



Charitable Gift Annuities
Product Outline
(Last Updated February 6, 2019)

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Charitable Gift Annuities
Product Outline

(Last Updated February 4, 2019)

I) Scope

This product outline applies to all charitable gift annuity contracts delivered or issued for delivery in New York. This outline is current as of January 15, 2019. Subsequent changes to statutes, regulations, circular letters, etc., may not be reflected in the outline. In case of any doubt, please contact the Life Bureau.

II) Charitable Gift Annuities

II.A) Definition

A.1) A charitable gift annuity agreement is a contractual arrangement that obligates an eligible organization to pay periodically a fixed sum measured by an annuitant's life (the donor or the donor's nominee(s)), in consideration for a gift of cash and/or other property transferred by the donor to the organization. Upon the death of the final annuitant the organization's obligation ends and what remains of the gift goes to the organization as a charitable gift.

A.2) Charitable gift annuities should not compete with products offered by life insurance companies.

II.B) Jurisdiction and Scope of Review

B.1) Pursuant to Insurance Law § 1110, a special permit is required to make or issue charitable gift annuity agreements in New York State.

(a) All permit requirements of § 1110 must be met if the requisite reserve on outstanding annuity agreements is greater than \$1,000,000 (§ 1110(d)).

(b) If an organization's reserve does not exceed \$1,000,000, the organization may be exempt from certain permit requirements.

(c) If exempt, the organization must obtain a letter from the Department indicating its exempt status before issuing any gift annuities in New York. An exempt organization must also comply with other Department requirements.

(d) Pursuant to § 1110(f), the superintendent may examine an organization that is exempt from obtaining a permit pursuant to § 1110(d).

B.2) The review of applications for a special permit pursuant to § 1110 is divided into three separate parts:

(a) Financial condition and reserves. This review is completed by the Life Bureau in both New York City and Albany.

(b) Corporate status. The Office of General Counsel in Albany completes this review.

(c) Form and rate compliance. This review is completed by the Life Bureau in Albany.

B.3) Permits will not be issued until all three parts of the review are completed.

B.4) This product outline sets forth the requirements for form and rate compliance.

III) Form and Filing Requirements

III.A) Form Submission Requirements

Pursuant to § 1110(a), an organization shall, prior to issuing any charitable gift annuity agreements in New York, provide to the Department copies, of all charitable gift annuity agreement forms it intends to use in New York. This is required for every organization even if the organization is exempt from other permit requirements. Agreement forms submitted to the Department should be in the form intended for actual issue.

Organizations applying for a special permit must submit the sample agreements as part of their submission to the Life Bureau in New York City. The Life Bureau in New York City will provide copies of the sample agreements to the Life Bureau in Albany, which will conduct the review of the agreements, correspond with the organization in that regard, and provide a disposition.

Organizations that have already received a special permit to issue charitable gift annuity agreements, but that need to file new or revised sample agreements, must submit those sample agreements directly to the Life Bureau in Albany for acceptance before issuing them.

Note: The Circular Letter No. 6 of 2004 approval procedure is not available for charitable gift annuity form submissions.

A.1) The Department will notify the organization whether the agreements are accepted. The organization may not use the annuity forms in New York until it receives an acceptance letter from the Department.

A.2) If an agreement form that has previously been filed with and “accepted” by the Department is changed, revised, modified, or updated, it must be submitted to the Department for acceptance prior to use because such form constitutes an entirely new gift annuity form.

Note: This includes any changes to the text of an agreement resulting from an update of commercial software that the organization may be using.

(a) The submission letter which accompanies a modified/updated gift annuity form submission should reference the form number, Department

file number, and date of Department acceptance of the previous version of the gift annuity form.

Note: A modified/updated gift annuity form submitted for acceptance must include a form number which is distinct from that included on the charitable gift annuity form previously accepted.

- (b) Where a form filing is a result of a Department audit or examination, the submission letter should identify the observations/violations that were noted by the auditor/examiner.

A.3) Each type of annuity agreement must be submitted as a separate form. Typical types of annuity agreements include the following:

- (a) Single-life-immediate payment – the annuity is measured by the life of one person or annuitant, often the donor, and the annuity payments are to commence within one year from the date of the agreement.
- (b) Single-life-deferred payment – the annuity is measured by the life of one person or annuitant, often the donor, and the annuity payments are to commence at some later date.
- (c) Two-lives-immediate payment – the annuity is measured by the lives of two people, often the donor and a successor annuitant, and the annuity payments are to commence to the first annuitant within one year from the date of the agreement.
- (d) Two-lives-deferred payment – the annuity is measured by the lives of two people, often the donor and a successor annuitant, and the annuity payments are to commence to the first annuitant at some later date.
- (e) Two-lives-joint and survivor – the annuity is measured by the lives of two people, often the joint owners of the property donated, and the annuity payments can commence either on the date of the agreement or at some later date.
- (f) The Department considers gift annuity agreements in which donors are annuitants to be distinct from gift annuity contracts where donors are not annuitants and as such, must be submitted to the Department as separate forms.

