Annuity 4-Hr Suitability

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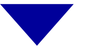

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A Word On Annuity Suitability Training

This course meets Department of Insurance Guidelines for Annuity Training. Specifically, this course is one of four sanctioned by the State to meet the 4-Hour "refresher" training required every two years by the end of your license renewal. This course addresses annuity suitability, however, there is additional Suitability Training you must fulfill that is supplied by your carrier (insurance company) to meet the State's Annuity Suitability Training spelled out in AB 689.

There is much confusion about recent legislation (AB 689) and "training" required on or before January 1, 2012. A 12/6/11 letter from the DOI attempts to clarify:

Do I need to take a new 8-hour or 4-hour annuity course?

NO. ***Existing 8-Hour and/or 4-Hour annuity training courses (INCLUDING THIS COURSE) taken through Affordable Educators, are STILL valid courses to meet annuity training*** rules for agents selling these products. If you have taken an 8-hour or 4-hour annuity refresher course to meet your current renewal period, ***you do not need to take it again*** to meet annuity suitability rules.

So what is the annuity suitability training required?

According to the State and AB 689, *insurance producers that sell annuity products must complete the* ***insurer's product-specific training***. Any insurance producer who has not completed the insurer's annuity product-specific training is precluded from selling those annuity products until the product-specific training is completed.

The annuity product-specific training is a separate requirement from the eight and four-hour annuity training (THIS COURSE). And, per the legislation above, *this training MUST come from your insurer.*

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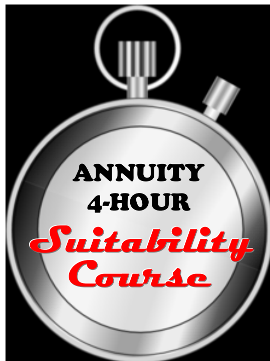


SECTION I
Annuity Suitability

Let's Discuss Annuity Suitability

Annuities can play a role in a client's ***overall*** financial plan. A client views annuities in terms of a desire for ***income, safety of principal and tax advantages***. From the agent's perspective, however, more needs to be done to uncover the ***client's true needs***, reflected in growth vs. income requirements, risk tolerance, liquidity specifications, now and in the future, and whether tax deferral benefits are worthwhile to pursue. Agents can be vital players in solving these client needs. It follows, that the greater agent due care exercised, the more suitable AND valuable his service.

There are variety of techniques that are accepted and used to determine customer needs or suitability. Some are more traditional than others. Most are seen as solutions to ***identify*** a certain customer segment. They give logical, rational explanations about where the customer fits in but do not explain how the customer ***feels and cares***. Policy applications are an example of information an agent might use to identify who he is about to insure.

Who should invest in annuities?

One rule of thumb follows that a client looking for a long-term investment with a tax bracket greater than 15 percent might consider annuities. Other likely candidates include moderate or high tax bracket individuals looking for a conservative way to shelter current income or growth over a long period of time, i.e., retirement monies.

Fixed rate annuities might be an alternative for CDS, GNMAs (Ginnie Maes), T-Bills or other similar obligations. Variable annuities are better geared to individuals who seek tax deferral, yet willing to ride with the ups and downs that accompany stock and mutual fund investments.

Once an annuity can be established as an appropriate investment opportunity, agents must carefully weigh the following choices and discuss same with each client:

Immediate Annuity vs. Deferred Annuity

Clients may have ***current*** income needs or the desire to ***defer*** income for greater growth. Perhaps a combination is appropriate. Tax planning and liquidity are key considerations for the agent.

Single Premium vs. Flexible Premium

Client's generally have a ***lump sum*** to invest or need to ***accumulate*** by paying into a savings plan. Short and long-term liquidity is an important consideration.

Fixed Rate vs. Variable Rate

Client's may have needs to ***lock-in*** their yields or go for ***growth***. One group is typically a CD type investor as opposed to those who are willing and able to incur greater risk. Agents needs to carefully explain the potential loss of principal possible in variable plans. Agents should review potential interruptions in return of principal and yield that can develop with either fixed or variable contracts.

Yield vs. Guarantees

It is logical that the stronger the guarantee the lower the yield. Agents must explain that a higher first year yield may include bonuses or special incentives to invest that later disappear. This type of contract should be compared to other contracts that may offer a slightly lower yield that is ***locked in*** for a specific period, i.e., determining overall ***predictable*** yield over time is important due diligence. In the same vein, a disclosure would be appropriate as to the method used by the insurer to ***adjust*** yield. A contract with a guaranteed yield spread may be more appropriate for some clients than a yield that is adjusted by the insurer's board of directors. Equally important is whether yield is ***banded,*** i.e., are yields adjusted separately for certain blocks of investors or are investors who entered five years ago given the same yield as new investors.

Yield vs. Liquidity

Clients demanding easy access to their money should be prepared to settle for lower overall yields. Agents need to go farther to determine special needs such as the potential for large sums of money to pay for a potential illness or nursing home. Certain contracts allow penalty free withdrawals for special circumstances. Due care dictates that agents carefully and clearly explain all surrender charges associated with the contract and when they occur.

Maturity options

Annuity contracts may mature at specific ages. This can affect BOTH a client's long-term investment planning as well as tax planning. A client wishing to plan for long term deferral to age 95, for example, might be disappointed to learn that the contract must ***annuitize*** at age 85. Further, agents MUST disclose the potential tax affect of a maturing annuity. Pre-1981 Annuities deliver ***principal first***, then tax interest or appreciation. Post 1981 annuities tax interest or appreciation first then deliver principal. Also to be considered is ***annuitization*** of the contract where a systematic withdrawal and payoff of the contract over time delivers some principal and taxes interest and appreciation with each payment.

Withdrawals & IRS Penalties

Where the client is withdrawing all or part of an annuity contract PRIOR to age 59.5, he should be apprised of the ten percent IRS penalty for early withdrawals. At present, this can only be avoided where the annuitant dies or becomes substantially disabled or, where annuitization is chosen within one year of investing in the annuity contract.

Guaranteed Death Benefits

Where agents assist in estate planning, due care would involve a disclosure concerning death benefits. Most fixed rate contracts guarantee the return of principal and any appreciation (interest left to grow). However, agents should uncover and review factors concerning potential surrender penalties or how they may be avoided, as well as the basis of the guarantee. Is the death benefit guarantee, for example, the greater of ALL contributions of principal OR simply the value of the contract on the date of the annuitant's death?

Settlement Options & Taxes

Clients should be made to understand that, at best, annuities represent tax deferral, not tax free income. Unless the beneficiary of the annuity is a surviving spouse, taxes on the accumulated growth will be due -- there is NO step-up in basis. The tax liability is the difference between the amount invested subtracted from the value of the annuity contract, multiplied by the beneficiary's tax bracket. Options to mitigate this include five year or lifetime annuitization of the contract.

Other settlement options that should be discussed with the client include possible options such as life annuity, joint and last survivor, lifetime with period certain, etc.

State Guaranty Fund Coverage

Rules governing state guaranty coverage should be disclosed to the client. If the State does NOT permit advanced disclosure concerning guaranty fund protection, the agent should privately exercise diligence in planning annuity purchases. The primary concern? Is the full amount of the annuity covered against insurer failure. Perhaps due care is served by ***diversifying*** among several insurers and/or between fixed AND variable contracts to take full advantage of guaranty protection.

Titling Options

If the agent is advertising tax and estate planning advice he should disclose the consequences of titling contracts. Where no tax or estate counseling is provided, the agent should still exercise due care by disclosing the fact that titling consequences may result and offer to refer a competent attorney or tax expert before any purchasing decisions. As a general rule, the death of an owner or annuitant triggers a death benefit which carries tax liability. Unless the survivor beneficiary is the spouse, the beneficiary must take a lump sum and pay the tax or annuitize over a minimum five-year period. An important area for agents to investigate is whether the annuity contract enforces or waives surrender charges where a death of the annuitant or owner has occurred. In some contracts, the surrender charge can be deferred where an owner dies and a contingent owner is allowed.

Essential Annuity Due Care Questions

- ✓ Is the client interested in growth or income?
- ✓ Is the client interested in current income or retirement income? How soon does he need to start receiving income?
- ✓ How much risk is the client ready to accept today and in the future? Could he stand the loss of his entire investment? How would an interruption in income affect him?
- ✓ What are the client's liquidity needs in the short-, intermediate- and long-term?

- ✓ What is the client's federal/state tax bracket? Does tax deferral through annuities make sense?
- ✓ Is the client under age 60, and is it likely that he will need to withdraw major portions of the annuity in the future? Will the ten percent penalty offset the benefits of tax deferral?
- ✓ Does the client demand full and complete protection of principal? Or, can the client afford to take risk in hopes of greater appreciation using variable contracts?
- ✓ Is the preservation of principal more important to the client than the effects inflation may have against a fixed yield?
- ✓ What are the survivor spouse/family needs in the event the client dies? How can these needs be accomplished?

Suitability & The Law

At this point, you may be asking . . . what's the bid deal? People need annuities, I sell them! Why does everything have to concern the law? Well, in general, an agent may not have a ***legal duty*** to secure ***complete*** insurance protection or place an annuity to fill every conceivable need an insured might have, but there is definite legal obligation to explain ***policy / product options*** that are <u>***widely available at a reasonable cost***</u> <u>(Southwest Auto Painting v Binsfield - 1995).</u> Likewise, an agent has a legal duty to use ***reasonable skill*** in asking certain questions during the application process to determine types of coverage / product needed (<u>Smith v Dodgeville Mutual Insurance – 1997)</u>. Further, failing to determine the nature and extent of the product / coverage requested as in <u>Butcher v Truck Insurance Exchange - 2000</u>, may subject you to a lawsuit.

NOTE: Confused about how the life insurance or casualty court cases above impact the selling of annuities? Don't be. The courts view the sale of insurance the same whether it involved home insurance or annuities. For example, an annuity agent who failed to disclose options available under an annuity contract might be sued using the auto painting case above as a precedent.

For a majority of suitability lawsuits, the basis of liability is relationship and purpose. Legally a ***personal relationship is created*** when a prospective insured consults an insurance agent, provides that agent with specific information about his unique circumstances and relies on the agent to obtain appropriate coverage tailored to these circumstances. Courts have recognized that the relationship between a prospective insured and an insurance agent (like the relationship of attorney and client) is that of principal and agent, for the purpose of negotiating a policy suitable to the client's needs <u>(Nu-Air Manufacturing Co. V. Frank B. Hall & Co. - 1987)</u>. Further, an insurance agent owes the prospective insured a duty of unwavering loyalty similar to that owed by an attorney to a client. It is the special ***fiduciary nature*** of the relationship between a prospective insured and an insurer that lends the relationship a ***personal character*** similar in scope to the lawyer-client relationship. For this reason, alleged acts of negligence on the part of an insurance agent who has been consulted for the ***express purpose*** of meeting a client's unique needs create a ***personal tort***.

