

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

SUITABILITY OF ANNUITY AND LIFE INSURANCE TRANSACTIONS

MINIMUM COURSE CONTENT REQUIRED

(Please address all Section Overviews and Discussion Points. Provide a synopsis and the information you will be covering and discussing.)

I. PURPOSE

SECTION OVERVIEW: Discuss purpose of legislation governing the sale of life insurance and annuities.

Discussion points – include discussion on relevant ethical violations and complaints.

II. Overview of Recent Legislation and Rules

Discussion on recent amendments to legislation governing the sale of annuities

- i. List all new legislation
- ii. Discussion points on all new legislation

III. DEFINITIONS

SECTION OVERVIEW:

A. Annuity:

Discussion points: §627.4554, F.S.

B. Suitability information:

Discussion points: (include all items listed under definition per 627.4554(3)(g))

C. Ethical conduct:

Discussion points:

D. Recommendation:

Discussion points:

E. FINRA:

Discussion points:

F. Replacement:

Discussion points:

IV. PRODUCTS

SECTION OVERVIEW: Include definition and discussion points on the following:

- A. Fixed annuities:
- B. Equity indexed annuities:
- C. Variable annuities:
- D. Group annuities:
- E. Emerging annuity features
- F. Immediate and deferred annuities

V. DUTIES OF INSURERS AND INSURANCE AGENTS

SECTION OVERVIEW:

- A. Determine objectively reasonable basis for believing a recommendation is suitable based on suitability information.
Discussion points:
- B. Have reasonable basis to believe that:
 - i. Consumer has been reasonably informed of annuity features
 - 1) Potential surrender period and surrender charges
 - 2) Potential tax penalties
 - 3) Mortality and expense fees
 - 4) Investment advisory fees
 - 5) Potential charges for and features of riders
 - 6) Limitations on interest returns
 - 7) Insurance and investment components
 - 8) Market risk
 - ii. Consumer would benefit from certain features of the annuity
 - iii. The particular annuity as a whole, the underlying subaccounts, riders, and similar product enhancements are suitable.
 - iv. Any exchange or replacement of an annuity is suitable after considering whether the consumer:
 - 1) Will incur a surrender charge, be subject to a new surrender period, lose existing benefits, or be subject to increased fees.
 - 2) Would benefit from product enhancements and improvements.
 - 3) Has had another annuity exchange or replacement, including within the preceding 36 months.

Refer to DFS Annuity Suitability Questionnaire (DFS-H1-1980) to ensure minimum required information is collected. Refer to DFS Disclosure and Comparison Form (DFS-H1-1981). ****Copies of each must be included as a supplement.***

- C. If currently owning an annuity or annuities:
 - i. Make reasonable effort to obtain consumer's suitability information on form DFS-H1-1980
 - ii. Questions on form must be in 12-point font and sufficiently clear and understandable
 - iii. Copy of form provided to insurer (or contracted entity of insurer) within 10 days after execution of form
 - iv. Copy of form provided to the consumer no later than the date of the delivery of the contract or contract.

- D. Per §627.4554(5)(f), F.S., if exchanging an annuity
 - i. Provide information that compares the differences between existing and recommended annuity contracts on form DFS-H1-1981 in order to determine the suitability of the recommendation and its benefit to the consumer.
 - ii. Copy of form provided to insurer (or contracted entity of insurer) within 10 days after execution of form
 - iii. Copy of form provided to the consumer no later than the date of the delivery of the contract or contract.

- E. An insurer or it's agent does not have an obligation to a consumer related to the suitability of an annuity transaction if
 - i. A recommendation has not been made
 - ii. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;
 - iii. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended or
 - iv. a consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or it's agent.

- F. At the time of sale, the agent or the agent's representative must:
 - i. Make a record of any recommendation made ot the consumer pursuant to 626.4554(5)(a);
 - ii. Obtain the consumer's signed statement documenting his or her refusal to provided suitability information, if applicable; and
 - iii. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he of she decides to enter into an

annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.

