



INSURANCE TRUSTS

It's important for you to have options...

When passing on savings to the next generation. If you desire a structured payment stream an annuity settlement option is available. If a structured payment stream is not the right fit you can consider using a trust as a means of transferring wealth to the next generation. Both options provide you with avenues to transfer wealth.

This kit will look at each option and provide support material where applicable. It will also consider what option may fit best in a certain scenario.

ANNUITY SETTLEMENT OPTION

When certainty is important...

The annuity settlement option provides a simple cost-free method of gradually transferring wealth through pre-scheduled income payments to beneficiaries after death. It provides an alternative to a lump-sum payment.

How is it done?

The annuity settlement option can automatically transfer the proceeds of an insurance contract or policy (including a guaranteed interest contract (GIC), segregated fund contract, or a life insurance policy) upon death, into an annuity. The resulting annuity will then make gradual income payments to your beneficiaries as specified by you.

The annuity settlement option replaces a lump sum death benefit with smaller, scheduled payments while providing probate fee savings, increased privacy and potential creditor protection.

There are also other benefits, let's consider them.

CONTROL

With the annuity settlement option, you have complete control over the specific annuity terms. You can select an annuity that makes payments to your beneficiaries, following your death, for the rest of their lives or for a specific time period. Guarantee options can also be added to ensure a minimum number of payments are made.

FLEXIBILITY AND SIMPLICITY

If you decide to change the beneficiaries or the terms of the annuity, a new annuity settlement option form can be done at no cost. It is that simple.

Where there are multiple beneficiaries the annuity settlement option allows you to differentiate between beneficiaries. Terms may be selected for payout that best meet the needs of your particular beneficiaries.

AS AN ALTERNATIVE TO A TRUST

Where a structured payment stream with no conditions fits best with your planning objectives, this option may be a good choice. It also has some benefits over a trust. Trusts have costs associated with set-up and on-going maintenance. If changes need to be made in the future, there are fees to amend or re-draft a trust agreement or will. This is not the case with the annuity settlement option.

TRUSTS¹

It's important to have the right information when...

It comes to ensuring a beneficiary designation is done correctly. This is especially true when a trust is named as a beneficiary.

Unlike other investments, annuity products including segregated fund contracts and registered funds allow for a beneficiary designation to be made.

Beneficiary designations can be complicated and naming a trust can add to that complexity. That is why it is important to have the right information to assist you when making a designation using a trust.

It is always recommended that a formal trust be created to help ensure that the intention of the person settling the trust is clear and that the funds ultimately reach the hands of the intended beneficiary.

This part of the kit will help you determine whether a trust may be a good fit and help ensure that the trust is set up to be administered by Manulife. This kit also contains information on what wording should be contained in the contract, benefits and considerations and sample trust wording for both a separate trust agreement and provisions within a will.

A trust may be a good alternative

When you want certain conditions met before a beneficiary can receive death benefit proceeds and where a structured payment stream is not the right fit.

A trust may work better than the annuity settlement option in certain situations. For instance, you may wish to have a payment stream delayed and trust provisions will allow the trustee the ability to do just that.

As an alternative to the annuity settlement option, a trust may be preferred for tax planning reasons (as discussed below) or to control when and how payments will be made to a beneficiary.

The most common use for a trust is often to benefit a minor. Death benefit proceeds cannot be paid directly to a minor and would therefore have to be paid into court. To avoid this from happening, the death benefit proceeds from the contract are received by the trustee for the benefit of the minor and the terms of the trust will permit the trustee to make payments out of the trust that will benefit the child.

¹This information on trusts does not apply in Quebec. Residents of Quebec should speak to their tax and legal advisor about using insurance trusts.



A trust is also useful in other situations too. Let's consider a few examples.

CONTROL DISTRIBUTION

When a child turns age 18, and no formal trust provisions exist, that child can request that payment of the entire death benefit proceeds be paid out entirely to him or her. This may not however be a desired outcome. A trust can be created to address this issue by providing appropriate distributions from the trust that may better meet that child's needs and maturity level.

Trust provisions can also address what funds can be used for and how they may benefit the beneficiary. For instance, funds out of the trust can be used to meet financial needs for education.

