

eRate: You've just received a letter from an attorney representing the estate of a recently-deceased gentleman who was a longtime, generous supporter of your charity. The will includes a provision for a gift of \$100,000 to your organization. There's a catch, however. The bequest is to be used to establish a charitable gift annuity to benefit the sister of the decedent; this is known as a *testamentary charitable gift annuity*. What do you do now?

Surprise Gifts from Dead People (The Challenges and Rewards of Testamentary Gift Annuities)

You've just received a letter from an attorney representing the estate of a recently-deceased gentleman who was a longtime, generous supporter of your charity. The letter says that the decedent included a provision in his will for a gift of \$100,000 to your organization – that's great news, right? But wait - there's a catch! The bequest is to be used to establish a charitable gift annuity to benefit the sister of the decedent; this is known as a *testamentary charitable gift annuity*. So what do you do now? How do you get information about the sister? What's the date of the gift? How much are you supposed to pay her? When are you supposed to start paying her? And who will sign the gift annuity agreement now that the donor is deceased?

We've received a number of calls and emails recently from clients who've found themselves in this situation. In some cases, the donor was indeed a longtime generous benefactor. In other cases, the charity didn't even have him listed in their database. If you find yourself in these circumstances, you may be lucky and the attorney will have included a check for the amount of the gift. Often, however, you will only be told that you will be receiving the money at some point in the future. Typically you will receive a letter from the attorney serving as executor or administrator of the estate of the decedent because the attorney needs information and wants it ASAP!

Every gift situation is unique, and testamentary gift annuities involve significant nuances that warrant review by the organization's own legal counsel. Below we share some of the issues that typically arise in these cases and the solutions commonly applied, but these examples are not to be taken as legal advice!

The date of gift is probably the biggest question. While it's true that your charity may not receive the money until a year or more after the passing of the donor, the date of gift is the date of the donor's death. The estate tax return and/or any other official documents pertaining to the estate will be as of the date of death, even if they are completed and filed long after the death occurred.ⁱ

So if the date of gift is the donor's date of death, how do you run the calculations? This part is easy – you simply run the calculations in *Planned Giving Manager* as if the gift were a standard charitable gift annuity established by a living person. Using the date of death as the date of gift, *PGM* allows you to select the highest IRS discount rate from the month of the death or either of the 2 preceding months.ⁱⁱ

As with any gift annuity, you will need specific information in order to run the calculations. For example, you will certainly need the gift amount and annuitant's date of birth to run basic calculations. Before going any further, however, you should obtain a copy of the will, or at least sections pertaining to the gift annuity. You will need to get the annuitant's full name and legal address, as well as her social security number, before issuing any payments. due to tax reporting purposes.

Depending on the size of the estate and the state in which the decedent legally resided, there may be estate tax due on the portion of the gift that benefits the non-charitable party (the sister). In most situations there will be a formal probate process, wherein the executor will have to record the total value of the gift, the portion of the gift deemed to benefit the charity (the usual charitable income tax deduction), and the portion of the gift benefitting the sister.ⁱⁱⁱ

Once you have received the money from the estate, you can begin issuing payments. The payments should be made as soon as possible after the gift is funded in order to bring the payment obligation up to date. The general consensus of the planned giving and financial services community is that payments for previous years are reported in the current tax year. This obviates the need for the annuitant to amend any tax returns for previous years, but adjustments will need to be made on the charity's accounting side for this first year of make-up payments. Please note that interest compensation is usually not included for the years of "missed" payments – the charity, after all, didn't have the funds until now, and should not be expected to remunerate for any "delay" of payments.

Questions regarding who should sign the gift annuity agreement frequently arise during the process of implementing testamentary gift annuities. Some charities don't require the donor's signature for CGAs funded during life (inter vivos arrangements), therefore, the question is rendered moot for those funded at death. Donor signatures are typically not required in any legal sense for establishing charitable gift annuities, but many charities include donor signatures to indicate full understanding of the overall arrangement. If your agreements include donor signatures, you may have the executor of the estate sign the agreement for a testamentary CGA; the executor is functioning on behalf of, and in lieu of, the donor, so his or her signature would not be inappropriate.

Please keep in mind that although every situation is unique, the lines of communication should be established at some point with the annuitant. Once the estate is settled and closed, the ongoing relationship will be between the charity and the annuitant. It works best if the executor notifies the annuitant with copy to the charity, so that she has some familiarity with the future source of payments. You should be in a position, before issuing actual payments, to contact the annuitant and request a W-9 if the executor has not already done so.

Once you have gone through the process of receiving a testamentary gift annuity, you will probably have a greater appreciation for the value of advance planning. Ideally your donors would consult directly with you during their years of active estate planning, so you could give them an idea of how the arrangement would work based on current facts. In particular, you could strongly recommend that the annuity be set up as deferred, allowing for a critical window of time between the donor's death and the transfer of funds to your organization. You may wish to consider at some point a special mailing to your donor base, advising them of the possibility of creating these vehicles and emphasizing the value of working with your charity during the planning process.

In summary, testamentary gift annuities are not something encountered every day in the life of a planned giving professional, but they are a valuable component of the overall matrix of donors making critical gifts to your organization. Planning is everything, but in reality, you may not have that luxury. In many cases, the donor has chosen to make a complicated gift to your organization without letting you know in advance.

Understanding the overall process and the typical issues that arise with these unique vehicles should help to put you in a better position to react to these surprises as they come your way. Communicating effectively with the executor and implementing the gift arrangement as quickly as possible will help to ensure a positive relationship with the annuitant and, in the long run, everyone benefits from that.

We hope this article has helped to answer some of the questions regarding testamentary charitable gift annuities. Please don't hesitate to contact us if you have additional questions or would like to discuss the matter further.

-JBF 4/16/14

ⁱ Chapter 20 of PG Calc's *Charitable Gift Annuities: The Complete Resource Manual* contains a section specifically addressing testamentary gift annuities. Here is a link to the information about the CGA Manual on our website: <http://www.pgcalc.com/education/charitable-gift-annuities-manual.htm>

ⁱⁱ *Planned Giving Manager* includes another feature that will prove useful in these situations – beginning with version 7.0, the software matches the ACGA payout rate with the date of the gift. So if the ACGA rates have changed since the death, PGM will “look back” in time to the appropriate ACGA rate table in effect on the date of death. Of course, if your organization uses custom rates, you will need to adjust the payout rate manually to reflect the appropriate rate in effect at the time of the death and gift.

ⁱⁱⁱ This last portion is easily computed by producing the Actuarial Calculations chart in PG Calc's *Planned Giving Manager* – the "Investment in Contract" is the present value of the projected stream of annuity payments to be made to the sister over her lifetime. You can also run this calculation using the Non-charitable Interest Actuarials chart.