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Complying with Gift Annuity Regulations



Date: February 28, 2013
Time: 1:00 – 2:30 Eastern Time
Presenter: Edie Matulka
 Senior Consultant
 PG Calc Incorporated



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Agenda

- Becoming compliant
 - Different levels of regulation
 - Criteria to meet
 - Action required
- Staying compliant
 - Criteria that requires monitoring
 - Annual filings - timeline

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No CGA-Specific Filing

■ = Silent ■ = Exempt – No Notification


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No Notification – Most Common Criteria:

- Years in operation
 - Ranges from 3 – 20 years
- Unrestricted assets
 - Ranges from \$100,000 to \$2 million
- Disclosure language
 - Agreements
 - Marketing materials (SD)


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No Notification – Other Criteria:

- Non-gift annuity registration
 - Foreign corporation
 - Charitable solicitation
- Disclosure statement
 - Philanthropy Protection Act
 - State-specific content
- Segregated reserve fund


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No Notification – Action Required

- Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Utah
 - **Nothing** (no additional criteria)
- Nebraska, South Carolina
 - **Confirm operation for requisite period of time (3, 5)**
- Illinois
 - Confirm operation for requisite period of time (20)
 - **Determine sufficiency of unrestricted assets (\$2M)**
 - **If don't meet both criteria, can issue if reinsure**


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No Notification – Action Required

- Colorado
 - > Confirm operation for requisite period of time (3)
 - > **Ensure applicable disclosure language used**
- Virginia, Vermont
 - > Confirm operation for requisite period of time (3)
 - > Determine sufficiency of unrestricted assets (\$100k, \$300k)
 - > Ensure applicable disclosure language used


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No Notification – Action Required

- Arizona
 - > Confirm operation for requisite period of time (3)
 - > Determine sufficiency of unrestricted assets (\$300k)
 - > **Create state-specific disclosure statement**
- Maine
 - > Confirm operation for requisite period of time (5)
 - > **Registration as foreign corporation**

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No Notification – Action Required

- Kentucky
 - > **Registration as charitable organization** (if not exempt)
- SD
 - > Confirm operation for requisite period of time (10)
 - > Determine sufficiency of unrestricted assets (\$500k)
 - > Ensure applicable disclosure language used (agreement **and marketing materials**)
 - > **Registration as foreign corporation**

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No Notification – Action Required

- Oregon
 - Confirm operation for requisite period of time (5)
 - Determine sufficiency of unrestricted assets (\$300k)
 - Ensure applicable disclosure language used
 - Segregated gift annuity reserve fund

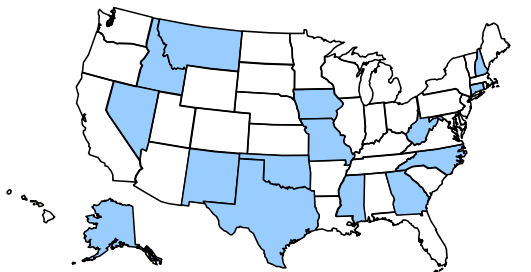



No Notification – Action Required

- Pennsylvania
 - Confirm operation for requisite period of time (3)
 - Determine sufficiency of unrestricted assets (\$100k)
 - Ensure applicable disclosure language used (longer than most)
 - Gift annuity reserves (segregation not specified; one-half principal value of issued CGAs)
 - Registration for charitable solicitation (if needed to be "qualified organization")



Notification Required




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Notification – Most Common Criteria:

- Years in operation
 - 3 years
- Unrestricted assets
 - Either \$100,000 or \$300,000
- Disclosure language
 - Agreements
 - Marketing materials (OK)


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Notification – Other Criteria:

- Non-gift annuity registration
 - Charitable solicitation
- Segregated reserve fund
- Gift annuity rates
 - Cannot exceed ACGA rates (NH)


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Notification – Action Required

- Filing to the state
 - State prescribed form or notification letter
- Supporting documentation
 - IRS tax-exempt letter
 - Audited financials
 - Sample gift annuity agreement
 - Gift annuity application form
 - Sample marketing materials
 - Proof of other applicable registrations


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Notification – Action Required

- Alaska, Connecticut, Georgia, Idaho, Iowa, Missouri, Nevada, New Mexico, North Carolina, Texas, West Virginia
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$100k or \$300k)
 - Ensure applicable disclosure language used


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Notification – Action Required

- Oklahoma
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$100k)
 - Ensure applicable disclosure language used (agreement **and marketing materials**)


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Notification – Action Required