In <u>Forgione v. State Farm Insurance - 1995</u>, it was determined that the insureds made ***express representations*** to the agent about the importance of arranging a set of policies that would prevent a gap in coverage. The insureds ***relied*** on these agents to obtain the appropriate coverage, and the agents failed to use reasonable care, skill and diligence to procure ***suitable policies***. The allegations in the complaint make clear that the insureds ***expected*** the agents to

respond to the couple's unique, personal insurance needs. A $600,000 claim proved that a ***gap in coverage existed*** and therefore it was not a suitable policy.

In another case (Anderson v. Knox - 1961) agent Leland Anderson had specialized in the sale of what is referred to as bank financed insurance or insurance under the bank loan plan. The plan was that premiums would be provided by borrowing the amounts thereof from a bank and securing the bank by assignment of old and new policies. What is significant about the Knox case is the testimony by the client:

'I had my faith in him because he was recommended by a leading business man in the Territory. I figured he knew what he was talking about. He had all the facts in my case. I figured he was giving me something that was designed for me.'

The court determined that Knox ***did rely*** upon Anderson's statements and that it would be unreasonable to argue that Knox should have found out for himself, because of some principle of caveat emptor, that the program was not at all what it was represented to be.

California Annuity Law Trends & Licensing Requirements

The trend in law surrounding the sale of annuities in California has resulted in a growing duty by insurance agents to find responsible and suitable products for their clients in a full disclosure environment. Consider the following legislative measures, past and recent:

SECTION 10509.914 (2012) In recommending annuities to individual consumers, including consumers over the age of 65, for purchase or exchange, ***the insurance producer (or insurer where no producer is involved) must have reasonable grounds for believing that the recommendation is suitable*** for the individual consumer on the basis of the facts disclosed by the individual consumer as to his or her investments and other insurance products and as to his or her financial situation, needs and objectives and reasonable belief of the following:

- The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

- The consumer would receive a tangible net benefit from the transaction.

- The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information.

- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration all of the following: Whether the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements; whether the consumer would benefit from product enhancements and

improvements; whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

- Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

- Except as permitted under subdivision (d), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. The preceding sentence and subdivision (d) notwithstanding, neither a producer nor an insurer shall in any event recommend to a person 65 years of age or older the sale of an annuity to replace an existing annuity that requires the insured to pay a surrender charge for the annuity that is being replaced, where purchase of the annuity does not confer a substantial financial benefit over the life of the policy to the consumer, so that a reasonable person would believe the purchase is unnecessary.

SB 1065 (1993) Requires special disclosures to senior citizens concerning accumulation and surrender values as well as provisions to cancel.

AB 1667 (1994) Defines the role of the California Insurance Guarantee Association and establishes certain product exemptions.

SB 1505 (1994) Makes more changes to cancellation procedures and notice requirements applicable to annuity sales.

SB 203 (1997) Revises previous law concerning annuity benefits in the event of default or surrender and allows the Commissioner to modify mortality tables.

SB 1718 (1998) Changes the unconditional right to refund from 20 to 30 days.

AB 2107 (2000) Reinforces the agent's duty of honesty and fair dealing and establishes special handling where Medi-Cal eligibility is concerned.

SB 423 (2000) Authorizes variable contract living benefits

AB 2984 (2002) Regulates annuity and life sales by depository institutions.

AB 284 (2003) Tightens paid-up and surrender benefits and provides for a uniform method of calculating nonforfeiture amounts.

SB 618 (2003) Establishes new penalties and control over the unfair acts licensees, especially for clients age 65 and older.

SB 620 (2003) Redefines annuity suitability and sales practices to seniors including the prohibition of sale in certain circumstances. Also establishes the requirement for the special annuity training present in this course. If a life agent offers to sell to an elder (age 65 or older) any life insurance or annuity product, the life agent shall advise an elder or elder's agent ***in writing that the sale or liquidation*** of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product ***may have tax consequences***, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before

selling or liquidating any assets and ***prior to the purchase of any life or annuity products*** being solicited, offered for sale, or sold.

SB 483 (2008) Designed to bring California into compliance with provisions of the Deficit Reduction Act of 2006 which lengthened the "look-back" period for asset transfers to establish Medicaid's eligibility for nursing home coverage from 3 to 5 years, requiring annuities to be disclosed and states to be named a beneficiary for the cost of Medicaid assistance with certain specific exceptions.

Section 1749.8 (2012) of the California Insurance Code (CIC) requires that every insurance producer who sells annuities shall satisfactorily complete eight hours of training prior to soliciting consumers to sell annuities. This section further requires insurance producers to complete four hours of training every two years prior to their license renewal.

AB 1416 (2011) included an amendment to Section 1749.8 to state that the four hours of annuity training is to be completed prior to each license renewal.

Section 10509.915(a) CIC (2012) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate ***knowledge of the pro***duct to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. ***Insurance producers may rely on insurer-provided product-specific training*** standards and materials to comply with the product-specific training requirement.

Section 10509.915(b)(2012) In addition to the above, an insurance producer shall complete a one-time eight credit-hour annuity training course by an proved education provider, prior to commencing the transaction of annuities. Further, every producer who engages in this state in the sale of annuity products shall satisfactorily complete a four-hour refresher annuity course prior to license renewal every two years.

AB 689 (2011) Effective January 1, 2012. AB 689 adopts several of the provisions of the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions model regulations adopted by California. Similar to AB 1416, the changes in AB 689 do not change the existing annuity training requirements.

Annuity Licensing & Training

A California Life-Only license shall entitle the licensee to transact insurance coverage on human lives, ***including benefits of endowment and annuities***, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

Before a Life-Only agent can sell annuities in California, he or she must meet special training requirements per ***Section 1749.8*** of the California Insurance Code.

(a) Every life agent who sells annuities shall satisfactorily complete eight hours of training prior to soliciting individual consumers in order to sell annuities.

(b) Every life agent who sells annuities shall satisfactorily complete four hours of training prior to each license renewal. For resident licensees, this requirement shall count toward the licensee' s continuing education requirement, but may still result in completing more than the minimum number of continuing education hours set forth in this section.

(c) The training required by this section shall be approved by the commissioner and shall consist of topics related to annuities, and California law, regulations, and requirements related to annuities, prohibited sales practices, the recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product, and fraudulent and unfair trade practices. Subject matter determined by the commissioner to be primarily intended to promote the sale or marketing of annuities shall not qualify for credit towards the training requirement. Any course or seminar that is disapproved under the provisions of this section shall be presumed invalid for credit towards the training requirement of this section unless it is approved in writing by the commissioner.

Newer annuity products (combo plans) combine an annuity product PLUS a rider that may provide benefits for long term care or life insurance or both. Ordinarily, one would think that an agent needs to also possess an Accident and Health license to sell any long term care products, however, the state allows Life-Only agents to sell these combo type plans without the A&H license.

NOTE: Agents selling annuity products with long term care riders are advised that they need to take the special California 8-Hour Long Term Care Training before discussing LTC needs or benefits with any clients. Also, AB 689 requires agents take "annuity suitability training", specific to the products they sell, direct from their carriers (insurance companies).

Required Checklist

10509.914(e) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale do all of the following:

(1) Make a record ***of any recommendation*** *subject to subdivision (a) of this section.* (These types of notes should be entered into the client's file or database and be accessible for reference or review by the State).

(2) Obtain a customer signed statement ***documenting a customer's refusal to provide suitability information****, if any.* (This can be as simple as a handwritten sheet of paper, signed by the client stating that the client refuses to provide requested information. To limit suitability exposure this letter should disclose to the client that failure to provide the required information may limit the protections offered under the law. Check with your compliance department before making or using any such form.)

3) Obtain a customer signed statement acknowledging that an ***annuity transaction is not recommended*** *if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.*

An agent may be absolved of the suitability requirements if the client refuses to give the agent the required information, the client provides false or incomplete information, or the client chooses to purchase annuities against the recommendation of the agent.

Insurer Responsibilities

Under 10509.914 of the California Insurance Code, responsibilities also apply to insurers as follows:

An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this article, including, but not limited to, all of the following:

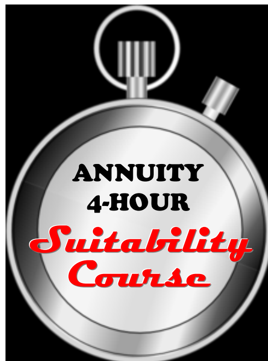
(A) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this article and shall incorporate the requirements of this article into relevant insurance producer training manuals.

(B) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of Section 10509.915.

(C) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers.

(D) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

(E) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.



SECTION II
Appropriate Advertising, Agent Duties and Prohibited Sales

Appropriate Advertising

What Is Advertising

What is advertising under the law? ***Advertising includes*** envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase an annuity. Advertisements shall not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public.

Required Information And The Word "Insurance"

In addition to ***prominently displaying*** your agent ***license number*** on advertisements, illustrations and letterhead / business cards, effective 1/1/05 agents selling annuity contracts are now required to print the word "***Insurance***" in the same venues (Section 1725.5 CIC). Past abuses leading buyers to believe annuities were pension plans or aggressive investment opportunities are the reason for this new requirement.

Further, illustrations that accompany annuity contract sales to seniors must now include the a disclosure in concerning the inability to predict future interest rates and values of annuity contracts and the illustrations that portray them. See Illustrations above for the exact verbage required.

Seminars, Classes Meetings

In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale may use the terms "seminar," "class," "informational meeting," or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words ***"and insurance sales presentation"*** immediately following those terms in the same type size and font as those terms. Of course, advertising must also comply with requirements to display your license number.

Direct Mailers (CIC 787)

Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall prominently disclose that an **agent may contact the applicant** if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person. So, if your product or way of operating requires an onsite visit or return phone call to a senior, you need to disclose that you will be contacting them.

Misleading Endorsements (Section 787)

Misleading advertising materials, include, but are not limited to, those which imply any of the following:

- The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.
- The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.
- No advertisement may use the name of a state or political subdivision thereof in a policy name or description.
- No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency who may call upon the consumer in response to the advertisement, is connected with a ***governmental agency***, such as the Social Security Administration.
- No advertisement may imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.
- An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.
- No insurer may use, in the trade name of its **insurance** policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

Fines

Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation. Upon a second violation, an agent will be liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation. In addition, if the commissioner brings an action against a licensee for the violations above and determines that he may reasonably be expected to cause significant harm to seniors, the commissioner may suspend his or her license pending the outcome of a hearing.