A trust may also be appropriate where a beneficiary is a spendthrift or unable to manage their own financial affairs. Where a trustee is given discretionary power over distribution payments from the trust to the beneficiary payments can be timed in such a way so that the beneficiary receives the money when they actually need it. Timed payments can also be done so that funds do not end up in the hands of creditors of the beneficiary or become part of a matrimonial dispute.

In a second marriage situation a trust is one way to help ensure that family members from a first marriage are taken care of while still ensuring a new spouse is also considered.

Family members of beneficiaries who are disabled and receiving government benefits want to ensure that those benefits remain in tact. This may be accomplished by using a discretionary trust.

TAX REASONS

When a trust is named as beneficiary, the trust can be a testamentary trust. This means that the trust arises as a result of the death of the individual who settled the trust (the settlor). When a trust is testamentary, it is taxed at the graduated tax rates making it a tax effective planning tool. To be considered testamentary, the trust cannot be settled with any property during the lifetime of the settlor. The trust can be created before death but it does not arise until the death of the settlor occurs and the death benefit proceeds from the contract are settled in the trust.

Income splitting may also be possible by using a trust where family members are named as beneficiaries. While income splitting may be somewhat limited from a tax perspective it still can be used in the overall planning of the individual. Income may be distributed out over a period of time where the intended beneficiary is in a lower tax bracket.



COMPARING THE OPTIONS

The chart below looks at some of the comparisons between an annuity settlement option and a trust and indicates where the fit might be better.

Scenario	Annuity Settlement Option	Trust ²
Payment to a minor		X
Payments to a disabled beneficiary		X
Conditions and control over payments		X
Simple	X	
Cost efficient	X	
Gradual payment of death benefit over time	X	
Income splitting/tax reasons		X

²Note: In Quebec trusts are not used as a planning tool.

TRUST AS A SUCCESSOR OWNER

A trust can also be named as a successor owner of the contract. This ensures the contract does not become ownerless on the death of the owner in a situation, for example, where the owner is not the annuitant or there is a successor annuitant or Joint Life³. It may be desirable to have the income stream continue for instance under an IncomePlus contract but to have the contract be controlled pursuant to the terms of the trust.

³A successor annuitant can be named for contracts that do not hold the IncomePlus Series and the Joint Life option is available for contracts holding the IncomePlus Series. Please refer to the applicable Information Folder and Contract

WHERE TO GO FROM HERE

Now you know where a trust may be applicable but how is it set up and how does Manulife administer to it? The materials in the rest of this kit can answer those questions so read on...

TIPS

- Conduct an annual review of existing designations and declarations to ensure they reflect your intentions
- Review all designations and declarations when life changing events occur e.g. birth, death, marriage, separation
- Work with your professionals to ensure designations are up-to-date and reflect your current situation
- Where a minor is involved use the box available in the appropriate form that makes reference to a trustee for a minor instead of creating a designation that refers to a minor on the form in the primary or secondary beneficiary designation space



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INSURANCE TRUSTS

How they work

How is a trust created?

A trust used to settle death benefit proceeds from a contract can be created by a trust agreement or by way of a will. It is always important to ensure that a formal trust is set up so that the intention of the settler of the trust is known and also the trustee knows how to make distributions out of the trust to the beneficiaries. You will need to seek the advice of a lawyer when creating a trust.



METHODS

A Trust Agreement

A trust can be set up by a separate trust document. The chart below provides information on how a separate trust may be created through separate sample trust clauses. These clauses will assist your lawyer in drafting provisions within a trust that contemplate distribution of

death benefits proceeds from the trust. The chart also assists with the correct wording that should be used on the Manulife forms when a separate trust is being named as a beneficiary. It also outlines considerations and benefits.

