



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
CORTLAND MEMORIAL FOUNDATION, INC.

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

JANUARY 23, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

CORTLAND MEMORIAL FOUNDATION, INC.

AS OF

DECEMBER 31, 2013

DATE OF REPORT:

JANUARY 23, 2015

EXAMINER:

JUAN SOTO

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Corporate governance	5
5.	Significant financial information	6
6.	Treatment of annuitants	8
7.	Annual statement reporting	9
8.	Summary and conclusions	14



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

July 20, 2016

Honorable Maria T. Vullo  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31144, dated April 8, 2014 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Cortland Memorial Foundation, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at 134 Homer Avenue, Cortland, NY 13045.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Fund amend the service agreement with its administrative services provider to reflect that services are being provided to the Fund. (See item 4 of this report)

The examiner recommends that the Fund diversify its investment holdings. (See item 5 of this report)

The examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 6 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 7 of this report)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 7 of this report)

The examiner recommends that the Fund prepare a hard copy reserve listing for its annual statements that provides complete details relative to annuity table, rate of interest, and other required information as of the current year. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2009. This examination covers the period from December 16, 2009 through December 31, 2013. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2013 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2013 to determine whether the Fund's filed 2013 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations, or rules or which require explanation or description.

### 3. DESCRIPTION OF FUND

The Cortland Memorial Foundation, Inc. (the “Foundation”), established in 1978, is a separate, not-for-profit organization, whose purpose is to coordinate fundraising activities for the benefit of the Cortland Regional Medical Center (“CRMC”) and Cortland Regional Nursing and Rehabilitation Center. The Foundation is managed by a volunteer Board of Directors and is recognized by the Internal Revenue Service as a 501(c)(3) non-member organization. Philanthropic gifts to the Foundation are tax deductible to the extent provided by law. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements and it has done so since 2010. A special permit was granted to the Foundation by the Department on December 16, 2009, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Foundation’s fundraising program provides individuals, corporations, and foundations with multiple gift planning options so that they may pursue their philanthropic objectives. At the same time, these gifts support CRMC’s efforts to continue to expand services, develop new programs and bring leading edge medical technology and treatments to Cortland and the surrounding communities. In cooperation with Cortland Regional Medical Center, the Foundation strives to increase public awareness through community service programs and to assist in the development of comprehensive long range plans for future healthcare. Through the generous support of donors, the Foundation works to guarantee quality healthcare remains close to home.

The Fund’s custodial account is with Tompkins Financial Advisors. Jennifer Turck provides strategic management of the planned giving program, including marketing of the program. Port, Kashdin & McSherry, CPAs, prepares the Fund’s annual statements.

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 22 regular voting trustees, and a minimum of 3. As of December 31, 2013, the board consisted of 16 trustees. The board of directors shall elect a chairman, a vice-chairman, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers.

#### 4. CORPORATE GOVERNANCE

The examiner's review of the third party administrator service agreement with Jennifer Turck revealed that the agreement was executed in the name of Cortland Memorial Foundation, Inc., not in the name of the Fund.

The examiner recommends that the Fund amend the service agreement with its administrative services provider to reflect that services are being provided to the Fund.

## 5. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial growth during the period under review:

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2013</u>	<u>Increase</u>
Admitted assets	\$ <u>100,165</u>	\$ <u>168,625</u>	\$ <u>68,460</u>
Liabilities	\$ <u>0</u>	\$ <u>30,497*</u>	\$ <u>30,497</u>
Minimum required fund balance	\$ 0	\$ 3,050*	\$ 3,050
Excess fund balance (surplus)	<u>100,165</u>	<u>135,078*</u>	<u>34,913</u>
Total annuity fund balance	\$ <u>100,165</u>	\$ <u>138,128*</u>	\$ <u>37,963</u>
Total liabilities and annuity fund balance	\$ <u>100,165</u>	\$ <u>168,625</u>	\$ <u>68,460</u>

Note: The items noted with an asterisk were determined during the examination. See item 7 of this report.

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. From the date of inception through 2013, the Fund issued four annuities with annual payment amounts of \$3,580 as of December 31, 2013.

