



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

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Superintendent

Insurance Circular Letter No. 4 (2012)
March 29, 2012

To: All Authorized Life Insurers and Fraternal Benefit Societies

Re: Retained Asset Accounts

STATUTORY REFERENCES: Insurance Law §§ 109, 2403, 2601, 3201, 4226

This Circular Letter replaces and supersedes the Insurance Circular Letter No. 4 (2012) that was dated February 24, 2012; that version is hereby withdrawn.

Summary

This Circular Letter sets forth the procedures that an insurer should follow when it wishes to establish a retained asset account (“RAA”) upon the death of an insured, instead of providing the beneficiary with a single check for the full life insurance proceeds. An RAA is an interest bearing draft or checking account in a beneficiary’s name from which the beneficiary can withdraw funds. Specifically, this Circular Letter provides that an insurer should: use an RAA only when a policyholder or beneficiary affirmatively chooses to receive life insurance proceeds in that fashion; explicitly state on any form selecting the mode for delivering proceeds that payment of the full life insurance proceeds by a single check is an option; and provide clear and conspicuous disclosures to a beneficiary, no later than the time when an option must be elected, including information about other options besides RAAs; the characteristics of RAAs; and any restrictions on the use of RAA drafts or checks.

Background

The Insurance Department, now the Department of Financial Services, has reviewed the practices of life insurers and fraternal benefit societies (collectively, “insurers”) when they establish RAAs in lieu of providing beneficiaries with a single check for the full life insurance proceeds of a life insurance claim. An insurer typically establishes an RAA upon the death of an insured under a life insurance policy or certificate and agrees to pay to the beneficiary a settlement of the life insurance proceeds. In most instances, the insurer agrees to establish in a bank or other institution an interest bearing draft account (or less typically, an interest bearing checking account) in the beneficiary’s name, and provides the beneficiary with a draft book (or checkbook, where applicable) in order to withdraw the funds. Most often, the insurer deposits funds into an account at the time that the beneficiary presents the draft to the bank or institution.

Many insurers aver that an RAA is designed to be a prudent repository of funds while the beneficiary considers what to do with the life insurance proceeds.

Many insurers provide the beneficiary with a choice of settlement options as an alternative to the payment of the full life insurance proceeds in a single check, but when a beneficiary under a life insurance policy or certificate does not affirmatively elect to receive the full life insurance proceeds in a single check or under any other available option, some insurers establish an RAA as the default option, and send a draft book, check book and/or agreements to the beneficiary in settlement of the death claim. Moreover, some insurers do not provide beneficiaries with an option to receive a single check for the full life insurance proceeds. In addition, some insurers have not provided sufficient disclosures setting forth the nature of RAAs.

Discussion

Most life insurance policies and certificates require the payment of the full life insurance proceeds upon the death of the insured. Where a life insurance policy or certificate is delivered or issued for delivery on or after April 1, 2012, and only provides that payment will be made in a lump sum, a single sum, or its equivalent, an insurer should pay the full life insurance proceeds in the form of a single check to a beneficiary of a life insurance policy or certificate delivered or issued for delivery in New York (“New York policy”), regardless of the beneficiary’s state of residence, or to a beneficiary who resides in New York (“New York beneficiary”) regardless of where the life insurance policy or certificate was delivered or issued for delivery, unless the statutes, codes, rules, or regulatory authorities’ bulletins, or similar documents of the jurisdiction in which the New York beneficiaries’ policy or certificate was delivered or issued for delivery provide otherwise. Where a life insurance policy or certificate is delivered or issued for delivery in New York prior to April 1, 2012 and only provides that payment will be made in a lump sum, a single sum, or its equivalent, an insurer should pay the full life insurance proceeds in the form of a single check to a beneficiary of a New York policy or to a New York beneficiary, unless there has been an affirmative election of another settlement option, including an RAA.

Many life insurance policies and certificates also provide for settlement options, or insurers make settlement options available, as an alternative to the payment of the full life insurance proceeds in a single check.¹ Where payment of life insurance proceeds may be made by settlement options other than a single check, an insurer should not place the proceeds of the policy or certificate in a settlement option, including an RAA, unless there has been an affirmative election of the settlement option.

Any form by which a settlement option is elected should clearly and conspicuously state that payment of the full life insurance proceeds in a single check is available. If no election is made, the insurer should send to the beneficiary a single check for the full life insurance proceeds. In no event should the insurer establish an RAA unless there has been an affirmative election authorizing the insurer to do so.

¹ In an Office of General Counsel (“OGC”) opinion dated January 7, 2004, OGC opined that, provided that an insurer complies with the relevant time frames for settlement contained in New York Comp. Codes R. & Regs. (“NYCRR”), tit. 11, Part 216 (“Regulation 64”), an insurer may offer the option to deposit the settlement amount into an interest bearing checking account and then issue a checkbook to the claimant, but may not require it.

