



A Handbook on
Beneficiary Designations for Annuity Contracts



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I. Introduction

This guide is intended to provide you with basic general information about the mechanics of how beneficiary designations work under deferred annuity contracts where the death benefit is payable as a lump sum, and why accurate designations are important. It should not be construed as tax or legal advice. Clients should always consult with their own tax and legal professional when determining appropriate beneficiary designations.

In addition, it is always important to know whether the annuity you are purchasing for your client has any special provisions regarding beneficiary designations. Be sure to consult the annuity contract and prospectus for important information about the rights of beneficiaries.

II. Death Benefits and Beneficiaries

Annuities provide a “death benefit.” A death benefit, as defined in the contract, becomes payable to a pre-determined, or “designated,” beneficiary upon the death of the contract owner, or in certain circumstances, the annuitant.

a. Why is it Important to Designate a Beneficiary?

One of the main benefits in designating a beneficiary is that the death benefit will pass directly to the beneficiary on file with John Hancock without having to be administered through the probate process. Rather, the designated beneficiary need only file a valid written claim with John Hancock in order to access the death benefit.

What is probate?

Probate, or estate administration, is a court-supervised distribution of a decedent’s assets, sometimes pursuant to a will. Probate is a public proceeding, may be costly, and can take many months or even years to complete.

What happens when an annuity contract owner fails to designate a beneficiary prior to death?

His or her estate will usually be deemed to be the beneficiary.

What happens if all designated beneficiaries die before the contract owner?

Payment of the death benefit will also default to the contract owner’s estate.

For trust-owned annuities, John Hancock will consider the trust to be the default beneficiary. (For a detailed discussion of trust issues, please see Sections III and IV.)

b. How to Designate or Change a Beneficiary

The beneficiary, **as reflected in John Hancock’s records**, is presumed to be the person, or non-natural person, entitled to receive the death benefit. All beneficiary designations must be in writing in a form acceptable to John Hancock.

After a contract is established, beneficiaries may be changed prior to the death of the contract owner. This means that even a properly drafted beneficiary designation may fail if it is not forwarded to John Hancock in a timely manner.

Upon receipt of a beneficiary designation or change request, John Hancock will provide you and your client with written confirmation or rejection of the request. If you do not

receive a written response to a beneficiary or other contract change request within ten business days, you should contact John Hancock to confirm your client's request was received.

When you receive a written confirmation of a contract change or beneficiary designation, please read it carefully to make certain it is accurate. If we cannot accept a designation, we will send a letter stating the reason for the rejection. The existing designation on file with John Hancock will not be changed until a new, acceptable beneficiary request is received.

In general, a valid beneficiary designation must be received by John Hancock prior to the contract owner's death. If your client dies before we receive a valid designation, the beneficiary will not change. Rather, the death benefit will become payable to the beneficiary already on file.

c. Designating Primary and Contingent Beneficiaries

John Hancock strongly recommends that clients designate a "primary" and a "contingent" beneficiary on the annuity application at the time the contract is established.

The **Primary Beneficiary** is the person, persons, or entity to whom certain benefits are payable following the death of the contract owner (or in certain circumstances, the annuitant—see Annuitant Driven Contracts, page 11).

The **Contingent Beneficiary** is the person, persons or entity who becomes the primary beneficiary if the primary beneficiary dies before the contract owner. Your client may designate more than one primary beneficiary and more than one contingent beneficiary. Your client may also direct that the death benefit be paid equally or in different percentages within each beneficiary category.

In the event a primary beneficiary elects to continue the contract after the death of the owner, the primary beneficiary must name new beneficiaries. This is because the contingent beneficiary already on file with John Hancock does not automatically become the new primary beneficiary. Therefore if a beneficial owner dies without having designated a new beneficiary, his or her estate will be the beneficiary by default.

For situations in which an owner and beneficiary die at the same time, please see "Simultaneous Death Acts" on page 10.

d. Understanding Per Capita and Per Stirpes Designations

Primary and contingent beneficiary designations are presumed by John Hancock to be "per capita."

- **Per capita** means that if a beneficiary dies before the contract owner, that beneficiary's share of the death benefit is apportioned among the surviving members of the applicable beneficiary class.

