



Annuities: A Valuable Estate Planning Tool

November 2022 - *Suzana Popovic-Montag*

Perhaps you have already encountered the following scenario: a client wants to leave a sizeable inheritance to a beneficiary, but is fearful that he or she will not handle a large bequest responsibly. What to do? While a trust can be utilized to control the payment of a bequest, this option may not be appealing to all clients in light of the price tag that often accompanies the administration of a trust. However, another estate planning tool may also warrant consideration in this type of situation – an annuity.

Annuities are a type of insurance contract that are typically associated with retirement planning and personal injury settlements. [Manulife Investment Management](#) explains how annuities work:

... in exchange for a single lump-sum deposit, an insurer makes guaranteed regular income payments to the owner of the annuity. These payments contain both interest and a return of principal component. Annuity payments can continue for a chosen period of time or for the lifetime of one or two people.

Annuities can be gifted to a beneficiary in one of three ways, which we outline below.

Option 1: Gifting an existing annuity

If the client is already the recipient of an annuity that either continues for a guaranteed benefit period or for more than one lifetime, any portion of the annuity that remains outstanding at the time of the client's death can be made payable to the beneficiary, assuming a beneficiary designation has been completed.¹ Under these circumstances, the gift would pass outside of the estate, making this an option that may assist in reducing probate fees, while also keeping the bequest discreet if the client has privacy concerns relating to the gift. The beneficiary would continue to receive regular payments, rather than receiving a lump sum at the original annuitant's death. The client may even select an indexing option, to ensure that payments keep up with inflation.

Option 2: Gifting a financial product with an annuity settlement option

Multiple insurance providers also offer clients the option of purchasing a financial product with an annuity settlement option for estate planning purposes. In this case, the client would handle the financial product while he or she is still alive, and the annuity would be payable after the client's death, at which time the money would be distributed over time to the beneficiary through

¹ Since the presumption of resulting trust has been found not to apply to assets for which beneficiary designations have been made, funds gifted through an annuity should effectively pass outside of the estate, subject to claims by dependants or others against the annuity itself. See [Mak \(Estate\) v. Mak, 2021 ONSC 4415](#), [Fitzgerald Estate v. Fitzgerald, 2021 NSSC 355](#), and [Roberts v. Roberts, 2021 ABQB 945](#).

regularly scheduled payments. In this scenario, the client could use the annuity to cover a beneficiary's monthly living expenses, for example. Again, the annuity could be paid to a beneficiary for a set amount of time, or even for the duration of the beneficiary's life. Such a gift would pass outside of the client's estate and would not ordinarily be subject to probate fees or be delayed by the estate administration process.

Option 3: Using a will to authorize the estate trustee to purchase an annuity

There are several cases dealing with wills that include a clause directing the testator's personal representative to purchase an annuity for the beneficiary.² If this option is selected, there are several potential issues to be aware of, including:

- Before the annuity is purchased, the beneficiary may be able to apply to the court and obtain an order that the bequest be paid out in a lump sum, rather than as an annuity.³ This relief may not be available, however, depending on how the will is worded, what the testator "had in mind" in directing the purchase of an annuity, and how much discretion is granted to the personal representative with respect to purchasing an annuity.⁴
- The bequest may be vulnerable to claims by a beneficiary's creditors once the bequest vests in the beneficiary, even before the annuity is purchased.⁵
- If the proposed annuitant dies before the annuity is purchased, his or her legal representatives may be entitled to the sum that would have purchased the annuity.⁶ However, the availability of this relief is determined on a case-by-case basis.⁷
- If the will does not clarify whether the annuity is payable out of estate income or capital, it will be payable primarily out of income and secondarily, to any extent necessary, out of capital.⁸

With three potential ways to gift an annuity as part of an estate plan, this type of gift warrants consideration for clients who are reluctant to create a trust, but who wish to retain a degree of control over the dissemination of a large bequest to a beneficiary.

² For a recent case, see [Strafford Estate \(Re\), 2021 ABQB 417](#), at para. 7.

³ See [Ker Estate v. Stevenson, 2009 ONCA 345](#); [Robbins v. Legge](#), [1907] 2 Ch. 8 (Eng. C.A.); [Lotzkar v. McLean, 1979 CanLII 649](#) (B.C. S.C.).

⁴ Again, see [Strafford Estate \(Re\), 2021 ABQB 417](#) at paras. 49, 62-85.

⁵ See [Ker Estate v. Stevenson, 2009 ONCA 345](#).

⁶ See [Strafford Estate \(Re\), 2021 ABQB 417](#) at para. 60.

⁷ For example, the proposed annuitant's estate was not entitled to the sum that would have been used to purchase the annuity in [Strafford Estate \(Re\), 2021 ABQB 417](#).

⁸ See [Re Struthers, 1980 CanLII 1900](#) (Ont. C.A.); [Re Robertson, 1948 CanLII 55](#) (Ont. S.C.).