



## Missing Persons and Uncashed Checks

PG Calc Featured Article, August 2017

By Jeffrey Frye, Senior Client Services Advisor, PG Calc

One of the most frequent challenges we encounter in the administration of life income gifts is the issue of uncashed checks. We've all seen or heard of these situations – a check is sent to a gift annuitant, or to the beneficiary of a charitable remainder trust (or pooled income fund), and it is never cashed.

The routine process is to place a stop payment on the check after a specific period of time, and to reissue payment in the form of a replacement check. If the replacement check is cashed within a reasonable period of time, and checks representing subsequent periodic payments are cashed in a timely manner, we assume that the original uncashed check was just an anomaly, and no further action is required.

But what happens when the first replacement check remains uncashed after 90 days, and what is to be done when checks for subsequent payment periods remain uncashed? To some extent, the same issues apply to electronic payments that are rejected by the beneficiary's bank, or financial institution. However, for the purposes of this article, we will refer simply to uncashed checks.

Every organization's planned giving program is unique, and standard operating procedures vary for each charity and its administrators. However, at some point, a charity needs to stop issuing replacement checks and research what has happened to the individual who is entitled to be receiving those payments. There are three main possibilities:

- The beneficiary is physically or mentally impaired, or for some other reason, has been unable to deposit the checks;
- The beneficiary has moved and is no longer at the address to which the payments have been sent;
- The beneficiary has passed away and for some reason, no one has notified the charity.

Let's take a closer look at each of these scenarios, and review some possible courses of action.

### **The Beneficiary Is Physically Or Mentally Impaired, Or for Some Other Reason, Has Been Unable to Deposit The Checks**

In the world of planned giving, we are working generally with older persons; indeed, for many organizations, someone in their early 60's is considered too young to start receiving payments from a charitable gift annuity! As part of the natural aging process, many of our donors are inevitably transitioning through years of declining physical and mental health. There may be physical impairments that make any trips outside of the home difficult.

We also see increasing prevalence of mental health issues for our donors as they become older. They may be able to leave their homes physically, but their poor mental health may block their ability or interest in going anywhere. In these cases, it's best to contact the individuals, and have direct and candid conversations about how the payments should be sent going forward. In many cases, the individuals will be eager to sign up for electronic delivery of payments, once they understand the process and the extremely low risk associated with that method of payment.

### **The Beneficiary Has Moved and Is No Longer at the Address to which the Payments Have Been Sent**

As our donors get older and confront a multitude of life-changing issues, many of them will choose to change where they live, or in some cases, be forced to move.

When checks from trusts and gift annuities remain uncashed, without any communication from the beneficiaries, there is a strong possibility that the individuals have moved without sending any notifications. If the home remains vacant and unsold for a period of time, the mail will continue to accumulate. The postal service will not stop delivering until it receives proper notification and authorization.

In these cases, the charity should try to determine what has happened to the annuitant or beneficiary as soon as it becomes clear that checks are not being cashed. Ideally, the organization will have the name and contact information for at least one individual associated with the donor, provided as part of the initial paperwork related to the establishment of the gift arrangement. With that information, the charity can contact the designated person and make inquiries into the beneficiary's whereabouts without upsetting the donor.

If there is no contact person information on hand, the charity needs to take some sort of alternative action. The checks should not simply languish as uncashed, and they should not be reissued in the absence of current information regarding the beneficiary. State laws specifically deal with the appropriate course of action for property belonging to missing individuals, under the description of "abandoned property" or "unclaimed property." If this lack of cashing checks goes on long enough, generally speaking, the money for payments that have not been received by the beneficiaries should not

remain in the general operating funds of the organization. Rather, they should be transferred into a separate account designated as abandoned or unclaimed property for missing persons. Only then can and should the charity stop reporting these distributions to the IRS.

The charity should continue to make efforts to locate the individuals, using private searches or the fee-based Social Security Death Index. Simultaneously, there should be a detailed accounting of every payment that has been retained by the charity.

### **The Beneficiary Has Passed Away, and for Some Reason, No One Has Notified the Charity**

There are cases where life income beneficiaries disappear from a charity's radar for a number of years, and then resurface in another state, or at a retirement home, or at an assisted-care community. In the majority of cases, however, when checks have remained uncashed for an extended period of time, the underlying reason is that the individual has passed away. The death may have occurred recently, as in a month or two ago, but in some cases, the death will have occurred years ago. This is where it becomes especially important to demonstrate that the charity has exercised due diligence in stewarding the payments. When notice of the death arrives, the charity should be able to take immediate action on all payments that have been held in abeyance.

There may be a second annuitant or beneficiary on the gift arrangement. It's not likely to be a spouse, because in those cases, notification of the death of the first spouse would have occurred fairly soon after the death. But there may be a sibling or a younger relative who is entitled to receive payments after the death of the first individual. The charity needs to review the original trust document or gift annuity agreement again (ostensibly, this would have been done previously) to confirm the specific provisions. If there is a revocation clause in the original documents, the charity needs to determine if that option was exercised. No payments should be reissued until the charity has determined the appropriate legal course of action.

In cases where checks have been unclaimed for a period of years, the charity will need to determine to whom, and to what address, the replacement checks should be directed, based on the period of time between the first uncashed check and the last check the beneficiary was entitled to. Any checks replacing payments made to an individual who died after the payments were due should be made to that person and then should be sent to the executor of the estate. This is a technical point of distinction – the income is not due to the estate, because only income earned after the date of death is income taxable to the estate.

The replacement of payments is personal income of the decedent and must be reported on the individual's income tax returns. As noted above, the tax reporting should have been done already on the income, unless the funds were officially segregated. If they were segregated and this income wasn't previously reported, then corrected tax forms may be due.

## **Conclusion**

In summary, missing persons and uncashed checks are fairly routine phenomena in the world of administering life income gifts. The sponsoring charity needs to have all of the critical information stored and well-organized on every gift arrangement, so that it can take prompt action when a pattern of uncashed checks emerges. The charity needs to demonstrate in general, and to its donors in particular, that the funds for all uncashed checks have been held aside in a dedicated account, and that all payments retained by the charity can be disbursed once the status and whereabouts of the income beneficiaries are determined. It is incumbent upon the sponsoring organizations to exercise diligence in carrying out their fiduciary responsibilities to the non-charitable beneficiaries. It is to everyone's benefit in the long run when the interests of both the charity and the income beneficiaries have been fully honored.