As a result, the heirs of the deceased beneficiary will have no right to share in the death benefit.

Upon request John Hancock will accept a "per stirpes" beneficiary designation. Unlike per capita,

- A **per stirpes** designation requires a deceased beneficiary's share of the death benefit to pass to his or her lineal descendants (i.e., children and/or grandchildren) by right of representation.

If your client intends a per stirpes distribution of the death benefit, he or she must include the words "per stirpes" as part of the written designation. Otherwise per capita rules will apply. When an owner dies with a per stirpes beneficiary designation, John Hancock will require satisfactory documentation to identify the lineal descendants entitled to the death benefit.

III. Choosing a Beneficiary

The decision to designate a person or a non-living entity as a beneficiary may impact future flexibility and distributions. Review these details carefully with your clients before they select their contract beneficiaries.

a. Beneficiary Scenario 1: Spouse

Naming a spouse as a beneficiary can often provide maximum flexibility at the death of the contract owner. Pursuant to current IRS regulations, when a spouse inherits a nonqualified annuity he or she can reregister the contract into his or her own name, which allows for continued tax deferral. In addition, when a spouse assumes beneficial ownership of an annuity, he or she does not have to take required minimum distributions during his or her lifetime.

Although a spouse has the option of taking ownership of the annuity, this is not always the best approach. For example:

- If the surviving spouse is not yet age 59½, but needs access to the annuity proceeds, then he or she may be better off accepting the death benefit, which is not subject to the 10% penalty tax on pre-59½ withdrawals.

Always be sure to consider all of the facts and circumstances surrounding a surviving spouse's financial situation before advising on the appropriate claim settlement option.

It is also important to remember that certain “living benefit” riders may not pass to a surviving spouse (or a nonspousal beneficiary). If your client's objective is to provide an income stream that will last for the lives of both spouses, be sure to consider at the time of application whether a “joint life” rider would be appropriate. Riders cannot be added after a contract is issued.

For a discussion of how rider benefits impact beneficiary designations, please see Section V.

Remember that when a spouse assumes sole ownership of a contract, whether as surviving joint owner or designated beneficiary, it will be necessary to update the beneficiary designation going forward.

b. Beneficiary Scenario 2: Nonspouse

When a nonspousal beneficiary, including an adult child, assumes ownership of a deferred annuity contract, the beneficiary generally has three distribution options:

- 1 Lump Sum Payout**—Immediate payout of the entire death benefit.
- 2 Five-Year Payout**—Payout of the entire interest in the contract no later than five years from the death of the owner.
- 3 Stretch Payout**—Payout over the beneficiary's life expectancy. This is commonly referred to as a “stretch” option. Because, in many instances, this option may not be available, it is important that you refer to the contract and prospectus for more information.

If a beneficiary wants to take advantage of the life expectancy distribution option, John Hancock must receive a written request within 12 months of the contract owner's death.

However, this rule differs for annuities held within IRAs. A beneficiary seeking to stretch an inherited IRA has until December 31 of the year following the owner's death to make this election.

For life expectancy distributions, the beneficiary must take a required minimum distribution ("RMD") each year, which is based on the beneficiary's life expectancy in the year following the owner's death. Life expectancies can be found in Table 1 of IRS Publication 590. Life expectancy is based on the beneficiary's age as of December 31 of the year following the death of the contract owner, reduced by one year each year thereafter. To determine the RMD, this number is divided into the contract value as of December 31 of the previous year.

c. Beneficiary Scenario 3: Minor Child

Your client may designate a minor child as a beneficiary. This is often the case when the beneficiary is a grandchild.

However, your client should be made aware that a minor is legally incapable of filing a valid claim for the death benefit. It does not matter that the child is "intelligent," "mature," "sophisticated" or "financially savvy." A minor is disqualified based solely on the fact that he or she is not an adult in the state of residence. Currently, the general age of majority in 48 states is 18 (Alabama 19, Mississippi 21).

In addition, parents or other adult members of the minor's family do not necessarily have the legal right to claim a death benefit on behalf of a minor. Rather, a parent may first need court approval in the form of a "Conservatorship" or "Guardianship" over the "estate" or "property" (as opposed to "person") of the minor beneficiary. If a parent files a claim for a death benefit on behalf of his or her child, John Hancock will require a copy of the court approval before settling the claim or otherwise acting on the parent's instructions.