A.4) Application Forms

The Department does not review or accept application forms for charitable gift annuities. If an organization submits an application form, we will file it for informational purposes only.

A.5) Forms for Out-of-State Use

A New York domiciled organization does not need to file with the Department contract forms that it intends to issue outside of New York. However, reserving standards are applicable to all contracts issued by the organization.

III.B) Filing Requirements

- B.1) Form Numbers. Every form submitted for acceptance by the Department shall include a distinct alphanumeric form number in the lower, left-hand corner of the agreement. Often the form number reflects the type of annuity the agreement creates. We suggest something along the lines of, for example: 1L-I for a one-life immediate payment annuity; 1L-D for a one-life deferred payment annuity; 1L-DNA-D for a one-life deferred payment annuity where the donor is not the annuitant; et cetera. Once assigned, the form number may not be changed unless the organization resubmits the form for acceptance. Organizations that wish to have a separate tracking number for their own use that varies with each instance may do so, but it must not appear in the lower left-hand corner of the form.
- B.2) Submission Letter.
- (a) For the form and rate review, the organization's submission should include a separate letter detailing in the "re" section the form number and brief description of each agreement submitted. As discussed elsewhere in this product outline, the submission letter should include any required confirmations or assurances.
 - (b) The submission letter should indicate whether the organization has issued and/or is currently issuing charitable gift annuities in New York which have not previously been submitted to and accepted by the Department.
- B.3) Every form should be written with the specific organization in mind. The full legal name of the licensed organization and its street address must appear prominently in the agreements.
- (a) Where the organization's legal name and/or street address has changed from the one appearing on previously issued active agreements, a name change and/or address change endorsement must be filed with the Department for acceptance. Once accepted, the organization must send the endorsements to all active agreement holders. See The Filing Guidance for Making Address Changes, Name Changes and Merger/Name Changes posted on our website for further information.
 - (b) Where the organization's legal name and/or street address changes from the one currently on file with the Department, the organization must

advise the Department's Albany Office of General Counsel in writing of such change.

- B.4) Variable Information. Names, dates, addresses, amounts and other information that would ordinarily vary from donor to donor, should be appropriately labeled and indicated as variable material using blank lines or brackets. For example, "[Donor 1] residing at [address of Donor 1] and [Donor 2] residing at [address of Donor 2]..."; "The annuity shall be paid in [monthly, quarterly, semi-annual, annual] installments of \$_____."
- B.5) Organizations should clearly identify and differentiate between agreements that provide for immediate annuity payments and those that allow for such payments to be deferred. The title of the agreement should state whether payments are immediate or deferred.
- B.6) If an organization is responding to an initial Department comment letter, a complete written response must be received by the Department within thirty (30) calendar days. If an organization is responding to an additional Department comment letter, a complete written response must be received by the Department within fifteen (15) calendar days. If the organization does not respond within the required time frame, the forms filing will be closed. An intervening telephone conversation or similar action does not toll the required time frame.

Note: Response letters sent via fax within the response deadline will be accepted so long as a hard copy of the response letter and clean copies of the revised agreement forms follow by overnight mail.

- B.7) If the submission is being made by a third party on behalf of the charity, a letter authorizing the third party to act on behalf of the charity must be provided. The letter must be:
- (a) on charity letterhead or include the charity name in the subject line of the letter;
 - (b) specifically addressed to the New York State Department of Financial Services;
 - (c) properly executed by an authorized officer of the charity;
 - (d) dated; and
 - (e) either
 - (i) specific to the file submitted for approval by including form number(s); or
 - (ii) generally applicable to all forms filed on behalf of the charity as long as a copy of such authorization is included in each submission.

