Please Note:

Issues of *Futures* appear as they were originally published. Information in these publications has not been updated to reflect changes that could affect calculations given in case examples.

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Futures

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A no-nonsense newsletter for estate planners and financial advisors from The Dayton Foundation

How Family Foundation *Plus*℠ Can Provide An Attractive Alternative to a Private Foundation

By Attorney Richard F. Carlile, Partner, Thompson Hine LLP

As the wealth of many people increases and family financial needs are provided for, many of my clients have looked at ways in which they can "leave a legacy" or otherwise provide for their charitable intentions.

Many clients do this by specific bequests through their estate planning documents. Others feel that they can better achieve their charitable objectives by creating a charitable foundation that can last into the future to provide for charitable distributions, to be guided by children, other family members or advisors. Accordingly, in the past, clients have turned to private foundations to achieve their objectives.

"I have many clients who have decided to utilize Family Foundation Plus*…rather than create a private foundation."*
– Richard F. Carlile

The Private Foundation

The private foundation has traditionally given donors the greatest independence and flexibility with respect to charitable giving. A private foundation can last as long as its trustees choose. With the benefits also come some burdens.


Richard F. Carlile

A private foundation must be formed as a separate legal entity, either through a trust or an Ohio not-for-profit corporation. A private foundation must apply for and receive individual qualification of its tax-exempt status from the Internal Revenue Service. After receiving tax-exempt status, the private foundation must deal with the prudent investment of the foundation's assets. There is also the compliance with various tax laws that apply specifically to private foundations, including the requirement that at least 5 percent of the asset value of the foundation be distributed each year to charities. This requirement, plus others, usually requires the hiring of an independent accountant to assist with the various calculations that are needed and to file the appropriate federal income tax return. Private foundations also are subject to a 1 or 2 percent tax on their investment income.

Private foundations also require that there will be individuals in the future who will be willing to undertake the responsibilities and time to operate the foundation. There are many families to which this is not a burden, but who consider it an opportunity to manage such an organization.

There has been substantial debate about how large a foundation should be to justify operating as a private foundation. While the Council on Foundations, the major trade association for foundations, located in Washington, D.C., says that it makes little sense to operate a foundation with less than $10,000,000 in assets, I have found that many private foundations have operated efficiently and economically with substantially fewer assets. There is, however, no doubt that a private foundation entails an expense and burden that not every client wishes to assume and pass on to future generations.

The Family Foundation *Plus* Alternative

In the summer of 2003, The Dayton Foundation formed Family Foundation *Plus* and received IRS approval for this new type of fund that offers a tax-wise, economical alternative to the private foundation. Pursuant to a ruling received from the IRS, Family Foundation *Plus* qualifies for public charity tax status.

A fund under Family Foundation *Plus*, as a public charity, does not have the requirements that are applicable to a private foundation, e.g. the 5 percent distribution rule and the 1 percent / 2 percent investment tax. It also qualifies for increased charitable contribution deductions, possibly up to 50 percent of adjusted gross income for cash contributions and 30 percent for long-term capital assets.

As I counsel many of my clients with respect to their charitable intentions, especially those that are to take effect at their death, and considering the fact that the next generation of many local families no longer resides in the area, clients start to address the mechanical difficulties of operating a private foundation and using children (and later generations) as trustees.

When I discuss with them the benefits of a private foundation and the alternative of a fund at Family Foundation *Plus* (FF+), many of them feel that utilizing FF+ provides them with everything that they need. They like the flexibility of distributions that are not always available from standard donor-advised funds at The Dayton

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How Family Foundation *Plus*℠ Can Provide an Attractive Alternative to a Private Foundation

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Foundation, and that the advisors to the fund can continue in the future for as long as desired, not subject to the generational limitations prevalent in typical charitable, donor-advised funds. Accordingly, many clients feel that they have all of the basic benefits of a private foundation with FF+, without placing the burdens of managing such on family members or others. They feel comfortable that the goals and operations of The Dayton Foundation are sufficient and compatible with their goals. I therefore have many clients who have decided to utilize FF+ for their family foundations, rather than create a private foundation.

Succession considerations, convenience and other practical considerations can lead clients to the Family Foundation Plus *alternative.*

While a fund at FF+ can be more cost-effective than a private foundation, cost is very often not the determining factor in many clients' decision. It is often more the fact that FF+ can relieve many of the administrative burdens from future generations, while allowing them to focus on the charitable goals of a charitable fund and not on its operational aspects.

FF+ has established a minimum of $250,000 in assets to establish a fund. Accordingly, some clients have decided to establish a FF+ fund during their lifetime with at least the minimum amount, and then at death through their estate planning documents, distribute and deposit an additional amount of money that they wish in the fund.

One drawback is that an existing donor-advised fund at The Dayton Foundation cannot be transferred to a FF+ fund. To deal with this, I have clients who leave their current donor-advised funds in place, but instead of funding them further at their death, establish a new FF+ fund and fund it at death. Accordingly, many clients do the paperwork today to establish a FF+ fund, but then "put it on the shelf" to be funded at their death.

Case Example

In the case of one particular client, he already had a donor-advised fund at The Dayton Foundation. He made a decision that charities were to receive a substantial portion of his estate. He had a number of children located both in and out of the state of Ohio. He focused on one particular child that he felt he would like to guide his charitable bequests. He did not feel, however, that that child could handle the full responsibilities of operating a private foundation.

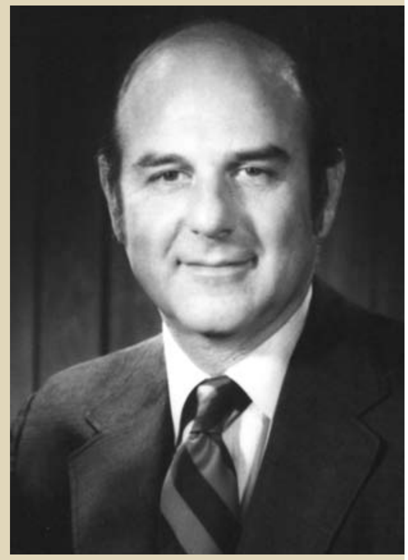
After discussions as to the use of a private foundation or a FF+ fund, he decided that the FF+ fund served all of his purposes. He created a FF+ fund, naming the child as the director, to receive a substantial portion of his estate. He will continue to make distributions from his donor-advised fund at The Dayton Foundation during his lifetime.

In conclusion, I have found that my clients are very happy to have the alternative of a FF+ fund to a private foundation. Of course, not all choose that option, but The Dayton Foundation has provided a viable alternative that my clients can consider – and many choose. ❧

Note: Solutions differ from case to case. The above does not constitute professional financial or tax advice.

Richard F. Carlile is a Partner with Thompson Hine LLP. He concentrates his practice in the areas of estate planning and probate, along with representing privately held businesses.

Remembering Theodore (Ted) Floridis



Theodore F. Floridis

While it's not customary for us to do this in *Futures*, we cannot do otherwise than to mark the passing of a very special friend of The Dayton Foundation, Theodore (Ted) F. Floridis. Former Senior Vice President, Investments, for Wachovia Securities (formerly Prudential Securities), Ted Floridis referred more of his clients to the Foundation's Charitable Checking Account℠ Service than any advisor in the Service's history and referred other clients as well.

Said Dayton Foundation President Michael M. Parks, "The Foundation has lost one of our best friends. Ted believed in the work of the Foundation. He and his wife used The Dayton Foundation themselves, giving of themselves over the years to numerous community organizations through their Charitable Checking Account. We will miss his intelligence, his friendship and his caring nature. Ted was, simply, special."

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The Regional Community Foundation