

## TO BE RESCINDED

3901-6-05

**Replacement of life insurance and annuities.**

## (A) Purpose

The purpose of this rule is:

- (1) To regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities.
- (2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:
  - (a) Assuring that purchasers receive information with which a decision can be made in his or her own best interest; and
  - (b) Reducing the opportunity for misrepresentation and incomplete disclosures.

## (B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.21 of the Revised Code.

## (C) Scope

- (1) Except as hereinafter exempted, this rule shall apply to the replacement of life insurance and annuities by any issuer of life insurance, including fraternal benefit societies, occurring within this state.
- (2) Unless otherwise specifically included, this rule shall not apply to:
  - (a) Credit life insurance;
  - (b) Group life insurance, group annuities, and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this paragraph, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;
  - (c) An application to the insurer that issued the existing life insurance where a

contractual change or a conversion privilege is being exercised;

- (d) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; and
- (e) Registered contracts shall be exempt from the requirements of paragraphs (G)(2)(b) and (G)(2)(c) of this rule requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

#### (D) Definitions

- (1) "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:
  - (a) Lapsed, forfeited, surrendered, or otherwise terminated;
  - (b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - (c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
  - (d) Reissued with any reduction in cash value; or
  - (e) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five per cent of the loan value set forth in the policy.
- (2) "Conservation" means an attempt by the existing insurer or its agent to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.
- (3) "Direct-response Sales" means any sale of life insurance or annuity where the

insurer does not utilize an agent in the sale or delivery of the policy.

- (4) "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."
- (5) "Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.
- (6) "Replacing Insurer" means the insurance company that issues or proposes to issue a new policy of contract which is a replacement of existing life insurance or annuity.
- (7) "Registered Contract" means variable annuities, investment annuities, or variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the federal securities and exchange commission.

(E) Duties of agents

- (1) Each agent who initiates the application shall submit to the prospective insurer with or as part of each application:
  - (a) A statement signed by the applicant as to whether replacement is involved in the transaction; and
  - (b) A statement signed by the agent as to whether the agent knows replacement is or may be involved in the transaction.
- (2) Where a replacement is involved, the agent shall:
  - (a) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in the appendix, or other substantially similar form approved by the superintendent. The notice shall be signed by both the applicant and the agent and left with the applicant.
  - (b) Obtain with or as part of each application a list of all existing life insurance and annuities to be replaced and properly identified by name

of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(c) Leave with the applicant the original or a copy of all written or printed communications used for presentation to the applicant.

(d) Submit to the replacing insurer with the application a copy of the notice provided pursuant to paragraph (E)(2)(a) of this rule.

(3) Each agent who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of all materials used.

(F) Duties of all insurers

Each insurer shall:

(1) Inform its field representatives or other personnel responsible for compliance with this rule of the requirements of this rule; and

(2) Require with or as a part of each completed application a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

(G) Duties of insurers that use agents

Each insurer that uses an agent in a life insurance or annuity sale shall:

(1) Require with or as part of each completed application a statement signed by the agent as to whether the agent knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved:

(a) Require from the agent with the application:

(i) A list of all of the applicant's existing life insurance or annuities to be replaced; and

(ii) A copy of the notice provided the applicant pursuant to paragraph (E)(2)(a) of this rule. The existing life insurance or annuity shall

be identified by the name of the insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

- (b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to paragraph (G)(2)(a) of this rule and a policy summary, contract summary or ledger statement containing policy data on the proposed life insurance or annuity which shall be completed in accordance with rule 3901-6-04 of the Administrative Code (life insurance illustrations) and for those policies that are not permitted to use an illustration, in accordance with rule 3901-6-03 of the Administrative Code (life insurance disclosure) or any other applicable rule. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.
- (c) Each existing insurer or insurer's agent that undertakes a conservation shall, within twenty days from the date the written communication plus the materials required in paragraphs (G)(2)(a) and (G)(2)(b) of this rule are received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or ledger statement containing policy data on the existing policy or annuity. For policies sold with an illustration and issued on or after the effective date of rule 3901-6-04 of the Administrative Code (life insurance illustrations), the policy summary or ledger statement shall be completed in accordance with rule 3901-6-04 of the Administrative Code (life insurance illustrations). For policies that are not permitted to use an illustration, and for policies that were sold prior to the effective date of rule 3901-6-04 of the Administrative Code (life insurance illustrations) the policy summary or ledger statement shall be completed in accordance with rule 3901-6-03 of the Administrative Code (life insurance disclosure). However, information relating to premiums, cash values, death benefits, dividends and other non-guaranteed elements, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any rule or statute. Cost indices and equivalent level annual dividend figures need not be included. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be provided within five working days of the receipt of the request.

- (3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the policy summary, the contract summary and any ledger statements used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of the policy summaries, contract summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for a least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.
- (4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which may be exercised within a period of twenty days commencing from the date of delivery of the policy.

(H) Duties of insurers with respect to direct response sales

- (1) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a "Notice Regarding Replacement" as described in the appendix or other substantially similar form approved by the superintendent. In such instances the insurer may delete the last sentence and the references to signatures from the appendix without having to obtain approval of the form from the superintendent.
- (2) If the insurer proposed the replacement it shall:
  - (a) Provide to applicants or prospective applicants with or as a part of the application a "Notice Regarding Replacement" as described in the appendix or other substantially similar form approved by the superintendent;
  - (b) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer and insured; and
  - (c) Comply with the requirements of paragraph (G)(2)(b) of this rule, if the applicant furnishes the names of the existing insurers, and the requirements of paragraph (G)(3) of this rule, except that it need not maintain a replacement register.

(I) Failure to comply

- (1) A violation of this rule shall occur if an agent or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. In addition to any other penalties provided by the laws of this state, an insurer, agent, or authorized representative of the insurer that violates a requirement of this rule shall be guilty of a violation of section 3901.21 of the Revised Code.
- (2) Patterns of action by policyowners who purchase replacing policies from the same agent, after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's intent to violate this rule.
- (3) This rule permits the use of additional material, other than that which is required, that is not in violation of this rule or any other statute or rule.

#### (J) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, and the remaining paragraphs, terms and provisions shall be and shall continue in full force and effect.

Effective: 03/01/2007

R.C. 119.032 review dates: 09/01/2006

CERTIFIED ELECTRONICALLY

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Certification

11/06/2006

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Date

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