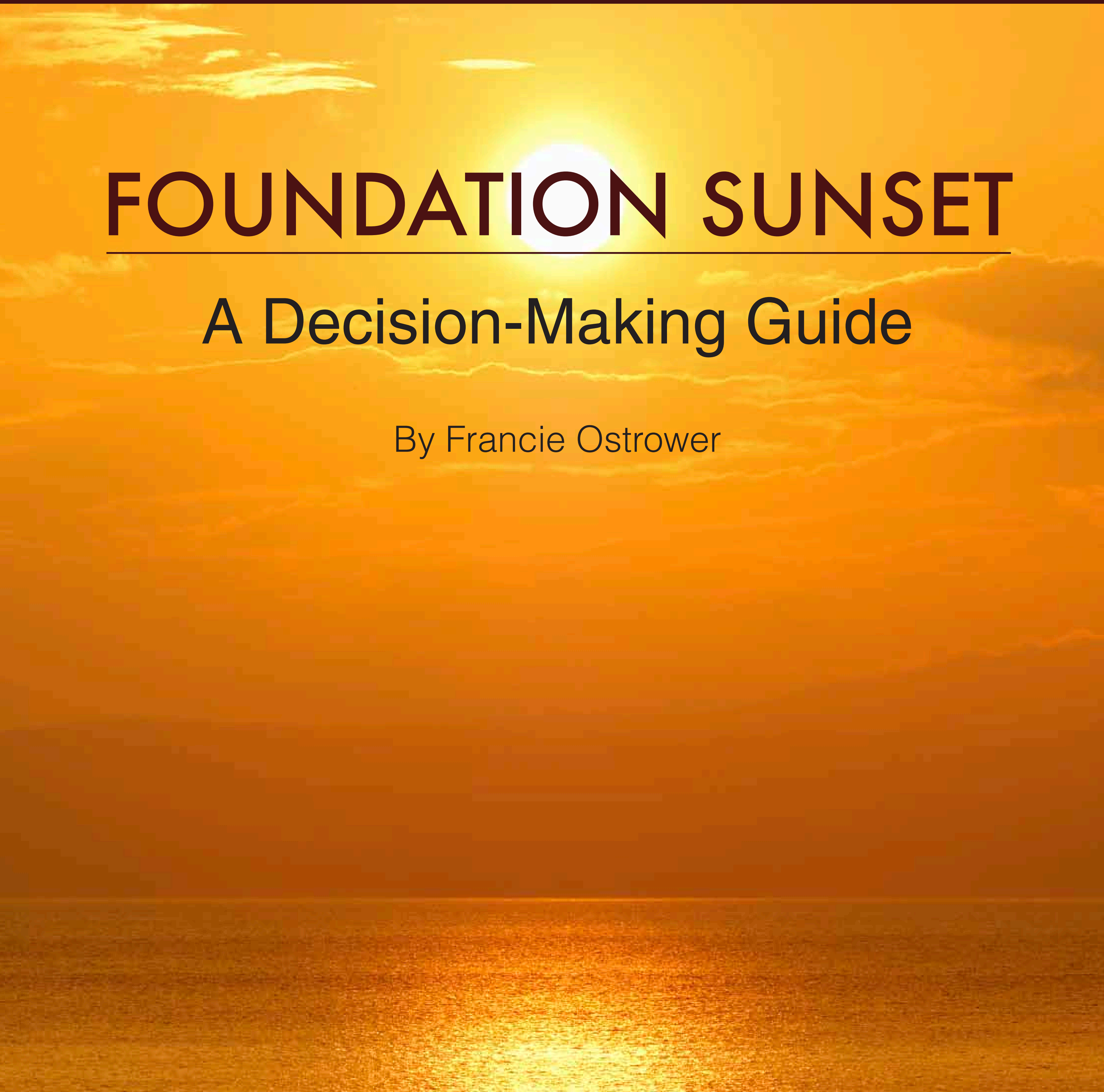
FOUNDATION SUNSET

A Decision-Making Guide

By Francie Ostrower



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Foundation Sunset: A Decision-Making Guide

