

# CONTENTS AT A GLANCE

Contents of Prototype Materials

Acknowledgments

Foreword

Gift Annuities Overview \_\_\_\_\_

*Chapter 1: The American Council on Gift Annuities*

*Chapter 2: Description & Tax Aspects*

*Chapter 3: Gift Annuity Rates*

*Chapter 4: Deduction Calculation & Payment Taxation*

Program Operation \_\_\_\_\_

*Chapter 5: Establishment & Administration of Program*

*Chapter 6: Annuity Agreements*

*Chapter 7: Transferring Assets & Executing Agreements*

*Chapter 8: Disclosure Requirements*

*Chapter 9: Tax Information for Donors*

*Chapter 10: Reinsurance*

State Regulations \_\_\_\_\_

*Chapter 11: Regulations Regarding Issuance of Gift Annuities*

*Chapter 12: Agreement Requirements*

*Chapter 13: Reserve Investment Regulations*

*Chapter 14: Annual Filings*

Marketing \_\_\_\_\_

*Chapter 15: Marketing Gift Annuities*

Applications \_\_\_\_\_

*Chapter 16: Possible Funding Assets*

*Chapter 17: Gift Annuity Funded with Remainder Interest in a Residence*

*Chapter 18: Flexible Deferred Annuities & Step Annuities*

*Chapter 19: College Annuities*

*Chapter 20: Special Situations*

*Chapter 21: Cross-Border Annuities - Particularly from Canadian Donors*

Resources \_\_\_\_\_

*Chapter 22: Resources*

Index

Afterword

# DETAILED SUMMARY OF CONTENTS

Contents of Prototype Materials	xx
Acknowledgments	xxv
Foreword	xxviii

## Gift Annuities Overview

---

### *Chapter 1: The American Council on Gift Annuities*

History .....	1
Purpose .....	2
Mission Statement .....	2
Services Provided .....	3
Gift Annuity Rates .....	3
Lawsuit .....	3
Organization .....	4
Becoming a Sponsor .....	4
Additional Information .....	4
ACGA Board of Directors .....	5
Appendix 1: Charitable Gift Annuity Antitrust Relief Act of 1995 .....	7
Appendix 2: Charitable Donation Antitrust Immunity Act of 1997 .....	9

### *Chapter 2: Description & Tax Aspects*

Description of a Gift Annuity .....	1
<i>Immediate Gift Annuity</i> .....	1
<i>Deferred Gift Annuity</i> .....	1
<i>Flexible Deferred Gift Annuity</i> .....	3
Tax Aspects of Gift Annuities .....	4
<i>Allowance of Charitable Deduction</i> .....	4
<i>Determination of the Charitable Deduction for Immediate Annuities</i> .....	4
<i>Determination of the Charitable Deduction for Deferred Annuities</i> .....	4
<i>Gifts Resulting in a Reduced Deduction</i> .....	5
Taxation of Annuity Payments .....	5

<i>Contribution of Cash</i> .....	5
<i>Contribution of Long-term Capital Gain Property</i> .....	7
<i>Contribution of Ordinary Income Property</i> .....	8
<i>Contribution of Mortgaged Property</i> .....	8
Requirements to Qualify for Tax Exemption .....	10
Assignment of Annuity Interest .....	11
Gift and Estate Tax Implications .....	12
<i>Single-life Annuity—Donor Is the Annuitant</i> .....	12
<i>Single-life Annuity—Donor Is Not the Annuitant</i> .....	12
<i>Two-life Annuity—Donor Is the First Annuitant,     Non-spouse Is the Successor Annuitant</i> .....	13
<i>Two-life Annuity—Non-spouse Is the First Annuitant,     Donor Is the Successor Annuitant</i> .....	13
<i>Two-life Annuity—Donor Contributes His/Her Separate Property     and Donor and Spouse Are Consecutive Annuitants</i> .....	14
<i>Joint and Survivor Annuity—Husband and Wife Contribute     Jointly-owned or Community Property</i> .....	15
<i>Joint and Survivor Annuity—Non Spouses Contribute Jointly-owned Property</i> .....	15
<i>Joint and Survivor Annuity—One Spouse Is the Donor</i> .....	16
<i>Two-life Annuity with Successive Annuitants—Donor Is Not     One of the Annuitants</i> .....	16
<i>When the Power of Revocation Should Be Exercisable</i> .....	17
<i>Testamentary Gift Annuity</i> .....	17
<i>Note Regarding Alien Spouses</i> .....	18
Revocation Language in Gift Annuity Agreements .....	18
<i>One Life—Donor Is Not the Annuitant, Immediate and Deferred</i> .....	19
<i>Two Donor Annuitants—Joint and Survivor, Immediate and Deferred</i> .....	19
<i>Two Successive Annuitants—Donor Is the First Annuitant,     Immediate and Deferred</i> .....	20
<i>Two Successive Annuitants—Donor Is Not an Annuitant,     Immediate and Deferred</i> .....	21
<i>Income Tax Deduction When Power to Revoke Is Exercised</i> .....	21
Appendix 1: How the CMFR Affects the Charitable Deduction .....	25
Appendix 2: Taxation of Capital Gain Under Different Donor-Annuitant Combinations.....	27
Appendix 3: Examples Showing Taxation of Gift Annuity Payments in Different Situations .....	31

### **Chapter 3: Gift Annuity Rates**

Assumptions Underlying ACGA Suggested Rates .....	1
<i>Residuum</i> .....	1
<i>Life Expectancies</i> .....	2
<i>Expenses</i> .....	2
<i>Total Annual Returns</i> .....	2
Returns on Gift Annuity Reserves .....	3
<i>Reason for Assumed Return on the Investment of Gift Annuity Reserves</i> .....	3
<i>Lower Cap on Gift Annuity Rates</i> .....	4
<i>How Charities Actually Invest Gift Annuity Assets</i> .....	5
Suggested Charitable Gift Annuity Rates .....	5
Comparison of Gift Annuity and Commercial Rates .....	5
Reduction in Interest Rates .....	5
Reduction in Gift Annuity Rates .....	5
Analysis of Risk If a Charity Follows the ACGA Rates .....	7
Effect of Timing of Returns on Projections .....	7
Value of a Gift Annuity to the Charity .....	9
Appendix 1: Life Expectancies Based on Annuity 2000 Tables .....	13
Appendix 2: American Council on Gift Annuities Suggested Gift Annuity Rates .....	15
Appendix 3: Historical Assumed Total Returns—Immediate Gift Annuities .....	21
Appendix 4: Historical Gift Annuity Rates—Immediate Gift Annuities .....	23

