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# Working Group Recommendations Regarding Life Insurance Provisions of the Uniform Unclaimed Property Act for Discussion at the February 27 & 28, 2015 Drafting Committee Meeting

## I. Should the Dormancy Period Begin to Run on Notice of Death of the Insured for Life Insurance Policies Rather Than Upon "Proof of Death"?

NAUPA Suggestions

Section 2(a)(8) should be amended to clarify that the dormancy period for benefits that mature upon death begins to run on the date of death of the insured and to explicitly state that, for such policies, it is the death of the insured that gives rise to the payment obligation. Any other contractual requirements that must be satisfied by a beneficiary before an insurance company is required to *settle* a claim do not alter the fact that it is the death that gives rise to "the obligation to pay." This revision is also consistent with: (i) the Supreme Court's holding in *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 546 (1948), stating that "[w]hen the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties"; (ii) Section 2(e) of the 1995 Act, stating that property is payable or distributable notwithstanding the owner's failure to present any documentation necessary to receive payment; and (iii) authorities recognizing that dormancy periods are set based on a determination of the amount of time by which an owner can be expected to come forward to claim his or her rightful property, and not a period of time during which the holder should be allowed to retain unclaimed property.

These revisions foreclose interpretations advocated by some holders that would limit the obligation to escheat unclaimed death benefits prior to the limiting age to only those situations where an insurer has received a claim and proof of death from a beneficiary. This would make the unclaimed property laws only apply in the virtually non-existent circumstance where a beneficiary was aware of the policy, made a claim with the insurance company and provided all necessary documentation and yet somehow the benefit was not paid. This would negate the central purpose of the unclaimed property laws, which is to have the states take custody of property that the owners are not aware belongs to them and, therefore, has not been claimed from the holder.

ACLI Suggestions

In the case of when the company receives notification that the insured or annuitant has died, including when the insurer relies upon an electronic database match of the insured's or annuitant's name for any purpose as constituting death of the apparent owner, dormancy periods should run from the time when the death of the insured or annuitant is validated by the insurer.

Recommendations

Where a policy or contract is payable upon proof of death, the amount owed by the insurer should be presumed abandoned three years after the insurer has notice of the death of an insured unless (1) the insurer can document that it was unable despite a good faith effort to confirm the death of the insured; or (2) if the insurer obtained proof of death, the beneficiary or beneficiaries of the insured received from the insurer instructions necessary to make a claim, in which case if a claim is not filed, the amount owed should be presumed abandoned three years after the last contact between the insurer and a beneficiary. Otherwise, a policy or contract payable upon proof of death should be presumed abandoned three years after the policy matures or the insured attained, or would have

attained in living, the limiting age under the mortality table upon which the reserve is based. Notice for these purposes should have the same general meaning as provided by UCC 1-202, and should include situations in which from all the facts and circumstances known to a person, the person has reason to know that a fact exists, so as to exclude willful blindness. Clarification should be provided that there is not an "amount owed" to the extent the insurer makes a good faith determination that benefits are not due in accordance with the applicable policy or contract, unless the insurer's determination is contested by a beneficiary and overturned in any administrative, judicial or alternative dispute resolution process.

This approach is generally consistent with § 7 of the 1981 version of the Uniform Act (and equivalent provisions contained in § 3(b) of the 1966 and 1954 versions of the Act) which appear to remain in effect in up to 22 states. The 1981 Act provided that a policy of contract not matured by actual proof of death is deemed matured when the insurer knows that the insured or annuitant has died Although more abbreviated language is used in the 1995 version of the Uniform Act, which was adopted by 15 states and the Virgin Islands, § 2(a)(8) of the 1995 Act does not appear to have been intended to make a substantive change to the provisions of the prior law relating to insurance policies or annuities payable upon proof of death. The comment to the 1995 Act states that the reorganization of dormancy periods contained in separate sections of the 1981 Act into section 2 "[w]ith limited exceptions … does not alter the bases for presuming abandonment of the property from that established in the 1981 Act, but merely restates those standards in a unified section, more easily applied, and with less repetition." The only exception to this principle noted in the comment to section 2 of the 1995 Act relates to property held by a bank if the bank held other property not presumptively abandoned.