Nevertheless many states have laws permitting funds payable to a minor to be paid to a parent without court approval; provided that, the proceeds do not exceed a certain amount. For example, Florida has a statute permitting funds that do not exceed \$15,000 to be released to a parent without court approval. Fla. Stat. Ann. Sec. 744.301(2).

Your client can also designate an adult custodian to claim the death benefit for a minor pursuant to the applicable state Uniform Transfers to Minors Act ("UTMA").

The following is an example of such a beneficiary designation:

John Smith, Sr., C/F John Smith, Jr., New York UTMA

Depending on state law, the UTMA age of majority can be greater than the general age of majority. In addition, if the death benefit becomes payable after the minor reaches the applicable UTMA age of majority, the funds will be paid to him or her outright, since the adult custodian's authority will have terminated by "operation of law."

d. Beneficiary Scenario 4: Estate

Your client may designate his or her "Estate" as the beneficiary. However, this is not without consequences due to the fact that:

- Naming an estate as a beneficiary can result in added time, expense, and inconvenience to family members and other heirs.

- Beneficiaries and heirs under estates have fewer distribution options. This is because the IRS requires that an annuity death benefit payable to an estate be fully distributed no later than five years from the death of the measuring life. As a result, heirs cannot benefit from the tax advantages associated with “stretching” the contract by taking distributions over their respective life expectancies (See Nonspousal Beneficiaries, Section III).

Whenever possible, individual beneficiaries should be named instead of estates.

e. Beneficiary Scenario 5: Trust

As a financial advisor, it’s important to make sure that a client leaving assets to a trust understands how trust distributions work. This can help ensure the client’s objectives are met while avoiding unpleasant surprises.

The General “Trust as a Beneficiary” Rule

When a “non-natural person” such as a trust is a beneficiary, distribution options are limited to a lump sum or five-year payout as measured from the death of the contract owner.

With individual retirement arrangements (IRAs), however, there is an exception. A “look through” trust allows the trustee to elect a life expectancy payout, usually only over the shortest life expectancy among the trust beneficiaries. In many trusts, this is a surviving spouse. This can result in a relatively rapid distribution of funds from the IRA to the trust.

Distributions from IRAs into Trusts

When distributions are paid from the IRA into the trust, they are subject to income taxes. Be aware that with trusts, the income tax brackets are compressed, and a trust reaches the 35% bracket at only \$11,200 for 2010. So it’s crucial that the trust allow for those distributions from the IRA to be distributed to trust beneficiaries and not be “stuck” in the trust at the end of the tax year. As long as the IRA distribution is passed to beneficiaries, those beneficiaries pay taxes at their own individual rates.

Clients who are interested in leaving IRA assets to a trust may want to consider converting their IRA to a Roth IRA. As long as certain criteria are met, income from a Roth IRA is tax exempt. The decision to convert a traditional IRA to a Roth is complex, and should only be made after careful review with your qualified tax professional.

Trusts and Nonqualified Annuities

The IRS has not sanctioned the use of “look through” trusts with nonqualified annuities (NQAs). If a trust is named as a beneficiary of a NQA, the annuity must payout in its entirety to the trust within five years as measured from the death of the contract owner. Any gains that are not distributed from the trust will be subject to trust tax rates.

IV. Ownership and Beneficiary Designations

Certain life events may impact client decisions when it comes to beneficiary designations. Outlined in this section are several potential scenarios that you should review with your clients when they designate their beneficiaries.

a. Ownership Scenario 1: Joint Contract Owners

Most contracts allow for joint or “co-owners.” In most instances, upon the death of the first owner, the surviving owner will be “deemed” the beneficiary.* If the surviving owner elects to continue the contract, he or she must designate new beneficiaries. Primary and contingent beneficiaries already on file will not carry over on the continued contract.

Due to tax laws governing annuity products, it is generally not advisable for a contract to be owned jointly other than between legally married spouses, even in situations where the co-owners would be a parent and an adult child. In addition, adding a nonspousal co-owner to an existing contract is a taxable event, as all gains and accumulated interest will be taxable to the original owner for the year the co-owner was added.

