



## Certification Page Regular and Emergency Rules

### 1. General Information

a. Agency/Board Name *See attached list for references*

Wyoming Department of Insurance

b. Agency/Board Address  
106 East 6th Avenue

c. Agency/Board City  
Cheyenne

d. Agency/Board Zip Code  
82002

e. Name of Contact Person  
James S. Mitchell

f. Contact Telephone Number  
(307) 777-6889

g. Contact Email Address  
Jim.Mitchell@wyo.gov

h. Adoption Date:  
November 29, 2012

i. Program(s) *See attached list for references*  
General

### 2. Rule Type and Information

a. These rules are: ☐ Emergency Rules *(After completing all of Section 2, proceed to Section 5 below)* ☒ Regular Rules

b. Choose all that apply: ☐ New Rules\* ☒ Amended Rules ☐ Repealed Rules

\* "New" rules means the first set of regular rules to be promulgated by the Agency after the Legislature adopted a new statutory provision or significantly amended an existing statute.

If "New," provide the Enrolled Act number and year enacted:

c. Provide the Chapter Number, and Short Title of Each Chapter being Created/Amended/Repealed *(if more than 5 chapters are being created/amended/repealed, please use the Additional Rule Information form and attach it to this certification)*

Chapter Number: 12	Short Title: Regulation Governing Replacement of Life Insurance Policies and Annuities
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:

d. ☒ The Statement of Reasons is attached to this certification.

e. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

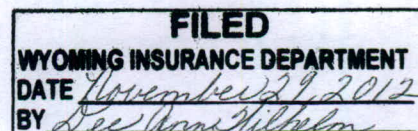
N/A

### 3. State Government Notice of Intended Rulemaking

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State: 08/22/2012

b. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Legislative Service Office: 08/22/2012

c. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Attorney General: 08/22/2012





#### 4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☒ Yes ☐ No ☐ N/A

b. A public hearing was held on the proposed rules. ☐ Yes ☒ No

If "Yes:"	Date:	Time:	City:	Location:

#### 5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature: November 29, 2012

b. Date on which final rules were sent to the Legislative Service Office: November 29, 2012

c. Date on which a PDF of the final rules was electronically sent to the Secretary of State: November 29, 2012

#### 6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual

Printed Name of Signatory

James S. Mitchell

Signatory Title

Staff Attorney

Date of Signature

November 29, 2012

#### 7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature

Date of Signature

#### Distribution List:

##### Attorney General

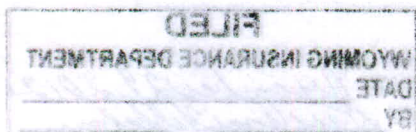
1. Statement of Reasons;
2. Original Certification Page;
3. Summary of Comments (regular rules);
4. Hard copy of rules: clean and strike/underscore; and
5. Memo to Governor documenting emergency (emergency rules).

##### LSO

1. Statement of Reasons;
2. Copy of Certification Page;
3. Summary of Comments (regular rules);
4. Hard copy of rules: clean and strike/underscore;
5. Electronic copy of rules: clean and strike/underscore; and
6. Memo to Governor documenting emergency (emergency rules).

##### SOS

1. PDF of clean copy of rules; and
2. Hard copy of Certification Page as delivered by the AG.





STATEMENT OF PRINCIPAL REASONS

FOR

Amendments to Chapter 12 of Wyoming Insurance Department Regulation

Regulation Governing Replacement Of Life  
Insurance Policies And Annuities

The amendments to this chapter, entitled Regulation Governing Replacement of Life Insurance Policies and Annuities, are to require additional consumer information to the "Replacement Notice" and "Items to Consider." The Notice provided to consumers will now require surrender charges, new surrender periods and charges, and any sales charges to be disclosed. The "Items to Consider" has been updated to advise the consumer to consider any tax consequences when replacing insurance and annuity policies, and to explain that surrender charges may occur in replacing a policy. These are areas that policy holders often have difficulties understanding based on consumer assistance request filed with the Department of Insurance.

Additionally, the terms "agent," "agents," "broker," and "brokers" have all been converted to "producer" in order to conform to the language of Wyo. Stat. § 26-9-201, *et. seq.*



## SUMMARY OF COMMENTS TO

### Amendment of Chapter 12 of the Wyoming Insurance Department Regulations

#### REGULATION GOVERNING REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITIES

In response to the public comments received by the Department of Insurance regarding proposed changes to Chapter 12 regulations, the Department has made the following changes:

Definitions for "sales charge," "surrender charge," and "surrender period" were added.

