



Revocation Language in CGA Agreements – To Include or Not To Include

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By Edie Matulka, Senior Consultant, PG Calc

In preparing a gift annuity agreement in *Planned Giving Manager*, you've likely been presented with the question, "Include revocation language?" The only time you won't see it is with a one-life annuity, where the donor and annuitant are the same person. In any other donor/annuitant combination, the revocation question will be applicable, though the answer may not always be yes.

Including revocation language serves two purposes. First, it may enable the donor to avoid making a taxable gift to the annuitant. Second, it preserves flexibility in the event of a change in circumstances, such as the dissolution of a marriage. The decision on whether to include the revocation language is ultimately the donor's, but it is helpful if the charity understands the issues to help inform that decision.

Donor and Annuitant Are Spouses

When the donor and annuitant are spouses (and US citizens), and it is an immediate annuity payable jointly and to the survivor, revocation language is not needed to avoid a taxable gift, as there is an unlimited gift tax marital deduction. However, if the annuity is payable successively, that is first to one spouse, then the other, the revocation language would be needed to avoid a taxable gift, as the gift to the successor annuitant spouse will not be eligible for the unlimited gift tax marital deduction because it is a future interest.

Donor and Annuitant Are Non-Spouses

With immediate annuities involving donors and annuitants that are non-spouses (or a non-citizen spouse), and with just a single annuitant or with joint and survivor payments to two annuitants, there may be a taxable gift if the present value of the entire lifetime annuity stream is greater than the annual gift exclusion amount (\$14,000 in 2017; for non-citizen spouses the amount is \$149,000). With immediate annuities involving successive payments, and for all deferred annuities, there would be a taxable gift without the revocation language, as the annual exclusion is not available because it is

a future interest gift.

In any situation where there would be a taxable gift, including the revocation language can “break up” the gift, making it a series of annual gifts – this is because in any year the donor could exercise the right to revoke payments, and thus the value of the gift to the annuitant is known only as each year passes. In that situation, only if the annual annuity payment exceeded the gift exclusion amount would there be a taxable gift.

Preserving Flexibility in Annuity Agreements

It should be noted that in certain states the ability to include/exclude revocation language will depend on the prototype agreements submitted to the state as part of the charity’s registration to issue gift annuities in that state. Currently Alabama, Arkansas, California, Maryland, New Jersey, New York, North Dakota, Tennessee, and Washington require a charity to submit agreements for approval. If the agreements submitted did not include revocation language, then the language could not be added in applicable circumstances; on the other hand, if the agreements submitted included the revocation language as “fixed text”, then the revocation language would always need to be included, even if the donor did not wish to (or need to) include it. It is recommended that the prototype agreements submitted to state authorities provide for both the inclusion and deletion of the revocation language. Then the charity will have the freedom to include or delete it depending on the donor’s circumstances.

Factors to Consider in Making the Revocation Language Decision

Many factors, personal as well as tax-related, enter into the decision whether to include revocation language in a gift annuity agreement. The following chart, taken from *PG Calc’s Charitable Gift Annuities: The Complete Resource Manual* shows when the inclusion of revocation language might be useful to avoid a current, taxable gift.

Situation	Revocation Language
Single-life annuity, Donor is annuitant	Not applicable
Single-life immediate annuity, Donor’s spouse is annuitant	Unnecessary
Single-life immediate annuity, Annuitant is someone other than donor or donor’s spouse	Should be considered
Single-life deferred annuity, Donor’s spouse is annuitant	Should be considered

Situation	Revocation Language
Single-life deferred annuity, Annuitant is someone other than donor or donor's spouse	Should be considered
Two-life annuity, immediate or deferred, Donor is first annuitant, Non-spouse is successor annuitant	Should be considered
Two-life annuity, immediate or deferred, Non-spouse is first annuitant, Donor is successor annuitant	Should be considered
Two-life annuity, immediate or deferred, Donor contributes his/her separate property, and donor and spouse are consecutive annuitants	Should be considered
Joint-and-survivor immediate annuity, Husband and wife contribute jointly- owned or community property	Unnecessary
Joint-and-survivor deferred annuity, Husband and wife contribute jointly- owned or community property	Should be considered
Joint-and-survivor annuity, immediate or deferred, Non-spouses contribute jointly-owned property	Should be considered
Joint-and-survivor immediate annuity, Both spouses are annuitants, Only one spouse is donor	Unnecessary

Situation	Revocation Language
Joint-and-survivor deferred annuity, Both spouses are annuitants, Only one spouse is donor	Should be considered
Two-life annuity, immediate or deferred, Donor is not an annuitant	Should be considered