### **Chapter 4: Deduction Calculation & Payment Taxation**

Immediate Charitable Gift Annuity, One Life—Completed Calculation .....	2
Immediate Charitable Gift Annuity, Two Lives—Completed Calculation .....	5
Explanation of Calculations for Immediate Charitable Gift Annuities—One Life and Two Lives .....	8
Deferred Charitable Gift Annuity, One Life—Completed Calculation .....	11
Deferred Charitable Gift Annuity, Two Lives—Completed Calculation .....	13
Explanation of Calculations for Deferred Charitable Gift Annuities—One Life and Two Lives .....	16

## Program Operation

---

### **Chapter 5: Establishment & Administration of Program**

Establishment of a Gift Annuity Program .....	1
Deciding Whether to Start a Gift Annuity Program .....	1
<i>Financial Strength</i> .....	2
<i>Significant Donor Base</i> .....	2
<i>Staff Person(s) Assigned to Gift Annuity Program</i> .....	2
Actions by the Board of the Charity .....	2
Actions by the Development Office of the Charity .....	4
Administration of a Gift Annuity Program .....	5
Execution of Documents .....	5
<i>Signature Options</i> .....	5
<i>Recommendation</i> .....	6
Proof of Age .....	6
Obtaining Cost Basis .....	6
Variance from Annuity Rate Schedule .....	7
Disclosure of Information to Donor .....	7
<i>Before the Gift is Completed</i> .....	7
<i>After the Gift is Completed</i> .....	7
Information Provided to Administrator .....	8
Payments to Annuitants .....	8
Taxation of Payments .....	9
<i>Annuities, the Annuity Starting Date of Which Occurs after 1986</i> .....	10
<i>Annuities, the Annuity Starting Date of Which Occurred before 1987</i> .....	10
<i>Deferred Gift Annuities</i> .....	10
<i>Withholding</i> .....	10
Missing Annuitants .....	10
Federal Reporting Requirements .....	11
State Reporting Requirements .....	13
Accounting Standards for Gift Annuities Recommended by the Financial Accounting Standards Board (FASB) .....	14
Investment of Gift Annuity Assets .....	16
<i>Expenditure of Annuity Contributions</i> .....	17
<i>State Requirements Regarding Investment of Reserves</i> .....	17
Death of Annuitant .....	19

<i>Notification</i> .....	19
<i>Death of Sole Annuitant</i> .....	19
<i>Death of Annuitant Survived by a Successor Annuitant</i> .....	19
<i>Death of a Successor Annuitant</i> .....	19
<i>Return of One or More Payments</i> .....	19
<i>Information Provided to the Donor's Personal Representative</i> .....	20
<i>Death Prior to End of Life Expectancy</i> .....	20
<i>Revising and Maintaining Records</i> .....	21
What to Do When an Annuity Runs Dry .....	21
Appendix 1: Sample Resolution Establishing a Gift Annuity Program .....	23
Appendix 2: Checklist of Factors to Consider in Establishing a Gift Annuity .....	25
Appendix 3: Agreement Signed by Charity Only .....	29
Appendix 4: Gift Annuity Application Form .....	33
Appendix 5: Agreement Signed by Both Charity and Donor .....	35
Appendix 6: Addendum to Annuity Agreement When Donor Accepts a Lower Rate .....	39
Appendix 7: Sample Letter Directing that Annuity Payments Be Made to a Revocable Living Trust .....	41
Appendix 8: Sample Letter Regarding Funding a Gift Annuity with Assets in the Donor's Revocable Living Trust .....	43
Appendix 9: Sample Letter Regarding First Payment Deferral .....	45
Appendix 10: Sample Letter Accompanying IRS Form 1099-R .....	47
Appendix 11: IRS Form 1099-R .....	49
Appendix 12: IRS Form 1096 .....	51
Appendix 13: Sample Letter to Personal Representative Regarding Additional Deduction .....	53

## **Chapter 6: Annuity Agreements**

One Life—Donor is Annuitant .....	3
One Life—Donor is Annuitant (Payments are Deferred) .....	6
One Life—One of the Donors is the Annuitant, Funded with Jointly-owned or Community Property .....	9
One Life—One of the Donors is the Annuitant, Funded with Jointly-owned or Community Property (Payments are Deferred) .....	12
One Life—Donor is Not the Annuitant .....	15
One Life—Donor is Not the Annuitant (Payments are Deferred) .....	18

One Life—Neither Donor is Annuitant, Funded with Jointly-owned or Community Property .....	21
One Life—Neither Donor is Annuitant, Funded with Jointly-owned or Community Property (Payments are Deferred) .....	24
Two Lives—Joint and Survivor, Funded with Jointly-owned or Community Property .....	27
Two Lives—Joint and Survivor, Funded with Jointly-owned or Community Property (Payments are Deferred) .....	31
Two Lives—Joint and Survivor, Funded with Donor’s Separate Property .....	35
Two Lives—Joint and Survivor, Funded with Donor’s Separate Property (Payments are Deferred) .....	38
Two Lives—Joint and Survivor, Donor is Not an Annuitant .....	41
Two Lives—Joint and Survivor, Donor is Not an Annuitant (Payments are Deferred) .....	44
Two Lives—Joint and Survivor, Funded with Jointly-owned or Community Property, Donors are Not the Annuitants .....	47
Two Lives—Joint and Survivor, Funded with Jointly-owned or Community Property, Donors are Not the Annuitants (Payments are Deferred) .....	51
Two Lives—Successive Interests, Donor is the First Annuitant .....	55
Two Lives—Successive Interests, Donor is the First Annuitant (Payments are Deferred) .....	58
Two Lives—Successive Interests, Donor is Not an Annuitant .....	61
Two Lives—Successive Interests, Donor is Not an Annuitant (Payments are Deferred) .....	65
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, Both Donors are Annuitants .....	69
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, Both Donors are Annuitants (Payments are Deferred) .....	73
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, One of the Donors is the First Annuitant. The Second Annuitant is a Non-Donor. ....	77
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, One of the Donors is the First Annuitant. The Second Annuitant is a Non-Donor. (Payments are Deferred) .....	81
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, Neither Donor is an Annuitant .....	85
Two Lives—Successive Interests, Funded with Jointly-owned or Community Property, Neither Donor is an Annuitant (Payments are Deferred) .....	90

