too Much 64

What about Too Little Direction? 66

Who Gets Control? 68

Conclusion 69

CHAPTER 7**Effective Foundations: The Business of Philanthropy 71**

The Mission Revisited 71

Getting Started 74

Know Your Charities 75

Governing for Effectiveness 77

Approaches to Grant Making 81

You Get What You Negotiate 82

Stand on the Shoulders of Others 83

Outside Experts Can Make the Difference 84

Types of Support: Periodic versus Endowment, General versus Program 84

Is Measurement Worthwhile? 86

Establishing Measures 90

Provide Feedback 91

Give Wisdom in Addition to Wealth 91

Give Strategically 93

Exercise of Leverage 95

Make Foreign Donations Deductible 96

Use Public Relations Effectively 97

Create Financial Leverage through Tax-Exempt Financing	98
Let Your Foundation Do the Dirty Work	98
Conclusion	99
CHAPTER 8	
The Road to Hell: Beware of Unintended Consequences	101
Food Aid	103
Private Charity and Unintended Consequences	105
Fungible Money and Inadvertent Funding of Terrorism	107
How to Give Restricted Grants	109
Poverty—Again	110
CHAPTER 9	
Developing an Appropriate Foundation Investment Policy	113
What to Include in an Investment Policy	113
Conclusion	121
CHAPTER 10	
Developing and Implementing a Foundation Asset Allocation Policy	123
Differences between Corporation and Foundation Investment Plans	123
The Seven Deadly Sins of Foundation Asset Allocation Policy	125
Developing a Good Asset Allocation Policy	129
Should an Asset Allocation Policy Change over Time?	135
Capturing the Rebalancing Bonus	136
Active Management versus Indexing	137
Who Is Responsible for the Asset Allocation Policy?	138
Conclusion	139
CHAPTER 11	
Main Themes in Legal Compliance	141
Some Compliance Errors May Seem Funny, but They're Not	142
A Fail-Safe System	143
Required Activities	144
Prohibited Activities	147
Conclusion	151
CHAPTER 12	
Fraud, Inflation, and Market Risk	153
Stanford Case	157
Enron	160
Baptist Foundation of Arizona Case	162

The Bre-X Fraud	163
Allied Capital	166
Fraudulent or Not? You Decide	167
What Is XYZ?	169
How Will Social Security End?	170
Promised Benefits	170
Real Terms	171
Inflation: A Brief History	174
Inflation Indexing	176
Foundations and Endowments Are Highly Exposed to Inflation	180
Avoiding Fraud	180
CHAPTER 13	
Other Planned Giving Vehicles	183
Charitable Gift Annuity	183
Gift Annuities versus Regular Annuities	184
Partial Exclusion of Annuity Payments from Income Tax	185
Bargain Sale	186
Charitable Gift Annuity versus CRT	189
Remainder Gifts with Retained Life Estate	190
Pooled Income Funds	192
CHAPTER 14	
Donor-Advised Funds	195
History	196
Guidelines—Highlights	196
Fees and Costs	199
CHAPTER 15	
Building Assets with Charitable Planning	201
Professionally Managed, Turnkey Private Foundations	205
Foundation Manager's Role	206
Conclusion	207
CHAPTER 16	
How to Select a Foundation Manager	209
Choosing a Full-Service Manager	209
Conclusion	212
CHAPTER 17	
What Can You Donate to Charity?	213
Publicly Traded Securities	213
Nonpublicly Traded Business Interests	215
Tangible Personal Property	216

Intangible Personal Property	218
Qualified Retirement Plans	221
Real Estate	223
Conclusion	225
CHAPTER 18	
When the Shoe No Longer Fits	227
Private Foundations	227
Charitable Remainder Trusts	231
Getting Rid of Other Charitable Vehicles	243
Conclusion	245
Selected Resources	247
About the Authors	249
Index	251