Internet Advertising

A person who is licensed in this state as an insurance agent or broker, advertises insurance on the Internet, and transacts insurance in this state, shall identify all of the following information on the Internet, regardless of whether the insurance agent or broker maintains his or her Internet presence or if the presence is maintained on his or her behalf:

- His or her name as it appears on his or her insurance license, and any fictitious name approved by the commissioner.
- The state of his or her domicile and principal place of business.
- His or her license number.

A person shall be deemed to be transacting insurance in this state when the person advertises on the Internet, regardless of whether the insurance agent or broker maintains his or her Internet presence or if it is maintained on his or her behalf, and does any of the following:

- Provides an insurance premium quote to a California resident.
- Accepts an application for coverage from a California resident.
- Communicates with a California resident regarding one or more terms of an agreement to provide insurance or an insurance policy.

Senior Advertising (Section 787 CIC)

Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall prominently disclose that an ***agent may contact the applicant*** if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person.

No insurer, agent, broker, solicitor, or other person or other entity shall solicit persons age 65 and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

Rights & Obligations of Agents At Contract Inception

Required Disclosures

If a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder's agent in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have ***tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation***, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold. This section does not apply to a credit life insurance product as defined in Section 779.2.

A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program shall provide, in writing, the following disclosure to the elder or the elder's agent:

NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY AND RECOVERY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

RECOVERY

An annuity purchased on or after September 1, 2004, shall be subject to recovery by the state upon the annuitant's death under the regulations of the Medi-Cal Recovery Program. Income derived from the annuity must be used to meet the annuitant's share of costs and, if the annuitant is married, the income derived from the annuity may impact the minimum monthly maintenance needs of the annuitant's community spouse. An annuity purchased by a community spouse on or after September 1, 2004, may also be subject to recovery if that spouse is the recipient of past or future Medi-Cal benefits.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance needs allowance) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE: One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE: Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS: These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS.

ONE MOTOR VEHICLE.
IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.
THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney who is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated: ________________ Signature: _________________"

The statement required in this subdivision shall be printed in at least 12 point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any.

The State Department of Health Services shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet Web site.

Product Illustrations

Illustrations that accompany annuity contract sales to seniors must now include the following disclosure in bold and set apart from other lines with a 1/2 inch spacing:

THIS IS AN ILLUSTRATION ONLY. AN ILLUSTRATION IS NOT INTENDED TO PREDICT ACTUAL PERFORMANCE. INEREST RATES, DIVIDENDS, OR VALUES THAT ARE SET FORTH IN THE ILLUSTRATION ARE NOT GUARANTEED, EXCEPT FOR THOSE ITEMS CLEARLY LABELED AS GUARANTEED.

Replacement (CIC 10509.6)

Every insurer that uses an agent in an annuity sale must, as part of each completed application, require a statement signed by the agent as to whether he or she knows replacement is or may be involved in the transaction.

Where a replacement is involved, the insurance must:

(1) Require from the agent with the application for life **insurance** or annuity: (i) a list of all of the applicant's existing life **insurance** or annuity to be replaced, and (ii) a copy of the replacement notice must be provided the applicant. An existing annuity shall be identified by name of 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.
(2) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to this section and a policy summary, contract summary, or ledger statement containing policy data on the proposed life **insurance** or annuity. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. 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.
(3) Every existing insurer or the insurer's agent that undertakes a conservation shall, within 20 days from the date the written communication plus the materials required in subdivisions (1) and (2) 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. Information relating to premiums, cash values, death benefits, and dividends, 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 regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that in the contract summary. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be within five working days of the receipt of the request. (c) 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 policy summaries, contract summaries, or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years. (d) 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 right may be exercised within a period of 30 days commencing from the date of delivery of the policy. In the case of variable annuity contracts, variable life **insurance** contracts, and modified guaranteed contracts, return of the contract during the cancellation period shall entitle the owner to a refund of account

value and any policy fee paid for the policy. The account value and policy fee shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy.

Specimen Policies (Sample Contracts)

An insurance agent should ***never sell*** an important product like an annuity without first obtaining and understanding a specimen policy and outline of coverage from the insurer. One of the most important reasons to ***obtain*** them is the ***rapid evolution of products, changing policies and new definitions***, e.g., What is an “applicant”, “certificate”, “group policy”, etc. Selling without them is like operating a computer without help screens. Do not depend on the insurance company literature or illustrations to give all the information needed to properly evaluate a policy.

Prohibited Sales Practices

The majority of selling infractions by agents center around two legal concepts: reasonable expectation and detrimental reliance. Here is a brief summary if each:

Reasonable expectation

No matter how clear the language, ***all policies*** contain areas of ***ambiguity***. When conflicts arise, the courts generally turn to ***theories of reasonable expectation***. In a nutshell, if a policy could imply to a reasonable or average policy holder that coverage is in force or benefits exist, yet that exact language does not exist in the policy, then coverage / benefit DOES extend to the policyholder. In other words, the courts generally favor the insured.

Many times it is the agent's misrepresentation of policy terms that sways the client into believing he is covered or that an anticipated outcome will accrue, only to find out he is not or it doesn't. Illustrations of annuity contracts with seemingly realistic rates of return and projected values is a clear example of how agents build a client's expectations. In cases where coverage or results were misrepresented, courts may interpret that the expectations of the client were at a level that a reasonable person would expect coverage or the intended results represented.

Detrimental Reliance

Where the insured reasonably believes he is covered or receiving a certain benefit by virtue of representations by an insurance agent or broker, the failure of the broker to produce the coverage/benefits or else warn the client at once that coverage/benefits could not be obtained constitutes a failure to exercise the requisite skill or diligence required of a broker. One of the key elements in a ***detrimental reliance claim*** is whether or not the reliance placed on the agent caused the insured to miss the opportunity to obtain alternative coverage or keep good coverage/benefits he already had.

As you will learn below, detrimental reliance is an important concept you must keep in mind when exchanging or replacing a client's coverage/benefits with another contract. A decision by that client to change, made on information you provided, should reasonably benefit the client in some, if not multiple ways . . . and the fact that you need a commission is not one of them!

Tax Consequences

Annuities are sold for their tax advantages. The laws are complicated and could have far-reaching effect on a client's overall yield. Agents have been known to underestimate tax consequence by forgetting to advise clients a tax exists or overestimate them in promoting the unnecessary replacement of a contract simply because the exchange will be tax free.

New legislation ***(CIC 789.9, SB 620)*** is clear when it comes to seniors: If a life agent offers to sell to an elder (age 65 or older) any life insurance or annuity product, the life agent shall advise an elder or elder's agent ***in writing that the sale or liquidation*** of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product ***may have tax consequences***, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold.

Medi-Cal Eligibility and Annuities

For years, agents have seized on the fears of client's regarding Medi-Cal eligibility. Clients have been sold considerable product that purportedly exempts income or assets from the eligibility rules so as to believe they will qualify for Medi-Cal when the time comes. Many of these exemption holes have been plugged and there are penalties for people and their agents who attempt to abuse the system.

New legislation makes this very clear: A life agent who offers for sale or sells a financial product to an elder 65 years or older on the basis of the product's treatment under the Medi-Cal program ***may not negligently misrepresent*** the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's ***eligibility*** for any program of public assistance (***Section 789.9 of the CIC***).

In addition, the following disclosure is required. The statement shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any. The State Department of Health Services shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet Web Site:

"NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance

premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

<u>MARRIED RESIDENT</u>

*COMMUNITY SPOUSE **RESOURCE ALLOWANCE**: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).*

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS: Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance needs allowance) in monthly income.

<u>REAL AND PERSONAL PROPERTY EXEMPTIONS</u>

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

<u>Real Property Exemptions</u>

ONE PRINCIPAL RESIDENCE: One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it. Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE: Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

<u>Personal Property Exemptions</u>

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS: These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

<u>PERSONAL PROPERTY USED IN A TRADE OR BUSINESS</u>.

ONE MOTOR VEHICLE.

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS. THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney who is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated:_______________ Signature: ____"

More Medi-Cal Restrictions (789.9 CIC)

An annuity shall not be sold to a senior (age 60 years and older) in any of the following circumstances:

The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:

- The purchaser's assets are ***equal to or less than the community spouse*** resource allowance established annually by the State Department of Health Services pursuant to the Medi-Cal Act.
- The senior would ***otherwise qualify*** for Medi-Cal.
- The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, ***after the purchase of the annuity***, the senior or the senior's spouse would not qualify for Medi-Cal.

If an annuity is issued but violates any of these provisions, the insurer must rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity.

In-Home Solicitations (CIC 789.10, SB620)

In-home solicitations have been the source of senior abuse for years. Now there is specific legislative ***criteria*** that addresses this area of annuity sales.

Any person who meets with a senior (anyone age 65 or older) in the senior's home is required to deliver a ***notice in writing*** to the senior no less than ***24 hours prior*** to that individual's initial meeting in the senior's home.

If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in ***14-point type***:

In-Home Solicitation Form

(1) During this visit or a follow-up visit, you will be given a sales presentation on the following (indicate all that apply):

( ) Life insurance, including annuities
( ) Other insurance products (specify): _________________.

(2) You have the right to have other persons present at the meeting, including family members, financial advisors or attorneys.

(3) You have the right to end the meeting at any time.

(4) You have the right to contact the Department of Insurance for information, or to file a complaint. (The notice shall include the consumer assistance telephone numbers at the department)

(5) The following individuals will be coming to your home: (list all attendees, and insurance license information, if applicable)"

Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, ***state that the purpose of the contact is to talk about insurance***, ***i.e. you cannot misrepresent the true content of the meeting***, or to gather information for a followup visit to sell insurance, if that is the case, and state all of the following information:

(1) The name and titles of all persons arriving at the senior's home.
(2) The name of the insurer represented by the person, if known.

Each person attending a meeting with a senior shall ***provide the senior with a business card or other written identification*** stating the person's name, business address, telephone number, and any insurance license number.

The persons attending a meeting with a senior shall end all discussions and ***leave the home of the senior immediately after being asked*** to leave by the senior.

A person may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

Sharing Commissions (CIC 1724)

An agent, broker, or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation with an active member of the State Bar of California. For purposes of this section, "commission or other compensation" means pecuniary (consisting of money) or nonpecuniary compensation of any kind relating to the sale or renewal of an insurance policy or certificate or an annuity, including, but not limited to, a bonus, gift, prize, award, or finder's fee.

Replacement (CIC 10509.8)

While the replacement of one annuity with another is not a bad thing, the introduction of new restrictions make it clear the Department of Insurance wants focus on abuses. Agents who are particularly aggressive in this area should exercise extreme caution in the presentation and implementation of a replacement contract.