## **Chapter 7: Transferring Assets & Executing Agreements**

Transferring Assets .....	1
<i>Cash</i> .....	1
<i>Publicly-Traded Securities</i> .....	3
<i>Restricted Securities</i> .....	6
<i>Closely Held Stock</i> .....	7
<i>Real Estate</i> .....	8
<i>Tangible Personal Property</i> .....	8
<i>Commercial Annuities</i> .....	9
<i>Savings Bonds</i> .....	9
<i>Retirement Funds</i> .....	9
<i>Life Insurance</i> .....	10
Executing Agreements .....	10
<i>Who Signs What When</i> .....	10
<i>When to Prepare the Agreement</i> .....	11
<i>What to Do If Assets Are Transferred on Two or More Different Days</i> .....	11

## **Chapter 8: Disclosure Requirements**

State-Imposed Requirements .....	1
The Philanthropy Protection Act of 1995 .....	1
Optional Disclosure Language in Financial Illustration .....	2
Possible Additional Disclosure Requirements Attributable to the Gramm-Leach-Bliley Act .....	3
Appendix 1: Sample Gift Annuity Disclosure Statement .....	5
Appendix 2: Philanthropy Protection Act of 1995 .....	7
Appendix 3: The Applicability of the Privacy Provisions of Gramm-Leach-Bliley to Nonprofits .....	13
Appendix 4: Sample Privacy Notice .....	17

## **Chapter 9: Tax Information for Donors**

Appendix 1: Cover Letter to Donor after Completion of Gift Annuity .....	3
Appendix 2: Summary of Accounting and Tax Information .....	5
Appendix 3: Statement Concerning Use of Alternate Valuation Date .....	11



Appendix 4: Completed Summary of Accounting and Tax Information .....	13
Appendix 5: Completed Statement Concerning Use of Alternate Valuation Date .....	15

### **Chapter 10: Reinsurance**

Comparison of Benefits of Self-Insuring and Reinsuring .....	2
<i>Assumptions</i> .....	2
<i>Comments on Comparison Charts</i> .....	3
<i>Advantages and Disadvantages of Reinsurance</i> .....	10
<i>Advantages and Disadvantages of Self-Insurance</i> .....	10
Selective Reinsurance .....	10
Tax Implications of Reinsurance .....	11
Reinsurance Contract with a Term-Certain Option .....	11
Effect of Reinsurance on Disclosure Requirements .....	12
Effect of Reinsurance on Reserve Requirements .....	12
<i>Arkansas</i> .....	12
<i>California</i> .....	12
<i>Florida</i> .....	12
<i>Hawaii</i> .....	13
<i>Maryland</i> .....	13
<i>New Hampshire</i> .....	13
<i>New Jersey</i> .....	13
<i>New York</i> .....	13
<i>North Dakota</i> .....	13
<i>Oregon</i> .....	13
<i>Pennsylvania</i> .....	13
<i>Tennessee</i> .....	13
<i>Washington</i> .....	13
<i>Wisconsin</i> .....	13
Administration of Reinsured Gift Annuities .....	14
Gift Annuity Agreement for Reinsured Gift Annuity .....	14
Marketing Reinsured Gift Annuities .....	14
Appendix: Gift Annuity Agreement with Reinsurance Paragraph .....	15

## State Regulations

---

### *Chapter 11: Regulations Regarding Issuance of Gift Annuities*

Filing Required .....	1
Filing Not Required .....	1
When a Charity Must Comply with the Regulations of a Particular State .....	2
Alabama .....	3
Alaska .....	4
Arizona .....	5
Arkansas .....	5
California .....	6
Colorado .....	7
Connecticut .....	7
Delaware .....	8
District of Columbia .....	8
Florida .....	8
Georgia .....	9
Hawaii .....	10
Idaho .....	11
Illinois .....	11
Indiana .....	11
Iowa .....	11
Kansas .....	12
Kentucky .....	12
Louisiana .....	12
Maine .....	12
Maryland .....	13
Massachusetts .....	13
Michigan .....	13
Minnesota .....	14
Mississippi .....	14
Missouri .....	14
Montana .....	15
Nebraska .....	15
Nevada .....	16
New Hampshire .....	16

New Jersey .....	17
New Mexico .....	18
New York .....	18
North Carolina .....	19
North Dakota .....	20
Ohio .....	20
Oklahoma .....	20
Oregon .....	21
Pennsylvania .....	21
Rhode Island .....	23
South Carolina .....	23
South Dakota .....	23
Tennessee .....	24
Texas .....	24
Utah .....	25
Vermont .....	25
Virginia .....	25
Washington .....	26
West Virginia .....	27
Wisconsin .....	27
Wyoming .....	28
Appendix 1: State Regulatory Categories .....	29
Appendix 2: States by Regulatory Categories .....	33
Appendix 3: Alabama Gift Annuity Disclosure Statement .....	35
Appendix 4: Arizona Gift Annuity Disclosure Statement .....	37

## **Chapter 12: Agreement Requirements**

Requirements Incorporated in Base Agreements .....	1
<i>Property Transferred—Payment Interval</i> .....	1
<i>Payment of Annuity</i> .....	1
<i>Age(s) and Sex of Annuitant(s)</i> .....	1
<i>Termination</i> .....	2
<i>Governing Law</i> .....	2
<i>Donor Signature</i> .....	2
<i>Form and Contract Numbers</i> .....	2

