Altshuler and Spiro
EST. 1959

9301 WILSHIRE BOULEVARD, SUITE 504
BEVERLY HILLS, CALIFORNIA 90210-5412
(310) 275-4475 – (323) 272-5339
FAX (310) 858-6763

Bruce J. Altshuler*
Randy M. Spiro

* a professional corporation

Leo Altshuler
(1919-1999)
James J. Brown
(1918- 1987)

PIT-FALLS IN DESIGNATING REVOCABLE TRUST AS OWNER OF AN AFTER TAX ANNUITY

by Randy Spiro

Some Annuities are purchased with funds that have already been subjected to income tax. A revocable trust cannot be made the owner of an annuity purchased by an IRA or retirement plan, but it can be made the owner of an annuity purchased with after-taxed funds. But if this is done, the contract must be examined to see if it says that where a non natural person (such as a revocable trust) is the owner, the owner is automatically treated as the beneficiary on the death of the annuitant.

If the contract says this, then the person or persons named as the beneficiary on the annuitant's death will not get the annuity at that time, even if the purchaser of this product intended it. If the revocable trust had been named as both owner and beneficiary, this problem would not have arisen. But the purchaser may have wanted to give a particular annuity to a particular person at the purchaser's death even though that person was not a beneficiary of the person's trust.

Why then would the purchaser have named his revocable trust, rather than himself, as owner? Possibly to avoid a conservatorship if the purchaser needed to give someone access to the annuity on the person's incapacity. But this result could also have been achieved by the purchaser naming himself individually as owner and by naming an attorney-in-fact (power of attorney) who could access the annuity on the purchaser's behalf.

If the beneficiary is denied the annuity or has to sue the owner to try to block the owner from collecting, the beneficiary's attorney may also suggest to him that he should sue the insurance agent who helped the purchaser fill out the beneficiary and owner designations. Agents should exercise care in helping their clients avoid the above trap.