

Annuity Regulation

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Given the central role the insurance industry plays in millions of American lives and businesses, it is no wonder that it is subject to a number of regulators – the federal government, state governments, and industry watchdogs. The primary purpose of this regulation is to promote the public welfare by maintaining the solvency of insurance companies. After all, policyholders depend on a company’s financial stability to pay benefits well into the future. One insolvent company can jeopardize thousands of insureds. In addition to ensuring the financial strength of individual insurers, regulators also provide consumer protection, enforce fair trade practices and take care that insurance contracts are offered to the public at fair prices. It is very important that insurance agents be aware of and comply with all insurance laws and regulations.

Florida's Department of Financial Services and Office of Insurance Regulation

The **Department of Financial Services**, headed by Florida's Chief Financial Officer, and the Commissioner of the **Office of Insurance Regulation** oversee the insurance industry in accordance with the provisions of the Florida Insurance Code. They each have rule-making and enforcement powers to carry out their responsibilities.

The **Florida Insurance Code** is a broad set of regulatory principles. It sets general policy, but leaves the details of regulation to the Department and Office. The Florida Legislature adopted a Policyholder Bill of Rights to protect the insurance buying public. The Bill of Rights sets forth a series of aspirational goals to guide the Department and Office in their day-to-day operations. The Policyholder Bill of Rights can be found in the *Florida Statutes, Chapter 626.9641*.

The Department of Financial Services focuses its regulations and authority on consumer and agent issues, such as agent licensing and anti-fraud efforts; while the Office of Insurance Regulation concentrates on regulation of insurance companies and contract terms. The Department and the Office are empowered to investigate complaints, audit industry participants, and, if need be, rehabilitate insolvent insurers. Let's take a quick look at a few regulations Florida imposes on insurance companies and agents.

Insurers

Certificates of Authority

An admitted insurance company is one that the Office of Insurance Regulation has licensed to transact business in Florida under the provisions of the state laws — i.e., it holds a certificate of authority to operate in Florida. Put another way it is an “authorized” company.

Insurance companies that have not been authorized by the Office do not come under the jurisdiction of the Florida Office of Insurance Regulation — they are not subject to examination of its financial soundness, approval of types of coverages offered, nor the appropriateness of its advertising. Florida's Life and Health Guaranty Fund (described below) only covers the liabilities of authorized insurers, so anyone purchasing policies from unauthorized companies is at risk if those insurers cannot meet their claims. In Florida, an agent is personally liable for any insurance contract he or she places with an unauthorized insurer.

The Department of Financial Services imposes severe penalties on **agents who aid and abet** these illegal operations:

- ◆ Conviction of a third-degree felony,
- ◆ Liability for all unpaid claims, and
- ◆ Suspension or revocation of all insurance licenses.

Florida Statutes Chapter 626.901

Solvency

Insurance policies are only of value if there is a high probability that the company will be able to fulfill its promises far into the future. One reason for state regulation of insurers is to ensure the financial integrity of insurance companies operating in the state. Insurance regulators require companies to file annual reports, and will audit insurers' financial situation at least every three years.

Occasionally, an insurance company will fail. When this happens, state regulators will appoint a receiver to liquidate or reorganize the insurer in a process similar to bankruptcy. If liquidated, the **Florida Life and Health Guaranty Association** — an organization comprised of all authorized life and health insurers in Florida — takes over the duties of the failed insurer: collecting premiums, servicing the policy and paying claims. Through this association, the industry collectively “bails out” the occasional failed firm. The Association will pay claims against the failed company's traditional life insurance products and fixed annuities (but not variable products). The Association will pay up to \$300,000 in death benefits for life insurance (\$100,000 in cash value) or \$300,000 for fixed annuity payments. Florida law prohibits agents from referring to this protection as part of their sales presentations.

Agent Responsibilities

Any individual who solicits insurance products, including annuities (fixed and/or variable) must hold a valid license for that line of business issued by the Department of Financial Services. A licensed individual also must be appointed as an agent to represent an insurance or annuity company before he or she may “transact insurance”. In short, an agent must simultaneously hold a license from the state and an appointment from an insurance company to solicit or transact a line of insurance. One is not effective without the other.

In Florida, an agent's license does not have an expiration or renewal date – it may remain in force perpetually. (Of course, the Department may suspend or revoke an agent's license for violations of the Insurance Code or Department rules.) If a licensee loses an appointment for any line of business, his or her license will remain valid for 48 months. However, the licensee may not engage in insurance activity for that line of business until a new appointment is obtained. If the agent remains unappointed for 48 months, the license lapses. Appointments are valid for two years, and must be renewed by the appointing company to remain in force.

Brokers vs. Agents

Agents represent the insurers that appoint them. Brokers legally represent the annuity purchaser (or prospective purchasers). A broker solicits and accepts applications for insurance and then places the coverage with an insurer. The business is not in force and the insurance company is not bound until it accepts the application. Technically speaking, a broker does not represent anyone until prospect or client requests coverage — then the broker represents the buyer.