Francie Ostrower

University of Texas at Austin

The Aspen Institute
One Dupont Circle, NW
Suite 700
Washington, DC 20036-1193

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Francie Ostrower

University of Texas at Austin

"First of all, come up with a very good game plan." This was the answer given by one sunsetting foundation's trustee, when asked what advice he might have for other foundations planning to sunset. But what is a good game plan? What are the major issues that donors, trustees, and staff confront when considering or implementing a sunset plan? Those are the questions addressed in this decision-making guide. As used in this guide, "a good game plan" for sunsetting does not mean simply a plan for closing a foundation. **It means a plan that approaches sunsetting as a distinctive philanthropic strategy offering particular benefits**. This guide offers a framework that can help donors and trustees craft such a plan, in a way that is consistent with their particular values, circumstances, and motivations. It does so by identifying overarching areas of decisions for donors and trustees to address, and discussing options within them. This guide proposes that a strong sunsetting plan will be one in which donors and trustees clarify their thinking on each of these elements, and in which the different elements of the plan are consistent with one another and the foundation's fundamental rationale for sunsetting.

This research-based guide represents a distillation of the author's observations from studying sunset foundations. In an earlier study the author analyzed survey data on over 800 foundations, including 70 limited life foundation and interviewed trustees, donors and staff of 29 foundations planning or considering limited life.[1] That research sought to chart the typical and representative aspects of sunsetting, and found that many sunsetting foundations do not link their longevity to a philanthropic strategy. In more recent research, the author conducted case studies of four foundations that took a deliberate and planned approach to sunsetting. These foundations therefore are well-suited to understanding how sunsetting can function as a philanthropic strategy.

The four foundations are the Beldon Fund, the Mary Flagler Cary Charitable Trust, the Jacobs Family Foundation, and the Pear Foundation (a pseudonym). A separate paper describes those cases in greater detail and offers an analytic discussion sunsetting as a philanthropic strategy.[2] This guide is a more practically-oriented companion piece and draws extensively on

[1] Francie Ostrower, *Limited Life Foundation: Motivations, Experiences and Strategies.* Washington, DC: Urban Institute. 2009.

[2] Francie Ostrower, *Sunsetting: A Framework for Foundation Life as Well as Death*. Washington, DC: Aspen Institute. 2011.

those case studies for examples. The Beldon Fund and the Cary Trust have sunset, the Jacobs Family Foundation plans to sunset in approximately 30 years, and the Pear Foundation will close in seven years.

<u>Components of a Sunsetting Plan</u>

There are five elements for donors and trustees to consider when crafting a sunsetting plan. These are:

- *Motivations for sunsetting:* Why did the donor and/or trustees decide the foundation should sunset? Original reasons may evolve and/or be supplemented by additional rationales over time.

- *The sunsetting framework*: What overall approach will guide the foundation's sunsetting plan, and why? For instance, will the foundation spend down systematically during its life, or take another approach?

- *The timing of termination:* How long should the foundation endure, and why? How much flexibility should be incorporated?

- *Plans for sustainability:* What part of its work does the foundation want to try and perpetuate after the foundation's own lifetime? What can it do to help promote that sustainability?

- *Closing the foundation:* What are the tasks, both broad and specific, that must be planned for when it comes to actually closing the foundation as an organization?

There are different answers and options in each of these areas. A strong sunsetting plan is one in which donors and trustees have considered each of the elements, and how they align with one another and with their fundamental rationale for sunsetting.

There is also another set of issues that cut across these elements for donors who anticipate creating a foundation that will sunset after their death. These concern how they will convey their wishes and intentions to those who run the foundation in the future, what they wish to mandate, and what flexibility they wish to leave their trustees to deal with changing circumstances. This includes considering whether, with the advice of legal counsel, they wish to formalize a requirement for the foundation to terminate (e.g., by incorporating a sunset clause into foundation by-laws).

<u>Motivations for Sunsetting</u>

Donors' and/or trustees' concern with preserving donor intent is perhaps the most widespread rationale for sunsetting, and was a factor for all four of the foundation case studies.

