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A variable annuity is a form of life insurance annuity contract whose value fluctuates with that of underlying securities or other index of performance.

The owner of the variable annuity may choose to receive income distributions at any time.

In the context of planned giving, variable annuities are promoted by some practitioners as an investment vehicle for a net income charitable remainder unitrust with a makeup provision. The concept is that the beneficiary of the trust tells the trustee when he wants to receive income and the trustee requests a distribution from the variable annuity accordingly. The net income and makeup provisions of the CRU cause the trust to distribute income only in the years in which the trustee requests income from the variable annuity.

As of this writing, the IRS has published proposed regulations that indicate that the IRS is studying whether investing a CRU in a variable annuity violates the requirement that the CRU operate solely as a charitable trust. Consequently, before suggesting a CRU invested in a variable annuity to a prospect, consult your own tax counsel and advise your prospect to do the same.

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