When an RAA is an option, in order to avoid any potential for misleading the beneficiary of a New York policy or a New York beneficiary, an insurer should, as of April 1, 2012, provide certain written disclosures to a beneficiary no later than the time when an option must be elected. The disclosures should be set forth in a clear and conspicuous manner. At a minimum, these disclosures should include:

- In addition to an option to establish an RAA, a list of other available options from which the beneficiary may choose. Unless the policy provides for payment of the life insurance proceeds only in installments, one option should be for payment by a single check for the full proceeds. The option to receive the full life insurance proceeds as a single check should be offered as prominently as all other listed available options.
- Notice that the settlement of the beneficiary's claim made under the life insurance policy or certificate will be made through the delivery of a draft or check kit to the beneficiary where the RAA option is elected.
- An accurate description of the nature of the RAA, including: that the beneficiary's funds are held by the insurer (or affiliated entity, where applicable) and not in a bank or other institution; and whether or not the insurer is earning or has the potential to earn income on the beneficiary's funds held in the RAA.
- The name and address of the bank or other institution where the insurer will establish the account, and whether the account is a draft or checking account.
- Notification that one draft or check (whichever is applicable) can be written at any time to access the full life insurance proceeds or remaining balance in the account.
- Notification of whether or not RAA funds are insured by the Federal Deposit Insurance Corporation (FDIC) and, if so, the extent of such insurance.
- Services provided by the bank or other institution to an RAA holder and the fees associated with such services, including any costs or fees associated with the RAA.
- The nature and frequency of statements that will be sent to an RAA holder.
- Notification of an RAA holder's right to designate a beneficiary for the RAA.
- Any restrictions on the usage of RAA drafts or checks (whichever is applicable), including minimum benefit payment restrictions, the number of withdrawals permitted within any time period and any applicable minimum withdrawal amounts.
- An approximation of any time delays that an RAA holder should expect to encounter in completing any authorized transaction under an RAA and the anticipated length of such delay.

- The minimum interest rate that may be paid on RAA funds, and a description of how the interest rate is determined and credited to the account.
- A disclosure indicating that choosing an RAA may have tax implications and that the beneficiary should consult a tax advisor.
- Any reservation of rights that the insurer may claim to freeze RAA funds or take RAA funds back to set off an alleged claim against the account holder.
- A telephone number and address where the beneficiary may obtain additional information and answers to any questions, including the current interest rate.

Where the RAA option is elected by a beneficiary of a New York policy or a New York beneficiary, materials sent to the beneficiary relating to the establishment of the account should include the disclosures set forth above that are applicable to RAAs.

With regard to existing RAAs held by beneficiaries of New York policies and RAAs held by New York beneficiaries, written notice should be provided to RAA holders as soon as practicable, but no later than October 1, 2012, that:

- One draft or check (whichever is applicable) can be written to access the entire proceeds or remaining balance to close the account.
- A beneficiary for the account may be designated if no designation has previously been made.

With regard to both newly-elected and existing RAAs held by beneficiaries of New York policies and RAAs held by New York beneficiaries, insurers should adopt the following practices as soon as practicable but no later than October 1, 2012:

- Drafts and draft books (where used) should consistently be referred to as such and not as checks or checkbooks in all correspondence and other materials.
- The face of each draft or check (whichever is applicable) should disclose the minimum amount, if any, for which a draft must be written.
- After each year of inactivity on an RAA, written notice should be provided to each RAA holder whose funds are subject to the New York State Abandoned Property Law informing the holder that the account has been inactive and reminding the holder that one draft or check (whichever is applicable) can be written to access the entire proceeds and close the account. The RAA holder should also be informed that the remaining funds will be escheated pursuant to the New York State Abandoned Property Law, when such funds are scheduled for escheatment, and of the steps the RAA holder must take to prevent such escheatment, including, but not limited to, responding to the written notice. All insurers should comply with applicable states' abandoned property laws with respect to RAA accounts.

With regard to a New York beneficiary, regardless of where the life insurance policy or certificate is delivered or issued for delivery, the requirements contained in the statutes, codes, rules, or regulatory authorities' bulletins, or similar documents, of the jurisdiction in which the policy or certificate was delivered or issued for delivery, may be substituted for the disclosures and/or procedures provided herein where such jurisdiction provides substantially similar or greater protections relative to the payment of life insurance proceeds and /or RAAs.

Conclusion

In sum, as of April 1, 2012, an insurer should only establish an RAA when a policyholder or beneficiary expressly chooses that mode of receiving life insurance proceeds, when the insurer explicitly informs the beneficiary in writing that it has a right to receive payment by a single check instead, and when the insurer provides the beneficiary with the clear and conspicuous disclosures described in this Circular Letter.

Questions regarding this Circular Letter should be addressed to Sharon Ma, Principal Insurance Examiner, Life Bureau, at (212) 480-4659, or by e-mail at sharon.ma@dfs.ny.gov.

Very truly yours,

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and Chief, Life Bureau