The refund of premiums for a variable product was modified to recognize the market investment and provide for return of the cash surrender value of the contract in section 7(d).

Section 8(i) was amended to allow the insurer to delete the references to producer when the transaction is a direct sale.

The Department has changed sections 7(d) and 8(iv) to allow the consumer a 30-day period to review the replaced policy.

"Exhibit A" was added as a reference to the Replacement Notice.



CHAPTER 12  
REGULATION GOVERNING REPLACEMENT OF LIFE  
INSURANCE POLICIES AND ANNUITIES

**Section 1. Authority**

These rules and regulations governing the replacement of life insurance policies and annuities in the State of Wyoming supplement the provisions of W.S. 26-13-102, W.S. 26-13-103, W.S. 26-13-104, W.S. 26-13-105, W.S. 26-13-106, W.S. 26-13-107, W.S. 26-15-109, and W.S. 26-15-110. They are promulgated by authority of and pursuant to the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115) and Wyoming Insurance Code (W.S. 26-2-110 and W.S. 26-2-125).

**Section 2. Purpose**

The purpose of this Regulation is:

(a) To regulate the activities of insurers, and producers with respect to the replacement of existing life insurance and annuities.

(b) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(i) Assuring that purchasers receive information with which a decision can be made in his or her own best interest;

(ii) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(iii) Establishing penalties for failure to comply with requirements of this Regulation.

(c) To declare that failure to comply with the provisions of this Regulation will be deemed an unfair method of competition and an unfair trade practice.

**Section 3. Definitions**

(a) "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing producer or to the proposing insurer if there is no producer, that by reason of such transaction, existing life insurance or annuity has been or is to be:

(i) Lapsed, forfeited, surrendered, or otherwise terminated;



(ii) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(iii) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(iv) Reissued with any reduction in cash value; or

(v) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

(b) "Conservation" means any attempt by the existing insurer or its producer to dissuade a policy owner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(c) "Direct-Response Sales" means any sale of life insurance or annuity where the insurer does not utilize a producer in the sale or delivery of the policy.

(d) "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(e) "Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(f) "Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(g) "Registered Contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

(h) "Sales Charge" is defined as any initial charge or fee assessed to the consumer for the purchase of an insurance product. This includes but is not limited to the following terms: front-end loads, separate commission charges, initial premium charge/load, and purchase fees. It does not include contingent deferred sales charges (CDSC) as this charge would be considered a surrender charge, monthly administrative



fees, annual contract charges, mortality and expense charges (M&E), premium taxes, or fees on investments in the separate account.

(i) "Surrender Charge" is defined as a charge or fee assessed to the consumer for the surrender, sale, cancellation, termination, transfer, or exchange of an insurance product prior to the maturity or completion of the surrender period stated in the policy.

(j) "Surrender Period" is defined as the amount of time a policyholder must wait in order to receive a withdrawal from an insurance product without a "surrender charge."

#### **Section 4. Exemptions**

Unless otherwise specifically included, this Regulation shall not apply to transactions involving:

- (a) Credit life insurance;
- (b) Group life insurance or group annuities;
- (c) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised;
- (d) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; and
- (e) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, producers proposing replacement shall comply with the requirements of Section 5(a).

#### **Section 5. Duties of Producers**

(a) Each producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

- (i) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and
- (ii) A signed statement as to whether the producer knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved, the producer shall:



(i) Present to the applicant, not later than at the time of taking the application, a "Replacement Notice" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the producer and left with the applicant. The "Replacement Notice" shall include any applicable surrender charges of the policy being replaced, any sales charges applicable to the policy being purchased, and any surrender periods and/or charges applicable to the new policy being purchased.

(ii) Obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

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

(iv) Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Section 5(b)(i).

(c) Each producer who uses written or printed communications in a conversation shall leave with the applicant the original or a copy of such materials used.

#### **Section 6. Duties of All Insurers**

Each insurer shall:

(a) Inform its field representatives or other personnel responsible for compliance with this Regulation of the requirements of this Regulation.

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

#### **Section 7. Duties of Insurers That Use Producers**

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

(a) Require with or as part of each completed application for life insurance or annuity, a statement signed by the producer as to whether he or she knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved:

(i) Require from the producer with the application for life insurance or annuity a list of all the applicant's existing life insurance or annuity to be replaced and a



copy of the Replacement Notice provided the applicant pursuant to Section 5(b)(i). Such existing life insurance or 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.