Refer to DFS Disclosure and Comparison Form (DFS-H1-1981).

- G. An insurer or insurance agent shall establish a supervision system that is reasonably designed to achieve compliance with §626.4554, F.S., including but not limited to:
- i. Supervision System requirements: (include but are not limited to:)
 - 1) Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals.
 - 2) Establishing standards for agent product training
 - 3) Providing product specific training and training materials that explain all material features of its annuity product to its agents
 - 4) Maintaining procedures for the review of each recommendation before issuance of an annuity.
 - 5) Maintaining reasonable procedures to detect recommendations that are not suitable
 - (1) Confirmation of consumer suitability information
 - (2) Systematic customer surveys
 - (3) Consumer interviews
 - (4) Confirmation letters
 - (5) Internal monitoring programs
 - 6) Annually providing a report to senior managers reviews of tests reasonably designed to determine the effectiveness of the supervision system
 - ii. An insurer may contract for performance of a function in a supervision system.
 - 1) Insurer must include the supervision of contractual performance.
 - (1) Monitoring and conducting audits
 - (2) Annually obtaining certification from a senior manager that function is being performed properly.
 - 2) Insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties regardless of
 - (1) Whether insurer contracts for performance of a function
 - (2) The insurer's compliance with requirements of contracting for performance of a function.
- H. Agent may not dissuade or attempt to dissuade a consumer from:
- 1) Truthfully responding to an insurer's request for confirmation of suitability information
 - 2) Filing a compliant

- 3) Cooperating with the investigation of a complaint.
- I. Sales made in compliance with FINRA suitability and supervision requirements satisfy the same of the Department. The office or department may still:
 - 1) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business
 - 2) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist in maintaining its supervision system.

VI. ETHICAL CONSIDERATIONS

SECTION OVERVIEW:

- A. Policyholder Bill of Rights – §626.9641, F.S.
- B. Agent's code of ethics – §626.797, F.S., DFS Rule 69B-215.210, F.A.C
- C. Agent's fiduciary responsibility to client
 - i. Does applicant understand basic concepts of annuities?
 - ii. Does applicant have sufficient assets to meet or exceed current financial objectives?
 - iii. Are other financial vehicles more suitable to meet the applicant's financial objectives?
 - iv. Is the sale in the best interest of the client and his family?
 - v. Does the transaction make sense?
 - vi. Discussion of Case Law

VII. MITIGATION OF RESPONSIBILITY

SECTION OVERVIEW:

- A. Per §627.4554(7), F.S.
Discussion points:
- B. Pertains to insurer, agent and/or MGA
Discussion points:
- C. Discussion of what constitutes harm to a consumer (Provide case law)

Discussion points:

VIII. PROHIBITED CHARGES

Per §626.4554(8), F.S.

Discussion Points:

IX. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS

Per FS §626.9541 & §626.9521, F.S.

SECTION OVERVIEW:

A. Churning – §626.9541(1)(aa), F.S.

Discussion points:

B. Twisting – §626.9541(1)(l), F.S., and DFS Rule 69B-215.215 F.A.C.

Discussion points:

C. Fraudulent signatures - §626.9541(1)(ee), F.S.

Discussion points:

D. Unlawful or deceptive use of designations – §626.9541(1)(ff), F.S.

Discussion points:

X. PENALTIES

SECTION OVERVIEW:

A. Per §626.9521(3)(a), F.S. – Twisting & Churning

Discussion points:

B. Per §626.9521(3)(b), F.S. – Fraudulent or false signatures

Discussion points:

C. Per §626.9521(5), F.S. – Video Depositions

Discussion points:

D. Penalties related to DFS Rule Chapter 69B-231, F.A.C.

Discussion points:

E. Penalties related to §626.611 and §626.621, F.S.

XI. LIFE INSURANCE SOLICITATION:

Per §626.99(4), F.S., - Disclosure requirements.

