CHAPTER

3

Choosing a Timeframe for Donating

In establishing your philanthropy, an immediate priority for preserving your donor intent is considering a timeframe for your giving. There are three potential approaches: disbursing your assets while you live, arranging to "sunset" your giving at a specific time after your death, or creating an entity that will exist in perpetuity. There are advantages and drawbacks to each timeframe. This chapter will help you think through each approach and decide which is best for your circumstances.

Giving it all away while living

The notion of spending much of one's fortune while living is a concept briskly taking hold in philanthropic circles around the globe. Giving away money fast—to do good right now—is an idea championed by some of the most high-impact, high-net-worth donors of the modern era. Philanthropic heavy hitters like Bill and Melinda Gates, Warren Buffett, Mark Zuckerberg and Priscilla Chan, Richard and Joan Branson, Larry Ellison, and Eli and Edythe Broad have all made giving while living a priority. As of early 2020, 207 high-net-worth individuals and couples have signed the Gates and Buffett Giving Pledge, promising to give more than half of their wealth away during their lifetimes—albeit in many cases to foundations that will operate after the donors' deaths.

Many of these philanthropists have drawn inspiration from a donor who has fulfilled his pledge to give everything away in his lifetime. Charles ("Chuck") Feeney, 89 years old when this book comes out, is co-founder of Duty Free Shops. His Atlantic Philanthropies has distributed a total of $8 billion over 35 years. Atlantic Philanthropies concluded nearly all its giving in 2016 and plans to close its doors permanently in 2020, the largest foundation in history to spend itself out of existence.

Feeney's story is highly unusual in the annals of philanthropic giving: With a single stroke in 1982, he divested himself of his fortune and dedicated it to charitable uses, and he did this anonymously. He chose anonymity out of heartfelt modesty, out of concerns about his family's security, out of his entrepreneurial inclination to "kick the tires" of prospective grantees without being recognized, and out of concern that publicity might discourage other donors from giving to the same worthy causes. As Conor O'Clery wrote in *The Billionaire Who Wasn't: How Chuck Feeney Secretly Made and Gave Away a Fortune*, "Feeney's philanthropic model is unique in its combination of size, offshore location, freedom of action, flexibility, anonymity, limited life span, willingness to make big bets, and global impact. It is a philanthropic landmark of the new century."

Feeney's motivation to give in his lifetime was threefold: First, he hoped to dodge the bureaucratic sclerosis that afflicts foundations as they age, seeking instead the nimbleness and "opportunity-driven" engagement he enjoyed in his business. Second, he wanted to maximize the impact of his gifts. "I see little reason to delay giving when so much good can be achieved through supporting worthwhile causes today. If I have $10 in my pocket, and I do something with it today, it's already

producing $10 worth of good," says Feeney. Most important of all, he embraced the pure joy of "giving while living," which maximizes both the size of gifts and their pleasures. Indeed, Feeney is perhaps the best spokesperson for the satisfaction derived from generous giving and from seeing with his own eyes the impact made. The man who consistently asked his associates, "What will we have to show for it?" has encouraged other donors to consider giving in their lifetimes, noting that it "has been a rich source of joy and satisfaction for me, and for my family as well." Feeney is also a man who never let himself get attached to money. He is famously known for wearing a $15 watch, insisting on flying coach, and using plastic grocery bags to carry around his belongings. "He has loved making money, but not having it," as O'Clery puts it.

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Other donors view the practice of divesting themselves of their wealth during their lifetimes as wise stewardship. "For some reason, God gave me more financial resources than I need or deserve, and therefore I believe I'm supposed to be the one to give them away," says Houston philanthropist David Weekley. "To me, the folks who earn and help create these resources have a responsibility to invest in nonprofit organizations with the same acumen and talents that helped create the resources in the first place." Weekley established a family foundation in 1991 and today works to make grants of nearly $20 million a year. A recent focus for the foundation has been to fund organizations across the globe that encourage human prosperity. For Weekley, this stage in his life demands a new perspective: "It really takes a different mindset that I wasn't prepared to have 10 years ago, or even five years ago. It's time to move to the distribution part of my life cycle. And while I've been distributing in the past, I've still been accruing in terms of my net worth. But now I need and want to start distributing my current net worth, which is different than giving out of income."

One enormous benefit of giving all your wealth away while living is obvious—it effectively eliminates the risk of a violation of your donor

intent in the future. When done wisely, it also helps protect donor intent in the present. Even living donors can find themselves frustrated by staff and board members who steer grantmaking in unwelcome directions, and by grantees who ignore the terms of gifts. (For more on this, see chapters 7 and 8.) A diligent and observant living donor focused on effective giving in the here and now is far more likely to ensure that funds are used for appropriate purposes than a donor who bets on a foundation left behind after his or her death.

Most important—as Chuck Feeney and David Weekley understand—giving away your fortune while living enables you to address today's pressing problems, to be directly involved in solutions, and to invest time, wisdom, and business skills in addition to wealth. "Giving while living is the truest form of philanthropy because it's personal," notes Riley. "It's the human-scale connection that's so wonderful and virtuous." Donors who choose the path of giving while living may be choosing the most satisfying path of all.

> He hoped to dodge the bureaucratic sclerosis that afflicts foundations as they age, seeking instead the nimbleness he experienced in business.

Giving while living and time-limiting what remains

Although allocating all your charitable dollars during your lifetime is growing fast in popularity, it doesn't appeal to all donors. Some are focused on problems that will become more acute in the future, or are committed to helping start-up nonprofits that will require decades to reach maturity. Others may simply not have the energy to distribute all their wealth while living. If these factors apply to you, then establishing a grantmaking entity that will survive you for a limited span of time may be the right choice.

Time-limited foundations have grown in appeal in recent decades. Born out of broad concerns over the difficulties of protecting donor intent over a long term, the practice of "sunsetting" is becoming more common. Although the precise number of time-limited foundations is unknown, an analysis by the Bridgespan Group reported that "only 5 percent of the total

assets held by America's largest 50 foundations were in spend-down in the early 1960s, compared to 24 percent in 2010." As Riley notes, "25 years ago, sunsetting was a dramatic, unusual thing to do. Today, it's increasingly seen as a best practice. The more sophisticated you become about charitable giving, the more you know the history of charitable giving, the more you experience the many instances of donor intent gone awry, the more sunsetting makes sense."