In three cases, the donor decided to sunset. In the fourth case, the Pear Foundation, the donor's children and trustees made the decision. One explained:

> We have seen foundations drift as they get farther away from the creator. The world changes. The creations, ideas of the creator are not taken as seriously. This is understandable, because they didn't know the creator. To avoid that, we decided to spend out.

The Pear Foundation's donor left trustees discretion over how funds were to be spent along with a statement of his interests and values. One trustee described his statement as their "lodestar" and it is read every year at an annual meeting.

Some donors are not only concerned that the foundation's activities remain true to their interests and values, but also have an interest in "giving while living." These donors, such as the Beldon Fund's creator, want to be personally involved in their giving and see its results.

Another prevalent motivation for sunsetting is a desire to avoid the perceived institutionalization and bureaucracy of perpetual foundations. As his daughter recall, one reason that Joe Jacobs wanted his foundation to sunset was "I don't want a bunch of bureaucrats running my foundation." One Beldon Fund trustee cautions that "the danger of big foundations that don't have a term is they can become caught up in their own survival. That's not what it should be about." **Those associated with sunsetting foundations view foundations as *vehicle,* and are not invested in creating distinct organizational identities for them**. They wish to make use of the advantages of an organizational form of giving, while ensuring that the organization remains an expression of their individual interests and values.[3]

One rationale for sunsetting tended to evolve *after* the original decision was made. Specifically, some of these small or moderate size foundations came to feel that because they could spend more sunsetting enabled them to have a greater impact and visibility than would have been possible for a perpetual foundation of their size. A Beldon Fund staff member said, "We were spending at the rate of a much larger organization and thus had the influence of a larger foundation. So you can play with the big boys." A Jacobs Family Foundation staff member said the ability to "use 100 percent of what we have to build community change…opened up the door to an incredible amount of capacity for a small foundation." [4]

Donors and trustees may also believe that sunsetting is particularly well-suited given their philanthropic field of interest. The Beldon Fund's donor focused on the environment, and

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[3] Ostrower 2011, op. cit.

[4] When the Beldon Fund started to spend down, it had assets of just over $100 million. The Jacobs Family Foundation had $23,528,353 million in assets in 2009.

concluded, "Given all the environmental problems besieging our planet today, how can I not give away all of the foundation's assets in the very near future?" [5]

Sometime, donors and trustees decide to sunset because they do not feel perpetuity is an option for them. For instance, donors may not have children, or their children may not share their interests. Family dynamics can play a role too, here, as when foundations sunset because family members do not get along.

Sunsetting Frameworks

Spending down is the approach that most people probably associate with sunsetting. Here, the foundation ultimately sunsets by annually giving at levels that erode its endowment. Since spend down foundations do not need to preserve their endowments in perpetuity – indeed quite the reverse – they are free to give in amounts far in excess of perpetual foundations of their size. The Beldon Fund exemplifies this approach, and tried to come as close as possible to "zeroing-out" its assets by termination. As one staff member recalled, "we could spend $14 million in grants – as a perpetual foundation it would be more like $5 million." For the period of its lifetime, therefore, Beldon could act like a perpetual foundation of a much larger size and this is why trustees, staff, and some grantees as well believed that sunsetting enabled Beldon to exert greater leadership and impact in its field.

The Pear Foundation is also a spend down. It is not uncommon for the Foundation's grants alone to exceed 15 or 20 percent of the value of foundation assets. A few years ago, the foundation commissioned a series of estimates about how long it would take them to spend out at their current level, and concluded that the results were consistent with their timeline.

The Cary Trust adopted a quite different approach to sunsetting. While it did typically spend over the legally required 5 percent, its basic strategy was to preserve its principal to distribute as endowments to grantees at termination. During its lifetime, much of its efforts and grantmaking was aimed at strengthening (and in one case creating), organizations to receive those endowments. A trustee explained the reasoning behind their approach as follows:

> Just making larger grants for ongoing operations of the grantees is not compelling, because once you stop doing it, then what do you do? And what do the grantees do? Suppose we didn't hold on to the principal, but increased the grant size – And then you stop, but the charitable institutions become twice as dependent on us. You boost them to a larger level, and then you reduce the underpinnings.