Unnecessary Replacement

A pattern of frequent replacements, especially those where the client did not materially benefit, is not only against insurance codes, it can be used to establish a detrimental reliance civil claim, i.e., you could be sued by your client. One of the key elements in a ***detrimental reliance claim*** is whether or not the reliance placed on the agent caused the insured to miss the opportunity to obtain alternative coverage or keep one that would have been just as good or better.

As a responsible agent, you should advise clients to explore the reasons they might consider a keeping what they have? Are they simply unhappy with their return? Would they have also lost money in a different contract? Would their existing insurer add a rider to enhance their death benefit to keep them from leaving? Is the contract meeting their original goal of legacy planning?

A correct analysis of any annuity replacement is a matter of common sense. What is your client leaving behind? What is he gaining in the move? Most experts believe there should be ***multiple reasons and benefits*** for justifying the ***replacement*** of a contract because of the associated costs in moving. For some, the first red flag is the current surrender. If it is more than 3 percent, a replacement plan would have to offer a lot to make up the difference. It would also be wise to write down why the current policy does not meet a client's needs, e.g., fees are higher and death benefit is lower than a replacement contract. Assessments of the actual surrender value invested (not a comparison of the original contracts investment) should demonstrate that at various hypothetical returns, the move is reasonable. And, an evaluation of new surrender charges and a client's need to access his funds is a must.

Knowing this, let's understand the new law and look at some examples:

Replacement for Age 65 And Older

Under new code sections, you are in violation of California law if you recommend the replacement of an existing contract by use of a materially ***inaccurate presentation or comparison*** of an existing contract's premiums and benefits or dividends and values or annuity to a person ***age 65 or older***.

For purposes of this section, ***"unnecessary replacement"*** means the sale of an annuity to replace an existing annuity that requires that the insured will pay a ***surrender charge*** for the annuity that is being replaced and that does not confer a ***substantial financial benefit*** over the life of the policy to the purchaser so that a reasonable person would believe that the purchase is unnecessary.

Substantial Financial Benefit

While ***substantial financial benefit*** is not defined in the code, a reasonable person would conclude that a contract owner should anticipate that the risk of exchanging or replacing one contract for another should amount to benefits that are ***more*** than an even swap; especially where surrender charges are required.

Example: Phil agrees to replace a $100,000 deferred annuity earning 5% with a new contract offering a first year bonus of 7%. Surrender charges in the swap will amount to $3,000. Over the life of the contract Phil calculates the replacement, after charges and taxes, made him a total of $100. Is this a substantial financial benefit? Probably not, considering the amount of

principal, risk and his time. How about 1,000 profit? Probably so. A move that nets $1,000 against $100,000 seems reasonable. Of course, the courts typically decide, on a case by case basis, what is reasonable. It is probably best to have multiple reasons for making a replacement.

Example: Irene has $50,000 invested in a variable annuity. Her death benefit is equal to the original value or surrender value at time of death and all surrender charges have worn off. Her agent finds a new contract with a slightly better return, reduced charges, a short surrender period and an enhanced death benefit that increases the death benefit at surrender by 40% with no underwriting required. A substantial financial benefit? As long as Irene does not appear to need to access to her funds before the new surrender charges lift and the added death benefit is something she needs anyway, it seems reasonable that this replacement is warranted since Irene will substantially upgrade her death benefit. Before you recommend the move, however, wouldn't it be prudent to evaluate Irene's true life insurance needs first? Perhaps the added life coverage is available somewhere else or not needed at all.

Agent Knowledge

If there is a ***pattern*** that develops, where policyowners purchase replacement policies from the same agent yet owners indicate on applications that a replacement is not involved, it shall be considered that the agent has knowledge that replacement was intended. The point here is that some agents know full well the only benefit from a replacement is the commission. Attempting to disguise the transaction is illegal and could cost you your license or a major lawsuit. This is exactly what happened in a recent case that received national attention. Agents knew they had to comply with state disclosure forms, but advised clients to leave out certain information or simply sign a blank form. The agents and company have paid dearly for this mistake.

Bait and Switch

Less than ethical agents use the illusion of providing a benefit to soften a client's perspective and then sell them something else. This is the classic definition of bait and switch. Many times the procedure is to ***qualify*** potential ***victims*** through a process of a deceptive interview or application . . . referred to as a ***pretext interview*** . . . with the sole purpose to gather confidential information. Often, clients are coerced into providing information under the guise of some potential benefit and once the information is retrieved, a product sales pitch is tailored.

Trust Mills

An example of this in the annuity area is the creation of what attorney's refer to as a ***trust mill***. It's purpose was to provide unsuspecting clients the benefit of an inexpensive trust when the real purpose was to expose client assets to uncover and sell potential annuity prospects. On July 18, 1996 the California Attorney General and State Bar filed a joint lawsuit against the Alliance for Mature Americans, a non-law firm trust mill, in the Los Angeles County Superior Court. The lawsuit sought an injunction, more than $200 million in restitution, and more than $3 million in civil penalties. The lawsuit alleged that the Alliance for Mature Americans used "scare tactics" and unlawful and deceptive business practices to sell living trusts to senior citizens, some of whom suffered from Alzheimer's and Parkinson's diseases, in order to obtain confidential information to sell these persons annuities. The lawsuit also alleged that the Alliance for Mature Americans engaged in the unauthorized practice of law by training non-attorney salespeople to promote themselves as estate planning experts. In April, 1997 the Alliance for Mature Americans agreed to a settlement of the lawsuit whereby it would make

restitution of $1 million, pay a civil penalty of $100,000, and discontinue its sales of estate planning services and living trusts.

As a result of this kind of deceptive practice, the Insurance Commissioner released a special bulletin in 2001 explaining agent and insurer responsibilities relating to any marketing scheme involving bait and switch tactics. A copy of this bulletin is provided (Attachment II) at the back of this course and is suggested reading by all agents.

Specific insurance codes have also been established to address these illegal activities:

No insurance institution, agent or insurance support-organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction.

A ***pretext interview is defined*** as an interview whereby a person, in an attempt to obtain information about another person, perform one or more of the following acts:

- Pretends to represent a person he is not
- Pretends to represent a person he is not representing
- Misrepresents the true purpose of the interview
- Refuses to identify himself upon request

Long Term Care Sales

Sales of long term care coverage, some attached as riders to annuities, are another area of bait and switch abuse. Their purpose is to capture the client's fear of a long term illness in order to promote the sale of the annuity. This is not to say that these contracts do not provide long term care benefits . . . it simply isn't their sole purpose.

For example, for years now, the insurance industry has designed annuity contracts that appeal to the liquidity needs of seniors and other market groups. Most new generation annuity policies, for example, offer ***free withdrawals*** that allow the owner to withdraw from the account value every year in case of a medical emergency or long term care illness. However, sometimes agents sometimes forget to mention that only 10 to 15 percent can be withdrawn without incurring penalties.

Additional drawbacks to both long term care riders and annuity coverage should be noted, but often are missed, such as: Benefits paid may be less than the standard long term care policy, particularly in areas such as home health care and assisted living. Similarly, the duration of payments will most certainly be limited. And, without inflation protection, the proceeds may do little to cover actual LTC costs. “Pot of money” approaches will most likely be exhausted in a matter of years or sooner and few, if any, can be expected to provide lifetime benefits.

<u>Other Unauthorized Unlawful Practices</u> ***(BPC 6125)***

It is important that agents do not represent themselves as having skills they do not possess in order to make a sale. The trust mill was just one example of this. Others include the practice of drafting, delivering and interpreting legal documents if you are unqualified to do so. An agent who decides to offer legal advice could be determined to practicing law without a license . . . a clear violation of the California Business and Professions . . . *No person shall practice law in California unless the person is an active member of the State Bar.*

Therefore, areas such as estate planning, eldercare planning Medi-Cal planning and tax planning should be left to the professionals who are trained to advise in these fields.

Suspension (CIC 1668.1, SB 618)

The State of California is serious about agents using their position to influence or misrepresent clients . . . especially senior citizens. That is the focus of SB 620 and SB 618. As such, new legislation has given the Commissioner the "teeth" to enforce illegal agent activities. One such method is license suspension or revocation.

Existing law prohibits a person from soliciting, negotiating, or effecting contracts of insurance, or acting in the capacity of various types of insurance agents, unless the person holds a valid license from the Insurance Commissioner authorizing the person to act in that capacity. Existing law authorizes the commissioner to deny an application for a license for various reasons.

The new law goes much further by authorizing the commissioner to suspend or revoke any permanent license issued if:

*A licensee induces the client to make a **loan or gift** to or investment with the licensee, or to otherwise act in other specified ways that benefit the licensee or other people acquainted with or related to the licensee.*

Suspension, revocation and/or monetary penalties may also be assessed against any licensed agent who:

Induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, OR induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision a ***beneficiary*** under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy, OR induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any intervivos or testamentary trust, OR . . .

Use a ***power of attorney*** granted by client has to purchase an insurance product on behalf of the client for which the licensee has receives a commission, OR induces the client to provide the ***benefits for a person who is related or a family friend*** to the licensee by birth, marriage, or adoption; a person who is a friend or business acquaintance of the licensee; a person who is registered as a domestic partner of the licensee. The ***exception*** to these rules is the case where transactions by the licensee are on behalf of a person related to the licensee by birth, marriage, or adoption; or a person who is registered as a domestic partner of the licensee.

Penalties (CIC 782, 789.3, 1738.5, 10509.9)—See Attachment III

The seriousness of the new legislation is also underscored in the penalties assessed for violations:

Misrepresentation of Policy Terms or Benefits (Section 780, 781, 782, 789.3 CIC)

Misrepresentation of policy terms, benefits, privileges, dividends; or to induce someone to buy one policy then sell another; or to mislead someone to forfeit his policy based on a false comparison is a crime and punishable by a fine not exceeding $25,000 or 3 times the amount lost by the victim and / or by imprisonment not exceeding one year. The commissioner may also require rescission of any contract found to have been marketed, offered, or issued in violation of this article.

Duplicate, Unnecessary Coverage / Deceptive Advertising (Section 1738.5, 10509.9 CIC)

Seniors who are abused via inaccurate, duplicated or unnecessary coverage. Or, who are deceived by an agent representing himself to be someone he is not will results in still penalties, including an administrative penalty of no less than five thousand dollars ($5,000) for the first violation; $5,000 to $50,000 for a second violation. If the Commissioner at anytime believes the agent can be reasonably expected to cause harm to seniors, his license may be suspended. Further violations for the same offense can result in another $10,000 fine for the agent and form $30,000 to $300,000 for the insurer. Further, based on the outcome of a hearing, the agent's license could be suspended or revoked.