Sunsetting foundations come in all sizes, and focus on many issues. Bill and Melinda Gates describe themselves as "impatient optimists" when it comes to their philanthropy. There is a sense of urgency in their decision to put their charitable dollars to immediate use on today's needs. They initially planned for the Gates Foundation to close its doors 50 years after both of their deaths, but later shortened the timeframe to 20 years. Giving away their wealth "is the most fulfilling thing we've ever done," said Bill Gates during a 2014 TED talk, and the couple has pledged that 95 percent of their wealth will go to the Gates Foundation.

Bernie Marcus, a co-founder of Home Depot, established his foundation with the stipulation that it sunset 30 years after his death, but has recently reduced that period of time to 20 years. He has purposefully created an age differential on his board so that most members will still be there at the foundation's close. He has also created ironclad parameters around how his money should be allocated. In an interview with the Bridgespan Group he spoke plainly about a time earlier in his life when he asked a member of a foundation board how they made their decisions. The trustee told him the donor had left no instructions, so "we give where we want to give, and even favor organizations the donor would have disliked." For Marcus, the impact was immediate and powerful and led to his determination to avoid the risks of perpetuity in his own foundation. "I don't want people to be here in perpetuity. I think it's a terrible thing to do…. People use that for their own benefit…. You've got to be dumb to let a foundation go on forever."

When Gerry Lenfest made a fortune from the sale of his cable company in 1999, he determined to give away his wealth as quickly and intelligently as possible. The result was more than $1.3 billion in giving during his lifetime (he died in 2018), much of it to the Philadelphia area. "I don't want to die with a lot of wealth," he told *Philanthropy* magazine in 2014. "I don't believe in wealth going on in perpetuity. There are occasions when it's turned out to be well done, but they are few in my opinion." The Lenfest Foundation will sunset in the next decade.

Tom Lewis, a donor from Scottsdale, Arizona, is also following the idea of giving while living. He and his wife Jan are using their "wealth, wisdom, work, and witness to try and make a difference while alive." The T. W. Lewis Foundation focuses on five areas: higher education, helping children and families in need, character education, building community through local organizations, and strengthening America. "A lot of the gifts we've made lead to interesting, meaningful experiences. It's become a kind of new identity for us, a new purpose," says Lewis.

The advantages of time-limiting your philanthropy

For donors committed to protecting their intent, time-limited foundations have a distinct advantage over philanthropic entities that exist in perpetuity. As a living donor, you have already established a pattern of grantmaking, and you have chosen board members who work with you in that process. Although not foolproof, having the bulk of your charitable giving take place in your lifetime gives you direct oversight, and leaves behind an imprint to guide any further disbursements—"a record that puts donor intent on a practical basis and that can be cited in the future when questions arise," as Jim Piereson puts it.

The Searle Freedom Trust in Washington, D.C., is steadily spending down toward closure by the year 2025. "Our sunset makes me confident that we're going to do what Dan Searle wanted to do—we will stick to his mission through the end," says Dennis. "I would not be confident of that if we were going beyond that end date. Right now, everyone involved with the foundation knew Dan, and as that changed, people just wouldn't have the same feeling of responsibility to the donor."

The Detroit-based Ralph C. Wilson Jr. Foundation is also benefitting from a board of trustees who knew the original wealth creator well. Before he passed away in 2014, Ralph Wilson handpicked four trustees (including his wife, Mary Wilson) and charted a 20-year sunset timetable. "Ralph had seen how the Ford Foundation left Detroit [for New York City, in 1953] and that really bothered him," Mary Wilson told *The Chronicle of Philanthropy* in July 2018. "He wanted to make sure that the people who knew him best, and the ones that he had total confidence in, were part of this." Wilson's foundation is now busily spending itself out of existence—a big chore given the over $1 billion infusion of cash it received after the sale of Wilson's Buffalo Bills NFL football team. The foundation is the largest philanthropic engine in western New York and among the largest in southeast Michigan (the foundation's two target

areas). Although Wilson left no specific instructions for how to spend his money beyond the general welfare of those communities, he put trusted people in place to carry out his legacy in alignment with his values, within a limited timeframe.

A second advantage of sunsetting is the outsized philanthropic impact you can have through aggressive spending while heading toward a closing date. Dan Peters, who is charged with spending all funds from his parents' Lovett and Ruth Peters Foundation by no later than 10 years after his death, is finding it "liberating." The spend down gives the foundation leeway to extend its giving far behind the 5 percent annual distribution that most permanent foundations follow. "The need is now—why wait?" Peters says.

The Pascale Sykes Foundation in New Jersey plans to spend itself out of existence by 2023 at the latest. Donor Frances Sykes founded the philanthropy in 1992 to help low-income families in some of the poorest New Jersey counties. Initially established in perpetuity, Sykes and her trustees voted just four years later to time-limit, specifically for reasons of donor intent. In 2012, Sykes convened an ad hoc group of New Jersey nonprofits, faith-based organizations, researchers, and government officials to create a 10-year spend-down plan. Sunsetting has added focus and urgency to her grantmaking, Sykes says. "Sunsetting is hard work—it's not for sissies," she admits. "It's much easier to chug along and spend 5 percent each year. But when you're sunsetting, you have to think entrepreneurially. You have to see the need, the demand. You have to see if your giving does the job. You go with what works."

The Roy Lichtenstein Foundation chose the unusual spend-down path of liquidating a significant portion of its art collection by donating it to the Whitney Museum and the Smithsonian. Roy Lichtenstein was one of the twentieth century's most famous pop artists, known for his comic-book-style work. "I like the idea of handing it off," his widow Dorothy Lichtenstein told the *New York Times*. "I don't want to leave things up in the air." The foundation is continuing to allocate its remaining artwork to museums in America and Europe. "We have always intended that the foundation, now almost 20 years old, would not operate in perpetuity, and are delighted we can create a new way forward with our first set of chosen successor institutions, well before we 'sunset,'" Lichtenstein has stated.

