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Is An Annuity Contract A Security?

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In general terms, an annuity contract involves the payment of money in return for a promise to receive payments on some periodic basis in the future. An obvious question therefore might be whether an annuity contract is a security. The answer insofar as the California Corporate Securities Law is concerned can be found in Section 25019 of the Corporations Code which defines "security" and then provides:

"'Security' does not include . . . any insurance or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period . . .".

Note that not all annuity contracts are excluded. The contract must be with an insurance company and that insurance company must be admitted in California. Note that if an annuity is not a security, it is subject to neither the qualification nor the anti-fraud provisions of the CSL.

One class action plaintiff recently learned the hard way that annuities may not be securities under California law. In *Abbit v. ING USA Annuity & Life Ins. Co.,* 2019 U.S. App. LEXIS 13518, the Ninth Circuit Court of Appeals cited Section 25019 in concluding that "California's securities laws do not apply" to plaintiff's claims.