

[admin](#) - Wed, 9/1/2010 - 00:00

If your organization has a purely “local” donor base, your planned giving program may not be affected by the laws of any state other than your own. But what happens when a key supporter moves to another state yet still wants to benefit the organization, whether through a charitable gift annuity or simply a bequest? Even charities that routinely work with donors throughout the country have to be mindful of all the ways legal and operational issues can have an impact on planned giving activity.

### **May I See Your License to Ask for Gifts, Please?**

Just as you should comply with your own state’s charitable solicitation requirements, you will need to be alert to the mandates of other states. While exactly what constitutes “solicitation” can vary among jurisdictions, you should not assume your state’s definition will match that of another state. A single out-of-state donor making a single gift may entail merely one-time compliance. Often, however, permits, fees, etc. can pose ongoing administrative and financial demands.

If your organization seeks to issue gift annuities to donors in other states, chances are it will need to comply not only with charitable solicitation laws, but also with whatever regulatory scheme may govern gift annuities (both in your state and in the donor’s state). Compliance with the laws of certain states is sometimes an easy and inexpensive matter, whereas in other cases a charity that issues – or merely offers to issue – a gift annuity without first obtaining the necessary authority to do so risks fines and other sanctions, as well as possible adverse publicity.

Meeting the requirements of such states can be a long-term commitment that typically involves a host of things a charity must do both initially and then annually thereafter. For an introduction to what different states expect and how PG Calc can help meet those expectations, please visit the state regulation portion of our website.

### **Death and Taxes**

Consider this scenario: Your donor uses a lawyer in your state to draw up a will that makes a bequest to your organization. The donor then moves to another state and

dies without having his or her will reviewed by a lawyer in that state. Is the bequest still valid? Is the will itself still valid? Chances are the answer to both questions is “yes,” but it can depend on a number of factors. If a charity keeps track of donors who have notified it of their bequest intentions, it is in a position to prompt such donors who have moved to other states to consult with new legal counsel regarding all aspects of their estate plans, including their charitable bequests.

A valid bequest in a valid will is simply the beginning of actually benefiting from an out-of-state donor’s gift. You may find that the probate process of the state in question is full of steps, documents, and timelines quite different from those you are accustomed to in your state. Particularly if your organization is designated as the recipient of a large or complex bequest, it may be worthwhile to engage a knowledgeable probate lawyer who practices in the state where your late donor lived.

Donors who establish life income plans or make other gifts during their lifetimes, rather than on a testamentary basis, are often attracted to the resulting income tax benefits. Fortunately, the federal income tax aspects of a planned gift are the same nationwide. Yet state (and even municipal) income tax laws can also come into play. Gift planners with charities domiciled in the handful of states, such as Florida and Washington, that do not have income taxes need to bear in mind that these taxes are a fact of life in most other states. Quite often the federal income tax advantages associated with a charitable gift will be augmented if the donor lives in a state with an income tax of its own. As always, however, a charity should advise donors to confirm with their own tax advisors all implications of making a proposed gift. In this regard, some donors will, along with their advisors, already have devoted quite a bit of care to determining which particular state should in fact be deemed to be their state of domicile. This is especially likely to be the case with “snowbirds” who spend a good portion of each year in your state but may technically be considered to live in another state for income tax purposes. Remember, too, that some states have their own estate and gift taxes.

### **Keepin’ It Real (Estate)**

Warning: If a donor down the street wants to use real property located in another state to make a gift (whether during life or upon death), your planned giving program is about to cross state lines. You will now have to pay attention to things such as how to examine and evaluate the property. Do you have to conduct a site

visit? To what extent do you rely on a team of professionals (real estate agents, inspectors, and appraisers)? Then there are the legal issues. What's involved in transferring title? What costs are going to be attributable to transfer taxes and fees?

Recently, a few of us at PG Calc assisted a hospital located in the Boston area, where we have our main office, with a retained life estate gift of a condominium located in the Seattle area, where we also have an office. We hooked the charity up with professionals on the ground all the way across the country: a seasoned appraiser for the donor to engage and, for the hospital, an estate planning lawyer (who just happened to be a former president of the planned giving council serving Seattle!) in a full-service law firm that also offered real estate expertise. As a result, the charity could take comfort in knowing that various details were receiving proper attention.

### **A Matter of Trust**

In some states, notably California, donors routinely have a revocable living trust as the centerpiece of their estate plans in order to avoid the costs, delays, and public nature of the probate process. Of course, donors in any state may value these features. The point is that a bequest made by such a donor may well take the form of a provision in a trust instrument, rather than in a will. This means it may become necessary for the charitable beneficiary of such a gift to seek the assistance a lawyer familiar with the trust code of the state in which the trust was established. Even charitable remainder trusts and charitable lead trusts, which are essentially creatures of federal law for tax purposes, ultimately depend on state law for their existence. Issues such as accounting for principal and income or the merging of income and remainder interests when a charitable remainder trust is terminated on an accelerated basis need to be addressed with reference to applicable state law.

### **His, Hers, and Theirs**

California and about 10 other states have some form of community property law that affects how a husband and wife own their assets (and the income attributable to those assets). Gift planners with charities operating in so-called "common law states" may be quite unfamiliar with the impact of community property laws, which themselves can differ quite a bit from state to state. Conversely those with charities in community property states may have to pay attention to the fact that what seems like a gift being made by a married couple is really a gift from just one of them (a

result that can also come about in a community property state when the separate property of only one spouse is used to make a gift).

## **Conclusion**

As much as possible, you want to be able to say “yes!” to any and all gifts. Still, it is prudent to be aware that the same gift can raise different issues, depending on the states involved. Frequently you will be able to address all the necessary details on your own, but sometimes your organization’s legal counsel, and perhaps others as well, will need to be called upon to guide you as you travel the interstate gift planning highway.

[Print](#)

Categories

[PG Calc Featured Articles](#)