The William E. Simon Foundation, a family philanthropy based in New York City, helps inner-city households access education and

community services that foster personal success and self-reliance. Its founder, former Treasury Secretary William Simon, also served as president of the John M. Olin Foundation and as a trustee of the John Templeton Foundation. Emulating John Olin, Simon stipulated that his foundation sunset within a few decades of his death. Originally scheduled to close its doors by 2029, the foundation is now likely to sunset in 2023 or 2024 because of its board's decision to spend more aggressively in its final years.

In one of the better-known early examples of spend-down, the Aaron Diamond Foundation spent itself out of existence by 1996. The foundation was funded in 1985 after the death of real-estate developer Aaron Diamond two years prior. Aaron and his wife, Irene, had decided to allocate all their resources over the course of one decade to have the greatest possible impact—in this case, on the AIDS epidemic. Their foundation became the largest private supporter of AIDS research in the U.S., devoting $220 million to the New York City-based Aaron Diamond AIDS Research Center whose pathbreaking scientific work ended up saving millions of lives.

Sunsetting needn't be a rigid process. "When the subject of sunsetting is first broached, it can seem pretty final and dramatic," says Riley. "It doesn't have to be abrupt. You can do it over a period of time, the grantees anticipate it, and can plan accordingly." As sunsetting grows in popularity, more spend-down foundations are publicizing their experiences and leaving behind their "roadmaps" for others to follow.

When boards decide to sunset

The decision to sunset is sometimes made by trustees after the original wealth creator has passed away. For example, the New York City-based Avi Chai Foundation sunsetted in 2019 as a result of a decision made six years after Zalman Bernstein's death. Bernstein founded Avi Chai in 1984 with a two-fold mission: Jewish education and Jewish unity. The foundation has made grants in North America, Israel, and the former Soviet Union to support Jewish day schools, connect secular and religious Jews around a shared heritage, and promote Jewish thinking in the public sphere.

Bernstein never specifically requested a spend-down for the foundation, but he did communicate the desire informally to trustees, expressing concern about the mission drift of the Ford Foundation and his wish that his philanthropy avoid that fate. Bernstein passed away in 1999, but it

Model donor—Raikes Foundation

Jeff and Tricia Raikes provide another example of giving while living. Jeff Raikes served as CEO of the Gates Foundation between 2008 and 2014, and worked for Microsoft Corporation 27 years as a member of the senior leadership team. Tricia Raikes served as the company's director of creative services and marketing communications.

They created their own foundation in 2002 and have given away over $100 million since then. They focus on youth-serving institutions, including those working in education and homelessness. The couple initially created their foundation without a firm timeframe, but later decided to sunset by 2038. They've identified several reasons for doing so: the sense of urgency that it creates, an increased willingness to take risks, the ripple effect their philanthropy can have to inspire and motivate other donors, a foolproof way for the donors' voices to be heard, and elimination of the risk of mission drift in future generations.

One of their most compelling reasons is the personal satisfaction they derive from giving while living. "We're anxious to see positive social changes that stem from our philanthropic investments during our lifetime," Jeff says. "The more we identify and see the joy in the impact our philanthropy can have, the more we're focused, committed, and dedicated. And the more we're focused, committed, and dedicated, the better our philanthropy can be. That center point—the joy of giving, the joy of philanthropic impact—is central to successful philanthropy."

"We certainly do view this as our life work," Tricia adds, "and it certainly is a reflection of us. We try to bring our whole game to work every day. There's just a tremendous sense of satisfaction when work comes to fruition and you can really see how the results are impacting people."

wasn't until around 2005 that the executive committee and the board of trustees made the decision to sunset. Initially, the date was set for January 2027 to honor what would have been Bernstein's 100th birthday. Trustees later moved the date earlier.

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Avi Chai's sunset strategy had one distinctive characteristic: Because the foundation decided to retain sufficient funds to make annual grants in perpetuity to support Beit Avi Chai, a cultural center in the heart of Jerusalem, the pressure to exhaust all funds wasn't present. "Our goal is to do everything as smartly as we can with the spend-down, and if we end up leaving a larger amount than planned, this will increase the funds available for Beit Avi Chai," says Yossi Prager, executive director. But sunsetting did push Avi Chai to think strategically about how best to help other grantees for whom the foundation tended to be the sole or primary funder. Avi Chai has reached out to partners to help grantees maintain their programs into the future, has helped recipients improve their fundraising capacities, and has encouraged grantees to plan for the future and merge with other nonprofits in some cases.

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Several decisions Zalman Bernstein made have protected his donor intent, according to Prager. Nearly all trustees knew Bernstein personally and worked with him on the board. Bernstein avoided naming professional grantmakers or family members other than his widow as trustees. Instead he chose individuals who were philosophically aligned with him. "That doesn't mean everybody always saw eye-to-eye—Israeli culture is different than American culture, and people on the other side of the ocean often had trouble seeing things the way people on this side of the ocean did—but the trustees agreed at the level of principles and purposes," Prager explains. "That pretty much guaranteed the foundation wasn't going to shift course." Second, Bernstein vested his trustees with genuine decisionmaking authority during his lifetime, while maintaining veto control. He never found it necessary to use his veto. Following his death, the trustees were already accustomed to leading—and equally accustomed to adhering to their founder's intent.

Prager believes that donors are wise to consider sunsetting, first to avoid mission drift in the future, but also because "you don't want

perpetuity to stand in the way of seizing opportunities when they come." A spend-down can "encourage future trustees to seize the opportunity when it's available." At the same time, he cautions, the time pressure can compel significant spending even if there are not yet optimal giving opportunities within the foundation's funding areas.

Earhart Foundation is another example of a board of trustees deciding to sunset after the original wealth creator's death. Harry Earhart was born in 1870, one of eleven children. Son of a respected local businessman, he was also a cousin of pilot Amelia Earhart. He started several businesses, with his greatest success coming as a manufacturer of lubricating oils. Then he used his fortune to support some of the most influential thinkers of the twentieth century through his foundation.