One consideration when considering endowments as a strategy, however, is whether a foundation's grantees are large enough for an endowment. Some of the Cary Trust's grantees

[5] President's Report. 1997.

were too small for this strategy. One option for foundations with small grantees is to leave an endowment to an intermediary organization, that can continue similar grantmaking for at least some period of time. For instance, the Cary Trust made a grant to one intermediary organization to be used to support small music ensembles and commission new works. Another sunset foundation, outside of this study, plans to leave its small grantees annuities that will provide income to replace the foundation's contributions for a few years after it closes.

The Jacobs Family Foundation, which is involved in comprehensive community development in the Diamond neighborhoods of San Diego, takes yet another approach to sunsetting. It plans to sunset by creating social and economic enterprises that will pass into community ownership. One staff member explained, "Joe's genius was to translate the sunset plan into, 'I think the community should own this.'" The foundation's ultimate goal is to develop a 60-acre mixed-use site that will be planned, built, and ultimately owned by the residents of the Diamond neighborhood. In keeping with the Foundation's philosophy that "giving people things can unintentionally disempower them," it does not plan to do this by giving away its assets. Instead, it seeks to enable residents to become investors in the market. A major step toward that goal occurred in 2006, when the Foundation obtained permission from the State of California to create an innovative Community Development Initial Public Offering that allowed residents to become stockholders in Market Creek Plaza, an early and important component of the Village. As we can seek, while the foundation does make grants, these are only part of its strategy.

While the foundations are taking different approaches, all four foundations' strategies share three key attributes:

- A high level of focus
- Long-term funding for a core group of grantees and/or purposes
- A high level of attention to donor intent

The three attributes are linked with one another, since the direction of the focus is rooted in the donor's interests and values, and is expressed in an ongoing commitment to its core grantees and purposes. For Beldon, it was the environment, for the Cary Trust it was conservation and music, for the Pear Foundation it is education, and for the Jacobs Family Foundation it is community development in a specific geographical locale.

Trustees, staff, and grantees emphasized that having an end date creates a sense of urgency and focus. As one trustee put it, "the prospect of a hanging does concentrate the mind." A Jacobs Foundation staff member explained, "Just by virtue of thinking about sunsetting, and knowing you have one lifetime to make a difference, it makes you think profoundly about what you want to leave behind." Likewise, a Cary trustee said,

> If you don't have the discipline of a date certain [for closing], you have in mind a set of long-terms operations of a foundation and you're not thinking of a date at which you have to account for results...It's a discipline, so you think in terms of things that you can complete by a certain date. It's a big psychological difference. Foundations that go on in perpetuity don't have that.

As a Beldon staff member pointed out, with only ten years to operate, "we didn't have the luxury of saying, 'OK, the states program isn't working – we'll do oceans." However, Beldon did commission external evaluations to help assess progress and make "mid-course corrections" to strengthen its work within its focus areas. A Pear Foundation staff member noted that given their minimal staff, a "laser like focus" was critical to making the spend down process manageable. As this comment suggests, sunsetting strategies also need to align with the foundation's own capacity, including its staff size, to carry them out.[6]

Ironically, these sunsetting foundations proved to be unusually long-term supporters of their grantees. Many grantees contrasted the foundations' ongoing commitment with the changing interests of many perpetual foundations. As one Cary grantee said, "Sometimes foundations will be on this program one year, and another emphasis next year … Cary never lost its focus because it knew it had that date certain …You never had to worry about, what seminar has [Cary staff] been to this year? What's the flavor of the month? Foundations can tend to do that."

Timing of Termination

A major decision that any sunset foundation has to make is how long it should stay in existence, and when it should terminate. A termination date can be set in two ways. Foundations can set an absolute closing time, such as 15 years or 20 years. Another approach is to set an outside date by which the foundation must terminate, but allow for an earlier closure. For instance, a sunset date could be set as no later than 20 years after the death of the donor. A variant of this approach is to set an outside termination date in relation to the participation of specific people. The Jacobs Family Foundation, which is to sunset by the end of the second generation's involvement, exemplifies this approach.

