

# PLANNED GIVING T·O·D·A·Y®

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PROVEN, PRACTICAL  
GUIDANCE FROM  
THE PLANNED  
GIVING EXPERTS

## Should Every Charity Offer Gift Annuities?

BY FRANK MINTON

Recently, I received a call from a person asking if I had a sample gift annuity agreement that I could send. The caller had accepted shares of stock for a gift annuity, sold them, and was now wondering what to do. This was her first gift annuity, yet her board had never authorized the issuance of gift annuities, no prototype agreements had ever been approved by legal counsel, no administrative arrangements had been made, and the caller was unaware of state regulations.

By virtue of a donor initiative, the charity was stumbling into a gift annuity program.

While it is uncommon for a charity to start issuing gift annuities without board authorization, there are many instances when charities launch gift annuity programs with little consideration of their ability to attract and administer such gifts.

The 2013 national survey of gift annuities conducted by the American Council on Gift Annuities (ACGA) found that 13 percent of charities had in force 10 or fewer annuities, and that 41 percent had between one and 40. Many of them have been offering gift annuities for years with modest results, and some, given the choice, probably would get out of the gift annuity business.

A gift annuity program with a small number of annuities is often not cost effective. Its minimum costs for investment of reserves and fixed costs for state reporting cause annual expenses to be well above the one-percent-of-reserves assumption by the ACGA when suggesting gift annuity rates. Consequently, the residuum left for the charity could be

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## Charity IRA Beneficiaries Navigate Stormy Seas to Safe Harbors: Part II

BY JEFF COMFORT

Have you opened an Inherited IRA account for your charity for the purpose of receiving funds to fulfill a designated gift from a deceased donor? Then here's my first question for you: Was it even legal for your organization to own an IRA?

When your charitable institution is named the beneficiary of an IRA gift at the death of a donor, sometimes the process of receiving this gift is simple. All you need to do is let the IRA custodian know if you prefer a paper check or a wire transfer. However, many custodians (mostly large firms) require the charity

to open an account with the custodial corporation in order to receive their gift funds. This is typically an Inherited IRA account.

Part I of this article (in the June 2016 issue of *Planned Giving Today*) framed the issues involved in a charitable recipient being required to open an Inherited IRA account. A recent national survey showed that the vast majority of charities simply fill out the forms to open an Inherited IRA account in order to receive their gift funds. The forms are usually extensive and take no small amount of

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time to complete, though the time involved is not the big issue.

It is the information required to open the Inherited IRA account that is an issue. The custodian asks for a staff member to provide highly personal information, including a Social Security number, birthdate, and driver's license number.

Part I of this article urged readers to push back. So where do you begin?

Perhaps you make a phone call to the custodian. You can say you will submit the account form, but add that no staff member will provide personal information. Instead, you might offer to provide corporate information including the charity's federal tax identification number. You can expect to hear the custodian cite the Patriot Act, emphasizing that the personal information required on the account form is a compliance matter.

Keep in mind that the person on the other end of the line probably has no clue of the actual issues involved. In just such a call last week to a custodian, the representative noted that, "These charitable distributions represent less than one-tenth of 1 percent of their IRA distribution business."

In another instance of pushing back, I called a longtime friend who had been the head of the custodian's national philanthropic services to ask if she had thoughts on a charity being asked to open an Inherited IRA account. She sighed heavily and said, "Yeah, we are a huge corporation with several hundreds of thousands of employees and this is simply a training issue." With her help, I circumvented the "required" opening of an Inherited IRA account.

Reflecting on this matter, one survey responder wrote: "My inbox is full of notes from charities across the country who cannot get the big institutional custodians to release IRA assets from deceased account holders who have named a charitable organization as the beneficiary. The issue is the intersection of the charitable designation and the Patriot Act, and there is a massive accident in that intersection."

With this perspective, the effort to push back will almost always devolve into an in-depth parsing of words in the Patriot Act. While I personally believe that the Patriot Act does not mandate me to provide my Social Security number or other personal

information in this instance, I am not a lawyer. The real question here is, should we even go to the scene of the accident in this intersection, or should we take a different path?

Let's start with an understanding. Each IRA is actually a trust, and the bankers/custodians are trustees. It makes sense for trustees to require an Inherited IRA for individuals. It does not make sense to require this for charities.

### **IRC Section 408**

In discussing this, legal counsel advised me that IRA beneficiaries and trustees are governed by Internal Revenue Code (IRC) Section 408, which is a top-of-the-pyramid law written by Congress and signed by the president. IRC Section 408 specifically refers to "individual" beneficiaries.