After retiring in the early 1930s and settling in Ann Arbor, Michigan, he focused on various charitable and religious causes, initially through a family foundation. Over time, Earhart became concerned about threats to free enterprise and traditional values, concerns that his children did not share. In the early 1950s, he made the bold decision to remove his children from governance of the foundation, and constituted a new board comprised of businessmen who shared his philosophical outlook. It is one of the first known instances in which a donor reorganized his board to ensure future compliance with his intent.

Earhart passed away in 1954, leaving his foundation in the hands of the board. Although the foundation was established in perpetuity at this point, Earhart gave his trustees broad latitude in the bylaws to make a sunsetting decision at a later date. And although he left no formal guidance on focus areas for the foundation, trustees had a wealth of information from his correspondence: he was keen to create a better understanding of American founding principles, develop human talents, and strengthen the humanities and disciplines such as history, law, philosophy, and economics. In its subsequent grantmaking, Earhart Foundation exhibited a peerless knack for identifying talented, influential scholars. Nine winners of the Nobel Prize in economics were Earhart Fellows earlier in their careers, among them both Friedrich Hayek and Milton Friedman.

By the early 2000s, the foundation's leadership was beginning to weigh the question of sunsetting. David Kennedy—one of Earhart's grandchildren and the president of the foundation at the time—led the board of trustees through an exploration of where the foundation stood, and where it might go in the future. Concerned about the many historical violations of donor-intent violation, the board in

2005 opted for a ten-year sunsetting schedule, closing the foundation's doors in 2015. "While there was no particular threat to donor intent at the time, the board thought it prudent—given the age of the foundation and the longevity of its operations—that operating for another 10 years would give maximum guarantee that donor intent would continue to be observed faithfully," says former president Ingrid Gregg.

To ease the spend-down process, the Earhart board took several steps. It kept its grant portfolio largely unchanged—remaining committed to current grantees—while slightly increasing spending across the board. It also identified ten top-performing grantees and targeted them for special closure grants. "The goal was to avoid peaks and troughs of spending, but have a gradual increase in targeted areas," Gregg says. To ensure program consistency, the board was also careful to maintain existing staff throughout the closure process by instituting incentives (including financial ones) to encourage crucial managers to stay to the end. Communication with grantees was also paramount. "We really wanted to be transparent with our grantees because we were mindful of what it would mean for them to not have Earhart's resources available to them anymore."

In 2015, after more than seven decades in existence, Earhart Foundation officially went out of business. "Sunsetting can be a nimble and flexible process," concludes Gregg. "It can be tailored specifically to small family foundations or much larger foundations. While some donors might find the process a little intimidating, they should realize they don't have to be boxed into strategies or limited in their effectiveness."

A final word on sunsetting

In addition to the negative concerns that may lead you to opt for giving while living or limited-life philanthropy, there are positive reasons to avoid locking up your funds for future use. In America there is good reason to be optimistic about the wealth of coming generations, and the generosity of our next cohort of citizens. It makes more sense to spend now to solve your own problems rather than save money for future residents who will likely have more options anyway due to their greater affluence. The best boost you can give to the future is to fix the now.

Julius Rosenwald understood this intuitively. He decided to have his foundation sunset not only to maximize his effect on the vital needs of his day, but also because he recognized that "Coming generations can be relied

Model donor—
John M. Olin Foundation

Perhaps the most referenced example of a philanthropy successfully sunsetting is the John M. Olin Foundation. This foundation exercised outsized influence in advancing conservative ideas in the last quarter of the twentieth century, having made a deliberate decision to concentrate its efforts during a compact period of time, instead of holding back financial resources for years into the future. Although the foundation's assets never totaled more than $150 million, its spending during the 1980s and 1990s exceeded that of many larger foundations.

Born in 1892 in Alton, Illinois, John Olin was the son of a businessman who owned a gunpowder mill. After majoring in chemistry at Cornell University he joined the family business, which had grown into the Western Cartridge Company. His product development and management skills spurred significant growth, and when the Second World War erupted, his family firm—rechristened Olin Industries—became a major supplier of ammunition to U.S. and Allied forces. After the war, the company expanded into chemical production and other areas. By the early 1950s Olin was a very wealthy man.

The John M. Olin Foundation was founded in 1953. For several years, it functioned like many perpetual foundations, making annual grants to Olin's alma mater and other causes. Alert to Vietnam-era disturbances on many campuses, including Cornell University, Olin shifted his focus in the early 1970s to the defense of free enterprise and limited government. "I would like to use this fortune to help preserve the system which made its accumulation possible in only two lifetimes, my father's and mine," he said. To lead this endeavor, Olin recruited like-minded board members and appointed former U.S. Treasury Secretary William Simon as foundation president.

Rosenwald's example, coupled with Henry Ford II's resignation from the Ford Foundation in 1976, prompted Olin to make another crucial decision: to sunset his foundation within 25 years of his death. Protecting donor intent was one factor, as was Olin's fear of increased government regulation of private foundations following the 1968 Tax Act. Another was Olin's

desire to use his funds in concentrated doses to achieve high-yield results in a short period of time. The foundation's rapid spending, focused mission, and programmatic ingenuity allowed it to have an oversized impact during its time. During the late 1980s and early 1990s, the Olin Foundation spent $20 million per year, while a typical foundation of Olin's size operating in perpetuity would have capped its annual spending at about a third of that.

A remarkable bull run in stocks between 1982 and 2000 extended Olin's reach. "We were able to turn out 12 to 18 percent returns consistently, so that helped us spend a lot and keep going," former president Jim Piereson notes. And America's intellectual climate between the late 1970s and the foundation's close in 2005 also presented a unique opportunity to create and fund organizations and individuals who were able to advance conservative intellectual life. Plus Olin Foundation leaders were unusually savvy in identifying individuals and groups with potential to influence social trends. Grantees included Allan Bloom, Milton Friedman, the American Enterprise Institute, Federalist Society, Heritage Foundation, Hoover Institution, and Manhattan Institute, and academic centers at major American universities that fostered conservative thought, including law-and-economics centers at prominent law schools. Experienced foundation observers—regardless of their personal politics—recognize Olin's accomplishments. In his 2017 book, *Putting Wealth to Work*, Duke University professor Joel Fleishman calls Olin "a textbook example of the potential of philanthropy to achieve significant results."

upon to provide for their own needs as they arise…. Wisdom, kindness of heart, and good will are not going to die with this generation."