Some donors and trustees plan to sunset but continue without committing to an end point. That may be appropriate and satisfying for some foundations. However, this approach rules out a major benefit of sunsetting experienced by all four foundation case studies – namely the sense

[6] Other foundations have commented on this issue as well. For instance, due to its small staff size, one sunsetting foundation deliberately focuses on organizations and purposes that can absorb large grants, because they do not feel they have enough capacity to oversee more smaller grants. Part of their strategy is to make gifts to capital campaigns for that reason.

of focus, discipline, and urgency rooted in working toward (and accomplishing goals by) an established endpoint.

There are several considerations for donors and trustees to consider when deciding how long a sunset foundation should live. Some of the major questions to be considered are:

- How long can the foundation plausibly continue without running the risk of drifting away from the donor's interests and values? The age of those running the foundation is an important consideration here, especially if the donor is deceased.

- How long will it take to accomplish the foundation's goals?

- How large is the foundation (in terms of assets)?

- How focused is the foundation already? The experiences of all four case studies indicate that a few years must initially be factored in to refine the foundation's focus, and how it will be implemented.

- How much flexibility is the donor (or whoever is the person deciding to terminate) willing to leave those running the foundation in the future?

The answers to these questions may point to different timeframes, and therefore donors and trustees may need to make compromises. Mary Flagler Cary had to make such a compromise. She reportedly did not want strangers handling her funds, and therefore favored a short timeframe. However, an advisor convinced her she was not allowing enough time to achieve her purposes, and so she set an outside termination date of 50 years.

As noted earlier, the Beldon Fund's donor wanted to be personally involved in his giving, and his age therefore influenced his decision to select a ten year timeframe. Some of those involved in the foundation felt that a somewhat longer period would have been helpful, and even suggested he reconsider, but also believed it was his decision to make.

Both the Cary Trust and the Jacobs Family Foundation made use of the flexibility in their termination timeframes. The Cary Trust closed nine years prior to the 50 year deadline, for multiple reasons, a couple of which bear consideration here. A fundamental reason was that trustees concluded that most of the Trust's purposes had been accomplished. As one trustee explained, "There's a cost to operating the Trust, so if there is a cost, and the purposes are accomplished, you might as well pay out the principal to the recipients." Furthermore, given their age, it was unlikely that trustees would remain in office for the full 50 years, and it seemed questionable to bring on a new board just prior to termination. In particular the full-time managing trustee was ready to step aside, and his departure would mean the board would be left with no connection to the original trustees that knew the donor.

The Jacobs Family Foundation, by contrast, extended its target termination date from 2020 to 2030. One reason is that they concluded that the scope of the work planned could not be accomplished in that amount of time. Another reason is that the donor left the foundation investments in a partnership that are not expected to liquidate prior to 2023 – after the originally anticipated sunset date. Furthermore, the economic downturn in 2008 led to losses that require the foundation to continue to update and adjust its projections. In light of these developments, trustees praised the flexibility that the donor left with respect to foundation timeline.

Foundations should give attention to the alignment between their finances and timeline. For instance, given Beldon's goal of "zeroing out" in ten years, investment strategy, financial projections, and long term budgeting became a major focus. The foundation outlined different spend-down scenarios, based on different rates of growth. Staff would annually review projected and annual expenditures and returns and adjust financial plans accordingly. In later years, these projections were conducted even more frequently. One staff member recalled, "Day to day, and year to year, to the end, we thought and planned. Everything revolved around our investments…It made the investment people crazy!" A few years before Beldon and Cary both started moving all of their remaining investments out of equities and in to cash in preparation. One happy consequence – and one they could not have foreseen – was that both were out of equities prior to the 2008 market decline.

<u>Sustainability</u>

Sunset foundations may not be invested in their own organizational longevity, but may care very much about sustaining their work and values. Since they will terminate, sunsetting foundations must look outside of themselves for that sustainability, and their grantees are key candidates. One strategy that all four foundations used was to identify grantees whose work they believed in and invest heavily in their organizational health and sustainability. They stayed committed to a core group of grantees over a long period of time, and provided them with general operating support and technical assistance to build their capacity. A Beldon trustee recalled,

> Beldon was very deliberate…about not just making program-related grants to advance a strategy, but also to build the capacity, and assist with the development capabilities of the grantees...We understood that we were going out of business and needed these organizations to be able to thrive after we were gone.