When the IRC refers to individuals, it specifically means human beings with a measurable life expectancy as opposed to when it refers to "persons," which may include an individual, partnership, corporation, nonprofit corporation, association, joint venture, private organization or other legal entity, and includes the plural of that term. Specifically, an Inherited IRA is an IRA acquired from an individual who is not your spouse. Only an individual can acquire an Inherited IRA. Only a human being can establish an Inherited IRA.

With this in mind, the strategy to push back distills to this simple question for the custodian asking you to open an Inherited IRA account. You ask, "What is your firm's legal basis for requiring my charity to open this account?"

The trick is to reach the right person in the custodial firm to answer this question. Don't expect to resolve it with the first phone call or written message to the person who initially sends you the forms to open an Inherited IRA account. Ask for a manager or supervisor. Resolution almost always requires moving up the custodian's chain of command to something such as the compliance department, office of risk management, or legal department.

You can expect to be asked to submit your request in writing. I suggest something as simple as this example:

*The assets in the XXX IRA that YYY Financial is holding lawfully belong to the Foundation and we ask for them to*

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**Each IRA is  
actually a trust.**

Seven universal emotions, and each displays its own unique facial expressions.

## You Might Be Surprised ... Ah, I See You Are!

BY REBECCA ROTHEY

I made two donor visits recently that started me thinking about the importance of paying attention to facial expressions during meetings.

The first was with a donor who, sadly, is suffering from multiple sclerosis. One of the impacts of the illness is that he is losing muscular control over his facial expressions. My colleague and I commented after the meeting that, although his verbal comments were positive, it was impossible to know from his facial expressions what his actual intentions were. Happily, he did subsequently make a significant commitment.

In the second visit, the donor was angry about perceived injustices. His face was hard as he spoke about the things that angered him. Only twice during the conversation did his face soften; it was the second time he was asked what would excite him about a potential future gift. His animated expression in response provided strong clues about how to overcome his strongly felt objections and move him toward a potential gift.

For most experienced gift officers, reading nonverbal communication becomes second nature. I have always assumed I was a fairly good judge of these nonverbal clues, which include facial expressions, body language, and gestures. Certainly, a sustained smile with wrinkled eyes is easy to understand, and we know that whites in the eyes display fear. These are macro expressions we all recognize. However, there are other and more subtle expressions that are less easy to detect and interpret.

In preparation for this article, I scanned some of the available literature about facial expressions and the value of being

able to read them correctly. For the sake of time and space, I am not including other nonverbal forms of communication and the value in reading them correctly. This article shares some of the surprising (to me at least) things I learned about the importance of improving one's ability to recognize and understand facial expressions.

There are seven universal emotions, each displayed by its own unique facial expression. Research has shown that humans experience these emotions and display these expressions across cultures and gender. Those emotions are anger, contempt, disgust, fear, joy, sadness, and surprise. When emotions are expressed normally, they appear due to a group of facial muscular actions and typically last from .05 to 4 seconds.<sup>1</sup>

Psychologists David Matsumoto and Paul Ekman wrote for Scholarpedia in 2008 identifying a characteristic set of facial manifestations for each of the seven emotions.

**Anger:** Nostrils raised, mouth compressed, a furrowed brow, eyes wide open, and head erect.

**Contempt:** Lip protrudes, nose wrinkled, partial closure of eyelids, turned-away eyes, and a one-sided raised upper lip.

**Disgust:** Lower lip turned down, raised upper lip, opened mouth, and wrinkled nose.

**Fear:** Eyes wide open, mouth open, lips retracted, and raised eyebrows.

**Joy:** Eyes sparkle, skin under eyes wrinkles into crow's feet, the mouth draws back and up at corners (a smile).

**Sadness:** Corner of the mouth de-

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*be delivered promptly, please. We have provided you with our Foundation name, address, and EIN. What is the legal basis for YYY Financial to require us to open an Inherited IRA account?*

This approach works. I have been asked numerous times over many years to open an Inherited IRA account for my nonprofit employer. I won't do it. Every time I have pushed back, eventually the custodian has

agreed to deliver the funds directly without opening the account.

The process can take a month or two, but it is the right thing to do. Keep in mind that this transaction is a less than a one-tenth of 1 percent occurrence for the custodian, and that the vast majority of those events are handled with the charitable recipient simply agreeing to open an Inherited IRA account.

Imagine if all — or even most — charitable organizations pushed back.

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