- Mississippi
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$300k)
 - Ensure applicable disclosure language used
 - **Registration as charitable organization**


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Notification – Action Required

- Montana
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$100k in unrestricted or \$300k in net worth)
 - Ensure applicable disclosure language used
 - Segregated gift annuity reserve fund


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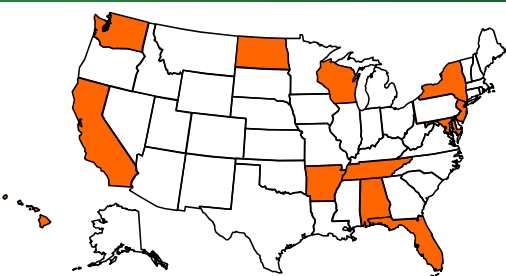
Notification – Action Required

- New Hampshire
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$300k)
 - Ensure applicable disclosure language used
 - Registration as charitable organization
 - Segregated gift annuity reserve fund
 - Gift annuity rates cannot exceed those of ACGA


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Application (Most Highly Regulated)




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Application – Requirements:

- Years in operation
 - Ranges from 3 – 10 years
 - In-state activity in Hawaii and Maryland
- Unrestricted assets
 - \$500,000 for Washington
 - \$200,000 held in-state for Hawaii
 - Even if unspecified amount, states looking at financial condition


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Application – Requirements:

- Annuity agreement content
 - Disclosure language
 - Specific provisions (e.g., payment correction, age or DOB of annuitant, governing law)
- Schedule of maximum gift annuity rates
 - May require actuarial support if higher than ACGA
 - Addendum if lower than submitted schedule (CA)


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Application – Requirements:

- Segregated reserve fund
 - Minimum fund balance
 - Varying calculation methodologies and surplus requirements
 - State-specific fund(s)
- Investment restrictions
 - Prudent investor
 - Specific requirements (CA and FL)


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Application – Requirements

- Filing of gift annuity rate schedule
- Registration with other state agencies
- Board resolutions
- Appointment of in-state agent
- Disclosure statement – state-specific content
- Information from individuals


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Application – Action Required

- Filing to the state
 - One or more state prescribed forms
- Supporting documentation
 - Organizational: IRS tax-exempt letter, articles of incorporation, by-laws, listing of board/officers, certificate of good standing
 - Financial: audited financials, Form 990, reserve fund information, investment policy statement
 - Programmatic: prototype agreement forms, disclosure statement, marketing materials


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Application – Action Required

- Alabama
 - Disclosure language/annuity agreement content
 - **State-specific disclosure statement**
 - Segregated gift annuity reserve fund
 - Gift annuity rate schedule
 - **Appoint state agency as agent for service of process**
 - **Information from individuals (Form U-4)**


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Application – Action Required

- Arkansas
 - Operation for requisite period of time (5)
 - Annuity agreement content
 - Segregated gift annuity reserve fund (minimum fund balance - \$50k)
 - Investment per prudent investor or specific limitations
 - Gift annuity rate schedule
 - Adoption of board resolution


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Application – Action Required

- California
 - Operation for requisite period of time (10)
 - Disclosure language/annuity agreement content
 - Disclosure in marketing materials
 - Segregated gift annuity reserve fund (CA-only)
 - Investment per specific limitations
 - Gift annuity rate schedule (addendum if lower)
 - Adoption of board resolution
 - Appoint in-state agent for service of process
 - Information from individuals (Individual Affidavit)


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Application – Action Required

- Florida
 - Operation for requisite period of time (5)
 - Disclosure language in agreement (not submitted to state)
 - Segregated gift annuity reserve fund (option for FL-only)
 - Investment per specific limitations


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Application – Action Required

- Hawaii
 - > Operation for requisite period of time (10), with **need for activity in-state**
 - > Sufficiency of unrestricted assets (\$200k, **held in Hawaii**)
 - > Disclosure language in agreement (**not submitted to state**)
 - > Segregated gift annuity reserve fund (**minimum surplus requirement - \$100k**)
 - > Investment per prudent investor


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Application – Action Required

- Maryland
 - > Operation for requisite period of time (10), with **need for activity in-state**
 - > Disclosure language/annuity agreement content
 - > Segregated gift annuity reserve fund
 - > Investment per prudent investor
 - > Gift annuity rate schedule


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Application – Action Required