While Cary's ultimate goal was to provide grantees with an endowment, during its lifetime it provided operating support as part of its goal of helping to strengthen their organizational health and capacity. In different ways, foundations also tried to help grantees develop their own fundraising abilities. This included variously offering matching grants, training, and introductions to other funders.

Grantees repeatedly commented on how unusual it was to have such sustained operating support from a foundation. They also commented on how the foundations had helped them to grow and become more independent. One Cary Trust grantee said that knowing the foundation would terminate created “an urgency on our part, and on theirs, to really set this program apart, and set it up for the future without the Cary Trust.” One Beldon grantee recalled, “They thought about the capacity we would need after they were gone. They didn’t just hand us the money and say you know, ‘Good luck and by the way we’ll be gone next year.’ They really did invest in our infrastructure so that we’d be successful after they were gone.”

Grantees repeatedly characterized their relationships with these foundations as unusually respectful, open, and partnership-like. Sunsetting foundations need their grantees to be strong in order to carry on their work. This is one reason why sunsetting, when combined with a specific philanthropic purpose, can undermine conventional grantee-grantor power relationships, in favor of a more partnership-oriented approach.[7]

Another sustainability strategy is to look to other foundations as partners who can then carry on the work after the sunset foundation terminates. This was a strategy that Beldon employed, and some grantees reported that Beldon helped them find other funders who had helped fill the gap left by Beldon. The risk, here, however, is that foundations do have their own interest and may not sustain the funding over the long-term. For instance, one foundation executive told me her institution’s giving was influenced by Beldon, but also said it had terminated the program following the recession in 2008.

Closing

There are numerous issues related to closing the foundation. Some involve strategy while others are mundane but important issues, such as paying final bills and turning off the electricity. Issues related to closing may be grouped under three categories: communication with grantees; attracting, retaining, and terminating staff, and; investment planning and other issues.

Communicating with Grantees

A major issue for sunsetting foundations as closure approaches is communicating with grantees about when the foundation will close, and what to expect in terms of final grants. Both the Beldon Fund and the Cary Trust, the two case study foundations that did this provided clear and advance notice (approximately three years). Grantees repeatedly spoke about how important and helpful this was to them. Helping grantee’s to make a smooth transition is also important to foundation’s interest in leaving behind strong organizations to sustain their valued work.

[7] Ostrower 2011 op. cit.

Interestingly, many grantees contrasted the clarity and advance notice they were given by these sunsetting foundations to the abrupt way in which perpetual foundations had discontinued funding to them in some cases.

One challenge to advance planning is that sunsetting foundations will not know in advance exactly how much money they will have left at termination. For instance, the Cary Trust planned to offer some of its grantees closing matching grants for an endowment. It had to notify them in advance in order to give them time to raise the match, but did not know what the value of its assets would be. With the assistance of legal counsel, the Trust developed language for their letters, whereby grantees would be informed of the amount the Trust generally intended to give, but with the qualification that the exact amount would depend on the value of Trust assets at that time. In the end, many grantees received more than initially anticipated. As this suggests, sunsetting foundations should also plan for how they will dispense of any "surplus" funds at termination, a subject to which we return later in this section.

Attracting, Retaining, and Terminating Employees

Sunsetting foundations also face issues related to retaining and terminating staff as the foundation closes. Depending on how far away from termination the foundation is, attracting staff in the first place can also be a significant issue. The magnitude and complexity of staff-related issues varies significantly depending on the size and age of the foundation's staff. For instance, the Pear Foundation has minimal staff, who plan to retire anyway and so staff retention is not an issue. Indeed, the Pear Foundation adjusted its termination date to coincide with retirement plans. In the case of the Cary Trust, closing early solved, rather than created, a retention issue, since the managing trustee was ready to retire. By contrast, the Beldon Fund had staff that would need to find other jobs. Beldon created a work plan for its final two years and determined how it would staff its termination activities. The foundation gave every staff member a unique termination date, based on the foundation's needs, and informed them at least 18 months beforehand. They gave funds for professional development and outplacement services, and were clear they would understand if staff left early. The board offered staff a retention bonus for those that stayed until their termination date. They also put a senior consultant on retainer in case a staff member left earlier and they needed a replacement. Given its ten-year termination plan, one strategy Beldon used was to couple employed staff with the use of consultants, who could be phased out as the foundation approached termination.