Requirements Included Only in Specific State Agreements .....	2
<i>Property Transferred</i> .....	2
<i>Payment Correction</i> .....	3
<i>Reasonable Value of Benefits</i> .....	3
<i>Revocation Language</i> .....	4
<i>Uses and Purposes of Gifts</i> .....	4
<i>State Specific Disclosure Language</i> .....	4
<i>Addendum—Variance from Annuity Rate Schedule</i> .....	5
<i>Jointly-owned or Community Property</i> .....	6
<i>Tax Credit—Montana, Nebraska, and North Dakota</i> .....	6
Appendix 1: State Agreement Requirements .....	7
Appendix 2: Form and Contract Numbers .....	11

**Chapter 13: Reserve Investment Regulations**

Arkansas .....	3
California .....	4
<i>Investment Rules for Required Reserves</i> .....	4
<i>Possible Exemption from Investment Restrictions</i> .....	5
<i>Withdrawal of Money from the California Gift Annuity Trust Account</i> .....	5
Florida .....	5
Hawaii .....	6
Maryland .....	6
New Hampshire .....	7
New Jersey .....	7
New York .....	7
Tennessee .....	7
Washington .....	8
Wisconsin .....	8

**Chapter 14: Annual Filings**

General Overview of State Requirements .....	1
Audits .....	3
State-by-State Requirements .....	3

<i>Alabama</i> .....	3
<i>Arkansas</i> .....	3
<i>California</i> .....	4
<i>Florida</i> .....	5
<i>Georgia</i> .....	5
<i>Hawaii</i> .....	5
<i>Kentucky</i> .....	5
<i>Maryland</i> .....	5
<i>Montana</i> .....	6
<i>New Hampshire</i> .....	6
<i>New Jersey</i> .....	6
<i>New York</i> .....	7
<i>North Dakota</i> .....	8
<i>Oklahoma</i> .....	8
<i>Tennessee</i> .....	8
<i>Washington</i> .....	8
<i>Wisconsin</i> .....	9
Appendix: Arkansas Certification Form .....	11

## Marketing

---

### **Chapter 15: Marketing Gift Annuities**

The Market for Gift Annuities .....	1
<i>Markets for Immediate Gift Annuities</i> .....	1
<i>Markets for Deferred Gift Annuities</i> .....	3
<i>Profile of Gift Annuities</i> .....	4
<i>Comparison of the Markets for Gift Annuities and Charitable     Remainder Annuity Trusts</i> .....	4
<i>Comparison of the Markets for Gift Annuities and Pooled Income Funds</i> .....	6
Marketing Techniques .....	7
<i>Target Mailings</i> .....	8
<i>Printed Advertisements</i> .....	9
<i>Spots and Promos on Radio and Television</i> .....	9
<i>Testimonials</i> .....	10
<i>Seminars</i> .....	10

<i>Presentations at Retirement Centers</i> .....	10
<i>Receipt Inserts</i> .....	10
<i>Check-off Boxes</i> .....	11
<i>Newsletters</i> .....	11
<i>Telemarketing</i> .....	11
<i>Internet</i> .....	11
<i>Tips</i> .....	12
<i>A Marketing Technique to Avoid</i> .....	13
<i>Securing the Gift</i> .....	13
<i>Financial Illustrations</i> .....	14
Emphasis on the Gift .....	14
Appendix 1: Target Mailers .....	15
Appendix 2: Advertisements .....	43
Appendix 3: Testimonial Article .....	49
Appendix 4: Inserts (Receipt Stuffers) .....	51
Appendix 5: Newsletter Articles .....	59
Appendix 6: Script for Telemarketing Call .....	71
Appendix 7: Sample Financial Illustrations .....	73

## Applications

---

### **Chapter 16: Possible Funding Assets**

Gift Annuity Funded with Real Estate .....	2
Strategies to Minimize Risk .....	2
Gift Annuity Funded with Mortgaged Real Estate .....	5
Gift Annuity Funded with Tangible Personal Property .....	8
Gift Annuity Funded with a Life Insurance Policy .....	8
Gift Annuity Funded with a Commercial Annuity .....	14
Gift Annuity Funded with Savings Bonds .....	14
Assets in an IRA or a Qualified Retirement Plan .....	17
<i>Lifetime Gift Annuity</i> .....	17
<i>Testamentary Gift Annuity</i> .....	20
Gift Annuity Funded with Closely Held Stock .....	21
Assets Needed by the Charity .....	23
Gift Annuity Funded with a Conservation Easement .....	23

Assets in a Donor Advised Fund .....	25
Appendix 1: Private Letter Ruling 200230018 .....	27
Appendix 2: Sample Agreement for Testamentary Gift Annuity Funded with IRA Assets .....	33

**Chapter 17: Gift Annuity Funded with Remainder Interest in a Residence**

Determination of Annuity Payments .....	1
Determination of Income Tax Deduction .....	1
Taxation of Annuity Payments .....	3
Documentation Necessary to Complete Gift .....	4
Reasons for Caution .....	4
Gift Annuity Funded with a Portion of the Remainder Interest in a Personal Residence .....	4
Preserving Flexibility .....	8
Using a Retained Life Estate to Fund a Gift Annuity .....	8
Appendix: Life Estate Contract for a Personal Residence .....	11

**Chapter 18: Flexible Deferred Annuities & Step Annuities**

Private Letter Ruling .....	2
Step Annuities .....	3
<i>Documentation for the Step Annuity</i> .....	5
<i>Maximizing Flexibility</i> .....	5
Appendix 1: Promotional Article .....	9
Appendix 2: Sample Illustration .....	11
Appendix 3: Completed Gift Annuity Agreement .....	15
Appendix 4: Completed Summary of Accounting and Tax Information .....	21
Appendix 5: Sample Letter Prompting an Annuitant of a Flexible Deferred Annuity to Consider Whether He or She Is Ready to Have Payments Begin .....	23
Appendix 6: Sample Letter for Use by Annuitant When Electing Commencement Date .....	25
Appendix 7: Specimen Flexible Deferred Annuity Agreements .....	27
<i>One Life—Donor is the Annuitant</i> .....	28
<i>One Life—Donor is Not the Annuitant</i> .....	32