With respect to what constitutes notice of death, a good faith effort to confirm death, or the provision of notice to beneficiaries, insurers should be entitled to rely upon any policies or standards developed by state insurance regulators in consultation with unclaimed property administrators. In adopting any such policies or standards, insurance regulators should be directed to promote uniformity and consistency with the practices of other states and with any national standards developed by the NAIC.

**II. Should the Dormancy Period Begin to Run When the Insured Attains (Or Would Have Attained If Living) the Limiting Age Upon Which Insurance Reserves Are Based Only When the Insurer Does Not Have Notice of the Death of the Insured?**

NAUPA Suggestions

Add language to Section 2(a)(8) to clarify that the limiting age should only be used to calculate the dormancy period for death benefits as a fall-back option when the insurer does not know if the insured is deceased. In all other instances, the date of death once known should be used to calculate the dormancy period. This clarification recognizes that the limiting age should only be used when it is necessary for the insurer to essentially presume that an insured is deceased (as opposed to when it knows that the insured is deceased), and ensures that unclaimed proceeds are not allowed to go unescheated for many years or decades after the insurer has knowledge that the insured is dead, at which point the beneficiary is likely to also be deceased.

Dormancy periods should run from "in the case of a policy of annuity payable upon death" from either "the date of death of the insured' or "the limiting age under the mortality table on which the reserve is based where the insurer does not know whether the insured is deceased as of the time the limiting age is reached."

ACLI Suggestions

As noted above, the limiting age should not be used to commence the running of the dormancy period where an insured has notice of the death of the insured and is able to verify that the insured has died.

Recommendations

The limiting age should be used to commence the dormancy period only if the insured does not have notice of death of the insured, or has notice, but cannot after a good faith effort verify that the insured has died.

**III. Should the Dormancy Period for Matured or Terminated Policies Be Reduced From Three to Two Years?**

NAUPA Suggestions

NAUPA recommends reducing the dormancy period for matured/terminated policies from three years to two years and provide for a separate one-year dormancy period for policies that are escheated based on the limiting age. This revision is based on our understanding that the Committee is interested in considering appropriate reductions of the dormancy period, and the fact that in those circumstances where benefits have not been paid as of the limiting age, it is likely that the proceeds already have been unclaimed for an extended period of time and it is highly unlikely that the owner will come forward to claim the property.

ACLI Suggestions

Retain the three year dormancy period.

Recommendations

Dormancy period should be based on evidence that particular periods avoid the premature escheat of property; maximize the recovery of property; and promote uniformity. Currently it appears that 17 states use a five year dormancy period for insurance proceeds; 31 states, DC and the Virgin Islands use a three year period; and two states use a one year period. The shortened two-year period when dormancy is measured from the limiting age is used in 16 states. Unless empirical evidence exists to justify shortening the dormancy period, in the interests of promoting uniformity it appears best to retain the three year dormancy period provided by the 1995 Act.

**IV. Should § 2(e) Provide That a Beneficiary Is Not Required to Present a Death Certificate to an Insurer For Amounts Due On a Policy To Be Subject to Escheat?**

NAUPA Suggestions

NAUPA recommends adding language to Section 2(e) to incorporate examples of the type of documentation, including a death certificate, that are not required to have been presented to the holder by the owner in order for property to be considered payable under the Act. The language added is taken directly from the comment to Section 2(e) of the 1995 Uniform Unclaimed Property Act, which has been disregarded by some holders of unclaimed property. Adding this language is intended to minimize the possibility that any technical requirements that an owner must satisfy to receive payment will be interpreted to apply to the states and relied on by a holder as a reason to avoid reporting unclaimed property.

ACLI Suggestions

Eliminating the requirement that proof of death must be provided before a policy or annuity is matured and subject to escheat unconstitutionally changes the terms of existing contracts between insureds and insurers.

Recommendations

Section 2(e) provides that, "Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment." Clarification should be provided that an apparent owner, i.e., a beneficiary, should not be required to present proof of death to commence running of the dormancy period where the insurer has notice of the death of the insured. On the other hand, the dormancy period should be tolled if the insurer after a good faith effort cannot obtain proof of death.