Staff reported that both financial and non-financial benefits attracted and kept them with a sunset foundation. For instance, a Cary Trust staff member wanted to be part of the grantmaking activity that would occur toward termination. Despite friends' warnings, one Beldon staff member left a secure position to work at Beldon because it offered more responsibility, more freedom, a higher salary, and "it's been so much fun working with a living donor who's a sweetheart of all sweethearts."

Investments and Other Issues

Planning for investment of the foundation's endowment is also a key issue as termination approaches. A typical pattern, and one illustrated by the Beldon Fund and the Cary Trust, is to move out of equities into cash to ensure funds will be available for final obligations. However, at least one foundation encountered in the author's earlier research did not plan to take this route. Instead, it plans to stay in equities until closure, and simply give grantees its stock at termination.

Sunsetting foundations will find there are many legal and logistical issues in closing the organization. For instance, plans must be made for retaining and storing certain records. If the foundation wants to leave behind its archives, it needs to find a library and make arrangements. Final bills must be paid; final tax returns filed; vendor agreements have to be terminated; back accounts closed; applications must be filed for dissolution under state law as required; IRS regulations for termination must be observed; final W2 and 1099s need to be sent out; and the foundation has to dispose of its property, including furniture in a manner consistent with the law. And this is by no means an exhaustive list. It is important for a sunsetting foundation to have an attorney and an accountant to assist with these issues. Both the Cary Trust and the Beldon Fund commissioned reports on the foundation prior to closure.[8]

Foundations also need to consider how to handle anticipated and unanticipated expenses that may arise after the office closes and grantmaking is done. Some, but not all, such expenses can be prepaid. Both the Beldon Fund and the Cary Trust set aside funds for expenses that might arise that could not be anticipated. The Beldon Fund transferred its remaining assets to the Tides Foundation, a public charity and former recipient of Beldon Fund grants. Assets were transferred with the agreement that Tides would hold a portion of the funds in reserve for a period of time, to cover specific contingencies. Funds were set aside for other activities, including the cost of communications work about Beldon's spend down, and conducting an evaluation of Beldon's work several years following closure. The Cary Trust set up an escrow account with a residual nonprofit beneficiary named to take remaining funds.

Conclusion

As we can see there is more than one way for a foundation sunset. Foundations have options, and by considering these carefully, they can choose an approach that best aligns with their own goals and helps to derive the benefits that sunset can offer.

[8] Beldon commissioned a report on its spend-out entitled *Giving While Living: The Beldon Fund Spend-Out Story,* 2009 http://www.beldon.org/beldonfund_1.pdf (accessed November 4, 2010). The Cary Trust commissioned a foundation history entitled *A Trust Fulfilled: Four Decades of Grantmaking by the Mary Flagler Cary Charitable Trust* by Heidi Waleson, 2009.

Some of what constitutes a good game plan for a sunset may also have relevance for perpetual foundations. Perpetual foundations especially those with multiple programs, may wish to consider some of their individual programs as “miniature sunsets” that have a distinct beginning, middle and end and craft sunset plans for them. As one executive director said, “Even if you don’t have a sunset I would recommend thinking like you do. Even if you plan to go on in the future, setting up fast, flexible decision-making focusing on exit strategies, focusing on sustainability, in a way that people really, really no longer need you…It helped us think about how people develop the power to solve their own problems.” Applying a sunset perspective to individual programs could paradoxically also help perpetual foundations incorporate a longer-term view, if they commit not only to exit at a certain date, but also to stay involved until that date.

In conclusion a good game plan is one that does not only help a sunsetting foundation to close. It is one that helps the foundation to make the most of its philanthropy during its lifetime.