<i>Two Lives—Joint and Survivor, Funded with Jointly-owned or Community Property</i> .....	36
<i>Two Lives—Successive Interests, Donor is an Annuitant</i> .....	41
<i>Two Lives—Successive Interests, Donor is Not an Annuitant</i> .....	46
Appendix 8: Private Letter Ruling 9743054 .....	51
Appendix 9: Tables Submitted with PLR Request in 1997.....	55

## **Chapter 19: College Annuities**

Description .....	1
Analysis .....	1
<i>Effect of the CMFR on the Size of the Payments</i> .....	3
<i>Advantages and Disadvantages</i> .....	3
<i>Generation-Skipping Transfer Tax</i> .....	4
<i>Annuity Payments to an Education Trust</i> .....	4
Charitable Alternative to the College Annuity .....	4
<i>Description of a NIMCRUT</i> .....	4
<i>Defining Trust Accounting Income to Include Realized Capital Gain</i> .....	5
<i>Features of NIMCRUT Used for College Education</i> .....	5
Comparison of College Annuity and College NIMCRUT .....	5
<i>Advantages of College Annuity</i> .....	5
<i>Advantages of College NIMCRUT</i> .....	5
Kiddie Tax .....	5
Reasons for Caution .....	8
Appendix 1: Specimen College Annuity Agreement .....	9
Appendix 2: Commutation Letter .....	13
Appendix 3: Completed Summary of Accounting and Tax Information .....	15

## **Chapter 20: Special Situations**

Deduction When the Sole or Last Annuitant Dies Prior to the End of Life Expectancy .....	1
<i>Determining the Deduction Amount</i> .....	1
<i>A Contrary Position</i> .....	2
<i>Deduction in the Case of Very Highly-Appreciated Stock</i> .....	2



<i>Calculating the Deduction</i> .....	2
<i>Claiming the Deduction</i> .....	5
Changing the Frequency of Annuity Payments .....	6
<i>Less Frequent Payments</i> .....	6
<i>More Frequent Payments</i> .....	6
<i>Timing of Payments</i> .....	6
<i>Taxation of Payments</i> .....	7
Contributing the Right to Annuity Payments to the Charity .....	7
<i>The Amount of the Gift</i> .....	7
<i>The Amount of the Charitable Deduction</i> .....	8
<i>A Contrary Position</i> .....	10
<i>Contribution Limitation</i> .....	11
<i>Specimen Language to Use When Assigning an Annuity Interest to the Charity</i> .....	13
Assignment of the Annuity Interest of a Flexible Deferred Gift Annuity .....	13
Cash-Out of a Gift Annuity .....	14
<i>Specimen Language to Use When Cashing Out a Gift Annuity</i> .....	14
Contributing the Income Interest in a Charitable Remainder Trust for a Gift Annuity ...	16
<i>Private Letter Ruling Authorizing the Exchange</i> .....	16
<i>Determination of the Gift Annuity Payments</i> .....	16
<i>Choosing the Annuity Rate</i> .....	16
<i>Allowance of an Income Tax Deduction</i> .....	17
<i>Allowance of a Gift Tax Deduction</i> .....	17
<i>Recognition of Capital Gain</i> .....	17
<i>Taxation of Annuity Payments</i> .....	17
<i>Procedure</i> .....	17
Contributing the Income Interest in a Pooled Income Fund for a Gift Annuity .....	18
Assigning an Annuity Interest to the Charity in Exchange for a New Annuity .....	18
Testamentary Gift Annuity .....	22
<i>Immediate Annuity Funded with a Specific Sum     or with the Residuary Estate</i> .....	22
<i>Immediate Annuity, Payments of a Specific Amount</i> .....	23
<i>Date the Obligation to Make Payments Begins</i> .....	23
<i>Deferred Annuity Funded with a Specific Sum or     with the Residuary Estate</i> .....	23

<i>Determination of Charitable Deduction</i> .....	24
<i>Testamentary Gift Annuity Funded with IRA Assets</i> .....	24
Gift Annuity to Benefit More than One Charity .....	24
Contribution of Both Appreciated and Depreciated Stocks .....	25
Gift Annuity to Benefit an Employee .....	25
Effect of a Gift Annuity on Medicaid Eligibility .....	25
Payments from a Gift Annuity to a Special Needs Trust .....	30
Appendix 1: IRS Form 1040 Schedule A .....	31
Appendix 2: IRS Form 1040 Schedule A, Line 28 Instructions .....	33
Appendix 3: Publication 529 Excerpt .....	35

## **Chapter 21: Cross-Border Annuities - Particularly From Canadian Donors**

Rules Regarding Gift Annuities .....	1
<i>Canadian Gift Annuity Rates</i> .....	1
<i>Donation Receipt</i> .....	2
<i>Taxation of Payments</i> .....	3
<i>Life Expectancies</i> .....	4
<i>Deferred Annuities</i> .....	5
<i>Taxable Gifts</i> .....	5
<i>Testamentary Gift Annuities</i> .....	5
Contributions by Canadians to American Charities for Gift Annuities .....	6
<i>Allowance of Tax Credit in General</i> .....	6
<i>Donation Receipt Issued by an American Charity</i> .....	6
<i>Authority and Tax Consequences</i> .....	7
<i>Reporting and Withholding</i> .....	7
<i>Gift Annuity Agreement and Currency</i> .....	8
<i>Contribution of Appreciated Assets</i> .....	8
U.S. Citizen Who Is a Resident of Canada .....	8
1971 Mortality Tables Life Expectancies .....	9
Gift Annuities for Donors from a U.S. Territory .....	9
Gift Annuities for Donors from Other Countries .....	10
Appendix 1: Donation Receipt .....	11
Appendix 2: CRA Form T4A .....	13
Appendix 3: IRS Form 1042 .....	15