(ii) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to Section 7(b)(i). This written communication shall be made within three (3) working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(c) The replacing insurer shall maintain evidence of the "Replacement Notice," all written communications with respect to replacement, and a replacement register, cross indexed by replacing producer and existing insurer to be replaced. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is later.

(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 thirty (30) days commencing from the date of delivery of the policy. In the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

#### **Section 8. Duties of Insurers to Direct Response Sales**

Each insurer shall:

(a) Inform its personnel responsible for compliance with this Regulation of the requirements of this Regulation;

(b) Require with or as a part of each completed application for insurance a statement signed by the applicant as to whether such proposed insurance will replace existing insurance;

(c) Where a replacement is proposed by an insurer in the solicitation of a direct-response sale or it is known by the insurer on the date of application that a replacement will occur:

(i) Provide the applicant or prospective applicant with or as part of the application the "Replacement Notice" (Exhibit A), or other substantially similar form approved by the commissioner, with the request that the applicant properly complete, sign and return a copy of the Notice with the application. In these instances the insurer



may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The "Replacement Notice" shall include any applicable surrender charges of the new policy being replaced, any sales charges applicable to the policy being purchased, and any surrender periods and/or charges applicable to the new policy being purchased.

(ii) Send to the existing insurer at its home office within three (3) working days of the date the Notice is received, a copy of the Notice advising of the replacement or proposed replacement of existing insurance. Forwarding of the Notice is not required if the replacing insurer and existing insurer are one and the same in name and direct management control;

(iii) Maintain copies of the Notice, all written communications with respect to replacement, and a replacement register, cross-indexed by existing insurer to be replaced, for at least three (3) years or until the conclusion of the next regular examination by the Insurance Department of its state of domicile, whichever is later;

(iv) Provide the applicant with a right to an unconditional refund of all premiums paid, which right may be exercised within a thirty (30) day period of delivery of the policy or contract.

(d) Where no replacement is proposed by an insurer in the solicitation of a direct-response sale and a Replacement Notice was not included with or as part of the application and returned to the insurer, but it is indicated on the application that a replacement might occur and the insurer plans to issue a policy:

(i) Suspend the application process for no longer than ten (10) days;

(ii) Provide the applicant with the Replacement Notice within three (3) days after receipt of the application;

(iii) Request that the applicant properly complete, sign and return a copy of the Notice within five (5) days; and

(iv) Continue the process as outlined in Sections 8(c)(ii) through 8(c)(iv). However, the insurer may continue the application process after ten (10) days from receipt of application even if a copy of the Notice has not been received.

#### **Section 9. Penalties**

(a) A violation of this Regulation shall occur if a producer or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, producer, representative,



officer or employee of such insurer failing to comply with the requirements of this Regulation shall be subject to such penalties as may be appropriate under the Insurance Code.

(b) Patterns of action by policy owners who purchase replacing policies from the same producer, after indicating on applications that replacement is involved, shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the producer's intent to violate this Regulation.

(c) This Regulation does not prohibit the use of additional material other than that which is required that is not in violation of this Regulation or any other statute or regulation.

#### Section 10. **Severability**

If any section or portion of a section of this Regulation, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this Regulation, or the applicability of such provision to other persons, shall not be affected thereby.

#### Section 11. **Effective Date**

This Regulation shall become effective upon filing with the Secretary of State.



**Exhibit A**  
**REPLACEMENT NOTICE**

**ASK QUESTIONS -- IT'S YOUR MONEY -- GET THE FACTS**

Whether it is to your advantage to replace or change your existing insurance or annuity program, only you can decide. It is in your best interest to obtain adequate information in order to compare relatively short and long range costs and benefits before a final decision is made.

The producer or insurance company assisting you with this new purchase must notify your existing producer or company so that they may prepare a detailed, current statement concerning your existing program for your comparison. Statements and illustrations should not, however, be used as the sole basis to compare policies or contracts. We want you to understand the effects of replacements before you make your purchase decision, and ask that you review the statements listed under "Items to Consider."

**EXISTING INSURANCE WHICH MAY BE REPLACED OR CHANGED**

Full Name of		
Insurance Company		
Including Home	Policy or Contract	
Office Location	Number*	Insured

_____
_____
_____

Surrender Charge of Policy Being Replaced \_\_\_\_\_ % and \$ \_\_\_\_\_

Sales Charge of Policy Being Purchased (if applicable) \$ \_\_\_\_\_

New Surrender Period and Surrender Charges of Policy Being Purchased.