Informed Decision / Reasonable Replacements

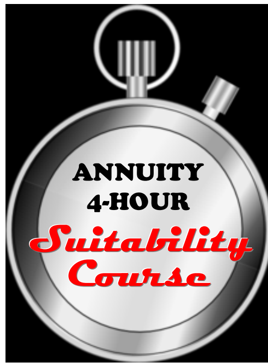
Annuity buyers are entitled to information to make an informed decision and the reasonable expectation that the consequences of a replacement of their existing policy is made. Agents not providing this are subject to an administrative penalty of no less than one thousand dollars ($1,000) for the first violation; $5,000 to $50,000 for a second violation. If the Commissioner at anytime believes the agent can be reasonably expected to cause harm to seniors, his license may be suspended. Further violation can result in another $10,000 fine for the agent and form $30,000 to $300,000 for the insurer. Further, based on the outcome of a hearing, the agent's license could be suspended or revoked.

Failure to Refund A Contract Refund To A Senior

Seniors (age 60 and older) are now entitled to a 30-day free look and a total refund of their premiums. Insurers that fail to make these refunds in a timely manner will pay the applicant interest from the date the insurer or entity received the returned policy or certificate.

Day in Court

Any allegations of misconduct perpetrated against a person age 65 or over shall result in a hearing to be held within 90 days after receipt by the department of the notice. . Based on the outcome of a hearing, the agent's license could be suspended or revoked.



SECTION III
SB 483, Medi-Cal & Annuities

SB 483 is a law passed by the State of California in September 2008 that limits the amount of equity individuals can have in their principal residence when they receive medical assistance for home and facility care services under the *MediCal.* It was designed to bring California into compliance with provisions of the Deficit Reduction Act of 2006 .

Home Equity Limit

SB 483 increases the equity limit to $750,000. It defines "equity interest" as the lower of the assessed value or the appraised value, minus encumbrances, and bases increases in the 2011 and later equity limits on the Consumer Price Index. The home equity limits will not apply if:

- The individual's spouse, minor, blind or disabled children is/are living in the home.
- The individual was eligible for or receiving home and facility care before January 1, 2006.
- Deny eligibility for the programs would cause demonstrated hardship.

Hardship Criteria

Consistent with the DRA provisions, SB 483 enables nursing homes to act on behalf of the beneficiary and authorizes the facility to request "bed hold" payments for up to 30 days in which the undue hardship process is in effect. The bill would also amend the Welfare and Institutions Code by including partial months of ineligibility.

The hardship criteria proscribed under SB 483 explains the provisions that will not be applied retroactively to individuals who were receiving services on or before January 1, 2006 or to those who applied on or after January 1, 2006, but before the regulations implementing the new provisions were filed with the Secretary of State.

Under SB 483, the undue hardship provisions for transfer of assets are substantial, and require that undue hardship be considered before any ineligibility finding. The provisions also include requirements for adequate notice, due process and opportunity for fair hearings.

Look-Back Period

Under SB 483, California uses a 30-month look-back period, and the period of ineligibility begins from the month of the date of the transfer. The DRA requires states to increase the look-back period to 60 months and to begin periods of ineligibility in either the month of application or the first day of the month during or after which assets were transferred by an eligible Medi-Cal beneficiary when they begin receiving those services.

The Department's provisions in SB 483 would begin the new transfer of asset rules based on federal law and adoption of the non-emergency regulations. It is likely that regulations will be phased in the new look-back period until the five-year look-back is reached:

- 1/09 = 30 months,
- 2/09 = 31 months, etc.

Thus, the new look-back rules will not be applied retroactively to transfers before the final regulations are filed with the Secretary of State.

Annuity Requirements

Under the SB 483 annuity provisions applicants must reveal any interest the applicant or spouse has in an annuity and requires the Department to inform applicants and beneficiaries that the state will become a remainder beneficiary in certain types of annuities. Further, the annuity provisions also:

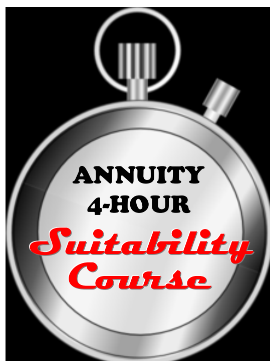
- Specify those annuities owned by an individual or an individual's spouse in which the state may become a remainder beneficiary; defines transactions that are subject to these rules; specifies the notice process to the issuer.
- Specify those annuities that are exempt from the DRA requirements, including annuities purchased with the community spouse's CSRA, work-related pension annuities, and annuities that are irrevocable and nonassignable, actuarially sound, and that provide for fixed, equal payments over the term of the annuity, with no deferral and no balloon payments.

Annuity Income and the Medi-Cal Threshold

While you are in long term care, you can have income of up to $35 per month, that is called the "maintenance need standard" which the state sets. If your income is higher than that, you may qualify nonetheless if you agree to pay the medical costs each month until you reach the $35 threshold, then Medi-Cal will pay the remainder, provided the services are covered. This is known as the share of cost. For example: if Joe enters a skilled nursing facility and his income is $1,200 per month from Social Security, Joe will have to pay $1,165 toward the cost of the facility, that will be his share of cost. Joe is entitled to only $35 of his $1200 per month Social Security check as his personal needs allowance. It is important to know that ***payments from an immediate annuity will be considered "income"*** and will have to be used towards share of cost if eligibility is established.

Good Faith and Fair Dealing (Section 785 CIC)

In any dealings with seniors, keep in mind that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.



SECTION IV
Client Suitability, Cancellations and Refunds

Determining The Need for Annuities

To know exactly if an annuity was appropriate for your client you would need to know everything about their existing and future cash needs, long term planning and exactly when they plan to die. Even without this information, it is probable that some form of annuity investing can be considered suitable for your client's financial planning at some point in their lives . . . especially when balanced with other investment mediums.

Annuities are first and foremost a long-term investment for someone in the moderate to high tax brackets looking for a way to shelter current income or growth. For investors who do not need to get at their money too often, annuities would make a smart alternative to bank CDs or mutual funds.

To a great extent it comes down to the level of risk a client is willing to take. Some clients are risk takers, others are conservative or moderate. Within each of these categories there is an annuity and as well as some form of alternative investment that could meet a client needs. Also to be considered is that some people need current income, others are looking for long-term accumulation or growth. Still others need current income but some means to offset inflation over the long haul. It would be rare to find annuities solving all these requirements. However, they certainly have their place in a client's personal financial planning.

Bank CDs, Savings or Money Market Accounts

A bank CD, savings or money market account is a proper choice for seniors wishing to limit their risk and enjoy consistent returns. Their obvious advantage over annuities is a shorter maturity and in the case of bank CDs federal guarantees (FDIC insurance) against loss of principal. Their disadvantage, however, is that all earnings are currently taxable and rates are often lower than those offered in annuity contracts. Shorter maturity CD's somewhat address the inflation problem since rates float up and down) as the market dictates. A fixed annuity contract, on the other hand, requires a lock-in of many years with little chance to offset inflation factors.

Mutual Funds, Stocks, Bonds, Commodities/Options

These investments are at the other end of the investing spectrum . . . higher risk, but potentially higher returns and inflation adjustment. There is also the opportunity among these vehicles to select both conservative and tax advantaged choices to rival almost any annuity contract. On the other hand, with a variable annuity contracts, there is the ability to participate in both -- a somewhat predictable return and tax advantages!

The key difference as to an individual investor's choice is probably his willingness to take risks and his need for liquidity. Since no one knows when an emergency might hit, the liquidity of

mutual funds and stocks would fare as a slightly better choice. On the other hand, if long-term stability with tax advantages is the signal, the scales tip more toward the annuity.

Limited Partnerships, Notes, REITs and Viatical Settlements

These types of investing are for only the strongest of investors. Liquidity could be zero in bad times and principal is continually at risk but returns are potentially the highest. There is simply no guarantee. There is practically no suitability in these products fitting the financial plan of a senior citizen other than for the only the well-heeled.

Mixing It Up

A common sense approach for many clients may be to diversify among many product investments to meet goals and suitability requirements. For the very conservative, a cross section of fixed annuities, CDs and even low-risk mutual funds could be appropriate. A more moderate approach might shift more toward the mutual fund and light stock arena while an aggressive plan may reduce annuities and CDs to a minimal position in order to emphasize growth mutuals and stocks with a some real estate thrown in for inflation.

Age of the Consumer

Annuity Owners Under 60 Years

Potential annuity owners under 60 years generally have more time on their side to make the tax-deferral advantage of annuities work for them. For example, a $100,000 contract earning 6 percent can double in 12 years without tax versus 18 years with tax along the way. The effects are even more dramatic with more time.

Younger annuity owners can also be subject to an IRS penalty of 10% on funds withdrawn from an annuity prior to age 59.5. Penalties are waived in the case of death or by choosing to annuitize the contract.

Contract owners under 60 who need some or all their investment back sooner than they planned might also be paying tax on their earnings at a higher rate. Why? It is well known that younger people are in higher tax brackets than when they retire. Needing money prior to retirement, therefore, will most likely mean they are going to pay tax based on a higher tax bracket than is they waited until after retirement.

Younger contract owners who wish to receive an income for life (annuitize) are likely to receive a lower monthly payment than would someone over 60 because annuitization rates are based on life expectancy and the longer someone is expected to live, the lower his annuity payment will be.

Younger owners needing money before retirement will also be subject to surrender charges that may substantially reduce overall yield.

Annuity Owners Over 60 Years

A contract owner over 60 years of age has ***less time*** for the tax-deferred growth of an annuity to work for him. Also, he is ***closer to the age when he may need his income*** from his annuity to

cover retirement expenses or medical costs which may require him withdrawing monies from his account early and paying tax as well as ***surrender penalties***. In essence, annuities are long-term investments that may not always fit with the needs of seniors.

Older annuity owners are not subject to an IRS penalty of 10% on funds withdrawn from an annuity prior to age 59.5. This helps in the event funds are needed earlier than anticipated. But, early withdrawals are subject to surrender charges which can substantially reduce overall yield.

Contract owners over 60 are more likely to reap tax advantages from annuities they have held for sometime since their earnings will likely be taxed at lower tax rates. Why? It is well known that younger people are in higher tax brackets than when they retire.

Older contract owners who wish to receive an income for life (annuitize) are likely to receive a higher monthly payment than would someone under 60 because annuitization rates are based on life expectancy and the longer someone is expected to live, the lower his annuity payment will be. This is offset by the fact that an owner who annuitizes at age 70 may only live to age 75. If he chose a life annuity option, his payout is substantially diminished over another owner who lives to be age 90.

Older annuity owners may face ***forced annuitization*** . . . even at times when they are least likely to want it or afford the tax . . . where an insurer sets a specific age that requires payouts to start. For qualified plans, this age would be age 70.5. Non-qualified contracts may extend this limit by many years.