III.C) Required Contract Provisions

- C.1) Each contract must include a summary description or caption. The brief description in the caption of each gift annuity agreement must describe the nature of the agreement; for example, “Two Lives – Deferred Payments – Successive Interests – Donor is an Annuitant” rather than simply “two-life deferred payment”.
- C.2) The agreement must set forth the dollar amount of the annuity payments and the date on which payments will commence.
- (a) The agreement may not contain language to the effect that the annuity payments will be determined after issue of the agreement or after sale of the gifted property.
 - (b) Under most gift annuities the payment commencement date has already been elected before the contract is issued. However, we have accepted deferred agreements which provide for a set of flexible annuity commencement dates. Under such annuities, the annuitant elects the commencement date after issue of the contract from a list of potential commencement dates set forth in the contract by giving the charity reasonable advance notice before the desired commencement date. For example, the annuity may provide that the annuitant may commence annuity payments on any contract anniversary up to the 10th contract anniversary by giving the organization notice at least 30 days prior to the contract anniversary. Since these are deferred annuities, the earliest commencement date may not be less than one year after the annuity issue date.
 - (i) The Department has generally accepted flexible income commencement ranges spanning from 1 – 20 years from the issue date. Where an organization desires to use a commencement range beyond 20 years from the issue date, the organization must provide justification in the submission letter in support of such an extended period. Ranges beyond 20 years will be reviewed on a case-by-case basis.
 - (ii) The deferred agreement must set forth all optional commencement dates (the first possible date being no earlier than 1 year from the issue date) and what the annuity payment amount would be for each optional commencement date. This is most often accomplished in a schedule attached to the agreement. The sample

schedule submitted to the Department should set forth bracketed variables that show the range of potential commencement dates.

Note: The submission letter to the Department must confirm that all optional commencement dates and corresponding annuity payment amounts will be set forth in the schedule when issued.

For example, if the agreement provides that the annuitant may commence annuity payments on any contract anniversary for the first five years following issue of the contract, the sample flexible commencement date schedule submitted to the Department may be drafted similar to the following example:

<u>Annuity Payment Schedule</u>	
<u>Where Payments commence on this date</u>	<u>Such Annual Income Amount Will Be</u>
[day/month/year1]	\$ [Annual Income Amount1]
[day/month/year2]	\$ [Annual Income Amount2]
[day/month/year3]	\$ [Annual Income Amount3]
[day/month/year4]	\$ [Annual Income Amount4]
[day/month/year5]	\$ [Annual Income Amount5]

- (iii) The agreement form must provide that payments will commence automatically on the final optional commencement date if payments have not already been commenced prior to that date.
- (iv) The agreement form must disclose that if the annuitant(s) dies before the payment commencement date no annuity payments will be made.

C.3) A provision indicating the age and/or birth date of the annuitants.

C.4) A misstatement provision similar to the following:

If the birth date of the Annuitant should be found to be incorrect, the amount payable or benefit accruing under this Agreement, at any time, shall be such as would have been provided according to the correct birth date. If any underpayment or overpayment has been made due to such misstatement, any such underpayment shall promptly be paid to the Annuitant, and any such overpayment shall be charged against the current and/or next succeeding payment(s) to the Annuitant.

C.5) A governing law provision.

- (a) In most situations a statement in the agreement that it is governed by the laws of the State of New York will suffice.

- (b) If the donor is a resident of another permit-issuing state, we have accepted language substantially similar to the following:

This agreement is executed in the State of New York and shall be governed by the laws of the State of [name of state], the state of residence of the donor when this agreement is delivered to the donor. In the event that New York and [name of state] laws or regulations differ with regard to a specific requirement relating to minimum reserve requirements or solvency standards applicable to charitable gift annuity agreements, the more stringent requirement or solvency standard will apply to this agreement. In no circumstances may any minimum reserve requirement or solvency standard applied to this agreement fall below the minimum standards imposed by New York law or regulation.

- C.6) A statement to the effect that the obligation of the charitable organization to make the annuity payments is in consideration for the charitable gift being made by the donor.
- C.7) A statement of the donor's intent indicating that the donor intends, in part, to make a charitable gift to support the work of the organization.
- C.8) A provision specifying what the gift consists of, i.e., the amount of cash and/or a specific description of any other property.
- (a) Many agreements reference an attached schedule or appendix in order to more completely describe the property transferred. However, the agreement cannot have an unqualified reference to an unspecified gift of property in a "Schedule A." The agreement itself must indicate what type of property is being described in any attachment. For a transfer of negotiable securities, sufficient identifying information must be provided either in the agreement or an attached schedule, i.e., name of the corporation, type of shares, number of shares and current fair market value.
- (b) Acceptable language includes "...hereby transfer [cash in the amount of \$ _____] [and/or] [other property] [described in Schedule A annexed hereto having the fair market value of \$ _____]." As noted in (a) above, the entry for [other property] must be filled in with the type of property being more specifically described in Schedule A.

Where an organization seeks to utilize a Schedule page for the property description, such page must be included as part of the form submission and should contain bracketed general language where the specific description of the gifted property will appear when the agreement is issued; e.g., "[Description of Gifted Property]", or "[Property Description]".