- New Jersey
 - > Operation for requisite period of time (10)
 - > Annuity agreement content
 - > **Registration as charitable organization and as foreign corporation**
 - > Segregated gift annuity reserve fund (**minimum surplus requirement - \$100k**)
 - > Investment per prudent investor
 - > Gift annuity rate schedule
 - > **Adoption of board resolution**


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Application – Action Required

- New York
 - Operation for requisite period of time (10)
 - Annuity agreement content
 - Segregated gift annuity reserve fund (minimum fund balance - \$100k; two levels of surplus)
 - Investment per prudent investor
 - Gift annuity rate schedule
 - Adoption of board resolution


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Application – Action Required

- North Dakota
 - Annuity agreement content
 - Segregated gift annuity reserve fund
- Tennessee
 - Disclosure language/annuity agreement content
 - Segregated gift annuity reserve fund (TN-only no longer required)
 - Investment per prudent investor
 - Appoint state agency as agent for service of process


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Application – Action Required

- Washington
 - Operation for requisite period of time (3)
 - Sufficiency of unrestricted assets (\$500k)
 - Annuity agreement content
 - Registration as charitable organization
 - Segregated gift annuity reserve fund
 - Investment per prudent investor
 - Gift annuity rate schedule
 - Appoint state agency as agent for service of process


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Application – Action Required

- Wisconsin
 - > Operation for requisite period of time (10)
 - > Disclosure language/annuity agreement content
 - > Segregated gift annuity reserve fund (minimum surplus requirement - \$100k)
 - > Investment per prudent investor
 - > Gift annuity rate schedule
 - > Appoint in-state agent for service of process


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Staying Compliant

- Years of operation
 - > Activity in Maryland and Hawaii
 - > Separate Foundation
- Minimum assets (24 states)
 - > At time of issuance
 - > Annual reporting (HI, WA)
 - > Self-suspension


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Staying Compliant

- Rates
 - > Filed: AL, AR, CA, MD, NJ, NY, WA, WI
 - > Notify when change
 - > Addendum to agreement if offer lower (CA)
- Agreement forms
 - > Filed: AL, AR, CA, MD, NJ, NY, ND, TN, WA, WI
 - > New forms need approval
 - > Disclosure language (in 23 states where forms not submitted)


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Staying Compliant

- In-state agent
 - Individual or firm (CA, WI)
 - State agency (AL, TN, WA)
- Marketing
 - Disclaimer and disclosure (CA, OK, SD)
 - No testimonials in Alabama


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Staying Compliant

Monitoring reserve fund

- Fund balance
- Investment allocation
- Not just at FYE or CYE




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Staying Compliant

Annual filings

- What:
 - Renotification, audited financials
 - Detailed reporting
- When:
 - FYE vs. CYE; tickler system
- Who:
 - PGO or business/finance



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Stay Compliant – Annual Filings

For a charity with a 12/31 FYE

- January 30
 - > CA: 4th quarter reporting of new CGAs; agreement attestation (quarter end + 30)


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Stay Compliant – Annual Filings

- March 1
 - > AL: audited financials (FY + 60)
 - > CA: renewal fee
 - > FL: on-line attestation (FY + 60)
 - > MT: re-notification
 - > NY: annual report
 - > TN: letter re: intent to renew and fee
 - > WA: annual report and fee (FY + 60)
 - > WI: annual report and fee


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Stay Compliant – Annual Filings

- March 15
 - > HI: annual report
- March 31
 - > MD: annual report (FY + 90)
 - > TN: annual report; financials (if verified) (FY + 90)


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Stay Compliant – Annual Filings

- April 30
 - > CA: annual report (CY/FY + 120); 1st quarter reporting of new CGAs
 - > NJ: annual report; audited financials (CY/FY + 120)
 - > WA: audited financials (FY + 120)
- May 15
 - > NH: renotification (part of charitable organization renewal) (FY = 4 months, 15 days)


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Stay Compliant – Annual Filings

- May 30
 - > TN: financials (if audited) (FY + 150)
- June 29
 - > AR: annual report (FY + 180)
- July 30
 - > CA: 2nd quarter reporting of new CGAs


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Stay Compliant – Annual Filings


- October 30
 - > CA: 3rd quarter reporting of new CGAs
- December 31
 - > AL: renew "restricted agents" (fee of \$60 per agent)
- Additional info (once available)
 - > AFS: GA, ND (+ 15 days), OK (+ 90 days)
 - > 990: WA (+ 15 days of submission to IRS)

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Staying Compliant


- Staff Transition
 - > Maintain files
 - > Color coded map
 - > Tickler system



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Questions?



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Still Have A Question?

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