Appendix 4: IRS Form 1042-S .....	19
Appendix 5: IRS Form 1042-T .....	21
Appendix 6: IRS Form W-8BEN .....	23
Appendix 7: 1971 Tables Individual Life Expectancies .....	25
Appendix 8: 1971 Tables Life Expectancies—Two Lives, Ages 60-105 .....	27

## Resources

---

### *Chapter 22: Resources*

Gift Annuity Calculations Software .....	1
Gift Annuity Administration Software .....	2
Annual Report Software .....	2
Accounting Software .....	2
Tax Manuals .....	2
Technical Newsletters .....	3
Services Regarding State Regulation of Gift Annuities .....	3
State Annual Report Preparation Services .....	4
Risk Analysis .....	4

## Index

## Afterword

# CONTENTS OF PROTOTYPE MATERIALS

Accompanying this manual are prototype materials formatted in Microsoft Word and PowerPoint for Windows, along with PDF files containing annual filing materials for certain states as referenced in Chapter 14. (For users of the hard copy version of this manual, the materials are on a separate CD-ROM.) The Word and PowerPoint materials may be adapted, personalized, and reproduced for use by your institution. They are made available to you with the understanding that the authors are not engaged in the practice of law, nor in rendering legal or other professional advice. Accordingly, you are advised to have your own legal counsel review and approve the documents, including any modifications, before using them.

<b>Document</b>	<b>File Name</b>	<b>Chapter &amp; Page Number</b>
Directory to Annuity Agreements	agreements-directory.doc	<i>xxiii</i>
Deduction Calculation Worksheets*	deduction calculations.doc	4.2 & 4.11
Sample Resolution Establishing a Gift Annuity Program*	resolution to establish.doc	5.23
Gift Annuity Application Form	application form.doc	5.33
Addendum to Annuity Agreement when Donor Accepts a Lower Rate	lower rate addendum.doc	5.39
Sample Letter Directing that Annuity Payments Be Made to a Revocable Living Trust	payments to RLT.doc	5.41
Sample Letter Regarding Funding a Gift Annuity with Assets in the Donor's Revocable Living Trust	CGA funded via RLT.doc	5.43
Sample Letter Regarding First Payment Deferral	first payment deferral.doc	5.45
Sample Letter Accompanying IRS Form 1099-R	1099-R letter.doc	5.47
Sample Letter to Personal Representative Regarding Additional Deduction	personal rep letter.doc	5.53
New York Agreements	NY agreements.doc	6.2
Annuity Agreements—Immediate & Deferred	agreements-base.doc	6.3
Sample Gift Annuity Disclosure Statement*	disclosure statement.doc	8.5
Sample Privacy Notice	privacy notice.doc	8.17
<b><i>Tax Information for Donors</i></b>		
Cover Letter to Donor after Completion of Gift Annuity	tax-cover letter.doc	9.3
Summary of Accounting and Tax Information*	tax-info summary.doc	9.5
Statement Concerning Use of Alternate Valuation Date	tax-alternate date.doc	9.11
Gift Annuity Agreement with Reinsurance Paragraph	agreement-reinsurance.doc	10.15
Alabama Gift Annuity Disclosure Statement*	AL-disclosure.doc	11.35
Arizona Gift Annuity Disclosure Statement*	AZ-disclosure.doc	11.37
State-required Disclosure Language*	disclosure-states.doc	12.4
Arkansas Investment Certification	AR-certification.doc	14.11

\*Signifies materials new or revised for 2009

<b>Document</b>	<b>File Name</b>	<b>Chapter &amp; Page Number</b>
<i>Marketing Gift Annuities</i>		
<i>Target Mailer: Immediate Gift Annuity</i>		
Sample Letter 1—Increase Cash Flow*	mailing-letter1.doc	15.17
Sample Letter 2—Popular Gift*	mailing-letter2.doc	15.19
Generic Illustrations (to accompany letter)*	mailing-illustrations.ppt	15.20
Alternative to Illustrations (to accompany letter)*	mailing-graphic.ppt	15.23
Annuity Inquiry Form (for use by prospective donor)	mailing-inquiry form.doc	15.24
Sample Postcard*	mailing-postcard.ppt	15.25
Follow-up Letter*	mailing-follow-up letter.doc	15.27
<i>Target Mailer: Deferred Gift Annuity</i>		
Sample Letter*	mailing-dga-letter.doc	15.30
Generic Illustrations (to accompany letter)*	mailing-dga-illustrations.ppt	15.32
Alternative to Illustrations (to accompany letter)*	mailing-dga-information.ppt	15.35
Inquiry Form (for use by prospective donor)	mailing-dga-inquiry form.doc	15.36
Sample Postcard*	mailing-dga postcard.ppt	15.37
Follow-up Letter*	mailing-dga-follow-up letter.doc	15.39
Target Mailer: “Anniversary”*	anniversary letter.doc	15.42
<i>Advertisements</i>		
General*	ad-general.doc	15.44
Renewal of C.D.*	ad-renewal.ppt	15.45
Testimonial*	ad-testimonial.doc	15.46
Deferred*	ad-deferred.doc	15.47
Article-Testimonial*	article-testimonial.doc	15.49
<i>Inserts (Receipt Stuffers)</i>		
<i>In a Jam?</i> *	insert-in a jam.doc	15.52
<i>Helping Hand</i> *	insert-helping hand.doc	15.53
<i>Closer Look</i> *	insert-closer look.doc	15.54
<i>Too Much Month</i> *	insert-too much month.doc	15.55
<i>Provide the Key</i> *	insert-provide the key.doc	15.56
<i>Stay Healthy</i> *	insert-stay healthy.doc	15.57
<i>Newsletter Articles</i>		
General Article (long)*	article-general-long.doc	15.60
General Article (short)	article-general-short.doc	15.62
<i>Securing Your Future</i> Article*	article-longevity.doc	15.63