<u>YEARS</u>										
<u>% CHARGE</u>										

<u>YEARS</u>										
<u>% CHARGE</u>										



\* If a number has not been assigned by the existing insurer, indicate alternative identification, such as an application or receipt number.

#### ITEMS TO CONSIDER

1. Due to a possible change in insurability status (health, occupation or high risk recreational activities) you might be denied new coverage, or the premium may be higher than a standard premium.

2. The Incontestability and Suicide Clause time periods would probably begin anew in a new policy. This could possibly result in a claim being denied that might otherwise have been paid under an existing policy or contract.

3. Your present insurance company may be able to modify your existing plan on terms which may be more favorable for you than completely replacing it with a new policy or contract.

4. Don't terminate or alter your existing policy until after the new policy has been delivered to you and accepted by you.

5. If you terminate your existing policy, you may incur surrender charges and/or penalties. The new policy you are purchasing may have a new surrender charge period and/or sales charges.

6. There may be tax consequences in replacing an existing policy. Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code? Is this transaction a "tax free" exchange? See your tax advisor for specific tax advice regarding the proposed transaction.

7. Take your time in making your decision about purchasing the new policy. Gather all information about the new policy and compare it to your old policy. Remember, you do not have to make a decision during the first meeting with your sales person.

8. REMEMBER: Following receipt of a new life insurance policy or annuity contract you should immediately examine its contents. If you are not satisfied with it for any reason, you have the right to return it within the thirty (30) day "examination period" to the insurer at its home office or branch office or to the producer through whom it was purchased, for a full refund of premium. If you do return the policy or contract, you should request a dated receipt indicating that it was returned.

DID YOU READ THE "ITEMS TO CONSIDER"?

\_\_\_\_\_



Applicant's Signature

Date

Producer's Signature

Date

Applicant's Name (printed)

Producer's Name (printed) and License No.

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number



## CHAPTER 12

### REGULATION GOVERNING REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITIES

#### Section 1. **Authority**

These rules and regulations governing the replacement of life insurance policies and annuities in the State of Wyoming supplement the provisions of ~~W.S. 26-3-116(b)(i), W.S. 26-9-136(a)(v), W.S. 26-9-136(a)(vii),~~ W.S. 26-13-102, W.S. 26-13-103, W.S. 26-13-104, W.S. 26-13-105, W.S. 26-13-106, W.S. 26-13-107, W.S. 26-15-109, and W.S. 26-15-110. They are promulgated by authority of and pursuant to the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115) and Wyoming Insurance Code (W.S. 26-2-110 and W.S. 26-2-125).

#### Section 2. **Purpose**

The purpose of this Regulation is:

(a) To regulate the activities of insurers, ~~agents and brokers~~ **and producers** with respect to the replacement of existing life insurance and annuities.

(b) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(i) Assuring that purchasers receive information with which a decision can be made in his or her own best interest;

(ii) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(iii) Establishing penalties for failure to comply with requirements of this Regulation.

(c) To declare that failure to comply with the provisions of this Regulation will be deemed an unfair method of competition and an unfair trade practice.

#### Section 3. **Definitions**

(a) "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing ~~agent or broker~~ **producer** or to the proposing insurer if there is no ~~agent~~ **producer**, that by reason of such transaction, existing life insurance or annuity has been or is to be:

(i) Lapsed, forfeited, surrendered, or otherwise terminated;



(ii) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(iii) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(iv) Reissued with any reduction in cash value; or

(v) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

(b) "Conservation" means any attempt by the existing insurer or its ~~agent or broker-producer~~ to dissuade a policy owner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(c) "Direct-Response Sales" means any sale of life insurance or annuity where the insurer does not utilize ~~an agent-a producer~~ in the sale or delivery of the policy.

(d) "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement".

(e) "Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(f) "Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(g) "Registered Contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

(h) "Sales Charge" is defined as any initial charge or fee assessed to the consumer for the purchase of an insurance product. This includes but is not limited to the following terms: front-end loads, separate commission charges, initial premium charge/load, and purchase fees. It does not include contingent deferred sales charges



(CDSC) as this charge would be considered a surrender charge, monthly administrative fees, annual contract charges, mortality and expense charges (M&E), premium taxes, or fees on investments in the separate account.

