<u>Unitrust</u> Variations

The following variations of the basic unitrust theme attune the unitrust document to specific donor objectives:

Net-income unitrust: A donor who wants unitrust corpus to grow may want to prevent invasion of trust principal under any circumstances. To accomplish this, the donor can choose to have a so called "net-income charitable remainder unitrust." This type of unitrust must pay its income beneficiaries either the income actually earned by the unitrust or the required payment rate, whichever is *less*. (The Coach had to read that last sentence more than once, too.)

> **A woman, 55, establishes an 8% net-income unitrust. Since the trust invests in growth stock, the income produced is minimal, which is fine with her. She has enough income already. However, when she turns 65 and retires, the trust invests for income and growth and earns a total return of better than 8%. She begins receiving 8% of the value of the trust which has increased substantially during ten years of growth.**

Net-income unitrust with a makeup provision: A donor can choose a net-income unitrust with a makeup provision. The makeup provision requires the trustee to keep track of the difference between the actual payments made and the required payment amounts. Whenever the trust earns more than the unitrust payment rate, the trustee can pay both the required payment amount *and* a portion of the accumulated deficit.

> **A man, 55, establishes an 8% net- income unitrust with a make-up provision. Most of the assets are invested in growth stock, and the income produced is minimal, which is fine with him. He has enough income already. However, when he turns 65 and retires, the trust invests for income and he begins receiving 8% of the value of the trust which has increased substantially during its ten years of growth. In the years when the trust earns more than 8% he can be paid the excess until his make-up account is paid down.**

Flip Unitrust: Donors are also allowed to start with a net-income unitrust and then have it flip when certain conditions are met to a "type-one unitrust" that makes the required percentage payment even if it has to invade principal to do so. The flip provision is often included in a unitrust when a donor is contributing real estate or another hard-to-market asset to the trust. The provision makes it easier for the trustee to meet the terms of the trust while the asset sits unsold.

> **A couple in their late sixties, tired of being landlords, places a rental unit in a charitable remainder unitrust. Knowing that the real estate market is uncertain, they decide to have a net-income and flip provision in the trust. When their quarterly payment is due, the vacant and still unsold rental unit, which is the trust's only asset, has no income to pay them. The trustee uses the net income provision and simply makes note of what is owed them. If the trust did not have the net-income provision, the trustee would have to make the quarterly payment, probably by giving them back an undivided percentage interest of the property, an awkward and unsatisfying arrangement. Finally the property is sold. The January following the sale of the property, the trust flips from its net-income identity to a simple type-one unitrust. Superman has changed back to Clark Kent, and the couple has enjoyed the best of both worlds: the flexibility of the net-income unitrust and now the simplicity of the type-one unitrust.**

Term-of-years Unitrust: Why would donors want a charitable remainder trust to last less than their life expectancy? They may want to get a larger income tax deduction, or see their gift go to the charity during their lifetime, or provide a short-term benefit to a friend or family member - tuition payments to a college-bound child, for example. Term-of-years unitrusts are far less common than lifetime unitrusts, but they can help donors meet specific short-term goals.

> **A couple in their mid sixties contributes $100,000 of highly appreciated stock to an 8% charitable remainder unitrust with a term of five years. They name as income beneficiary their college-bound granddaughter. The couple receives a charitable income tax deduction of $67,000, bypasses a very large capital gains tax, provides their granddaughter with tuition assistance and an incentive to graduate from college in five year's or less, which will be a record time for their distractible grandchildren. Also, the income is taxed at their granddaughter's low rate, not theirs. They have to report a $33,000 gift to their granddaughter, but this simply lowers their gift tax exclusion by that amount. They also have the satisfaction of knowing a sizable gift will go to a charity they care about in five years.**

Life-plus-term-of years Unitrust: "But what about my kids?" is the most common objection to charitable remainder trusts when every other factor seems positive. The insurance industry has responded to this objection by encouraging clients with charitable trusts to use "a wealth replacement trust," a rather grandiose term for a life insurance policy. Parents, for example, use some of the tax and income benefits of their charitable trust to purchase additional life insurance to compensate their children for the trust asset that will go directly to charity upon the death of the surviving parent. But what if, because of age or health, the insurance is too expensive? The parents can benefit their children by extending the life of the trust for a term of years after they die, naming the children as income beneficiaries.

> **A couple in their early seventies transfers a $1 million apartment house they have owned for years to a 6% charitable remainder unitrust. The trust states that after the couple's death, the trust must continue to pay income to their three children for ten years. The couple receives an income tax deduction of $236,000 when they establish the trust, plus income for life. If the trust earns an average total return of 8% annually, in eighteen years - the couple's life expectancy - the trust will be worth about $1.4 million. At the same 8% rate of return and 6% payment requirement, the trust will produce about $919,000 in income to the children over the ten-year term following their parents death and give the parent's estate with about a $770,000 estate tax deduction.**

Term-certain Unitrust: Donors may choose to have a trust last for their lifetime or for a term of years, whichever is *greater*. This assures the donor that the trust will be around to provide support to another beneficiary even if the donor isn't.

> **A retired physician, age 80, transfers appreciated stock to a charitable remainder trust. He stipulates in the trust document that the trust is to last for 15 years or his lifetime, whichever is greater. He names his daughter as successor income beneficiary of the trust. He knows that if he dies at 85, his daughter will continue to receive trust income for ten more years.**