



## TIAA-CREF trust company

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**Big 12 Development Conference  
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## **Ethical Dilemmas in Gift Planning: When Do We Cross the Line?**



# Today's Discussion

- Sources of Ethical Rules for Gift Planners
- Practical Applications
- Recent “Real Life” Examples



# Sources of Ethical Rules

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# Sources of Ethical Rules

- Federal and State Law
- Professional Standards
  - Attorneys
  - Accountants
  - Insurance Professionals
- AFP Code of Ethical Principles and Standards
- A Donor's Bill of Rights
- PPP (NCPG) Model Standards of Practice
- Others?

# Practical Applications

## Scenario #1:

At the box social, Will Parker, visiting from New York, tells PG officer Curly McClain confidentially that his family business is not doing well, and that he is in need of another source of reliable, immediate income. He is familiar with gift annuities from Curly's website and would like to set one up for himself and his wife, Ado Annie.

He proposes funding a CGA with company stock worth \$1 million. His wife Annie will provide the qualified appraisal. He insists, however, that Curly's charity agree not to sell the stock for at least 3 1/2 years.

Will also thinks the ACGA rates are far too low. He tells Curly that other local charities have offered to pay up to 1% higher than the recommended rate for his and Annie's ages, and expects Curly to match the offer or lose the gift.

A \$1 million CGA would put PG officer Curly over his goal for the year (and it's been a tough year!)

# Practical Applications

## Scenario #1 - Issues Raised:

- Legal? (Federal and State)
- Model Standards?
- University Policy?
- Other?

How should PG Officer Curly Respond?

# Practical Applications

Scenario #1 - a (suggested) list of issues:

- Federal Law: Qualified Appraiser / Form 8283 / 10% remainder
- State Law: NY Insurance Dept: registration? rates on file?
- Model Standards: I. Philanthropic motivation? VI. Consultation with advisors? IX. Compliance with letter and spirit of the law?
- Charity's GAP: Illiquid asset funding CGA? Policy to sell stock? Age limit for annuitants? Maximum rates?



# Practical Applications

## Scenario #2:

PG Officer Curly has explained the benefits of a charitable remainder trust to donor, Judge Andrew Carnes. Judge Carnes would like to establish a CRUT for the benefit of his daughter, Annie, during her life, with the remainder passing to the local schoolhouse (a qualified charity).

Judge Carnes never practiced trust law, but he is reluctant to hire an attorney to draft the CRT and is thinking of doing it himself. Curly suggests, instead, that the schoolhouse endowment might be tapped to pay a lawyer from Stillwater to draft the document. Alternatively, Curly is also confident that the school's in-house counsel, Ali Hakim, would agree to draft the trust as a favor to the Judge.



# Practical Applications

## Scenario #2 - Issues Raised:

- Legal?
- Professional?
- Model Standards?
- Other?

How would you handle this?



# Practical Applications

Scenario #2 - a (suggested) list of issues:

- Federal Law: Qualification as CRT under IRC section 664; quid pro quo? private benefit?
- State Law: Unauthorized practice?
- Professional: Competence? Conflict of interest?
- Model Standards: III. Full disclosure?  
V. Competence and Professionalism?  
VI. Independent Advisors?

# Practical Applications

## Scenario #3:

Aunt Eller, president of the Cowmen & Farmers Friendship Association, is in full campaign mode. She tells Curly that, if he can convince “Pore Jud” Fry to contribute his gun and knife collection to the campaign, she will convince her niece, Laurey, to marry Curly.

Curly visits Jud in the bunkhouse and suggests to him that, if only he would change his Will to leave his collection to the Association, (and then hang himself), everyone in town would finally realize what a wonderful person Jud had been and how much they miss him.



# Practical Applications

## Scenario #3 - Issues Raised:

- Model Standards?
- Other?

Is anybody okay with this?



# Practical Applications

Scenario #3 - a (suggested) list of issues:

- Model Standards: I. Philanthropic motivation?  
III. Full disclosure? IV. Compensation?  
VI. Independent Advisors? VII. Consultation with  
charity?

# Real-Life Examples

- Review Handout
- Issues Raised?
- Are there better ways to structure the arrangement?





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