
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 13B

WV Legislature

§33-13B-1. Definitions.

(a) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(b) "Charitable organization" means an entity described by:

(1) Section 501(c)(3), of the Internal Revenue Code of 1986 (26 U.S.C. 501(c) (3)); or

(2) Section 170(c), of the Internal Revenue Code of 1986 (26 U.S.C. 170 (c)).

(c) "Qualified charitable gift annuity" means a charitable gift annuity described by 501(m) (5), of the Internal Revenue Code of 1986 (26 U.S.C. 501(m) (5)), and 514(c) (5), of the Internal Revenue Code of 1986 (26 U.S.C. 514(c) (5)), that is issued by a charitable organization that on the date of the annuity agreement:

(1) Has a minimum of \$300,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and

(2) Has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

§33-13B-2. Charitable gift annuity is not insurance.

Notwithstanding any other provision of this code to the contrary, the issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state, and the issuance of any charitable gift annuity prior to July 1, 2006, does not constitute engaging in the business of insurance in this state.

§33-13B-3. Notice to donor.

(a) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this state, is not subject to regulation by the commissioner and is not protected by the West Virginia Life and Health Insurance Guaranty Association established in article twenty-six-a of this chapter or by any other guaranty association established by this code.

(b) The notice required by this section shall be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

§33-13B-4. Notice to Insurance Commission.

(a) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner of such fact in writing by the later of September 30, 2006 or the date on which it enters into the organization's first qualified charitable gift annuity agreement.

(b) The notice required by subsection (a) of this section shall identify the organization, be signed by an officer or director of the organization, and certify that the organization is a charitable organization and that the annuities issued by the organization are qualified charitable gift annuities.

§33-13B-5. Failure to provide required notice; penalties.

Any person who violates any provision of section three or four of this article may, after notice and hearing pursuant to section thirteen, article two of this chapter, be fined by the commissioner a sum not to exceed \$1,000 per qualified charitable gift annuity agreement issued: Provided, That the failure of a charitable organization to comply with the notice requirements imposed under section three or four of this article does not prevent a charitable gift annuity that otherwise meets the requirements of this article from constituting a qualified charitable gift annuity.

§33-13B-6. Unfair or deceptive trade practices act not applicable.

The issuance of a qualified charitable gift annuity does not constitute a violation of article eleven of this chapter.

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