**V. Should Insurers Be Exempt From the Payment of Interest For Failing To Escheat Unclaimed Death Benefits Within the Time Period Required If the Failure Is Due To Lack of Notice of Death of the Insured?**

NAUPA Suggestions

NAUPA recommends revisions and a new subsection to Section 24 to exempt a holder from being subject to payment of interest and penalties under the unclaimed property laws for failing to escheat unclaimed death benefits within the time period required under Section 2(a)(8)(i) (as that section is proposed to be revised) if the reason for such failure is due to the insurer's lack of knowledge of the insured's death. These proposed revisions recognize that there can be times where an insurer first learns of the death of an insured a number of years after the death took place and after the dormancy period already has expired. Under such circumstances, although the death benefits should be reported as unclaimed property in the next reporting cycle, the insurer should not have to pay any interest or penalties, as the insurer lacked the information necessary to have reported the property earlier.

ACLI Suggestions

No comments.

Recommendations

Adopt NAUPA suggestions.

**VI. Where Policy or Contract Benefits Are Not Payable to the Insured or Annuitant, but the Last Known Address of Any Designated Beneficiary Is Unknown, Should the Address of the Beneficiary Be Presumed To Be the Same As the Address of the Insured or Annuitant?**

NAUPA Suggestions

Reinstate the provisions of § 7(b) of the 1981 Act.

ACLI Suggestions

No comments.

Recommendation

Unless there is some precedent holding § 7(b) of the 1981 Act inconsistent with the principles articulated in Texas v. New Jersey, adopt the NAUPA suggestions.

## VII. Should a Requirement to Search the Social Security Administration's Master Death File Be Incorporated into the Uniform Unclaimed Property Act?

NAUPA Suggestions

NAUPA recommends adding a new section calling for insurers to perform periodic checks of their records against the United States Social Security Administration's Death Master File (the "DMF") and a definition of DMF. We have made these proposed additions based on our understanding that the Committee is interested in incorporating into the unclaimed property laws a DMF search requirement similar to the one adopted by the National Conference of Insurance Legislators. Although we believe that an affirmative DMF search requirement is in the best interests of consumers and owners of unclaimed property, this is an area where there is extensive on-going regulatory and statutory activity. Therefore, we have initially proposed a streamlined requirement that is intended to avoid conflicting with other statutes or agreements that may be in place. We believe that a streamlined approach is also consistent with the overall structure of the 1995 Act.

A substantial number of insurance companies, including AIG, Allianz, Aviva, Forethought, Genworth, Hartford, ING, John Hancock, Lincoln National, MetLife, Midland National, Nationwide, New York Life, Northwest Mutual, Pacific Life, Prudential, Symetra, Sun Life, TIAA-CREF, Transamerica, Western & Southern and John Hancock, have entered into multistate settlement agreements with respect to audit periods applicable to life insurance policies, annuity contracts and retained asset accounts that were-force since 1/1/1992, including policies that were lapsed, expired, rescinded or terminated. The settlement agreements provide that if a Master Death File match is identified, the company will engage in due diligence to determine if benefits were payable, and if death is confirmed and a beneficiary cannot be identified, the policy proceeds will escheat unless grounds to deny payment of a claim. While many of the settlement agreements include representations about policies insurers have developed to determine whether policyholders have died, the settlement agreements generally do not establish binding standards or requirements extending beyond the audit periods covered by the settlements. Many insurers have not entered into settlement agreements are currently either subject to on-going audits or are engaged in litigation to challenge audit procedures, requirements and findings.

ACLI Suggestions

State unclaimed property laws, generally based on one of four versions of the Uniform Act, have all treated life insurance similarly for decades, recognizing that life insurance is not unclaimed until maturity or, in the absence of a claim, when the insured reaches his or her limiting age. Recent assertions by state unclaimed property administrators that the insured's date of death is a dormancy trigger for reporting life insurance as unclaimed run counter to well-established unclaimed property law. Likewise, demands by such administrators and insurance regulators that life insurance companies' conduct regular Death Master File searches of their policy records in order to accelerate their unclaimed property reporting, in the absence of any prior stated statutory standards, also run counter to existing law. Several court decisions released over the past two years have rejected these unsupported assertions by administrators and regulators, finding that, in the absence of legislation to the contrary, insurers are not required to mine external databases in connection with the payment or escheatment of life insurance benefits. Specifically acknowledging that these arguments are contrary to long established insurance code requirements, these courts have

reinforced the need for consistency in unclaimed property laws and the need for clarity in the insurance codes.