Financial Status

The message of the NAIC and any suitability effort is the importance of identifying the need to gather information ***prior or before*** making any recommendation. At a minimum, this information should include information on the ***client's financial status***, such as:

Income: What is the annuity prospect's current income? What are his needs in the future? What other sources of income are present today? Tommorrow?

Liquid Assets: What is the prospect's ratio of cash to hard assets? Is it adequate? How will this change in the future? Will purchasing an annuity negatively effect his liqduity?

Long Term Care: Does the prospect have a plan for long term care in place? Does he understand the need to have one before investing elsewhere? What other sources could help care for a long term care illness?

Tax Status & Considerations

What is the prospect's tax bracket? Considering this, is an annuity advantageous or not? How will the future change his tax status?

While earnings in an annuity accrue on a tax-deferred basis—typically a big selling point—they do not provide all the tax advantages of 401(k)s and other before-tax retirement plans. 401(k)s and other before-tax retirement plans not only allow one to defer taxes on income and investment gains, but allow contributions to reduce your current taxable income. That's why

most investors should consider annuity products only after they make their maximum contributions to their 401(k)s and other before-tax retirement plans.

Once one starts withdrawing money from an annuity, earnings (but not principal) will be taxed at the ordinary income rate, rather than at the lower capital gains rates applied to investments in stocks, bonds, mutual funds or other non-tax-deferred vehicles in which funds are held for more than one year.

Furthermore, proceeds of most variable annuities do not receive a "step-up" in cost basis when the owner dies. Other types of investments, such as stocks, bonds, and mutual funds, do provide a step up in tax basis upon the owner's death

Section 1035 of the US tax code allows one to exchange an existing annuity contract for a new contract without paying any tax on the income and investment gains in the current annuity account. These tax-free exchanges, known as 1035 exchanges, can be useful if another annuity has features that is preferred, such as a larger death benefit, different annuity payout options, or a wider selection of investment choices; however, limitations exist on the number of times a client can perform a 1035 exchange on a contract without a tax consequence. Also, one may be required to pay surrender charges on the old annuity if he is still in the surrender period and a new surrender charge period generally begins when one exchanges into the new annuity. This means that, for a significant number of years (as many as 10 years), your client typically will have to pay a surrender charge (which can be as high as 9% of your purchase payments) if he withdraws funds from the new annuity. Further, the new annuity may have higher annual fees and charges than the old annuity, which will reduce returns. Before performing a 1035 exchange one should consider, among other things, the following: the total cost of the exchange; the consequences of a change in the surrender period; the cost, benefit and necessity of any new feature; whether any new feature offered by a 1035 exchange might already be available via the existing contract; and the amount of commissions being paid.

Investment Objectives of the Consumer

Where does the prospect see himself in 10 years? 20 years? Is he realistic? If so, does he need to emphasize growth or income to get there? Does he have time to meet his goals? Is the prospect financial sophisticated? Is he capable of monitoring an investment plan such as a variable annuity? Consider all of the advantages and disadvantages when using an annuity to satisfy your client's investment objectives:

Advantages of Annuities

Tax deferral. Dollars can grow tax–deferred until the client starts withdrawals. They do pay ordinary income taxes on your earnings then, but the difference may be profitable—since they may be in a lower tax bracket in retirement. (Think long–term, though, because early withdrawals bring penalties.)

Payout choice. When clients are ready to withdraw money, they'll have many choices: Lifetime payments; payments for a period of time; or payments of certain amounts are just some examples. They may also be able to have the annuity continue paying your spouse if you die.

Systematic withdrawal. Choose between monthly, quarterly, semi–annual, or annual distributions.

Safety. With fixed annuities, the insurer guarantees principal. With variable annuities, the beneficiary is provided a guaranteed death benefit or contract value, whichever is greater

Professional management. Experienced managers run the portfolios that invest payments.

Diversification. With a variable annuity, clients choose between several portfolios. And they can re–allocate from time to time without incurring a taxable event. Diversification among fixed contracts is also available by spreading investment over several insurers.

Avoids probate. Your client beneficiaries get the money immediately because annuities avoid probate. That saves time, money, and legal hassles.

Guaranteed death benefit. Principal is guaranteed in fixed contracts and almost always in a variable contracts.

Enhanced death benefit. Some variable contracts allow an owner to pay more for his beneficiaries to receive as much as 200 percent of his original investment back if he dies prematurely.

Guaranteed income. An annuity can provide your client with a guaranteed lifetime income, regardless of how long he or she lives. No other investment instrument can provide this guarantee.

Unlimited contributions. Unlike other tax-advantaged investments, such as IRAs, clients can contribute an unlimited amount of money to an annuity during the year, whether in periodic installments or a lump sum. Individual carriers may place a ceiling on the total amount they may put into an annuity without approval.

Bonus rates. Some annuities award investors with bonuses -- extra interest that further increases your investment -- at the end of your annuity's first year . The bonus increases the annuity's principal on which future interest will be calculated in subsequent years, thus providing a substantial boost to the ultimate value of an annuity fund.

No-penalty rollovers. Company pension or profit-sharing plan payouts may be reinvested without incurring current taxes or penalties.

No initial sales charges ("no load") or annual fees. Annuities are generally no-load, no-fee investments, which means more of your money is actually invested than with investments where some money is used to pay an initial or annual charge.

Shelter investment earnings. Retired people can use annuities to shelter investment earnings that would otherwise lead to taxation of Social Security benefits.

Tax-free exchange. A client sometimes thinks he wants one thing only to discover later that he wants another. One advantage of annuities is that clients can be exchange one for another tax free using a 1035 exchange. However, early withdrawal or surrender charges levied by the insurer may still be charged.

Disadvantages of Annuities

Loss of principal. If your client selects a variable annuity, he can lose money.

Expenses vary and can be high.

Earnings are taxed as income once they withdraw them.

IRS Penalties. If clients withdraw money before you're 59 ½, the IRS usually requires them to pay a 10% penalty in addition to the income tax

Surrender penalty. Most contracts have a fee if the contract is surrendered within the first five to 10 years. This is because the insurance company paid a commission to the person who sold the annuity. The more the agent was paid, the longer and more punishing the surrender penalty. However, there are a few products, although not commonly offered, that don't pay commissions and thus don't have surrender penalties.

No capital-gain treatment. All income generated from gains in an annuity is treated as ordinary income. Investments purchased after 2000 and held for at least five years are subject to an 18 percent ordinary income tax rate. In fact, clients are converting potential capital-gain taxation for ordinary income. This is the primary reason to look into current and projected future tax rates before buying.

Loss of step-up in basis at death. Current estate tax laws allow for stock or mutual fund investments passed on to beneficiaries to be valued at the owner's date of death, which is called a step-up in basis. Annuities do not have this feature, and all gains are treated as ordinary income.

Mortality and expense charges: Annuities have, on average, an annual 1.3 percent charge against the assets plus a $27 annual administration charge for what is termed "mortality and expense charges." This is in addition to the underlying investment fund charges.

Variable annuities have a finite sub-account fund selection.

Loss of Tax Advantage. Tax deferral is lost inside a qualified plan.

Need For Full Contract Disclosure

Matching contract terms to client needs is another important aspect of determining suitability. Full disclosure of terms, ***surrender charges, expenses and important issues such as cash surrender benefits or death benefits that fall short of minimum nonforfeiture amounts*** are the only way your client can make an informed decision to proceed. Most contracts should have critical omissions like this prominently displayed in the policy. If not, it is your responsibility to bring them up. How will you know? Obtain specimen policies for every product you plan to offer. Carry them with you to show disclosures and to understand that all features of the contract are in line with your customer needs and objectives.

Record Keeping

Annuity contracts, like variable annuities, can be quite complex. You will need to stress to your client that he keep accurate records of subaccount investment choices as well as their performance.

Required Disclosures (AB 2107)

The thrust of the new annuity legislation is disclosure and suitability. Only then can you recommend a reasonable solution; only then can a client make and informed decision to purchase or pass.

Assembly Bill 2107 (2001) significantly strengthened disclosure in the selling of annuities . . . especially to seniors. This legislation requires agents to make specific disclosures about the consequences of financial transactions related to Medi-Cal eligibility. Many points of this legislation have already been discussed and the full text of this bill is included as Attachment II at the end of this course. To sumarize:

- A special Notice Regarding Standards for Medi-Cal Eligibility is now required to be signed by the annuity buyer for any financial product geared to Medi-Cal or its eligibility.
- Agent conduct and history will be investigated and deemed to be relevant in any action or breach of duty concerning the selling of Medicare supplement insurance, long term care insurance, etc.
- The definition of senior financial abuse is expanded as well as the need for people who work among the elderly to act more responsibly by recognizing their rights to feel secure from abuse.
- Agents need to apprise seniors that the sale of existing assets or annuities in order to buy new ones can have negative tax consequences and associated penalties.

Policy Cancellations and Refunds *(CIC 10127.10, 10509.6)*

Free Look – 60 Years and Older

Senior citizens who purchase annuities must now be given the right to cancel them ***within 30 days***. This law applies to all contracts sold and delivered after 1/1/04. Return of the policy during the cancellation period has the effect of voiding the policy from the beginning and placing the parties in the same position as if no policy had been issued. That means that all premiums and policy fees shall be refunded by the insurer. If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest

If a variable annuity is involved, the owner, is entitled to a full refund of his account value. And, during the 30-day ***free look*** cancellation period the premium ***must only be invested in fixed-income investments***.

These new rules are underscored by the need for every policy to print, in 12-point bold, the following disclaimers:

YOU HAVE PURCHASED AN ANNUITY CONTRACT. THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY KNOWN AS A SRRENDER CHARGE.

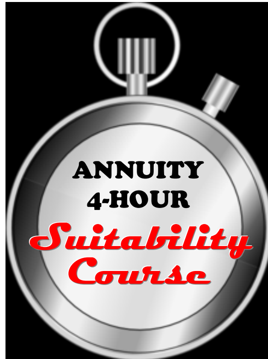
For ***variable annuity*** contracts, the disclaimer is slightly modified as follows:

THE POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT. DURING THAT 30-DAY PERIOD, YOUR MONEY WILL BE PLACED IN A FIXED ACCOUNT OR MONEY MARKET FUND, UNLESS YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO UNDERLYING THE CONTRACT DURING THE 30-DAY PERIOD. IF YOU DO NOT DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO, AND IF YOU RETURN THE POLICY WITHIN THE 30-DAY PERIOD, YOU WILL BE ENTITLED TO A REFUNBD OF THE PREMIUM AND POLICY FEES. IF YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO DURING THE 30-DAY PERIOD, AND IF YOU RETURN THE POLICY DURING THAT PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE POLICY'S ACCOUNT VALUE ON THE DAY THE POLICY IS RECEIVED BY THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY, WHICH COULD BE LESS THAN THE PREMIUM YOU PAID FOR THE POLICY. A RETURN OF THE POLICY AFTER THE 30-DAYS MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.