The Fund's admitted assets, as of December 31, 2013, were invested mainly in bonds (37.69%) and common stocks (54.25%). All bonds held were investment grade.

Section 1409(a) of the New York Insurance Law states,

“(a) Except as more specifically provided in this chapter, no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose certificates of deposit, partnership interests and other equity interests) of any one institution.”

According to the 2013 annual statement, the Fund reported: 11.42% of admitted assets invested in a Costco Wholesale Corp. bond and 12.10% invested in a DuPont & Co. bond. The Fund's current concentration in the two bonds makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in these funds.

The examiner recommends that the Fund diversify its investment holdings. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's ("ISS") risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio. If the trustee has determined that it is in the interests of the beneficiaries not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.

## 6. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account. Based upon the sample reviewed, no significant findings were noted.

## 7. ANNUAL STATEMENT REPORTING

The Instructions for Completing Line 10a (additional reserve required by Regulation 126) of the Liabilities and Annuity Fund Balance section of the 2010, 2011, 2012, and 2013 New York State Segregated Gift Annuity Fund Annual Statements state:

For the 2011, 2012 and 2013 Annual Statements:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2011, 2012 and 2013, report on this line 15% of the amount reported on Line 10, for both current and prior years.)”

For the 2010 Annual Statement:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2010, report on this line 15% of the amount reported on Line 10.) ‘Prior year’ column: report 10% of the amount on Line 10.”

The Instructions for Completing Line 20.1 (Minimum required fund balance) of the Liabilities and Annuity Fund Balance section of the New York State Segregated Gift Annuity Fund Annual Statement for each of the years during the exam period (January 1, 2009 through December 31, 2013) state:

For the 2010, 2011, 2012, and 2013 Annual Statements:

“‘Current Year’ Column: A minimum required fund balance equal to 10% of the net reserve reported at Line 12 must be reported at this Line. Refer to Section 1110(b) of the New York Insurance Law. ‘Prior Year’ Column: Report prior year’s minimum required fund balance.”

The Fund failed to report any amount for line 10a in the Assets and Liabilities page, “Additional reserve required by Regulation 126,” in its annual statements for all years during the examination period.

The Fund reported “Net present value of annuities” of \$26,519 as of December 31, 2013. In accordance with the annual statement instructions cited above, the Fund should have reported

an amount on line 10a for “Additional reserve required by Regulation 126” of \$3,978, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$30,497, or \$3,050. The Fund therefore understated net reserve and total liabilities by \$3,978. The Fund overstated minimum required fund balance by \$111,950. The Fund understated excess fund balance by \$107,972. The Fund overstated total annuity fund balance by \$3,978. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$138,128 as of December 31, 2013, instead of the \$142,106 actually reported.

The Fund reported “Net present value of annuities” of \$23,663 as of December 31, 2012. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for “Additional reserve required by Regulation 126” of \$3,549, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$27,212, or \$2,721. The Fund therefore understated net reserve and total liabilities by \$3,549. The Fund overstated minimum required fund balance by \$112,279. The Fund understated excess fund balance by \$108,730. The Fund overstated total annuity fund balance by \$3,549. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$126,363 as of December 31, 2012, instead of the \$129,911 actually reported.

The Fund reported “Net present value of annuities” of \$16,889 as of December 31, 2011. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for “Additional reserve required by Regulation 126” of \$2,533, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$19,422, or \$1,942. The Fund therefore understated net reserve and total liabilities by \$2,533. The Fund overstated minimum required fund balance by \$113,058. The Fund understated excess fund balance by \$110,524. The Fund overstated total annuity fund balance by \$2,533. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$113,112 as of December 31, 2011, instead of the \$115,645 actually reported.

