



## Whose Money Is It Anyway? Dealing with Unclaimed Payments for Missing Persons

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We get a lot of calls from clients regarding how to handle unclaimed payments related to life income gifts. We can help clients with the mechanical aspects in *GiftWrap*, of course, but the real challenges have more to do with policies and protocol. What is the right way to manage the payments that are due to people whose whereabouts are unknown? And how long is a charity – or an agent thereof – supposed to hold those funds before state laws dictate specific actions under abandoned property laws? We will go over those issues in this article.

The first challenge is simply finding out that the person entitled to payments is no longer where you thought they were. Beneficiaries of life income gifts tend to be older persons, and inevitably, they move for reasons having to do with life stages and general well-being. Sometimes they move into retirement communities, sometimes they move to live with family members, and sometimes they move for other reasons. Changes of address are less relevant when payments are issued electronically – which is increasingly popular – but checks issued to people who have moved can become quite problematic.

It probably goes without saying, but any organization that is issuing payments for gift annuities, pooled income funds, and charitable remainder trusts, should be reconciling the checking account used for those payments on a regular basis. There have always been a certain number of checks returned because somebody moved and didn't provide any forwarding address. In other cases, checks are not returned, but they are simply never cashed. And sometimes even electronic payments are returned, either due to technical problems or changes in banking information.

It's critically important that somebody monitors the checks being returned, the checks not being cashed, and the electronic payments being returned. Each instance represents, at minimum, a change of circumstances relating to a beneficiary. At worst, the unclaimed money can be a sign that the person has disappeared – or is not even alive anymore.

One practice that we feel strongly about is the use of an abeyance account for returned, unclaimed, and uncashed payments. The general checking account used for issuing payments should be purely a pass-through account; funds are deposited to support periodic payments, and those monies are zeroed out as payments are issued and checks are cashed.

If a payment is returned or a check is uncashed, the first course of action is to reach out and try to find out the status of the associated beneficiary. We see this as generally standard among our clients who are in the business of managing life income gift programs. But if efforts to determine the status of the beneficiary are unsuccessful, there are concrete steps that should be taken before too much time goes by. Every organization will have its own timeframes, but once a payment has been held beyond the period the organization deems acceptable, appropriate action should be taken.

The unclaimed funds should be moved out of the general checking account and placed into a special abeyance account. The general checking account should be, at least in theory, zeroed out before the next set of payments is issued. With a gift annuity program, for example, most payments are issued every 90 days, and in many cases, tied to the last day of each calendar quarter. If the funds for uncashed checks or returned payments sit in the checking account for 90 days, they should then be moved to the abeyance account.

There is some disagreement about whether to issue subsequent payments to a beneficiary after their first check is never cashed (or after their electronic payment is returned and never reclaimed). Should the sponsoring charity keep issuing payments to the beneficiary, even though the person's whereabouts are undetermined? Or should the charity simply sit on the money for the next payment? Keep in mind that the tax reporting of the payments for the missing person continues unabated, regardless of whether payments have actually been issued.

Instead of choosing either of the above-mentioned approaches, we believe the best solution is to decide a course of action that is decidedly in between these other two alternatives: the charity should continue to issue subsequent payments to missing persons, but then it should direct those amounts into the abeyance account.

This approach is certainly beneficial to the charity, in terms of safeguarding the money due the beneficiary: when they reappear, the charity will have a record of all payments issued and held in abeyance. Payments for multiple periods can be issued as catch-up payments. But this approach also benefits the charity because all funds representing the "missing payments" have been withdrawn from the main account.

While retaining a handful of problematic payments in the main account causes only a minimal amount of distortion to the main account, a succession of payments for multiple beneficiaries can inflate the total value of the gift annuity program beyond a reasonable threshold. Until and unless the death of a beneficiary has been confirmed, the sponsoring charity still has an obligation to issue payments. The use of the abeyance account allows for those payments to be directed out of the main investment account.

In these situations, inevitably, two questions arise:

## **1. What happens if the missing person turns out to be deceased?**

In that case, the payments due to the beneficiary prior to the date of death are sent to the executor or administrator of the person's estate. Any payments issued by the charity AFTER the date of death are returned to the charity.

## **2. What happens if the missing person turns out to be still alive?**

In that case, all the payments issued but held back are paid to the beneficiary. There will be no sudden drop in the market value of the gift annuity program because all the payments in question will have been held in the abeyance account.

Perhaps the most critical issue in the area of missing persons and unclaimed payments is that of state laws. Among charities with life income gift programs, there seems to be a lack of awareness regarding state laws governing unclaimed funds. Most states have specific regulations dictating the treatment of unclaimed funds (also referred to as "abandoned property"). And of course, these laws pertain to a wide swath of businesses and organizations, not just charities.

While each state has unique laws, there is generally an initial period during which the entity issuing the original payment is allowed to – and expected to – retain the funds from checks not cashed and payments returned. It is typically a period of 3 to 5 years, although there may be outliers. The issuer of the payment is supposed to hold the funds only for that period of time, and then the issuer is required to send the unclaimed funds / abandoned money to the state. At that point, the state will hold the money for a specific number of years. Periodically, the state will publish lists of all unclaimed amounts along with the names of the persons believed to be the owner of the funds. If no one claims the money within the set number of years, ultimately the funds will escheat to the state. The money becomes the property of the state, and even if the original payee reappears, the funds will not be returned to that person.

Organizations that issue payments for charitable gift annuities, pooled income funds, and charitable remainder trusts should be aware of the states' requirements regarding unclaimed funds (the governance is based on the last known legal domicile of the beneficiary or payee). These organizations should try to maintain accounting standards and protocols that dovetail within the general spirit of state regulations. Regardless of whether the beneficiary is still alive or deceased, these better standards of bookkeeping and accounting will benefit all parties involved.