Donors who choose this route must nonetheless deal with some thorny decisions. What timeframe is optimal for a sunset? How do you navigate the off-ramp so as to achieve objectives and avoid leaving programs hanging? How can your foundation best communicate with and support grantees who will lose funding after the sunset date? How can you retain crucial employees in your organization long enough to get the job done without doing serious damage to their future professional prospects? How best to handle the closure process itself (archiving materials and legal documents, disbursing residual

assets, etc.)? There is no one-size-fits-all answer to these questions, but limited-life foundations are beginning to communicate more with each other and with the larger philanthropic community about "lessons learned" in the sunsetting process.

Meanwhile, sunsetting presents the strongest defenses for donor intent. As Frances Sykes puts it, "If you want to make an impact, spend down. If you are concerned about your foundation being a burden, or concerned about controlling your philanthropy from the grave, spend down. If you are concerned about funds being spent on family retreats instead of going to grantees, spend down. If you are concerned about donor intent, spend down."

Creating a perpetual entity

The third option for grantmaking activity is to establish a philanthropic vehicle that will survive you—with no end date in mind. Open-ended timeframes carry several advantages. If your primary goal is long-term support for clearly specified geographic regions, issues, or institutions, then a perpetual grantmaking entity can be an attractive choice.

The problem of anticipating future needs is not insuperable, notes Linda Childears of the perpetual Daniels Fund: "If you pick things like our donor Bill Daniels did—aging, early childhood, K-12 education—those are not ever going to be solved or go away." And Daniels' geographic focus on the states where he earned his fortune will likewise never become out of date or problematic. In addition, Joel Fleishman points out that perpetual foundations have made possible "the birth and nurturing" of many major national charities built over decades of support.

Nor is it impossible for a foundation to operate over a long term while protecting donor intent, as some examples in this guidebook demonstrate. Attention to your governing documents and structures becomes even more critical for those foundations with no defined end date, though. What happens when those elements are deficient?

Codifying donor intent after the donor's death

The Foellinger Foundation of Fort Wayne, Indiana, was created in 1958 by Helene Foellinger and her mother Ester. Helene was publisher at the *News-Sentinel* from 1936 to 1980, one of the few female newspaper publishers at the time and certainly one of the youngest. Helene specifically wanted her foundation to operate in perpetuity, so even though the board discussed sunsetting a few years ago, it ultimately decided to continue with no end date.

The Foellingers' philanthropic interests were strictly geographic. All grants were to support causes in Allen County, Indiana, with nine out of ten going to early childhood, youth, and family-development efforts, particularly for those who are most in need. Following Helene's death in 1987 and the settlement of her estate, the foundation's assets jumped from $20 million to $70 million.

The first key to protecting donor intent at the Foellinger Foundation after Helene passed away was putting the right person in charge. Helene trusted Carl Rolfsen and indicated in writing that he should head the foundation. "For many years, he was the voice of donor intent," says Cheryl Taylor, president of the foundation from 2001 to 2020.

By 2000 Rolfsen and the board began to realize the need to document more formally the founders' vision for future generations, but neither Helene nor Ester had left a written mission statement or detailed statement of intent. To document the Foellingers' goals, Rolfsen and his board found speeches that Helene had given on personal responsibility. Those "very much highlighted her personal philosophy," says Taylor, "in articulating the difference between the individual's role and the community's role." Remarkably, the Foellinger Foundation halted grantmaking during a two-year period between 2000 and 2002 to focus exclusively on codifying its founders' vision.

Rolfsen also turned his attention to the selection of future board members. He and his colleagues developed an exhaustive approach to board recruitment. Board nominees must come through a committee structure, and each new board member is assigned a mentor (an experienced board member). Upon arrival, the new members receive an intensive course in the Foellingers' intent, and each is required to sign a statement affirming that intent.

The Harry and Jeanette Weinberg Foundation, based just outside Baltimore, made a similar transition. After his family immigrated to the U.S. from Eastern Europe in the early twentieth century, Harry Weinberg quickly showed a propensity for business. He left home as a teenager to make his way, and throughout the 1950s and 1960s built a diverse transportation empire, and accumulated wealth in securities and real estate. With a keen philanthropic heart—as early as the 1930s Harry Weinberg was helping Jews escape Germany and find safe haven in the U.S.—he created the Weinberg Foundation to aid the poor and vulnerable, with a special emphasis on Jews.

Harry Weinberg passed away in 1990. The foundation's charter has always specified a desire to help people in the lower half of the economic

spectrum, but with a few exceptions delves into little detail beyond that. It was incumbent upon the first generation of trustees to take what they knew about Harry's philanthropic aspirations and apply them faithfully. They based their understanding of his donor intent both on Harry's writings and on his spoken words.

By 2005, with a new president and some new trustees, it was time to codify Harry's donor intent formally, and more clearly identify the geographic and issue areas where grants would be made. "We were looking at what Harry would have wanted, and what would be consistent with his goal of helping poor people," says Donn Weinberg, Harry's nephew and a trustee of the foundation through 2018. The trustees settled on particular programs supporting jobs, housing, health, and education, with a special emphasis on the elderly, at-risk children, and veterans. Grantmaking is also directed at rural communities in the United States, and Israel. Today, the foundation that Harry Weinberg founded in 1959 has assets totaling $2.6 billion, and continues to fund programs that provide services and create opportunity for vulnerable populations.

If you are determined to create a foundation designed to last in perpetuity, and you want to prevent—or at least limit—the erosion of donor intent, then you should consider the following steps (which are discussed further in other chapters).