(i) "Surrender Charge" is defined as a charge or fee assessed to the consumer for the surrender, sale, cancellation, termination, transfer, or exchange of an insurance product prior to the maturity or completion of the surrender period stated in the policy.

(j) "Surrender Period" is defined as the amount of time a policyholder must wait in order to receive a withdrawal from an insurance product without a "surrender charge."

#### Section 4. **Exemptions**

Unless otherwise specifically included, this Regulation shall not apply to transactions involving:

- (a) Credit life insurance;
- (b) Group life insurance or group annuities;
- (c) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised;
- (d) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; and
- (e) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, ~~agents or brokers~~producers proposing replacement shall comply with the requirements of Section 5(a).

#### Section 5. **Duties of ~~Agents and Brokers~~Producers**

(a) Each ~~agent or broker~~producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

- (i) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and
- (ii) A signed statement as to whether the ~~agent or broker~~producer knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved, the ~~agent or broker~~producer shall:



(i) Present to the applicant, not later than at the time of taking the application, a "~~Notice Regarding Replacement~~ Notice" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the ~~agent or broker~~ producer and left with the applicant. The "Replacement Notice" shall include any applicable surrender charges of the policy being replaced, any sales charges applicable to the policy being purchased, and any surrender periods and/or charges applicable to the new policy being purchased.

(ii) Obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

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

(iv) Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Section 5(b)(i).

(c) Each ~~agent or broker~~ producer—who uses written or printed communications in a conversation shall leave with the applicant the original or a copy of such materials used.

## **Section 6. Duties of All Insurers**

Each insurer shall:

(a) Inform its field representatives or other personnel responsible for compliance with this Regulation of the requirements of this Regulation.

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

## **Section 7. Duties of Insurers That Use ~~Agents or Brokers~~ Producers**

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

(a) Require with or as part of each completed application for life insurance or annuity, a statement signed by the ~~agent or broker~~ producer as to whether he or she knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved:



(i) Require from the ~~agent or broker~~ producer with the application for life insurance or annuity a list of all the applicant's existing life insurance or annuity to be replaced and a copy of the Replacement Notice provided the applicant pursuant to Section 5(b)(i). Such existing life insurance or 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.

(ii) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to Section 7(b)(i). This written communication shall be made within three (3) working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(c) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement Notice," all written communications with respect to replacement, and a replacement register, cross indexed by replacing ~~agent~~ producer and existing insurer to be replaced. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is later.

(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 twenty thirty (30) days ~~(20)~~ commencing from the date of delivery of the policy. In the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

#### Section 8. **Duties of Insurers to Direct Response Sales**

Each insurer shall:

(a) Inform its personnel responsible for compliance with this Regulation of the requirements of this Regulation;

(b) Require with or as a part of each completed application for insurance a statement signed by the applicant as to whether such proposed insurance will replace existing insurance;

(c) Where a replacement is proposed by an insurer in the solicitation of a direct-response sale or it is known by the insurer on the date of application that a replacement will occur:



(i) Provide the applicant or prospective applicant with or as part of the application the "Replacement Notice" (Exhibit A), or other substantially similar form approved by the commissioner, with the request that the applicant properly complete, sign and return a copy of the Notice with the application; In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The "Replacement Notice" shall include any applicable surrender charges of the new policy being replaced, any sales charges applicable to the policy being purchased, and any surrender periods and/or charges applicable to the new policy being purchased.

(ii) Send to the existing insurer at its home office within three (3) working days of the date the Notice is received, a copy of the Notice advising of the replacement or proposed replacement of existing insurance. Forwarding of the Notice is not required if the replacing insurer and existing insurer are one and the same in name and direct management control;

(iii) Maintain copies of the Notice, all written communications with respect to replacement, and a replacement register, cross-indexed by existing insurer to be replaced, for at least three (3) years or until the conclusion of the next regular examination by the Insurance Department of its state of domicile, whichever is later;

(iv) Provide the applicant with a right to an unconditional refund of all premiums paid, which right may be exercised within a ~~twenty~~ thirty (320) day period of delivery of the policy or contract.

