Individuals, including Veterans, Should Consider Annuities in Their Financial Planning
By Camille J. Iurillo and Gina M. Pellegrino

In keeping with the theme of this month's *Paraclete*, honoring veterans, we wanted to bring some awareness to utilizing annuities as a financial planning tool. Annuities can be an extremely useful method for creating an income stream for one's retirement and are arguably not used often enough. Individuals, including veterans, should consider annuities in their overall financial planning. In addition, if an annuity is properly created and maintained in accordance with the applicable Internal Revenue Code provisions it may be deemed an exempt asset. However, we recommend that before you advise any client to consider purchasing an annuity that you advise them to consult with an attorney who regularly practices in the area of financial planning as well as a financial advisor to ensure that the annuity is properly created and maintained.

Generally speaking, there are two types of annuities: deferred annuities and immediate annuities. Typically, deferred annuities are purchased by individuals with a single payment or with a series of periodic payments while the individual is working and able to make periodic payments into the annuity, so that the individual can receive a lump sum payment, or monthly or annual payments from the annuity while in retirement. In addition, with respect to a deferred annuity, the annuitant, or the individual receiving the benefit of the annuity, usually is not scheduled to receive payments from the annuity until some future date at the election of the annuitant, or until the IRS requires the annuitant to take mandatory payments. On the other hand, immediate annuities differ from deferred annuities in that after they are purchased they generally pay the annuitant monthly income immediately from the annuity, for a number of years or for life. If your client is considering purchasing an annuity for financial planning purposes, are both deferred annuities and immediate annuities exempt?

Fla. Stat. § 222.14 provides that "the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person who is the beneficiary of such annuity contract." Therefore, under Florida law, both deferred annuities and immediate annuities may be exempt from creditor levy. The majority of annuity contracts are deferred annuities. According to the Supreme Court of Florida in <u>In re McCollam</u>, 612 So.2d 572, 574 (Fla. 1993), the legislature did not intend to limit the annuity exemption to particular annuity contracts, if that was the case, the legislature would have included restrictive language in the statute.

However, importantly, simply because an annuity is called an "annuity" does not make it exempt. In order for an annuity to be deemed exempt, it must meet the required characteristics of which, generally speaking, there are four, as discussed below.

First, in order for either a deferred or an immediate annuity to be exempt, it must be identified as an annuity, pursuant to Fla. Stat. § 222.14 and the applicable case law. According to the 11th Circuit, in <u>In re Solomon</u>, 95 F.3d 1076, 1078 (11th Cir. 1996), an actual annuity contract is required to exist in order for any annuity to be deemed exempt under section 222.14.

Second, the individual claiming the exemption must be the beneficiary of the annuity, pursuant to Fla. Stat. § 222.14 and the applicable case law. According to the Court in In re Belue, 238 B.R. 218, 222 (Bankr. S.D. Fla. 1999), the meaning of "beneficiary" in section 222.14 is the recipient of the proceeds paid under the annuity.

Third, a court will consider whether the annuity issuer, such as an insurance company for example, is responsible for distributing the funds in accordance with the annuity contract. *See*, Belue, 238 B.R. at 222.

Finally, a court will consider whether the payments received by the beneficiary are a payment stream upon maturity, for a term of years or for the lifetime of the beneficiary. *See*, Belue, 238 B.R. at 219; *see also*, Goldenberg v. Sawczak, 791 So.2d 1078, 1083 (Fla. 2001); *see also*, McCollam, 612 So.2d at 572-3.

In conclusion, if your client is interested in creating an income stream for their retirement then it is imperative that you advise them to consult with a financial planning attorney as well as a financial advisor to determine whether an annuity would be beneficial for them, and if so, how it should be purchased and maintained properly.

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