- C.9) A statement that upon the death of the last annuitant or the survivor of two joint annuitants, the obligation of the organization to make annuity payments shall end. Agreements that allow for deferred payments should also include a statement describing what happens if the donor(s) die prior to the commencement of the annuity payments.
- C.10) If the agreement allows a donor to designate a particular aspect of the organization's activities as the recipient of all or part of the gift, then the agreement must state that any gifts not specifically designated will be used to further the general charitable purposes of the organization. This informs all donors of their ability to designate a specific use for their donation and informs them of the use of funds not subject to the designation.
- Note:** It may be permissible for such provision to designate the organization's support of another entity as the use of the gift as long as such support is in accordance with the general charitable purposes of the charity and does not violate any other statutes or regulations governing charities. However, the Department may object if it appears that such designation is being used as a means for the entity ultimately benefiting from the gift to operate a gift annuity program without complying with the requirements of Insurance Law § 1110.
- C.11) If the person signing the agreement on behalf of the charitable organization is not an officer of the organization, the agreement must include a statement that the person signing is duly authorized to sign on behalf of the organization. If the person signing the agreement is an officer, the signature block should include the officer's title.
- C.12) A statement indicating that the agreement, including any attached schedules, if applicable, constitutes the entire agreement between the parties.
- C.13) A statement indicating that the agreement is irrevocable.
- C.14) A statement indicating that the agreement is nonassignable, except that it can be assigned to the issuing organization.
- C.15) A signature block for the donor(s) to sign the agreement.

III.D) Prohibited Language

- D.1) Agreements may not contain language that indicates that the organization does not intend to be bound to make the agreed upon annuity payments.
- D.2) Agreements may not contain sex-specific terms and must be drafted using gender neutral language. Examples of sex-specific language include references to "his wife" or "her will", "husband" and "wife". We have accepted forms that use "his/her", "Annuitant 1" and "Annuitant 2".

III.E) Right to Revoke

- E.1) The right (or power) of revocation in charitable gift annuities involves the ability of a donor to terminate some portion of the future interest of an annuitant or successor annuitant in the donated property. The exercise of this right ends the organization's obligation (either in whole or in part) to pay an annuity after the death of the revoking donor. For gift tax reasons, the right to revoke is often included where the donor names someone other than or in addition to himself/herself as annuitant. The revocation language does not apply when the donor is the sole annuitant. The agreement must indicate whether or not the donor will be an annuitant.

The right to revoke is an optional feature in charitable gift annuity agreements. This option must be offered to every potential donor, regardless of his or her gift tax status. Therefore, revocation language should be enclosed in brackets to denote variability.

Note: With the following exception, the organization must confirm to us in writing that every potential donor will be given the choice of whether or not to include the provision, and that the revocation wording will be either included as written or not included at the option of the donor(s). A confirmation is not required for forms where the donor is the sole annuitant.

If a revocation provision is not included at the option of the donor, any subsequently numbered paragraphs in the agreement will need to be renumbered. Accordingly those section numbers should be bracketed as variable; i.e., "[8.], [9.], [10.]".

- E.2) The right of a donor to revoke may be exercisable only by the donor's Last Will and Testament or other testamentary means, and cannot be revoked by any non-testamentary means.
- E.3) If an agreement states elsewhere that it is irrevocable, then the right to revoke provision must be prefaced with language similar to the following:
- "Notwithstanding any of the foregoing sections, . . ."
- E.4) If the agreement is established by two (2) donors wherein either or both include the revocation option at issue, the revocation text should indicate that each donor may revoke up to such donor's "proportional interest" in the gifted property.

IV) Annuity Rate Requirements of § 1110(a)

- IV.A) The maximum annuity rates used by the organization shall be computed on the basis of the annuity standard adopted by it for calculating its reserves so as to return to it

upon the annuitant's death a residue at least equal to one-half the original gift or other consideration for such annuity.

IV.B) A schedule of the maximum rates must be accepted by this Department for filing with every application for a special permit or request for an exemption from the permit requirement.

IV.C) The rate requirements of § 1110(a) prohibit the issuance of a so-called "College Gift Annuity" in which the life annuity issued could be exchanged for a specific payment to be made annually for four years beginning with the annuitant's 18th birthday. The language of § 1110(a) clearly contemplates that the organization will not obtain full benefit of the charitable gift until the annuitant's death.

V) Additional Information

There are additional guidance documents and materials available on the Department of Financial Services website. They address topics such as the application for a special permit, annual report requirements and reserve issues.