(d) Where no replacement is proposed by an insurer in the solicitation of a direct-response sale and a Replacement Notice was not included with or as part of the application and returned to the insurer, but it is indicated on the application that a replacement might occur and the insurer plans to issue a policy:

(i) Suspend the application process for no longer than ten (10) days;

(ii) Provide the applicant with the Replacement Notice within three (3) days after receipt of the application;

(iii) Request that the applicant properly complete, sign and return a copy of the Notice within five (5) days; and

(iv) Continue the process as outlined in Sections 8(c)(ii) through 8(c)(iv). However, the insurer may continue the application process after ten (10) days from receipt of application even if a copy of the Notice has not been received.



## Section 9. Penalties

(a) A violation of this Regulation shall occur if an ~~agent, broker~~ **producer** or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, ~~agent~~ **producer**, representative, officer or employee of such insurer failing to comply with the requirements of this Regulation shall be subject to such penalties as may be appropriate under the Insurance Code.

(b) Patterns of action by policy owners who purchase replacing policies from the same ~~agent or broker~~ **producer**, after indicating on applications that replacement is involved, shall be deemed prima facie evidence of the ~~agent's or broker's~~ **producer's** knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the ~~agent's or broker's~~ **producer's** intent to violate this Regulation.

(c) This Regulation does not prohibit the use of additional material other than that which is required that is not in violation of this Regulation or any other statute or regulation.

## Section 10. Severability

If any section or portion of a section of this Regulation, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this Regulation, or the applicability of such provision to other persons, shall not be affected thereby.

## Section 11. Effective Date

This Regulation shall become effective ~~on August 1, 1986.~~ **upon filing with the Secretary of State.**



## Exhibit A

### REPLACEMENT NOTICE

#### ASK QUESTIONS -- IT'S YOUR MONEY -- GET THE FACTS

Whether it is to your advantage to replace or change your existing insurance or annuity program, only you can decide. It is in your best interest to obtain adequate information in order to compare relatively short and long range costs and benefits before a final decision is made.

The agent-producer or insurance company assisting you with this new purchase must notify your existing agent-producer or company so that they may prepare a detailed, current statement concerning your existing program for your comparison. Statements and illustrations should not, however, be used as the sole basis to compare policies or contracts. We want you to understand the effects of replacements before you make your purchase decision, and ask that you review the statements listed under "Items to Consider."

#### EXISTING INSURANCE WHICH MAY BE REPLACED OR CHANGED

Full Name of  
Insurance Company

Including Home Office Location

Policy or Contract  
Number\*

Insured

Surrender Charge of Policy Being Replaced \_\_\_\_\_ % and \$ \_\_\_\_\_

Sales Charge of Policy Being Purchased (if applicable) \$ \_\_\_\_\_

New Surrender Period and Surrender Charges of Policy Being Purchased.

<u>YEARS</u>										
<u>% CHARGE</u>										

<u>YEARS</u>										
<u>% CHARGE</u>										



\* If a number has not been assigned by the existing insurer, indicate alternative identification, such as an application or receipt number.

#### ITEMS TO CONSIDER

1. Due to a possible change in insurability status (health, occupation or high risk recreational activities) you might be denied new coverage, or the premium may be higher than a standard premium.

2. The Incontestability and Suicide Clause time periods would probably begin anew in a new policy. This could possibly result in a claim being denied that might otherwise have been paid under an existing policy or contract.

3. Your present insurance company may be able to modify your existing plan on terms which may be more favorable for you than completely replacing it with a new policy or contract.

4. Don't terminate or alter your existing policy until after the new policy has been delivered to you and accepted by you.

5. If you terminate your existing policy, you may incur surrender charges and/or penalties. The new policy you are purchasing may have a new surrender charge period and/or sales charges.

6. There may be tax consequences in replacing an existing policy. Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code? Is this transaction a "tax free" exchange? See your tax advisor for specific tax advice regarding the proposed transaction.

4.7. Take your time in making your decision about purchasing the new policy. Gather all information about the new policy and compare it to your old policy. Remember, you do not have to make a decision during the first meeting with your sales person.

5.8. REMEMBER: Following receipt of a new life insurance policy or annuity contract you should immediately examine its contents. If you are not satisfied with it for any reason, you have the right to return it within the twenty-thirty (30) day ~~(20)~~ "examination period" to the insurer at its home office or branch office or to the agent producer through whom it was purchased, for a full refund of premium. If you do return the policy or contract, you should request a dated receipt indicating that it was returned.

DID YOU READ THE "ITEMS TO CONSIDER"?



Applicant's Signature

Date

Producer's Signature

Date

Applicant's Name (printed)

Producer's Name (printed) and License No.

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number