- Incorporate carefully worded mission statements and other donor-intent documents into your foundation's articles of incorporation and bylaws and require a significant board majority vote to alter those documents. For example, the Hilton Foundation added the following clause to its articles of incorporation in 2014: "The corporation shall make distributions and conduct activities in accordance with the philosophy of Conrad N. Hilton, which philosophy includes religious, ethical, business, and conservative beliefs." Make supplementary materials like oral histories and videos of the donor available to trustees, as well.
- If such documents are not available, follow the example of the Foellinger and Weinberg foundations and create a contemporary donor-intent statement based on personal knowledge of the donor and on letters, speeches, or other writings that provide insight into the donor's values, principles, and key interests.
- Implement the requirement used at the Daniels Fund, Foellinger Foundation, and other places that trustees sign a statement

acknowledging the donor's intent and their commitment to honor it. See chapter 8.
- Have the donor-intent statement read out loud at least once a year at a board meeting, as the Duke Endowment does.
- Follow the Templeton Foundation practice of scheduling regular independent donor-intent audits of your grantmaking.
- Give outside parties legal standing to take action against your board if it strays from its mission.

Of course, none of these practices are foolproof: If future trustees are intent on upending your donor intent, they will most likely be able to do so. When all is said and done, no matter how clearly you define your intentions in writing, no matter how judiciously you populate your board of trustees with trusted colleagues, there is no firm legal barrier to significant drift in the mission of your perpetual foundation. Future trustees and staff may steer your foundation away from your intent as memory of your life fades.

"Western law has done away with ancestor worship. No legally enforceable duties exist to the dead," state philanthropy experts Fred Fransen and Keith Whitaker in their article "Preserving Donor Intent." "As currently constituted, foundations, in effect, have no accountability mechanism, save in the case of egregious violations of the law that come to the attention of their state's attorney general," adds Heather Higgins, president and director of the Randolph Foundation in New York City. In the Philanthropy Roundtable publication *Should Foundations Exist in Perpetuity?* she warns that "No one really referees the actions of foundation trustees, and no forces visit negative consequences upon them when they make poor decisions. Their latitude is extraordinary because the work they do is presumed to be for the public good."

Recent critics of philanthropy actually encourage the dismissal of donor intent. In his 2018 book, *Just Giving: Why Philanthropy is Failing Democracy and How It Can Do Better*, Stanford University professor Rob Reich maintains that "the foundation is defensible only when philanthropic assets are directed for long-term social experimentation," and so "the state must always retain the right to intervene in a philanthropic endowment." Reich wields quotes from John Stuart Mill to argue that a "dead man's intentions for a single day" should not be allowed to morph into a "rule for subsequent centuries."

Even less ideological observers see pitfalls in perpetual foundations. Rosenwald was one of the first philanthropists to caution his

Model donor—Lynde and Harry Bradley Foundation

Lynde and Harry Bradley were brothers and business partners who led a manufacturing business, the Allen-Bradley Company of Milwaukee, Wisconsin. Founded in 1903, the company experienced significant growth during World War I due to the Allies' need for naval electrical equipment, artillery firing mechanisms, and radio apparatus. By the war's end, Allen-Bradley had expanded to fill nearly a city block. By the 1960s, it had become one of the largest manufacturing concerns of its type in the country.

With six years separating them, the brothers were never close confidants, but their dramatically different personalities enabled them to establish a partnership that guided Allen-Bradley through its growth years. Lynde was quiet, retiring, and austere, a man who preferred to tinker in his labs and workrooms, handling research and development of new products. Harry was gregarious and focused on sales and personnel management.

The Bradley brothers were kind and generous to their workers, creating a workplace that provided extensive amenities: a wood-paneled reading room, a sundeck, on-site medical care, and a company jazz orchestra. They resisted unionization, and both brothers (particularly Harry) had strong conservative beliefs which later shaped their philanthropic giving.

After a brief illness, Lynde passed away in 1942. Most of his shares in the company were poured into a series of interlocking trusts that kept management of the company intact while providing income to Harry and other family members. Close to the time of his death, Lynde had been working to establish a foundation, and Harry partnered with Lynde's wife, Caroline, to complete the process. Initial giving was focused on Milwaukee nonprofits and schools.

Harry Bradley's philanthropy soon turned to public-policy causes. He was deeply anti-communist, a supporter of Robert Taft for President in 1952, and a major backer of Barry Goldwater in 1964. He supported the Hoover Institution and conservative radio programs in the Midwest. And he provided early and frequent support to William F. Buckley Jr.'s *National Review* to help the magazine through its financially rocky years. Harry passed away in 1965.

In the 1960s and 1970s, public-policy grants became even more frequent. The Bradley Foundation supported groups such as the Intercollegiate Studies Institute and Morality in Media. Even so, most giving went to local organizations like Marquette Medical School and St. Luke's Hospital.

In 1985, the Allen-Bradley company was purchased for $1.7 billion. The foundation started by the brothers ballooned overnight from $14 million to almost $300 million in assets. The Bradley Foundation now grants between $35 and $45 million annually to hundreds of charities in Milwaukee and conservative causes across the U.S. Since 1985, the foundation has made more than 13,000 grants totaling over $1 billion to more than 1,900 organizations.

Bradley is one example of a foundation operating in perpetuity that has preserved donor intent, even though many decades now separate the foundation's work and Lynde and Harry Bradley's original philanthropic giving. "We spend an enormous amount of time—both staff and board—reflecting on what Lynde and Harry would have done today had they still been here," says president Richard Graber.

With that commitment in mind, board and staff recently underwent a planning process that yielded four focus areas: Constitutional order, free markets, civil society, and informed citizens. While specific grantmaking targets may change over time, the foundation adheres to the values and principles of its donors: "Lynde and Harry Bradley believed not just in freedom, but also in the richness of community and culture that are the basis of a well-lived life. The Bradley Foundation seeks to further those beliefs by supporting the study, defense, and practice of the individual initiative and ordered liberty that lead to prosperity, strong families, and vibrant communities."

To Graber, there are two ingredients in the Bradley Foundation's long-term fidelity to donor intent. First, have a rigorous process for selecting new board members and staff that ensures they are philosophically compatible. Second, thoroughly evaluate grant requests. "If you get these two things right—the people part, and the rigorous process for grantmaking—then you've got a pretty good chance of staying true to donor intent," says Graber.

peers that "storing a large sum of money for long periods of time" resulted in "tendencies toward bureaucracy and a formal or perfunctory attitude toward the work." Similarly, Jeff Raikes warns about the propensity for perpetual foundations to play it safe in their philanthropic investments rather than take on bold projects. Foundations may be formed by entrepreneurs quite willing to take risks to solve problems, he notes, but "when you get into the third and fourth generation, the foundation ends up being more controlled by a set of trustees that may not have that willingness." In addition to having different temperaments, they have different incentives. Some trustees believe their foremost responsibility is "to protect the reputation of the institution. If they're trying to protect the reputation of the institution, will they feel empowered to take the risks that might lead to some significant failure? I think not."