Discussion Points:

- A. Prior to accepting initial premium or premium deposit the insurer must provide the prospective buyer with a buyer's guide and policy summary
- B. Buyers guide and policy summary may be delivered with the policy if
 - i. Life insurance contract provides an unconditional refund for at least 14 days
 - ii. Fixed or variable annuity contract provides an unconditional refund for at least 21 days
- C. Buyers guide for fixed annuities must be in the form provided by the NAIC Annuity Disclosure model Regulation until department develops one to be used instead.
- D. For variable annuities a policy summary which may be contained in a prospectus may be used until the NAIC or the department develops a buyer's guide to be used instead.
- E. Unconditional refund of premiums means:
- F. For fixed annuity, any contract fees or charges
- G. For variable or market value annuity, the equal of the cash surrender value provided in the contract plus any fees or charges deducted from the premium or imposed under the contract; or
- H. A refund of all premiums paid.
 - i. Buy
 - ii. "Free Look"
 - 1) Life insurance
 - 2) Annuities
 - iii. Unconditional refund of premiums
 - 1) Fixed annuity
 - 2) Variable or market value annuity
 - iv. Cover page attached
 - 1) Inform of unconditional refund
 - 2) Contact information for the issuing company and the selling agent, the department's toll-free help line.
 - 3) Cover page must contain in bold print and at least 12-point font all specific disclosures listed in 626.99(4)(c).
 - 4) Cover page is part of the policy
 - v. In addition, upon request, provide a buyer's guide or policy summary to a prospective purchaser.
- I. Per §626.99(5), F.S. – General Rules Relating to Solicitation.
Discussion points:

XII. GROUNDS FOR SUSPENSION AND REVOCATION OF LICENSE

- A. Per §626.621(13), F.S. – Disciplinary action by the Department when licensee is disciplined under securities or related license

Discussion points:

- B. Per §626.641(3)(b), F.S. – Prohibition of license application for an applicant whose previous license was revoked due to solicitation or sale of an insurance product to a senior.

Discussion points:

XIII. RECORDKEEPING – per §627.4554(6), F.S.

SECTION OVERVIEW:

- A. Maintain files five years.
- B. Records that should be maintained.
 - i. Applications
 - ii. Questionnaires
 - iii. Illustrations
 - iv. Correspondence
 - v. Account review documents
 - vi. Account statements
 - vii. Any other documentation used in making the recommendations that were the basis for the transaction.
- C. Acceptable formats or records
 - i. Paper
 - ii. Photographic
 - iii. Micro process
 - iv. Magnetic
 - v. Mechanical
 - vi. Electronic media
 - vii. Any process that accurately reproduces the actual document

XIV. REPRESENTING UNAUTHORIZED ENTITIES

SECTION OVERVIEW:

- A. Prohibited under §626.901, F.S.
- B. Unauthorized entities engaging in insurance are a serious and growing problem in Florida.

- C. Agents representing unauthorized entities place themselves and their clients at risk.
- D. Penalties for agents representing or aiding an unauthorized insurer.
- E. Agent requirements to perform due diligence.

Unauthorized Entities Verbiage:

An entity that is required to be licensed or registered with the Florida Office of Insurance Regulation but is operating without the proper authorization is identified as an ***unauthorized insurer***. All persons have the responsibility of conducting reasonable research to ensure they are not writing policies or placing business with an unauthorized insurer. Any person who, directly or indirectly, aid or represent an unauthorized insurer can lose their licenses or face other disciplinary sanctions. Please see section 626.901, Florida Statutes, to read the law. Lack of careful screening can result in significant financial loss to Florida consumers due to unpaid claims and/or theft of premiums. Under Florida law, a person can be charged with a third-degree felony and also held liable for any unpaid claims and refund of premiums when representing an unauthorized insurer. It is the person's responsibility to give fair and accurate information regarding the companies they represent.