

Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

Chapter 33 - LIFE INSURANCE SOLICITATION

001. Authority. This rule is adopted and promulgated by the Nebraska Department of Insurance pursuant to NEB. REV. STAT. §§ 44-101.01, 44-1522, 44-1525(l)(a) and 44-1533.

002. Purpose.

002.01 The purpose of this regulation is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

002.02 This regulation does not prohibit the use of additional material which is not in violation of this regulation or any other Nebraska statute or regulation.

003. Scope.

003.01 Except for the exemptions specified in Subsection 003.02, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. Subsection 005.02 shall apply only to an existing nonexempt policy held by a policyowner residing in this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

003.02 This regulation shall not apply to:

003.02A Individual and group annuity contracts;

003.02B Credit life insurance;

003.02C Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);

003.02D Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 *et seq.* as amended; or

003.02E Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

004. Definitions. For the purposes of this regulation, the following definitions shall apply:

004.01 **Buyer's Guide** means the current Life Insurance Buyer's Guide adopted by the National Association of Insurance Commissioners (NAIC) or language approved by the Director of Insurance.

004.02 **Current scale of nonguaranteed elements** means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

004.03 **Generic name** means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

004.04 **Nonguaranteed elements** means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

004.05 Policy data means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information:

004.05A illustrated annual, other periodic, and terminal dividends;

004.05B premiums;

004.05C death benefits; and

004.05D cash surrender values and endowments benefits.

004.06 Policy summary means a written statement describing the elements of the policy, including, but not limited to:

004.06A A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

004.06B The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;

004.06C The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written;

004.06D The generic name of the basic policy and each rider;

004.06E The following amounts, where applicable, for the first five (5) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, at least one age from sixty (60) through sixty-five (65) and maturity, whichever is earlier:

004.06E(i) The annual premium for the basic policy;

004.06E(ii) The annual premium for each optional rider;

004.06E(iii) The amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, that is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;

004.06E(iv) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

004.06E(v) Any endowment amounts payable under the policy that are not included under cash surrender values above;

004.06F The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law; and

004.06G The date on which the policy summary is prepared.

004.07 Preneed funeral contract or prearrangement means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

005. Duties of Insurers.

005.01 Requirements Applicable Generally

005.01A The insurer shall provide a Buyer's Guide to all prospective purchasers, prior to accepting the

applicant's initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

005.01B The insurer shall provide a policy summary to prospective purchasers where the insurer has identified the policy form as one that will not be marketed with an illustration. The policy summary shall show guarantees only. It shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure. Any amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in Subsection 004.06E shall be listed in total, not on a per thousand or per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as a blank space. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in Subsection 005.01A.

005.02 Requirements Applicable to Existing Policies

005.02A Upon request by the policyowner, the insurer shall furnish either policy data or an in force illustration as follows:

005.02A(i) For policies issued prior to the effective date of 210 NEB. ADMIN. R. & REG. 72, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 210 NEB. ADMIN. R. & REG. 72.

005.02A(ii) For policies issued after the effective date of the illustration regulation that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of this regulation.

005.02A(iii) If the policy was issued after the effective date of the illustration regulation and declared to be used with an illustration, an in force illustration shall be provided.

005.02A(iv) Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. Notwithstanding Chapters 40 and 72 of Title 210 of the Nebraska Administrative Code, the insurer may charge a reasonable fee, not to exceed twenty (\$20.00) dollars for the preparation of the statement.

005.02B If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies; it shall, no later than when the first payment is made on the new basis, advise each affected policy owner residing in this state of this change and of its implication on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

005.02C If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor; it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this state.

006. Preneed Funeral Contracts or Arrangements. The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement that is funded or to be funded by a life insurance policy:

006.01 The fact that a life insurance policy is involved or being used to fund a prearrangement;

006.02 The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

006.03 The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

006.04 The impact on the prearrangement:

006.04A Of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

006.04B Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;

006.04C Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

006.05 A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

006.06 All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

006.07 Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and

006.08 Any sales commission or other form of compensation that is being paid and the identity of the individuals or entities to whom it is being paid.

007. General Rules.

007.01 Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer pursuant to this regulation. This file shall contain one copy of each authorized form for a period of three (3) years following the date of its last authorized use unless otherwise provided by this regulation.

007.02 An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

007.03 An insurance producer shall not use terms such as financial planner, investment advisor, financial consultant, financial counseling, or other similar terms in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

007.04 Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements (use appropriate special term such as current dividend or current rate scale.) If a nonguaranteed element would be reduced by the existence of a policy loan, a

statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued after the effective date of 210 NEB. ADMIN. R. & REG. 72 that includes nonguaranteed elements over a period of years shall be governed by that regulation.

008. Failure to comply. Failure of an insurer to provide or deliver a Buyer's Guide, an in force illustration, a policy summary or policy data as provided in Section 005, shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

009. Severability. If any provision of this regulation is for any reason held to be invalid, the remainder of the regulation shall not be affected thereby.

010. Effective date. This amended rule shall become effective on October 1, 2008.