"Whether it's decades from now or centuries from now, almost any purpose that you can think of will ultimately become obsolete or unfeasible, at which point whatever money is left—which could be quite a lot—is going to be used for another purpose, a purpose that you probably can't even conceive of, decided by people that you can't even imagine," warns Tom Riley. "If you're choosing perpetuity, then you are choosing that ultimately it will wind up going forward as something unfamiliar, run by people you don't know." As Jerry Hume of the Jaquelin Hume Foundation bluntly puts it, "You can't protect donor intent from the grave."

Donor intent in family foundations: A unique challenge

Establishing family foundations in perpetuity is a popular choice among donors. A recent survey by the National Center for Family Philanthropy found that 30 percent of the responding family foundations have opted for perpetuity, compared to just 10 percent who are spending down. (The remaining foundations are either undecided or plan to revisit the question periodically.) Another survey by Foundation Center concluded that two out of three family foundations plan to operate indefinitely. Frequently, perpetuity is an almost automatic choice for family foundations, based on a vision of a harmonious family legacy extending across multiple generations.

Multi-generation family philanthropy can be a source of great satisfaction, but donors who establish foundations, donor-advised funds, or other philanthropic vehicles for their families must first understand their own intentions and communicate them in clear terms to their family members, to their estate planners, and to their legal advisers. If you seek

an opportunity for your family to come together and experience the joy of giving with few or no restrictions on mission, then engage your children in your charitable endeavors early and give them free rein.

John D. Rockefeller's personal giving was driven by his Baptist faith and his belief in a free-market economy. His family—now entering its seventh generation of philanthropy—has never been bound by any specific directive other than the notion that great wealth brings with it great responsibility. Successive generations of the family have shifted their giving priorities dramatically and experimented with a variety of grantmaking styles, heavily influenced by personal life experiences. The Rockefeller name, however, still binds them.

The Sobrato Family Foundation is a perpetual foundation based in California. Real-estate developer John Sobrato built many of the commercial structures in Silicon Valley. He and his wife, Susan, are

> Donors who establish family foundations with a vision of a harmonious family legacy nonetheless need to communicate their intentions in clear terms to family members.

the original wealth creators of Sobrato Philanthropies, an umbrella entity that includes their family foundation. The Sobratos have three children plus seven grandchildren, and all three generations are represented on the foundation's board of directors. Grandchildren are permitted to attend board meetings, and they may vote on grants after their 21st birthday. That's one step the Sobratos have taken to involve future generations in giving: exposing them to the process early on.

The family foundation has a specific mission: to make Silicon Valley a place of opportunity for all its residents by promoting access to high-quality education, career pathways, and essential human services. In addition to the main foundation, John and Susan have also allowed family members to pursue their individual charitable interests by creating donor-advised funds for them. When the Sobratos donate appreciated real estate to their foundation, they deposit half of the proceeds into these donor-advised funds, from which the children and grandchildren are free to make distributions without

seeking board approval. "We hope that by doing this we encourage the family to continue giving together rather than drifting apart," John Sobrato told *Philanthropy* magazine in 2018. "Our giving keeps us close. Making decisions on our shared priorities creates a natural process for learning each other's passions and opinions."

In line with the family ethic of generosity, John and Susan Sobrato are also stewarding trust funds for their grandchildren. Sobrato heirs begin receiving distributions from their trusts at age 25, with incremental increases in payouts at intervals until age 50. But the twist is that in order to receive funds, each family member must donate an equal amount to charity—dollar for dollar. "We thought it was important to encourage our grandchildren and children to do as we do," John Sobrato says. "There's enough wealth that they're comfortable, but not to excess. And our kids aren't selfish, so they're okay with this."

There are other models for philanthropists who seek to encourage productive giving across multiple generations of a family foundation. Heirs involved with the Hilton and JM Foundations, respectively, have honored the original donors' wishes over many decades. Families strongly interlaced by religious faith appear to be especially able to act in comity across succeeding generations.

The Utah-based GFC Foundation (an acronym for God, Family, and Country) has transmitted its donor intent across three generations with a common denominator of faith as a key ingredient—in this case, the Church of Jesus Christ of Latter-day Saints. Although it was several decades before the family created an official mission statement for the foundation, core values were nonetheless passed from one generation to the next. Dudley Swim, a successful investment manager during the Great Depression, launched the foundation in 1941. He passed away in 1972, but his son and daughter-in-law, Gaylord and Laurie Swim, took up the mantle of the family's philanthropy. In 1994, Gaylord established the current version of the foundation. Beyond its grantmaking to numerous charities, the GFC Foundation has chartered a public-policy organization, the Sutherland Institute, and a local faith-based private school, American Heritage. The foundation now focuses on freedom, cultural renewal, K-12 education, higher education, and poverty relief.

Following Gaylord Swim's death in 2005, his son Stan Swim became a third-generation president of the foundation until July

2018. He credits his close-knit family for transmitting core values. "The way we were brought up is one of the most important preservatives of donor intent," he says. "If we have succeeded in perpetuating Dudley's values into the third generation, it is not because of anything written into our organizing documents or bylaws, which are boilerplate. Our determination to stay consistent comes from parental teaching, which for each generation has started in childhood. Family experiences, conversations, and educational choices have all played a role. Today we have spirited arguments over practical means but remain unified on principle."

Swim adds that the inculcation of gratitude and a stewardship responsibility is fundamental to keep the foundation "still reflecting my grandparents' and parents' priorities. And I think gratitude will do more to keep you on track than documents or papers. Gratitude is what makes those documents come to life." For nearly 80 years the family's shared faith and values across generations have served as a strong defense against the threat of straying from donor intent.

When money and family collide

Even with careful planning, donors should recognize that money, even money dedicated to charitable purposes, can be an enormously

Tips for involving family while protecting donor intent

Communicate your priorities to your children and grandchildren early and often.