<b>Document</b>	<b>File Name</b>	<b>Chapter &amp; Page Number</b>
<i>Better to Give and Receive Article*</i>	article-give receive.doc	15.64
<i>Twice as Nice Article*</i>	article-twice as nice.doc	15.65
Question & Answer Article*	article-intro-Q&A.doc	15.67
Introductory Article (narrative version)*	article-intro-text.doc	15.69
Script for Telemarketing Call*	telemarketing script.doc	15.71
Sample Agreement for Testamentary Gift Annuity Funded with IRA Assets	agreement-IRA.doc	16.33
<b><i>Flexible Deferred Annuity</i></b>		
Promotional Article*	flex-article.doc	18.9
Sample Letter Prompting an Annuitant of a Flexible Deferred Annuity to Consider Whether He or She is Ready to Have Payments Begin	flex dga-check-in letter.doc	18.23
Sample Letter for Use by Annuitant When Electing Commencement Date*	flex dga-election letter.doc	18.25
New York Flexible Agreements	NY flex dga agreements.doc	18.27
Flexible Deferred Annuity Agreements	flex dga-agreements.doc	18.28
<b><i>College Annuity</i></b>		
College Annuity Agreement	college ann-agreement.doc	19.9
Commutation Letter—College Annuity*	college ann-commutation.doc	19.13

## Directory

### *Annuity Agreements File*

The annuity agreements file (agreements-base.doc) contained among the prototype materials (which are on a separate CD-ROM for those using the hard copy version of this manual) is formatted with each agreement as a new section. The easiest way to go to a particular agreement within the file is by use of the section number, a complete list of which is set out below. In Microsoft Word, click Edit, then Go To, then select Section and enter the applicable number.

If you wish to print a particular agreement, click File, then Print, then under Page Range select Pages and enter the applicable section number(s) you wish to print (e.g., s1, s5). You may also highlight a particular section for printing (or copying as a new document). When doing this, be sure to highlight through the ending section break, or the footers will not appear.

	<b>Section</b>
One Life—Donor is the Annuitant	1
One Life—Donor is the Annuitant (Payments are Deferred)	2
One Life—One of the Donors is an Annuitant, Funded with Jointly-Owned or Community Property	3
One Life—One of the Donors is an Annuitant, Funded with Jointly-Owned or Community Property (Payments are Deferred)	4
One Life—Donor is Not the Annuitant	5
One Life—Donor is Not the Annuitant (Payments are Deferred)	6
One Life—Neither Donor is an Annuitant, Funded with Jointly-Owned or Community Property	7
One Life—Neither Donor is an Annuitant, Funded with Jointly-Owned or Community Property (Payments are Deferred)	8
Two Lives—Joint and Survivor, Funded with Jointly-Owned or Community Property	9
Two Lives—Joint and Survivor, Funded with Jointly-Owned or Community Property (Payments are Deferred)	10
Two Lives—Joint and Survivor, Funded with Donor’s Separate Property	11
Two Lives—Joint and Survivor, Funded with Donor’s Separate Property (Payments are Deferred)	12
Two Lives—Joint and Survivor, Donor is Not an Annuitant	13
Two Lives—Joint and Survivor, Donor is Not an Annuitant (Payments are Deferred)	14
Two Lives—Joint and Survivor, Funded with Jointly-Owned or Community Property, Donors are Not the Annuitants	15
Two Lives—Joint and Survivor, Funded with Jointly-Owned or Community Property, Donors are Not the Annuitants (Payments are Deferred)	16

	<b>Section</b>
Two Lives—Successive Interests, Donor is the First Annuitant	17
Two Lives—Successive Interests, Donor is the First Annuitant (Payments are Deferred)	18
Two Lives—Successive Interests, Donor is Not an Annuitant	19
Two Lives—Successive Interests, Donor is Not an Annuitant (Payments are Deferred)	20
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, Both Donors are Annuitants	21
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, Both Donors are Annuitants (Payments are Deferred)	22
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, One of the Donors is the First Annuitant, the Second Annuitant is a Non-Donor.	23
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, One of the Donors is the First Annuitant, the Second Annuitant is a Non-Donor (Payments are Deferred).	24
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, Neither Donor is an Annuitant	25
Two Lives—Successive Interests, Funded with Jointly-Owned or Community Property, Neither Donor is an Annuitant (Payments are Deferred)	26



# ACKNOWLEDGMENTS

This manual has evolved over several years of concentration on gift annuities. Much of the material accrued from our practice of starting gift annuity programs, speaking at conferences, assisting charities in complying with state regulations, and responding to numerous donor situations.

The production of this 2009 updated and revised manual was truly a team effort of various individuals at PG Calc.

**J. William Zook, Jr.** researched and organized the often arcane state regulations pertaining to restrictions on the investment of gift annuity reserves, and he compiled forms for state reports and explained those reports in general. He also took primary responsibility for the chapters dealing with transferring various kinds of assets, meeting disclosure requirements, and providing tax information to donors. “Bill” has been our editor-in-chief, and his attention to detail and constructive suggestions for revisions have greatly improved the text.

**Edith Matulka** regularly helps charities comply with state regulations, which means becoming certified in some states and qualifying for an exemption in others. The chapters in the manual that describe state regulations regarding the issuance of gift annuities and state requirements for gift annuity agreements are largely her work. “Edie” has also been responsible for compiling a complete set of gift annuity agreements for practically every possible variation. She has contributed significantly to the chapter on marketing gift annuities.

**Ann McPherson** has assisted with the revisions in Chapter 15 pertaining to marketing.

**Julie Goldenberg** applied her computer knowledge, good judgment, and superb organizational skills to prepare this update of the manual.

**Kathleen Goodfellow**, provided considerable assistance to Julie with various layout and production details. She also handled all of the logistics pertaining to printing and production.

Besides the staff of PG Calc’s Seattle Office, I want to acknowledge in particular three persons who were technical reviewers of either the entire manual or sections of it during the year we first produced it.