The Fund reported “Net present value of annuities” of \$16,021 as of December 31, 2010. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for “Additional reserve required by Regulation 126” of \$2,403, an amount

consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$18,424, or \$1,842. The Fund therefore understated net reserve and total liabilities by \$2,403. The Fund overstated minimum required fund balance by \$113,158. The Fund understated excess fund balance by \$110,754. The Fund overstated total annuity fund balance by \$2,403. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$114,029 as of December 31, 2010, instead of the \$116,432 actually reported.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

The Department's instructions for the 2010, 2011, 2012, and 2013 annual statements, namely line item 20.3 (Total Annuity Fund Balance), in its Assets and Liabilities page state, in part:

“Line 20.3 Total Annuity Fund Balance:  
‘Current Year’ Column: The difference of the Total Assets (Page 2, Line 9) and Total Liabilities (Page 2, Line 19). This amount must equal to the sum of Lines 20.1 and 20.2, as well as the amount on Page 3, Line 15. ‘Prior Year’ Column: Report prior year’s Total Annuity Fund Balance.”

The Department's instructions for the 2010, 2011, 2012, and 2013 annual statements, namely line item 15 (Annuity Fund Balance at end of year), in its Income and Disbursements page state, in part:

Line 15 “Current Year” Column: Must equal the sum of Lines 13 and 14, as well as Page 2, Line 20.3. ‘Prior Year’ Column: Report prior year’s Annuity Fund Balance at end of year.

The Fund erroneously reported Annuity Fund Balance of \$142,106 in the Income and Disbursements page of its 2013 Annual Statement, which does not agree with the examiner's correction for Annuity Fund Balance in the Assets and Liabilities page of the Fund's 2013 Annual Statement noted in the prior section. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$138,128 in its 2013 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$129,911 in the Income and Disbursements page of its 2012 Annual Statement, which does not agree with the examiner's correction for Annuity Fund Balance in the Assets and Liabilities page of the Fund's 2012 Annual Statement noted in the prior section. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$126,363 in its 2012 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$115,645 in the Income and Disbursements page of its 2011 Annual Statement, which does not agree with the examiner's correction for Annuity Fund Balance in the Assets and Liabilities page of the Fund's 2011 Annual Statement noted in the prior section. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$113,112 in its 2011 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$116,432 in the Income and Disbursements page of its 2010 Annual Statement, which does not agree with the examiner's calculation for Annuity Fund Balance in the Assets and Liabilities page of the Fund's 2010 Annual Statement noted in the prior section. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$114,029 in its 2010 Annual Statement.

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

The Department's instructions for 2010, 2011, 2012, and 2013 annual statements, namely the instructions for the hard copy reserve listing to be provided for all annuities in-force as of year-end for each annual statement state, in part:

“Attach a hard copy reserve listing, providing complete details relative to annuity table, rates of interest, etc. as of the current year. The information that is required for each gift is: name and/or contract number; sex; date of birth; issue date; gift amount; annual income paid; mode of payment; for deferred annuities: annuity commencement date; for joint and survivor contracts: all information previously listed on both lives. Contracts must be identifiable as to which valuation basis and interest rate was used to value each contract. Actuarial statements or certifications are not acceptable in lieu of the detailed listing.”

The Fund failed to provide a hard copy reserve listing for its 2010, 2011, 2012, and 2013 annual statements that provides complete details relative to annuity table, rate of interest, and other required information as of the current year.

The examiner recommends that the Fund prepare a hard copy reserve listing for its annual statements that provides complete details relative to annuity table, rate of interest, and other required information as of the current year.

## 8. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund amend the service agreement with its administrative services provider to reflect that services are being provided to the Fund.	5
B	The examiner recommends that the Fund diversify its investment holdings.	7
C	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	11
D	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	12
E	The examiner recommends that the Fund prepare a hard copy reserve listing for its annual statements that provides complete details relative to annuity table, rate of interest, and other required information as of the current year.	13

Respectfully submitted,

\_\_\_\_\_/s/  
Juan Soto  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )SS:  
COUNTY OF NEW YORK    )

JUAN SOTO, being duly sworn, deposes and says that the foregoing report, subscribed by him,  
is true to the best of his knowledge and belief.

\_\_\_\_\_/s/  
Juan Soto

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 31144

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**JUAN SOTO**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
CORTLAND MEMORIAL FOUNDATION, INC.**

and to make a report to me in writing of the condition of said

**FUND**

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name  
and affixed the official Seal of the Department  
at the City of New York

this 8th day of April, 2014

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