Further, whether it is an existing contract or a new contract, adding a nonspouse co-owner can result in gift tax implications. For example, if a parent funds an annuity and names an adult child as co-owner, they are considered as having gifted half the purchase payment to that child. If this gifted amount is in excess of the annual exclusion amount (currently \$13,000), the parent may have to file a gift tax return with the IRS, and their unified credit for estate and gift taxes will be reduced.

*For “Annuitant Driven” contracts, please see Section V on page 11.

b. Ownership Scenario 2: Trust

Annuities can be purchased in the name of a trust or by a trustee on behalf of a trust. If an annuity is owned by a trust, a living person must be named as the annuitant of the contract. All rider benefits and tax reporting will be based on the life of the annuitant. Joint or “co-annuitants” are not allowed on trust-owned contracts.

Whenever a trust is the owner of an annuity, it is important that the trust also be named as the beneficiary. If a trust owns a contract, but the designated beneficiary is not the same trust, a conflict may arise as to how the trust distributes the death benefit. Therefore it is the responsibility of the trustee, and not John Hancock, to ensure that the beneficiary designation on file with John Hancock is consistent with the objective of the trust.

c. Ownership Scenario 3: Qualified Retirement Plan

Annuities may be used as investments within qualified retirement plans, such as profit sharing plans. In general, when the annuity is owned by a retirement plan for the benefit of a participant, the proper structure is to name the plan as the owner, the participant as the annuitant, and the plan as the beneficiary.

The participant must also maintain a beneficiary designation with the trustee of the plan. That designation will control the ultimate distribution of the contract proceeds at the participant’s death. The participant should periodically review this beneficiary designation to make sure it is accurate and up to date.

If an annuity is issued to a qualified plan, the participant or beneficiary of the plan should check the plan document to ensure they have the ability to change ownership of the annuity and distribute it “in kind” upon a distributable event or death. For example, if the trustee of a profit sharing plan is going to invest in an annuity for the benefit of a participant, the trustee should confirm that when the participant retires, the participant can roll the annuity into an IRA. Similarly, the plan must allow a beneficiary to transfer ownership of the annuity from the plan to an inherited IRA at the death of the participant.

These ownership changes are very important. If the annuity cannot be moved into an IRA or an inherited IRA, then the rules requiring a five-year payout as measured from the death of the annuitant may apply.

Remember that once the ownership is changed from the plan to the participant or beneficiary, the new owner should update the beneficiary designation to remove the plan and name their own beneficiaries.

d. Ownership Scenario 4: Custodial IRAs

A “custodial IRA” is an arrangement in which a custodian, often the broker-dealer where the IRA is held and through which the annuity was purchased, will hold the IRA annuity in trust for the benefit of the IRA participant. The participant will be the annuitant and the custodians are sometimes referred to as “trustees.”

When an annuity is held within a custodial IRA, the structure is similar to when a trust or qualified plan owns an annuity. The owner is listed as “ABC Broker Dealer f/b/o John Doe, depositor.” The depositor (or de facto owner) is listed as the annuitant. The designated beneficiary is the same as the owner, “ABC Broker Dealer f/b/o John Doe, depositor.” As with a qualified plan, the custodian maintains its own beneficiary designation on file.

Upon the death of the annuitant, the beneficiary on file with the custodian generally has the right to instruct the custodian how to proceed with regard to claim settlement. If the beneficiary is a surviving spouse, he or she has the same rights described on page 4, “Spousal Beneficiaries.” A nonspousal beneficiary can direct the custodian to establish an inherited IRA. Nonspousal distribution rules for inherited IRAs are similar to those for inherited annuities as discussed in Section III (b.) “Nonspouse Beneficiaries.”

V. Other Beneficiary Considerations

a. Annuitization or payout contracts

There may be special beneficiary considerations for contracts that are “annuitized.”