**David Newman** of Mitchell, Silberberg & Knupp in Los Angeles was given the daunting task of conducting a technical review of the entire manual. He and his associates did the review systematically and thoroughly, and they suggested a number of clarifications and technical corrections that have been incorporated in the text. I always marvel at the

lucidity of David's mind, and he is a friend from whom I continue to learn. David regularly responds to questions about updates of the manual.

**Terry Simmons** of Thompson & Knight in Dallas has been a valued friend and colleague in this field for a quarter century. Terry, more than anyone else, saved gift annuities for the charitable community. When they were seriously threatened by the class action lawsuit, it was Terry who led the successful effort to enact legislation that formed the basis for the dismissal of the lawsuit. Without his total commitment and political astuteness, gift annuity programs might have been so damaged that there would have been no cause to write this book. I am also indebted to Terry for his wise counsel on a number of technical issues discussed in the book.

**Emil Kallina** of Kallina and Associates, LLC in Baltimore combines an encyclopedic knowledge of the Code and Regulations with an in-depth understanding of the mathematics of planned giving. I asked him to review some of the more technical sections, and he did not stop with the citations but also checked the numbers. His quantitative mind is accompanied by a caring soul. I am grateful for his insightful comments.

In addition to the three reviewers, I want to thank the following four other persons who agreed to look at the manual before it was initially completed and comment on the work as a whole. Although these persons have not been asked to review or comment on updates, their initial review was most helpful.

**André Donikian** of Pentera, Inc., a close friend for the entire 32 years I have been in this business, whose generosity of spirit knows no bounds, and who has allowed me to expose his seminar participants to my thoughts on gift annuities through the years.

**Conrad Teitell** of the Philanthropy Tax Institute, who deserves the title, "Man of the Century in Planned Giving," who has been mentor to thousands of us, and who not only teaches us but also helps us to see the humor in our work.

**Tal Roberts** formerly with the Baptist Foundation of Texas, who led the American Council on Gift Annuities with distinction for more than a decade, who guided the Council through its darkest days, who is a true friend, and always a gentleman.

**Robert F. Sharpe, Jr.** of the Robert F. Sharpe Company, one of the most influential leaders in the planned giving field, an innovator and strategic thinker who helps us see trends and how to respond to them.

I am indebted to these friends and associates. They have clearly improved the quality of the manual and made my work more fulfilling.

Finally, I want to acknowledge the many other readers of the manual, friends, and associates who have made helpful suggestions and asked questions that caused us to deal with new issues. During the course of the year we file your questions and suggestions and then respond to them in the next update. We appreciate the role you have played in contributing to the evolution of the manual, and we continue to welcome your feedback.

Frank Minton  
Senior Advisor  
*PG Calc*

# FOREWORD

Some books need to be written, some books were meant to be written, and others fall in both categories. Such is the case with this manual.

Charitable gift annuities constitute one of the simplest and most popular planned giving techniques in use by American charities today. Whether large or small, once a charity has a bequest program in place, charitable gift annuities are almost invariably the next step in building a planned giving program. However, until now, comprehensive information on gift annuities—how to market them, how to break them into their component parts, how to illustrate them, how to apply the United States and Canadian income, gift and estate tax laws to them, how they are regulated by the various states, how to comply with that regulation and how to draft agreements to put gifts in place—has never been compiled in one place. Now, with this manual, that guidance is here in one volume. With this manual in hand, a charity can have an exceptional gift annuity program.

That such a comprehensive and practical manual would be prepared by Frank Minton is no surprise. Frank is the true renaissance man: he is mountain climber with a Ph.D. from the University of Chicago. He is a theologian, a philosopher, and a keen observer of human nature, and a friend to everyone who knows him.

I have known and worked with Frank Minton for almost 20 years. It is a great privilege to count him as one of my closest friends, and I can think of no one whom I respect more. His accomplishments exceed most people's career dreams. His distinguished career in institutional development started at Northwestern University and concluded at the University of Washington where he served as both Director of Planned Giving and as Executive Director of Development. But indefatigable Frank Minton could not stop. He then established his own one-person consulting firm, which has now grown to include a staff of five including two attorneys. He has become a consultant and advisor to charities across the country, and is in demand as a speaker on a wide range of topics.

In his spare time, Frank has played a major role in planned giving in Canada. Along with Lorna Somers, he is the author of *Planned Giving for Canadians*, the seminal book on planned gifts and their tax treatment under Canadian tax law. He has worked with Revenue Canada (Canada's version of the Internal Revenue Service), and for nine years has been director of a comprehensive planned and major gifts course for Canadian fund-raising professionals.

Frank continues to give his time without limit to planned giving. He literally went from the security of his salaried position at the University of Washington to the entrepreneurial world of planned giving advisor in the same year that he gave of himself wholeheartedly to serving as President of the National Committee on Planned Giving. Subsequent to that,

he wrote the Syllabus of Learning for the Planned Giving Professional promulgated by the National Committee on Planned Giving, has continued to serve as a Board member of the American Council on Gift Annuities, has done numerous research projects and surveys for both organizations, has chaired a national conference for each organization, and currently chairs the Ethics Committee of the National Committee on Planned Giving. During his tenure as president of that organization, he was instrumental in helping draft and then secure the adoption of the Model Standards of Practice for the Charitable Gift Planner.

Recently, he spearheaded the philanthropic community's efforts to work amicably with the National Association of Insurance Commissioners in promulgating model gift annuity regulation and model deregulation acts for consideration by the various state legislatures. The negotiations, which he conducted on behalf of all of us over a period of years, resulted in proposed legislation which, as the Acts are adopted by the various states, will substantially relieve the burdens of administration of gift annuity programs.

Frank is a gift planner, an academician, a teacher, an author, a mountaineer, and an adventurer. But more than anything, he has mastered the fine art of true friendship. If I metaphorically think of myself as dangling over one of the bottomless crevasses of life, there is no one that I would rather have holding the rope for me than Frank Minton. More often than we can count, and more times than most people know, he has held the rope for all of us in the charitable world. We owe him a debt of gratitude for all that he has done, and a new debt for this incredibly useful manual which he has produced for all of us.

*Terry L. Simmons*  
*Dallas, Texas*  
*October 1999*