The ***free look provisions (CIC 786)*** apply to persons 60 years and older and do not apply to contracts sold through group plans.

Free Look – Under Age 60 Years

Agents should know that clients over age 60, as well as persons younger than 60, who purchase annuities must now be given the right to cancel them within 30 days (786, 10127.9, 10127.10 CIC). This law, which supersedes similar legislation defining seniors as 65 years, applies to all contracts sold and delivered after 1/1/04. Return of the policy during the cancellation period has the effect of voiding the policy from the beginning and placing the parties in the same position as if no policy had been issued. That means that all premiums and policy fees shall be refunded by the insurer.   If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest.



SECTION V
Ethics

What It Means to Be An Agent

A proper attitude about this responsibility is not only prudent, but important to your success. No agent can really prosper and move forward if he leaves a trail of dazed and unhappy clients behind. Understanding the mistakes of others and not making them yourself is probably the best way to assure this doesn't happen. You have several ways to evaluate your selling performance, our advice is to let one measure be the problems you avoid in helping clients acquire valuable insurance protection and effective, safe investment opportunities. Likewise, it does little to build a thriving insurance practice only to have it all taken away from a single lawsuit. When you avoid the legal problems in selling insurance, you are protecting your own future as well. Some of the specific rules you must abide by are included in the next section.

Agent Responsibility

Compliance is crucial, but it is not the same thing as being ethical. In fact, you can still be legal but ethically wrong. Posting a code of ethics or simply doing the right thing most of the time is still not enough . . . although it's a start. You see, having high ethical standards, or more simply being honest, can be more important than being right because honesty reflects character while being right reflects a level of ability. Unfortunately, the insurance industry, for the most part, still rewards ability. There are, for example, plenty of "million dollar" marketing winners and "sales achievement awards"; but few, if any, "Ethics & Due Care" certificates.

You bring a higher level of ethical conduct to your practice just by the manner in which you operate. This includes more ***effective communication***. A lot of times, making something easier for your client to understand means you have to sacrifice your ego. Face it, you really want to impress clients with your newfound knowledge about annuity facts and features . . . don't you? It's human nature. But, resist the urge to spout.

Product Knowledge

The time line of insurance vehicles like annuities and long term care is important to recognize. Policies sold today, for example, can fail to meet client needs when they need them most because in the time that passes before benefits might be used, there is a lot that can go wrong. This is all the more reason that your clients need to "lean on you" for your advice. You must be knowledgeable in your product, sell only what you understand and be certain it meets the stated needs of your client to the best of your ability.

Needs and Benefit Selling

Higher ethical standards are raised when you are ***needs based***. A needs-driven sales system's analyzes a ***client's needs*** and determine how insurance and annuities can ***best meet those***

needs. It is not meant to generate the sale based upon the obvious points of the product or the need of the salesperson to produce. It uncovers a prospect's general financial problems or deficiencies so that the prospect begins to recognize the need. The problem is personalized to arouse interest in a possible solution.

Like any system, needs analysis works effectively only when it is used as it is designed. The system builds upon itself in terms of both content and data and is most effective when used from start to finish. Shortcuts undermine the effectiveness of the process. An agent following this system from start to finish can never be accused of less than professional point-of-sale practices.

Needs-based selling goes into great detail in analyzing needs and creating recommendations that are based upon airtight logic and conclusions. Needs-based selling involves the client, allowing him or her to use his or her own ideas and assumptions. It is a process that allows the prospect to participate in creating his or her own solutions to needs based upon what he or she considers important. Analyses must represent and respect the client's opinions. The goals are those of the prospect, not the agent. If the goals are not the goals of the prospect, the prospect is not likely to go along with the agent's recommendations in the end.

The needs-based selling system is characterized by the recognition of accurately assessed needs, which are the result of careful and professional analysis. Through careful fact-finding, information is gathered about the prospect's desire to provide income to family members in the event of premature death or disability, as well as to plan for retirement needs and accumulation. The analysis performed is based upon interest rates, inflation assumptions and the prospect's views about his or her objectives and timetables.

Needs analysis helps the agent sell the right amount of insurance to the client for the right reasons. In today's competitive environment, agents cannot afford the exposure of makeshift or piecemeal sales practices. They must have a complete, comprehensive selling system. They must provide a needs-based analysis for their clients and generate trustworthy recommendations based on this investigation. Learning how to effectively determine needs gives the opportunity to offer a full array of financial products and services.

This sales system is focused on needs for another reason. In addition to needs being the best reason for a client to buy life insurance, it is also the best reason to sell life insurance. Sales based on greed, i.e., big returns on premium dollars paid, can be made by people other than life insurance agents. A sale based on greed is simply selling a return, or just selling a configuration of numbers on a piece of paper. This type of selling can be done by bankers, stockbrokers or even accountants. Selling based on a genuine need for life insurance is another matter. Needs-based selling is the thing that makes life insurance agents necessary; greed selling is the thing that could make them extinct.

Clients who have needs, also need ***solutions***. A responsible agent understands that this starts with matching specific needs of a client to dozens of policy features and benefit options – this is not a job for sissies! When all is said and done, however, a responsible, solutions-based agent must take the final step to assure himself and client that your insurance or planning suggestion is the most effective way to handle economic and health needs. You must sprinkle your client meetings with the following questions:

- Does this make sense to you?
- Have I given you all the information you need to make a decision?

- Is there something else I can answer to assure you that this is the right solution based on your needs?

These are essential questions because they help “clear the air” circulating around any doubts or concerns your client may have. And, they can also help limit your liability if something goes wrong down the road (more ideas on reducing conflicts with clients later).

A positive response to these questions is the feedback you need to know that you have “gotten through” to your client and are providing some real solutions to some very important needs.

Client Confidentiality

Less than ethical agents use the illusion of providing a benefit to soften a client's perspective and then sell them something else. This is the classic definition of bait and switch. Many times the procedure is to ***qualify*** potential ***victims*** through a process of a deceptive interview or application . . . referred to as a ***pretext interview*** . . . with the sole purpose to gather confidential information. Often, clients are coerced into providing information under the guise of some potential benefit and once the information is retrieved, a product sales pitch is tailored.

The Care Owed to Seniors

Consumers, and especially seniors, can be easily convinced to buy the wrong kind of annuity or ***buy too many annuities*** without consideration for needed liquidity at retirement. In addition there are many ***scam operations*** that often misrepresent the disadvantages of seniors' current investments and the advantages of the investments they are selling. They may even make seniors believe their bank accounts are less safe than the annuities or other investments they want seniors to buy.

In their solicitations, some of these sales ***agents often pose as expert*** financial or estate planners. They pass themselves off as a "trust advisor", "senior estate planner", or "paralegal", and schedule an initial appointment with seniors in their homes. Under the guise of helping set up or update a living trust, the sales agents find out about seniors' financial assets and investments. They often work in assisted living centers, churches and other places where seniors gather, hooking elderly victims through free seminars and other sales presentations.

Senior abuse in the selling of annuities is the reason for recent legislation and the reason you are now required to take this course. The hope is that education such as this will prevent additional legislation so that you can be productive and understanding in the valuable role annuities can play in a consumer's retirement planning.

Agent Responsibility to Insurers

Your insurer is a stakeholder in you representing product fairly and within the scope of the law. The shareholders who have invested in the insurance company are also stakeholders and when it comes down to it, you are a stakeholder yourself. That’s right! You owe it to yourself to survive in your chosen field.

Insurer applications are the lifeblood of the your business yet most agents regard them as a hassle. You have a ***legal duty*** to be sure that each application is completed ***fully without deceit*** of any nature. The information on all forms must be accurate to the best of your

knowledge. An ***agent's duty to his insurer*** is to ***ensure that the applicant understands the questions in the application and ask the prospective insured to read it to confirm that everything is answered*** correctly and completely. Only then should it be signed. Under no circumstances should applicants sign blank forms.

Profiling the Client

The process of identifying client risks is not as complicated as some make it to be. Clients fill out forms and insurance applications which help quantify ***what and when*** coverage is needed (discussed below). ***How*** you will meet these needs with matching products is discussed in the next section.

What a client does for a living, his age, where he lives and even his recreation determines the many risks that your clients are exposed to. Family relationships and responsibilities create additional risks as do what is owned and owed. A clients concern for family members he might leave behind is yet another risk determinant.

How are client risks discovered? Through insurance applications and/or forms you create. There are so many possibilities and options that it is impossible to present you with a single format. Adapting existing policy applications is probably one of the best suggestions we can make. When completely filled out, you will see areas of concern and potential exposure probably not mentioned in a verbal interview.

Once you and your client have identified their risk exposures, you need to determine a strategy to handle it.

Consider the following options: A client with an identified risk can either ***control it*** or ***finance it***.

Controlling client risks involves avoiding or reducing them:

- <u>Avoiding Risks</u>. The tools to accomplish this are in the decision not to own something, not to do something, not to say something or just to not do something that could create or represent risk exposure.
- <u>Reducing risk</u> involves the issues of loss control with a focus on safety, procedures, pooling, segregation, diversification.

Financing risks involve transferring, sharing or retaining them:

- <u>Transferring or sharing risk</u> can mean renting instead of owning, buying insurance, using credit instead of assets, getting hold harmless agreements, etc
- <u>Retaining risk</u> examples include insurance deductibles, co-insurance, self-insurance or simply ignoring the risk and absorbing the full cost if it occurs.

Perhaps this is the time to sit down with your client and discuss these strategies to learn better what his or her tolerance is for self-insurance or deductibles. Can he transfer all or part of the risk and be happy? Can he retain more of the risk for the lower premium he desires? Could he do something to completely avoid the exposure?

Insurer Responsibility

See more responsibilities on page 11.

Since insurance companies are highly regulated, one would assume there is little that can go wrong between insurers, policyholders and agents. This is not always correct and agents need to be on the lookout for their clients. Fundamental to choosing appropriate product for your clients is the understanding that all insurance is constructed of the same elements -- expenses; experience (claims risk or mortality); and return or profit. Therefore, a policy that appears to be significantly better than others in the marketplace should be suspect. Once a suitable product can be found, the decision to buy should be based on the assumptions in the policy and the financial stability of the company. Policy illustrations and quotes are one method to make this assessment. Unfortunately, agents and clients rely too much on these presentations to the extent that policies are rarely read. As a result, agents should be sure that any projection or estimate disclose the assumptions that went into the projection and the fact that variations in these assumptions can significantly change insurance results. Recent laws have even made it mandatory to include (in cases of certain product eliminate illustrations) and/or bold or highlight any "guaranteed" portions, as compared to simple projections. It is further suggested that illustrations be run again, using realistic input, to see if they still meet client expectations. And, always obtain a specimen policy, and if applicable an outline of coverage, to get to the bottom of glowing terms and/or "too good" features and benefits.