Toby Neugebauer, co-founder of Texas-based Quantum Energy Partners, took his family on a 110-day worldwide trip to expose them to the slums of Mumbai, the orphanages of China, and the dirt-path villages of Tanzania—all toward the goal of ensuring that his sons develop a sense of the possibilities for responding to real need in the world with the money they will inherit.

Reinforce these early lessons with lasting documents that enhance your family's understanding of your intent.
Oral histories, videos, anything that can be pulled out later for study, will help cement what you say in person.

Have hard discussions around core values and pay attention to deep-seated differences.
Family members who disagree with your stated mission are not likely to change their minds, and many donors realize too late that forced togetherness around a foundation's board table can do irreparable harm to a family in its private life, rather than knitting its members together.

Be clear with family members that formal participation in your family philanthropy is voluntary, not obligatory.
Your children may simply not share your interest in charity, especially when they are beginning their professional lives and starting their own families.

Treat participation as a privilege that must be earned, not an automatic consequence of one's DNA.
Be clear from the beginning about who is eligible to help run the philanthropy, and the qualifications needed for board service. Avoid having it interpreted as a guaranteed right. Some children might be more appropriate than others. Will you include spouses or domestic partners? Stepchildren? Think those decisions through up front.

Consider a system of rotating board membership.
If the pool of potential family board members is large, or if you want to restrict the number of family members sitting on the board at any one time, something like three-year terms can be helpful. After rotations, you might want to appoint particularly effective participants to longer service.

Consider appointing family members to an advisery board.
The governing board may not be the appropriate place for relatives. There are other places to participate, like bodies that generate ideas and offer expertise, without exerting control.

Consider even less formal alternatives to board membership.
You can engage family members in philanthropy without handing them

governance control. Consider temporary committees, prize boards, short-term investigations, publicity duties, gala chairmanships, etc.

Give family members limited discretionary grant privileges within your primary foundation.
This can allow them to pursue their own interests, without giving them a board seat. This can be a good choice for a family that is geographically dispersed. Discretionary grant allotments should never be so large that they distract from a foundation's core mission and instead create individual "fiefdoms" within the family; nor should they be used for grants which directly counter donor intent.

Create a separate foundation or a donor-advised fund where there is unity.
It can focus on causes and organizations where there is agreement and interest among family members.

Create a separate foundation or a donor-advised fund when there is division.
If family members disagree with—or are simply less interested in—your mission, you might want to provide them independently with smaller amounts of money to support charities of their own choosing.

Establish different foundations for each of your children.
The late Gerry Lenfest was wary of family foundations (which he called "generally a big mistake") and chose to limit the life of his foundation. He also wanted to involve his children in philanthropy, however, so when Lenfest and his wife sold their company they had each child set up his or her own foundation. This gave the Lenfest heirs an opportunity to pursue their personal charitable interests, while keeping the larger Lenfest Foundation focused on Gerry's goals of improving education and work for the young of Philadelphia.

Don't allow the foundation to become the only—or even the primary—vehicle for family interaction.
This is especially important when only some family members serve on the foundation board. Continue to convene the full family for private occasions completely apart from the activities of the foundation.

destructive force within families. Many founders fail to foresee that disbursing the family's philanthropic assets can become a contentious process, one that is often complicated with the introduction of multiple marriages, half-siblings, and so forth. It is very easy to overestimate feelings of familial fidelity and ancestral deference when members become dispersed by generations, locations, and experiences.

As Paul Schervish, director of the Boston College Center on Wealth and Philanthropy, puts it, "Affluence and wealth are like electricity. They can light up your house—or burn it down." Even apart from the many cases where tart philosophical differences grow up within a family, Al Mueller of Excellence in Giving warns, "people give away somebody else's money differently than they give away money they had a part in making." Second- and third-generation philanthropy can take a toll on even the strongest clan.

A recent and well-publicized family feud centered on philanthropy involves the Surdna Foundation, one of the larger charities in the U.S. with $1 billion in assets. Surdna is over 100 years old, and 380 living adult descendants of the founder are kept abreast of the foundation's work through regular e-mails and reports. In May 2018 almost two dozen of these descendants signed a letter to the board decrying an exaggerated focus on social-justice causes which they say the foundation's creator, John Andrus—an investor and businessman in pharmaceuticals, real estate, railroads, and utilities—would have found objectionable. The dissenting family members particularly balked at the pending hire of a new foundation president with close ties to progressive politics.

Until his death in 1934, Andrus's charitable donations went to mainstay institutions like hospitals, schools, churches, and orphanages. Unfortunately, he left behind no statement explaining his donor intent, no instructions on board membership and succession, and no mission details beyond the boilerplate "religious, charitable, scientific, educational and eleemosynary purposes…." Perhaps he assumed his family would follow the clues he left behind in his own giving. Perhaps he intended for them to have complete flexibility. What seems certain is that he did not intend to launch a bitter—and public—family dispute eight decades after his death.

Kim Dennis of the Searle Freedom Trust cautions that family foundations are most problematic if your central purpose in giving is philosophical or ideological. "Family members do feel more of a claim to the money than non-family members do, so I think donors should weigh what matters more to them. Often, they want to blend the family and the

purpose, and that's very hard to do. It can work—it has in our case—but if you really care about the mission, don't expect to be able to include your family members and have that succeed."

"A donor might create a family foundation expecting to unify family members," Dennis continues. "But money is a divisive thing. It's more likely to create conflict within a family than to bring everyone together."

Frances Sykes chose to sunset her foundation partly to lighten the load for her heirs. "I don't want to burden my children with causes they might or might not believe in," she says. "Why should I burden them with trying to carry through my intent, which might not be their intent?"

The questionable track record of family foundations when it comes to donor intent has prompted many donors to approach family giving cautiously, or steer clear of it altogether. Regardless of precautions, sooner or later a family foundation that operates in perpetuity requires you to entrust your donor intent to future generations. "Donors need to be honest with themselves," advises philanthropic counselor Keith Whitaker. "Am I willing to let my family members do what they think is best at a future time? Or am I seeking to change the world in a particular way? If so, then I better do it while I'm living."