

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

SUITABILITY OF ANNUITY AND LIFE INSURANCE TRANSACTIONS FOR SENIORS

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 to seniors.

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

II. Overview of Recent Legislation and Rules

- A. 2010 Legislative Enhancements from the Safeguard Our Seniors Act.
Refer to Amendment Supplement.
Discussion Points:
- B. Discussion on other recent amendments to legislation governing the sale of annuities to seniors.
 - i. List all new legislation
 - ii. Discussion points on all new legislation

III. DEFINITIONS

SECTION OVERVIEW:

- A. Annuity contract:
Discussion points: §627.4554, F.S.
- B. Suitability:
Discussion points:
- C. Ethical conduct:
Discussion points:
- D. Recommendation:
Discussion points:

- E. Accredited Investor:
Discussion points:

- F. Senior Consumers:
Discussion points:

- G. Affiliated Party:
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

V. DUTIES OF INSURERS AND INSURANCE AGENTS

SECTION OVERVIEW:

- A. Determine objectively reasonable basis for believing a recommendation is suitable for a senior consumer.
Discussion points:

- B. Discussion on all the minimum information required to be gathered by an agent pursuant to §627.4554(4), F.S.:
 - i. Personal information
 - ii. Investment objectives: What is the individual desire to achieve
 - iii. Applicant's risk tolerance:
 - iv. Existing assets, including investment holdings
 - v. Applicant's annual income
 - vi. Tax status (i.e. tax bracket, filing status, etc.)
 - vii. Applicant's liquid net worth and liquidity needs
 - viii. Future Financial Considerations
 - ix. Intended use of the annuity
 - x. Source of funds to be used for purchase of annuities
 - xi. Any other information used or considered by the agent or insurer in making recommendations to consumers regarding the purchase or exchange of an annuity contract.

Refer to DFS Annuity Suitability Questionnaire (DFS-H1-1980) to ensure minimum required information is collected. ****Copy must be included as a supplement.***

C. If currently owning an annuity or annuities, determine:

- i. Type of contract(s)
- ii. Issue date(s)
- iii. Maturity date(s) or annuitization date(s)
- iv. Allocation of funds within contract
- v. Terms of Surrender Charges
- vi. Contract riders or endorsements
- vii. Liquidity of Contract
 - 1) Prior to maturity
 - 2) At maturity

D. Per §627.4554(d), F.S., if exchanging an annuity provide a comparison of difference between contracts, including:

- i. Comparison of benefits, terms, and limitations
- ii. Comparison of fees and charges
- iii. Written basis for recommended changes
- iv. Such other information considered relevant by the agent and insurer in making recommendations to the consumer regarding replacement or exchange of an annuity contract.

Refer to DFS Disclosure and Comparison Form (DFS-H1-1981). ****Copy must be included as a supplement.***

E. Disclosure

- i. Crediting Methods and Potential Tax Implications
 - 1) Source of Interest Credits
 - 2) Income Taxation of Interest Credits
 - 3) When income tax deferral is advantageous
 - 4) Crediting Formulas
 - 5) Guaranteed Interest Credits
- ii. Risk factors
 - 1) Loss of principal
 - 2) Known versus expected interest
 - 3) Reallocation limitations
- iii. Changes in market or company financial conditions

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

- F. An insurer or insurance agent must ensure that a system to supervise recommendations are in compliance with §626.4554, F.S.,
 - i. which may be established and maintained by:
 - 1) Insurer or insurance agent
 - 2) A managing general agent and an insurance agency
 - 3) A third party contract including managing general agent or an insurance agency.
 - ii. Such a system should include but is not limited to:
 - 1) Written Procedures
 - 2) Periodic reviews.

VI. ETHICAL CONSIDERATIONS

SECTION OVERVIEW:

- A. Policyholder Bill of Rights – §626.9641, F.S.
- B. Agent's code of ethics – DFS Rule 69B-215.210, F.A.C and s. 626.797, F.S.
- 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(5), 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(9), 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:

XI. LIFE INSURANCE SOLICITATION:

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

Discussion Points:

- A. Insurer responsibility prior to accepting initial premium
 - i. Buyers guide
 - 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, and any other information required by the department by rule.
 - 3) Cover page is part of the policy
 - v. In addition, upon request, provide a buyer's guide or policy summary to a prospective purchaser.

- B. 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. EDUCATION REQUIREMENTS

SECTION OVERVIEW: Per §626.2815, F.S. – Continuing education requirements

- A. Application

- B. Exceptions – Per §626.2815(3)(k), F.S.

- i. Agents not actively soliciting or servicing life insurance and annuity contracts.
- ii. Hours may be used to satisfy ethics.

XIV. 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.

XV. 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.