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## SUITABILITY IN ANNUITY TRANSACTIONS

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Must be completed and accompany applications for annuities

Applicant's Name \_\_\_\_\_

Applicant's Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- |  |   |
|--|---|
| <input type="checkbox"/> Tax Status            | <input type="checkbox"/> Source of funds              |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information        |
| <input type="checkbox"/> Liquidity needs       | <input type="checkbox"/> Need for Income              |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other \_\_\_\_\_

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

\_\_\_\_\_  
Agent's Signature

\_\_\_\_\_  
Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

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Applicant's Address \_\_\_\_\_

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Other \_\_\_\_\_

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\_\_\_\_\_

Agent's Signature

\_\_\_\_\_

Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

\_\_\_\_\_

Applicant's Signature

\_\_\_\_\_

Date

**806 KAR 12:120. Suitability in annuity transactions.**

RELATES TO: KRS 304.9-390, 304.12-010, 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461  
STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

**Section 1. Definitions.**

- (1) "Agent" is defined in KRS 304.9-020(1).
- (2) "Annuity" is defined in KRS 304.5-030.
- (3) "Consultant" is defined in KRS 304.9-040.
- (4) "Executive director" is defined in KRS 304.1-050(1).
- (5) "Insurance producer" is defined in KRS 304.9-020(7).
- (6) "Insurer" is defined in KRS 304.1-040.
- (7) "Licensee" means agent, insurer if an agent is not involved, and consultant.
- (8) "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

**Section 2. Exemptions.**

This administrative regulation shall not apply to recommendations involving:

- (1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or
- (2) Contracts used to fund:
  - (a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;
  - (b) A plan described by 26 U.S.C. 401(a), (k), 403(b), 408(k), or (p), as amended, if established or maintained by an employer;
  - (c) A government or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;
  - (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - (e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - (f) Prepaid funeral contracts.

**Section 3. Duties of Licensees.**

- (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs.
- (2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain information concerning:
  - (a) The consumer's financial status;
  - (b) The consumer's tax status;
  - (c) The consumer's investment objectives; and
  - (d) Other information necessary for making recommendations to the consumer.
- (3)
  - (a) Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under subsection (1) of this section related to a recommendation if a consumer:
    1. Refuses to provide relevant information requested by the licensee;
    2. Decides to enter into an insurance transaction not based on a recommendation of the licensee;or
  3. Fails to provide complete or accurate information.
  - (b) A licensee's recommendation subject to paragraph (a) of this subsection shall be reasonable under all the circumstances actually known to the licensee at the time of the recommendation.
- (4)
  - (a) An insurer shall either:
    1. Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this administrative regulation and shall comply with paragraphs (c) through (e) of this subsection; or

- 2. a. Establish and maintain written procedures to demonstrate the insurer's compliance with this administrative regulation; and
- b. Conduct periodic reviews of its records that shall be reasonably designed to assist in detecting and preventing violations of this administrative regulation.
- (b) A supervising insurance producer shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this administrative regulation, or shall establish and maintain a system, including:
  - 1. Maintaining written procedures to demonstrate the insurer's compliance with this administrative regulation; and
  - 2. Conducting periodic reviews of records that shall be reasonably designed to assist in detecting and preventing violations of this administrative regulation.
- (c) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required by paragraph (a) of this subsection with respect to insurance agents under contract with or employed by the third party.
- (d)
  - 1. An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (c) of this subsection is performing the functions required under paragraph (a) of this subsection and shall take reasonable action to enforce the contractual obligation to perform the functions.
  - 2. An insurer shall comply with its obligation to make reasonable inquiry if the insurer:
    - a. Annually obtains a certification from a senior manager of the third party who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
    - b. Based on reasonable selection criteria, periodically selects third parties contracting under paragraph (c) of this subsection for a review to determine if the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.
- (e) An insurer that contracts with a third party pursuant to paragraph (c) of this subsection and that complies with the requirements to supervise in paragraph (d) of this subsection shall be in compliance with paragraph (a) of this subsection.
- (f) An insurer or supervising insurance producer shall not be required by paragraph (a) or (b) of this subsection to:
  - 1. Review, or provide for review of, all agent solicited transactions; or
  - 2. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer or supervising insurance producer.
- (g) A supervising insurance producer contracting with an insurer pursuant to paragraph (c) of this subsection shall promptly, if requested by the insurer pursuant to paragraph (d) of this subsection, give a certification as described in paragraph (d)1a of this subsection or give a clear statement that the supervising insurance producer is unable to meet the certification criteria.
- (h) A person shall not provide a certification under paragraph (d)1.a. of this subsection unless:
  - 1. The person is a senior manager with responsibility for the delegated functions; and
  - 2. The person has a reasonable basis for making the certification.

**Section 4. Mitigation of Responsibility.**

- (1) The executive director shall require:
  - (a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its agent's, violation of this administrative regulation;
  - (b) An agent to take appropriate corrective action for any consumer harmed by the insurance agent's violation of this administrative regulation;
  - (c) A supervising insurance producer that employs or contracts with an insurance agent to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the agent's violation of this administrative regulation; or
  - (d) A consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(2) Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2) or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

**Section 6. Recordkeeping.**

Licenses shall maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070.

**Section 7. Effective Date.**

The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008. (33 Ky.R. 4292; Am. 34 Ky.R. 286; 728; eff. 11-2-2007.)