Annuitization is the irrevocable decision by the owner to convert the contract to the “payout” or “annuity” phase and begin receiving a stream of income, usually payable on a monthly basis. If the owner dies after the contract is annuitized, a lump sum death benefit may not always be available to beneficiaries. Depending on the contract terms and the annuity option elected, the following may occur upon the death of the owner:

- 1 Payments continue until the expiration of a guarantee period.** For example, if the owner elected an annuity option with a ten-year guarantee, but died after four years, payments would continue to the designated beneficiary for an additional six years (i.e., through the end of the ten-year guarantee period).
- 2 Payments permanently stop.** A “life” or “straight life” annuity option provides for the highest payout amount. However, there is a tradeoff, because no further payments are due after the owner dies. Therefore there would be no need for a beneficiary under this annuitization option.
- 3 Lump sum death benefit is payable.** In general, a lump sum death benefit will be calculated based on the present value of the payments remaining under the guarantee

period. The beneficiary would receive that amount, similar to a contract in the “deferred” or “accumulation” phase.

You should consult your client’s contract and prospectus to determine what death benefit options, if any, are available after the contract is annuitized. This would include single premium immediate annuity, or “SPIA,” contracts.

b. Optional Rider Impact on Beneficiaries

Annuities may be purchased with optional “riders” that provide for additional or greater benefits compared to the base contract. Keep in mind that your client may have elected a rider which requires a certain beneficiary designation. If instead a noncompliant beneficiary is designated on the application, or if the designation is changed to a non-compliant beneficiary after the contract is issued, your client and the beneficiary may lose rider guarantees and benefits. Therefore your client should carefully consider the appropriateness of his or her beneficiary designations and whether they are compliant with any contract riders.

For example, joint life income riders will generally require that the contract owner’s spouse be designated as the sole primary beneficiary. Joint life riders issued to qualified plans or custodial IRAs may also require documentation from the trustee acknowledging certain rollover rights that will allow the rider to function properly. You should check your contract and prospectus for instructions on compliant beneficiary designations.

c. Irrevocable Disclaimers

Depending on the circumstances, a beneficiary may wish to permanently give up, or irrevocably “disclaim,” his or her right to the death benefit. Disclaimers may also be used after the death of your client to adjust for unforeseen consequences of an estate plan and to achieve optimum tax results.

A disclaimer must be:

- Irrevocable and unconditional by its terms;
- Written, explicit, and signed by the beneficiary; and
- Filed with John Hancock no later than nine (9) months from the death of the person on whose life the death benefit is based.

Disclaimers executed after the nine-month deadline may result in the beneficiary-disclaimant being responsible for the taxes associated with the death benefit, even though the funds were paid to another person (or non-natural person).

It is highly recommended that no beneficiary execute a disclaimer unless it is done in consultation with his or her own legal counsel. For more information on disclaimers, see Internal Revenue Code Section 2518, together with your client’s state law on the subject.

d. Irrevocable Beneficiary Designations

Beneficiary designations are presumed to be revocable by the contract owner prior to death. However, upon written request, John Hancock will accept an “irrevocable” beneficiary designation. For example:

Primary Beneficiary: Mary Jones (100%), Irrevocable

If a designation is irrevocable, the beneficiary cannot be removed without his or her written consent. In addition, irrevocable beneficiaries must also consent to withdrawals from the contract, including annuitization and changes to ownership. Careful consideration should be taken by your client before electing an irrevocable beneficiary designation.

e. Impact of Divorce on Beneficiary Designations

In the event of divorce, your client should immediately update beneficiary designations with John Hancock. A divorce may not automatically revoke a designation, or similar transfer-on-death instruction, in favor of a former spouse. It depends on the applicable law, and whether the annuity is held within a qualified plan.

f. Uniform Simultaneous Death Act

Enacted in all states, the Uniform Simultaneous Death Act (“the Act”), may impact payment of a death benefit. In summary, the Act provides that if there is insufficient evidence that an insured and his or her beneficiary died other than simultaneously, the beneficiary will be deemed to have died before the insured. The death benefit will then flow accordingly.

Example: Dave purchases an annuity and designates Joan and George as beneficiaries. Dave and Joan then die in a plane crash and there is insufficient evidence to determine they died other than simultaneously. Since under the Act Joan, as the beneficiary, will be considered to have died before Dave, the insured, her share of the death benefit becomes payable to George as the surviving beneficiary. It is not payable to Joan’s heirs.