The life insurance industry is generally not opposed to reasonable and periodic use of the Death Master File. Some types of products are not appropriate for searches, or some companies may need to be exempted or may only be able to conduct limited searches, due to operational or resource issues, and debate remains regarding whether or not searches should be prospective. Enactment of consistent laws, such as the NCOIL Model, which provide directives for insurer conduct of reasonable and regular Death Master File searches and outreach to beneficiaries, will complement existing unclaimed property law and insurance code provisions, while assuring uniformity and certainty for life insurance companies while also further assisting beneficiaries with obtaining their benefits. Development of uniform lost policy programs, such as those in Missouri, Ohio and Louisiana, will also assist consumers with identifying lost life insurance policies. Regulators are encouraged to support enactment of legislative standards, as described herein, and to offer lost policy programs for their consumers in order to bring future clarity to the issues surrounding Death Master File use by life insurers.

Recommendations

Provisions consistent with the Model Act should be uniformly adopted and prospectively applied to impose an obligation on insurers to conduct reviews of the MDF at least semi-annually, and upon identifying potential matches, within 90 days to (1) make a good faith effort to confirm the death of the insured; (2) determine whether benefits are due in accordance with the applicable policy or contract; and (3) if benefits are due, use good faith efforts to locate the beneficiaries and provide them with claims forms or instructions regarding how to make a claim.

## VIII Should Requirements to Conduct Master Death File Searches Be Incorporated into the Uniform Unclaimed Property Act or Separately Incorporated Into State Insurance Law?

NAUPA Suggestions

Incorporate the provisions of the Model Act as a new subsection of the Uniform Unclaimed Property Act that supplement and assist in the interpretation of the basic rules relating to the presumption of abandonment of insurance proceeds provided by § 2(a)(8) & (e) of the 1995 version of the Uniform Act.

ACLI Suggestions

To the extent there is or should be a requirement for insurers to use the Death Master File, the requirement should be lodged in state insurance law, not unclaimed property law. States are addressing Death Master File requirements as a matter of insurance law, not unclaimed property law. Inclusion of a Death Master File requirement in the *Uniform Unclaimed Property Act* will create an adversary relationship between state unclaimed property and insurance authorities, creating a chaotic regulatory environment for insurers. The statutory dissonance that will arise should Death Master File requirements for insurers appear in unclaimed property statutes administered by different authorities than those administering insurance statutes would be intolerable. In addition, inclusion of a Death Master File requirement will diminish the likelihood of uniform adoption of a revised *Uniform Unclaimed Property Act*.

Recommendations

States should be provided the alternative of either (1) incorporating into the Uniform Unclaimed Property Act provisions consistent with the Model Act; or (2) expressly cross-referencing requirements contained in insurance laws to conduct Master Death File searches, conduct due diligence to determine if benefits are payable to beneficiaries, and either make payments to beneficiaries or transfer amounts due to unclaimed property administrators, *provided that such laws are consistent with the version of the Model Act recommended for inclusion in the Uniform Unclaimed Property Act*. A legislative note in the Uniform Act should express a strong preference for the first alternative in order to create a consistent, uniform, and easily identifiable body of law, and avoid the risk that non-uniform amendments may be added to insurance company laws anytime amendments to these laws are under consideration.

Regardless of whether MDF search requirements are incorporated into the Unclaimed Property Law or in insurance laws, insurance regulators should be authorized, in consultation with unclaimed property administrators, to develop standards and policies needed to implement the search requirements, and any due diligence activities required when potential matches are identified. Insurers acting in conformity with any such standards or policies should be deemed in compliance with MDF search and follow-up due diligence requirements. As noted above, in developing any such standards and policies, insurance regulators should be directed to promote uniformity among the states and to implement any standards developed by the NAIC.

## IX How Should Differences Between Versions of the NCOIL Model Act Recommended by NAUPA and ACLI Be Reconciled?

We have been advised that NAUPA and the ACLI have agreed upon a revised version of the Model Act as revised on November 23, 2014. If there is a commitment to pursue uniform enactment of laws substantively equivalent to the revised Model Act, the issues listed below need not be addressed. At this point, however, it is unclear whether any such a consensus exists.

### A. What Should Be the Jurisdictional Limits of DMF Search Requirements?

NAUPA Suggestions

Does not specify which insurers are required to conduct DMF searches.

ACLI Suggestions

Definitions associated with policies, contracts and retained asset accounts subject to the Death Master File search requirements should be clarified so that the searches are limited to those policies, contracts and accounts issued “in this state” or to “residents of this state”, as applicable, to avoid extraterritorial application and to make the multi-state Death Master File search process more efficient.