SAMPLE CLAUSES IN TRUST AGREEMENT	See Sample Clauses in Schedule A of this kit Keep in mind that sample clauses provided are only suggestions. They should not be included verbatim in a legal document or relied on as legal advice. You will need to consult with a lawyer with extensive experience in estate planning and drafting to ensure your intentions are properly reflected.
HOW TO COMPLETE THE BENEFICIARY DESIGNATION IN THE INSURANCE CONTRACT (where the declaration is in the Trust Agreement)	Indicate in the contract the following: "John Doe, trustee, or any successor trustee of the (name of trust) dated (insert date)"
CONSIDERATIONS	<ul style="list-style-type: none">■ Where this designation is made in favour of a spouse, it would be testamentary, however since it is not created within a will the 21-year rule which allows for deferral until the spouse's death would not be permitted■ Inform the carrier of any changes to the trust agreement affecting a designation■ A later designation revokes a designation within the trust agreement■ Where the trust is revoked a new designation needs to be made
BENEFITS	<ul style="list-style-type: none">■ Testamentary trusts receive favourable tax treatment■ Potential to avoid creditors and/or probate fees



Declaration Within a Will

As an alternative, a trust can also be created within a will by having certain will provisions set out that a separate insurance trust is created to deal with the death benefit proceeds from a contract. A declaration within a will creates a separate insurance trust. The chart below provides information on how a declaration within a will may be created. Sample clauses are also provided.

The sample clauses can assist your lawyer in drafting provisions within the will that contemplate distribution of death benefits proceeds. The chart also assists with the correct wording that should be used on the Manulife forms when a declaration within a will is done. It also outlines considerations and benefits when using a will to create a trust.

SAMPLE CLAUSES IN WILL	See Sample Clauses in Schedule B of this kit Keep in mind that sample clauses provided are only suggestions. They should not be included verbatim in a legal document or relied upon as legal advice. You will need to consult with a lawyer with extensive experience in estate planning and drafting to ensure your intentions are properly reflected.
HOW TO COMPLETE THE BENEFICIARY DESIGNATION IN THE INSURANCE CONTRACT (where the declaration is in the will)	Indicate in the contract the following: “The trustee(s) of the trust created in the Last Will and Testament dated (insert date) of the annuitant”
CONSIDERATIONS	<ul style="list-style-type: none">■ Trust provisions within the will should clearly identify the beneficiaries, the trustee, the contract information and indicate that the death benefit proceeds under the contract do not form part of the estate■ A notarial copy of the will needs to be provided at time of death■ Advise the carrier of any changes in a designation in the will that affects the declaration■ A later designation revokes a designation within the will■ Where the will is revoked a new designation needs to be made
BENEFITS	<ul style="list-style-type: none">■ Testamentary trusts receive favourable tax treatment■ Potential to avoid creditors and/or probate fees

Important rules to remember relating to wills:

- A will is always revocable therefore the declaration within a will that creates the beneficiary designation is always revocable
- A marriage revokes a will but separation and divorce do not revoke a will or a beneficiary designation (except in Quebec – which is not applicable in this instance because trusts are not used for these purposes)
- If a will is invalid the designation within the will may still be valid

The following are sample clauses that can be included in a trust document or for provisions within a will. The clauses are samples only and should not be used verbatim. The advice and drafting skills of a lawyer will be required.

SCHEDULE A

Sample Clauses for Trust Agreement

This example provides sample clauses for a trust agreement. It includes proceeds being payable from a number of different types of insurance contracts including investment and life insurance. The clauses below contemplate the scenario where proceeds are held for a minor child with distribution occurring from

the trust at age 21. This is one example of distribution, but other scenarios could be used with modifications to the text. Note: this declaration will revoke all earlier declarations or designations in place for any and all insurance contracts held with Manulife Financial.



Insurance Declaration¹

I, [Declarant's name], declare that the proceeds from any and all types of insurance contracts including investment and life insurance contracts but not limited to such, issued by Manulife Financial, no matter to whom such contracts are presently payable under the terms of any declaration or designation, shall be paid to [insert name of trustee] (the "Insurance Trustee") as a separate Insurance Trust Fund.

The Insurance Trust Fund shall be administered by my Insurance Trustee in the following manner:

- I. The Insurance Trustee shall invest and keep invested the Insurance Trust Fund in shares, stocks, bonds, debentures, notes, mortgages, life insurance policies (including annuity contracts) and any other investments which the Insurance Trustee, in his or her absolute discretion, determines to be advisable, without being limited to investments authorized by law for trustees, and shall deal with the same as follows:
 - A. until _____ attains the age of 21 years the Insurance Trustee shall keep invested the Insurance Trust Fund and shall accumulate and add to the Insurance Trust Fund the net income therefrom;
 - B. upon _____ attaining the age of 21 years, the Insurance Trustee shall pay or transfer all remaining Insurance Trust Funds to _____ outright for his/her own use absolutely.
 - C. If _____ should die before attaining the age of 21 years, leaving children, any remaining balance of the Insurance Trust Fund shall continue to be held in trust by the Insurance Trustee for those of _____'s children then living, in equal shares per capita if more than one, each such share likewise becoming subject to the provisions contained in this clause in respect of _____'s interest in the Insurance Trust Fund. If there are no children of _____ living at his/her death, any remaining balance of the Insurance Trust Fund shall continue to be held in trust by the Insurance Trustee for those of _____'s brothers and sisters then living, in equal shares per capita if more than one, each such share likewise becoming subject to the provisions contained in this clause in respect of _____'s interest in the Insurance Trust Fund.
If there are no children, brothers or sisters of _____ living at the time of his/her death, the remaining Insurance Trust Fund shall be distributed to the persons who would have been entitled thereto if the Settlor of this Insurance Trust had died at the time, intestate, without debts and domiciled in the Province of _____, and his/her estate consisted of the Insurance Trust Fund.
 - D. The Insurance Trustee may, in their unfettered discretion, at any time pay or transfer all or a portion of the Insurance Trust Fund to _____ for his/her maintenance, education or advancement.
- II. In addition to all other powers and authorities available to them by law or otherwise, the Insurance Trustee shall have the power to:
 - A. acquire, hold, invest in and deal with, in their discretion as they deem advisable, any asset, real or personal, acquired as provided in this Agreement;
 - B. acquire and own life insurance policies (including annuity contracts) and exercise all powers of ownership, including the designation of beneficiaries; and
 - C. make such elections, determinations or designations as may be allowed under the Income Tax Act (Canada), as may be amended from time to time, as the Insurance Trustee in his/her absolute discretion determines advisable.
- III. The Insurance Trustee shall not be liable for any acts, omissions or defaults, whatsoever or howsoever caused, beyond their control. In general, they shall be liable only for their own willful misconduct in connection with the administration of the Insurance Trust Fund. If the Insurance Trustee becomes liable to others as Trustee in connection with matters not within their control or not due to their willful misconduct they shall be entitled to indemnity out of the Insurance Trust Fund.
- IV. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.
THIS DECLARATION is a declaration within the meaning of the Insurance Act of [insert province].

Dated at [insert city, province] this ___ day of, [insert year] Witness

Declarant

¹Not for use in Quebec

SCHEDULE B

Declaration Within a Will²

The sample clauses below provide two types of distribution clauses relating to the creation of an insurance trust within a will.

“I declare that the death benefit proceeds from contract number [insert number] issued by the Manufacturers Life Insurance Company shall be held in a separate insurance trust for the benefit of [name someone]. The death benefit proceeds shall not form part of my estate. The trust shall be administered in the same manner and shall be paid and payable to my Trustee to be held in a separate insurance trust in the same manner and in accordance with the residual clauses contained in my will at paragraphs [insert numbers]. This declaration shall be a declaration within the meaning of the Insurance Act, [insert province].”

OR

“I declare that the death benefit proceeds of contract number [insert number] issued by the Manufacturers Life Insurance Company, no matter to whom the same presently may be payable in connection with the terms thereof or of any declaration prior in date hereto, shall be paid over to my Trustee as a separate insurance trust fund for the benefit of (name someone), upon the same terms as to payment of income and capital of the said death benefit insurance proceeds as if such proceeds had formed part of the residue of my estate contained at paragraph [insert number] of my will. The death benefit insurance proceeds shall not form part of my estate. This declaration is a declaration within the meaning of the Insurance Act (insert province). Subject to the foregoing, my Trustees shall have the same powers, rights, protections, obligations and duties in connection with the administration of this insurance trust fund as they have for the administration of my residuary estate.”

Note: The above clauses are a variation of an insurance trust that mirrors the residuary distribution of the estate under the provisions of the will. However, a separate distribution scheme may be set up that does not mirror the residuary provisions of the will. Caution should be taken to ensure that the residuary clauses referenced do, in fact, exist within the will. With a separate distribution scheme, Canada Revenue Agency will be less likely to treat the proceeds as part of the other testamentary trust provision.

²Not for use in Quebec

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