Leading By Example

In any given industry, someone is compelled to document the strategies and tactics employed by highly admired companies. These companies are not particularly the "best-in-class" in every area -- such a company may not exist at all. Rather, due to their nature of competition and drive for excellence, the ***practices*** they have implemented and honed place them among the most admired, the most profitable and the keenest competitors in the business. In essence, these agents and companies are ***leading by example***.

In the early 1990's the Independent Insurance Agents of America began researching ways to reverse tough market conditions present at the time. They formed a commission to identify the most successful agencies and find out what they were doing that set them apart. A series of interviews, on-site visits and conversations among 800 offices revealed a set of common practices consistent with the most successful agencies. These common business methods became known as the basis of ***Best Practices***.

In reality, best practices may not be revolutionary or new ideas; they are just ***good, sound business practices***. They may be things you already know, but having them broken down helps to bring attention and use them easier.

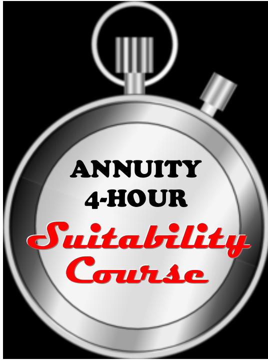
The IIAA Best Practice survey resulted in nine guidelines to maximize potential and improve agency operations:

1. ***Focus on customer service and satisfaction***. This means not only providing good service but looking into what the customer needs and expects.
2. ***Maintain good customer contact***. Best Practice agencies use customer contacts to educate the customer, serve as the client's advocate and problem solver, and make every

transaction as easy as possible. They also tend to be pro-active on pricing and introducing new products

3. ***Valued staff***. Agencies' staff are continuously provided education, training and tools to do a good job. The expectation of high performance and professional growth is often rewarded with recognition, better salaries and better benefits.
4. ***Participatory management***. Top managers are very active in day-to-day operations. Managers regularly seek employee input, especially about planning and budgeting processes. Fiscal information is not a secret and profit expectations are clear.
5. ***Vision***. Best Practice agencies have a very clear vision of where they are and where they intend to go in the future.
6. ***Win/Win supplier relationships***. Successful agencies seek to do business with companies that have a vision and embrace values like theirs. A Best Practice agency engages in joint planning.
7. ***Efficiency***. Though not all agencies are completely automated, use of efficient processes and systems is common. Bets Practice agencies strive to improve work flows t add value for their customers.
8. ***Total account development***. Best Practice agencies seek to grow through total account development. They are looking to develop a larger share of the customers' accounts.
9. ***Continuous improvement***. These agencies constantly work to improve themselves. They measure and compare themselves to peers and their own past performances.

Agents who follow best practices typically use them as a benchmark to see how they measure up with other agencies -- where they excel and where they can improve. Benchmarking is a common practice among many industries. The mission is simple: observe, learn and copy practices that lead to success. As the old adage goes: ***Success breeds success***. Product or the type of agency (life, casualty, health, etc) is irrelevant. The bottom line is that these are tools and skills the agent can use to change or improve his practice.



ADDENDUM
Penalties

Eight-Hour Annuity Training Outline **Attachment III**

Penalties Defined (Section 782, 786, 789.3, 1738.5, 10509.910 et seq. of the CIC)

California Insurance Code	Violation	Penalty
Section 782 Establishes penalties for violation of section 780 and section 781	**Section 780** - Prohibited Misrepresentation **Section 781** - Twisting (see page 3 for actual language)	Punishable by fine not to exceed $25,000, or if victim loss exceeds $10,000, the fine not to exceed 3 times the loss suffered by the victim, by imprisonment not to exceed 1 year or by both a fine and imprisonment Restitution to victim pursuant to Section 1202.4 of the Penal Code shall be satisfied before any fine imposed by this section is collected
Section 786 Provides for an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract	no violations or penalties cited in this section (see page 3 for actual language)	
Section 789.3 Administrative penalties; amounts; rescission of contracts	**Section 789.3:** (a) and (b) by broker, agent, or other person engaged in the transactions of insurance other than an insurer (see page 4 for actual language) (d) and (e) by insurer	789.3(a) minimum $1,000 for the first violation 789.3(b) minimum $5,000 and no more than $50,000 each subsequent violation 789.3(c) Commissioner may suspend or revoke license 789.3(d) $10,000 for the first violation 789.3(e) minimum $30,000 and no more than $300,000 each violation thereafter 789.3(f) Commissioner may require rescission of contract

Section 1668.1 Acts that constitute cause to suspend re revoke any permanent license issued pursuant to this chapter	no violations or penalties cited in this section (see page 5 for actual language)	
Section 1738.5 A proceeding held pursuant to section 1668, 1668.5, 1738, 1739, or 12921.8	no violations or penalties cited in this section (see page 5 for actual language)	
Section 10509.9 Administrative penalties:	**Section 10509.9:** (a) and (b) by any agent or other person or entity engaged in the business of insurance other than an insurer (see page 6 for actual language) (c) and (d) by insurer (see page 6 for actual language) (e) by person or entity after a hearing (see page 6 for actual language)	10509.9 (a) $1,000 for the first violation 10509.9 (b) minimum $5,000 and no more than $50,000 each subsequent violation 10509.9 (c) $10,000 for the first violation 10509.9 (d) minimum $30,000 and no more than $300,000 each violation thereafter 10509.9 (e) the Commissioner may suspend or revoke the license
Section 10509.916 **Insurer responsibilities**	violations and penalties to be determined (see page 7 for actual language)	

Current Law

This list includes the statutes stated in SB 618 and the penalty statute from AB 689 (Chapter 295, Statutes of 2011) Insurance: annuity transactions, Section 10509.914 of the California Insurance Code, which will take effect on January 1, 2012.

Section 780: An insurer or officer or agent thereof, or an insurance broker or solicitor shall not cause or permit to be issued, circulated or used, any statement that is known, or should have been known, to be a misrepresentation of the following:

(a) The terms of a policy issued by the insurer or sought to be negotiated by the person making or permitting the misrepresentation.
(b) The benefits or privileges promised thereunder.
(c) The future dividends payable thereunder.

Section 781: (a) A person shall not make any statement that is known, or should have been known, to be a misrepresentation (1) to any other person for the purpose of inducing, or tending to induce, such other person either to take out a policy of insurance, or to refuse to accept a policy issued upon an application therefor and instead take out any policy in another insurer, or (2) to a policyholder in any insurer for the purpose of inducing or tending to induce him or her to lapse, forfeit or surrender his or her insurance therein.
(b)A person shall not make any representation or comparison of insurers or policies to an insured which is misleading, for the purpose of inducing or tending to induce him or her to lapse, forfeit, change or surrender his or her insurance, whether on a temporary or permanent plan.

Section 782: Any person who violates the provisions of Section 780 or 781 is punishable by a fine not exceeding twenty-five thousand dollars ($25,000), or in a case in which the loss of the victim exceeds ten thousand dollars ($10,000), by a fine not exceeding three times the amount of the loss suffered by the victim, by imprisonment in a county jail for a period not to exceed one year, or by both a fine and imprisonment. Restitution to the victim ordered pursuant to Section 1202.4 of the Penal Code shall be satisfied before any fine imposed by this section is collected.

Section 786: All disability insurance and life insurance policies and certificates offered for sale to individuals age 65 or older in California shall provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract, at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no contract had been issued. All premiums paid and any policy or membership fee shall be fully refunded to the applicant by the insurer or entity in a timely manner.

a) For the purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

b) If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(c) Each policy or certificate shall have a notice prominently printed in no less than 10-point uppercase type, on the cover page of the policy or certificate and the outline of coverage, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(d) In the event of any conflict between this section and Section 10127.10 with respect to life insurance, the provisions of Section 10127.10 shall prevail.

Section 789.3: (a) Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation.

(c) If the commissioner brings an action against a licensee pursuant to subdivision (a) or (b) and determines that the licensee may reasonably be expected to cause significant harm to seniors, the commissioner may suspend his or her license pending the outcome of the hearing described in subdivision (c) of Section 789.

(d) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars ($10,000) for the first violation.

(e) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars ($30,000) and no more than three hundred thousand dollars ($300,000) for each violation.

(f) The commissioner may require rescission of any contract found to have been marketed, offered, or issued in violation of this article.

Section 1668.1: (a) The licensee has induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, or to any of the persons listed in subdivision (e).

(b) The licensee has induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision (e) a beneficiary under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy.

(c) The licensee has induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any intervivos or testamentary trust. However, if the licensee is also licensed as an attorney in any state, the licensee may be made

a trustee under the terms of any intervivos or testamentary trust, provided that the licensee is not a seller of insurance to the trustor of the trust.

(d) The licensee, who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.

(e) Subdivisions (a) and (b) shall also apply if the licensee induces the client to provide the benefits in those subdivisions to the following people:

(1) A person who is related to the licensee by birth, marriage, or adoption.
(2) A person who is a friend or business acquaintance of the licensee.
(3) A person who is registered as a domestic partner of the licensee.

(f) This section shall not apply to situations in which the client is:

(1) A person related to the licensee by birth, marriage, or adoption.
(2) A person who is registered as a domestic partner of the licensee.

Section 1738.5: A proceeding held pursuant to Section 1668, 1668.5, 1738, 1739, or 12921.8 that involves allegations of misconduct perpetrated against a person age 65 or over shall be held within 90 days after receipt by the department of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(a) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of any of these persons, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(b) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(c) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the un-amended portion of the pleadings is ready to be heard.

(d) A stipulation for continuance signed by all parties, or their authorized representatives, that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(e) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(f) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact, due to a conflicting and required appearance in a judicial matter if, when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict,

and the conflict, with the request for continuance, is immediately communicated to the administrative law judge.

(g) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(h) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

Section 10509.9: (a) Any agent or other person or entity engaged in the business of **insurance**, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation.

(b) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation.

(c) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars ($10,000) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars ($30,000) and no more than three hundred thousand dollars ($300,000) for each violation.

(e) After a hearing conducted in accordance with Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may suspend or revoke the license of any person or entity that violates this article.

(f) Nothing in this section shall be deemed to affect any other authority provided by law to the commissioner.

Section 10509.916: (a) An insurer is responsible for compliance with this article. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may, in addition to any other available penalties, remedies, or administrative actions, order any or all of the following:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this article.

(2) A managing general agent or an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this article.

(3) Penalties and sanctions pursuant to Section 10509.9. For purposes of Section 10509.9, this article shall be deemed to be part of Article 8 (commencing with Section 10509), and the

commissioner may in a single enforcement action seek penalties for a first and a second or subsequent violation.