Recommendations

Search requirements should apply to any insurer that is a holder of property subject to custody of the state as provided by § 4 of the Uniform Act. If all states fail to adopt DMF search requirements, limiting search requirements only to policies issued in each state would create gaps in the uniform application of search requirements to the extent the last known address of an apparent owner is not in the state in which a policy was originally issued, but instead is in a state that does not impose search requirements. Similarly where a state has custody over insurance policies because the last

known address of the owner of a policy is unknown, but the corporate domicile of an insurer is in the state, a rule that limits search requirements to policies issued in the state would exempt from search requirements policies issued by the insurer in another state if that state does not impose search requirements.

### B. To What Extent Should Search Requirements Apply to Lapsed or Terminated Policies?

NAUPA Suggestions

*An insurer shall perform a comparison of its insureds' in-force Policies, Contracts and Retained Asset Accounts against a Death Master File, as well as any Policies that have lapsed or terminated within the last 15 years.*

ACLI Suggestions

An Insurer shall perform a comparison of in-force Policies, Annuities and Account Owners against a Death Master File.

Recommendation

As provided by the NCOIL Model Act, search requirements can be limited to policies in force because the prospective application of at least semi-annual MDF search requirements should minimize the improper termination of matured policies due to the failure to pay premiums. In the context of an audit, however, it may be appropriate to demand a broader search to determine whether policies were improperly terminated for non-payment of premiums, or the improper drawing down of surrender values through the application of premium loan on non-forfeiture provisions, when a policy had matured because the insurer had notice of the death of the insured.

### C. Should Search Requirements Be Limited Only To Policies Issued On Or After the Effective Date of Legislation Imposing Search Obligations?

NAUPA Suggestions

A number of insurance companies have suggested that the Model Act be amended to only apply to policies issued sometime after the date it is enacted by a particular state, thereby exempting insurers from searching any of their previously issued inforce policies. These previously issued policies, however, are the very ones that are likely to be unclaimed now, or to become unclaimed in the foreseeable future. Individuals insured under newly-issued policies generally are not expected to die for decades to come. Moreover, to the extent that insureds die unexpectedly shortly after their policies have been issued, it is far more likely that their beneficiaries will be aware of the existence of the policies. A review of policies where funds have been remitted to beneficiaries as a result of recent state actions demonstrate that a large number are small face amount policies sold many years ago door-to door. These were purchased at great personal cost and sacrifice and were often intended to cover burial costs for families. Promises made to these citizens should be kept. Accordingly, an amendment that would limit DMF comparisons to newly-issued policies would effectively eviscerate the underlying purpose of the Model Act and render it an illusory fix to the very real problem it seeks to rectify.

ACLI Suggestions

ACLI has not suggested limiting search requirements only to newly issued policies or contracts.

Recommendations

Search requirements should be made expressly applicable to policies and contracts issued prior to the effective date of legislation provided the policies are either in-force at the time searches are required to be conducted or lapsed or terminated during a period for which search requirements are applicable.

**D. Should a Hardship Exemption From Search Requirements Be Provided?**

NAUPA Suggestions

NAUPA has not recommended an exemption, but has indicated that generally comprehensive search requirements are in the best interest of consumers and will be most effective in preventing policy proceeds from becoming unclaimed property. Accordingly, NAUPA cautions that any proposed amendments that reduce the number of comparisons and/or the groups of policies to be searched from what is currently called for the Model Act be carefully evaluated to ensure that they do not unnecessarily omit companies or policies from the search process or create a situation where unclaimed death benefits will be overlooked.

ACLI Suggestions

The Model Act should be modified to authorize the state insurance commissioner to limit or phase-in compliance with the law or delay its effective date. The resources necessary to comply with the new law are significant, especially for insurers that never used the Death Master File. The commissioner should be given the discretion to limit or phase-in compliance with the law, on a company-specific basis, if the circumstances are warranted and upon a demonstration of hardship.

Recommendations

Discretion to delay or phase-in compliance with search requirements on company-specific basis upon the demonstration of hardship or special circumstances, but only with the approval of both the state insurance commissioner and the state unclaimed property administrator. If the state officials do not agree, a denial of a request for delay or phase-in of search requirements by the unclaimed property administrator that has been approved by the insurance commission should be subject to either binding arbitration or review on an expedited basis under the State Administrative Procedures Act.