Importantly, many states have enacted a version of the Act that requires a beneficiary to survive the insured by at least 120 hours (5 days), otherwise he or she will be deemed to have died before the insured.

Example: Bob purchases an annuity and designates Michael and Susan as beneficiaries. Bob and Susan are in a car accident together and Bob is killed instantly. Susan, the beneficiary, dies 72 hours later. In a 120 hour jurisdiction, Susan’s share of the death benefit becomes payable to Michael. It is not payable to her heirs even though there is no question she died after Bob.

g. Complex Beneficiary Designations

As the estate planning community becomes more aware of the planning issues presented with retirement benefits, some planners have responded by offering their own custom beneficiary designations. IRA administrators, including John Hancock, have different positions on whether to accept such designations. Moreover, those positions may change over time. When considering the effectiveness of a customized or complex designation, ask yourself the following questions:

- Does the designation put you or the contract administrator in the position of having to interpret a will or trust?
- Does the designation refer to specific sections of a will or trust?
- Is the designation otherwise unclear or confusing?

If the answer to any of these questions is “yes,” consider simplifying the beneficiary designation. Otherwise, payment of the death benefit may be delayed. A good rule of

thumb for a complex designation: It should tell the contract administrator how to fill out the payee line on the death benefit check.

h. Restricted Beneficiary Designations

John Hancock currently offers a “Restricted Beneficiary Payout” form. By using this form, the contract owner is providing John Hancock with binding instructions as to how the death benefit will be distributed to beneficiaries. For example, the owner may instruct John Hancock to pay a beneficiary only the required minimum distribution each year, or a fixed dollar or percentage payout. Keep in mind that John Hancock will pay the greater of the amount specified by the owner or the required minimum distribution.

Please also note that the payout restriction specified by the contract owner can be for a predetermined period of years; however, it cannot exceed the life expectancy of the beneficiary.

i. Rival or Contested Claims

The beneficiary, as reflected in John Hancock’s records, will be the person (or non-natural person) entitled to receive the death benefit. As a practical matter, his or her claim will not usually be disputed or challenged by anybody else.

Nevertheless there are instances when John Hancock is put on notice that another person is contesting a beneficiary’s right to receive the death benefit. These are called “contested” or “rival” claims and special rules apply.

If John Hancock is put on notice of a rival claim, John Hancock will not distribute the death benefit to anyone unless an agreement is reached between the interested parties. John Hancock, as a neutral stakeholder, will not take sides or favor the claims, rights, or interests of anyone, nor will it act as a court, arbitrator, mediator or referee.

If an agreement as to the distribution of the death benefit is not reached by the interested parties within a reasonable time, John Hancock may initiate a “judicial interpleader.” This is a lawsuit whereby the death benefit is deposited into court, with a request that it make a binding determination as to which party is entitled to the proceeds. John Hancock will request that its attorneys’ fees and costs be deducted from the death benefit and this will reduce the proceeds accordingly.

j. Annuitant-Driven Death Benefits

Your client may have a contract that pays a death benefit upon the death of the annuitant, **even if there is a surviving joint contract owner**. If that is the case, the death benefit becomes payable to the designated beneficiary. This may be contrary to the expectations of a surviving owner who may be the spouse of the decedent. Therefore you should carefully review your client’s contracts to determine whether the death benefits are “annuitant driven.”

Furthermore, a contract owned by a non-natural person such as a trust is always annuitant driven, regardless of when the contract was issued. The death of the annuitant will trigger a death benefit payout to the beneficiaries on file with John Hancock.

VI. Conclusion

Beneficiary designations are an extremely important component of every client's overall estate plan and wealth transfer strategy. For some of your clients, more of their wealth will pass by way of contractual beneficiary designations than any other method. Periodic review of your clients' beneficiary designations should be an integral part of your practice. In addition, you should conduct a beneficiary review whenever a client has a significant life event, such as marriage, civil union or domestic partnership; disability; birth of a child or grandchild; divorce or death.

John Hancock Annuities is here to help. If you have any questions about the impact of a proposed beneficiary designation, please contact John Hancock Special Markets at (800) 338-1776.

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