Living Annuity With No Nominated Beneficiary

Executor's Fees and Estate Duty Implications (South Africa)

What happens to a living annuity if no beneficiary is nominated?

Where a living annuity has **no valid beneficiary nomination at the time of death**, the annuity provider is required to pay the remaining value of the annuity into the **deceased estate** as a lump-sum death benefit. The proceeds are then dealt with as part of the estate and distributed in terms of the deceased's will or, failing that, in accordance with the rules of intestate succession.

If, however, one or more beneficiaries are properly nominated, the annuity proceeds are paid **directly to those beneficiaries** and do not pass through the estate administration process. This distinction has important cost and timing consequences.

Authority:

- *Montanari v Montanari* (Gauteng Local Division, 2016)

Executor's fees where the annuity pays into the estate

Once the living annuity proceeds are paid into the deceased estate, they become subject to the **normal rules governing executor remuneration**.

In terms of the **Administration of Estates Act 66 of 1965** and the applicable regulations, an executor is entitled to remuneration of **up to 3.5% of the gross value of estate assets**, plus VAT where applicable, as well as **6% on income accrued and collected after death**. Because the annuity proceeds now form part of the estate's asset pool, the executor may levy their fee on that amount in the same way as on any other estate asset.

Had the annuity been paid directly to nominated beneficiaries, it would not have formed part of the estate and **no executor's fees** would have been chargeable on those proceeds.

Authority:

- Administration of Estates Act 66 of 1965

Estate duty treatment of a living annuity

Although a living annuity may fall into the estate for **administration purposes**, it does **not** follow that estate duty becomes payable on its value.

Section **3(2)(i) of the Estate Duty Act 45 of 1955** specifically excludes from estate duty any benefit payable as a result of membership of a **pension fund, provident fund or retirement annuity fund**. A living annuity, having been purchased with approved retirement fund proceeds, falls within this exclusion.

Accordingly:

- **No estate duty is payable** on the remaining capital value of a living annuity,
- **Even where the annuity is paid into the deceased estate** due to the absence of a beneficiary nomination.

While commentary sometimes suggests that a living annuity becomes "estate-dutiable" when it pays into the estate, **SARS practice and accepted interpretation** support the view that approved retirement-fund-based living annuities remain **excluded from the dutiable estate**.

Authority:

- Estate Duty Act 45 of 1955, s 3(2)(i)

Capital value vs income tax – an important distinction

It is important to distinguish between **estate duty** and **income tax**, as they apply at different stages and to different amounts.

- **Estate duty** is a once-off tax on the value of a deceased estate. As noted above, the capital value of a living annuity is excluded from estate duty.
- **Income tax**, however, may still apply when benefits are paid out after death.

If the annuity proceeds are taken as a **cash lump sum**, the amount is taxed in terms of the **retirement fund lump-sum death benefit tax tables** under the Income Tax Act. This tax is deducted before the proceeds are paid to the estate or heirs.

Alternatively, if the proceeds are used to **continue or transfer the annuity** in favour of heirs, no tax is triggered on transfer, but **future annuity payments** will be taxed as income in the hands of the recipients.

In short, while a living annuity is protected from estate duty, it is **not entirely tax-free** on death; taxation is simply dealt with through the income-tax system rather than estate duty.

Authority:

- Income Tax Act 58 of 1962
- SARS retirement fund lump-sum tax framework

Legal rationale

A living annuity is a **retirement product**, not a conventional investment owned outright by the annuitant. Once purchased, the underlying capital is held by the insurer or fund, and the annuitant's entitlement is limited to a regulated income stream.

On death, that income right comes to an end and the remaining value is dealt with in accordance with the annuity contract and legislation. This explains why:

- the benefit may revert to the estate if no beneficiary is nominated,
- the executor may charge fees if the proceeds enter the estate, and
- estate duty nevertheless does not apply, due to the statutory protection afforded to retirement benefits.

Key case law

Montanari v Montanari (2016)
The High Court confirmed that a living annuity is tightly regulated, that the annuitant does not own the underlying capital during their lifetime, and that where no beneficiary is nominated, the remaining value may be paid into the deceased estate.

CM v EM [2020] ZASCA 48
The Supreme Court of Appeal clarified that the **right to future annuity payments has value** and constitutes an asset for estate or accrual purposes, even though the capital is held by the insurer. The decision confirms that a living annuity is not an illusory or "off-balance-sheet" asset, while leaving intact the statutory estate-duty exemption for retirement benefits.

Practical takeaway

From an estate-planning perspective:

- A living annuity with **no beneficiary nomination** will increase estate administration costs due to **executor's fees**,
- **No estate duty advantage** is gained by allowing the annuity to fall into the estate, and
- Proper beneficiary nominations remain one of the simplest and most effective ways to **reduce costs, avoid delays, and preserve value for heirs**.

The legal position is clear under South African law:
executor's fees may apply; estate duty does not.

By Renate Jute CFP® FPSA® TEP®
Noble Prosperity Pty Ltd
https://www.linkedin.com/in/renate-jute-fiduciary-specialist/