This distinction between agent and broker becomes blurred in the annuity market when independent (unaffiliated) agents are appointed by various companies to sell their products. In many cases, a client will wish to purchase an annuity and the agent will show proposals from several different companies. Is the sales person an agent representing the company's products, or broker representing the client's needs? In practice, the regulatory distinction between brokers and agents is not significant, as Florida does not issue separate licenses for brokers. Instead, licensed agents may act as brokers for their clients. There is, however, an important legal distinction: brokers owe their ultimate fiduciary responsibility to their clients; agents owe a fiduciary responsibility to the company that appoints them. Since a company can only pay commissions to appointed agents, a broker legally owes a fiduciary responsibility to both his clients and the annuity company. These conflicting interests can sometimes place an agent or broker in a difficult position.

Fiduciary Responsibility

A *fiduciary* is a person in a position of financial trust. Attorneys, accountants, trust officers, pension plan trustees, stockbrokers and insurance agents are all considered fiduciaries. Insurance agents and brokers may owe a fiduciary duty to both to the companies they represent and to the insurance buying public. Agents who make recommendations to clients have an obligation to be knowledgeable about the features and provisions of the products they sell, as well as the prudent use of these products. Agents also must take the time to become acquainted with the client's financial needs, situation and objectives. Agents collect premiums on behalf of the insurers they represent, so they also have a fiduciary duty to

submit those monies to the insurer promptly.

Insurance agents and brokers voluntarily accept this fiduciary responsibility and implicitly agree to carry out that duty in good faith. That has been interpreted by the courts to mean that fiduciaries must act reasonably to avoid negligence and to not favor anyone else's interest (including their own) over that of their clients or the companies that appointed them. Fiduciaries owe their principals (the person they represent):

Utmost Care. One standard applied to fiduciaries is the "prudent man rule", which states that the fiduciary should behave as a "prudent person" would under the same circumstances. This can be a very vague standard, but it is one that courts have relied on over the years. Professionals are usually held to a higher standard of conduct — to exercise "utmost care". This higher standard is warranted because professionals are assumed to be more knowledgeable and experienced than an ordinary prudent person. One can argue that clients seek out and are willing to pay for professional advice precisely because of the added knowledge and experience the professional brings to the decision-making process — and therefore should be held to that higher standard.

Integrity — this applies to the fiduciary's soundness of moral principle and character: the agent must act with fidelity to the principal's interest and with complete honesty.

Honesty and Duty of Full Disclosure of all material facts, either known, within the knowledge of or reasonably discoverable by the agent which could influence in any way the principal's decisions, actions or willingness to enter into a transaction.

Loyalty — An obligation to refrain from acquiring any interest adverse to that of a principal without full and complete disclosure of all material facts and obtaining the principal's informed consent. This precludes the agent from personally benefiting from secret profits, competing with the principal or obtaining an advantage from the agency for personal benefit of any kind.

Duty of Good Faith — includes total truthfulness, absolute integrity and total fidelity to the principal's interest. The duty of good faith prohibits taking advantage of the principal through the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

In the case of conflicting interests, the agent must disclose the "**dual agency**" (acting for two parties at the same time) or risk being accused of fraud from either or both principals. Most brokers are compensated by commissions. This, in itself, creates a difficulty since there is an inherent conflict of interest. It is common knowledge to most insurance purchasers that agents and brokers earn a sales commission, which may mitigate the conflict somewhat.

Florida courts addressed this commonly held knowledge in the case of *Beardmore v. Abbott* — ruling that a broker does have a fiduciary responsibility to his clients, but the broker's failure to disclose the full amount of his commission does not breach that duty. In this case, the client did not inquire as to the size of the commission at the time of the purchase, and broker did not volunteer the information. If the client had asked that question, presumably the courts would have ruled that the broker must honestly disclose that information as a matter of fiduciary trust. It should be

noted that the client was very familiar with the insurance market, and knew that the broker would receive a commission — it was disclosure of the exact amount that was the crux of this case. Agents should, at least, make clients aware that they may receive a commission as part of an insurance/annuity transaction.

The fiduciary duty of insurance brokers was also addressed in another case: *Moss v Appel*. In this case, a broker helped a small business set up a pension funded with an annuity contract, and the broker was also hired to handle administrative paperwork for the pension plan. The broker received notice from the annuity company that it was in seeking additional capital to remain in business, but he did not alert the clients to that notice. The annuity company later became insolvent. The courts ruled that the broker owed a fiduciary responsibility to his clients based on the sale of the annuity and the ongoing consulting/administrative contract. As the court noted: "It is undisputed that [the broker] was acting as an insurance broker, not an insurance agent employed by a particular company, when he sold the plaintiffs the annuity." Presumably that distinction means that the broker should have placed the client's interests above any duty he may have felt to keep the contract in force with the troubled annuity company (even if it was the company that compensated him for the sale). In this case, there was a contract with the clients to administer the plan. The court did not indicate how that continuing relationship affected its ruling — or for how long after the annuity sale a broker (in the absence of a continuing relationship) owes that duty to his clients. These cases illustrate some of the problems that can arise for insurance brokers. As noted earlier, annuities are more likely to be "shopped around", which increases the likelihood that the sales person will be viewed as a broker, and not as an agent.

Agent as Beneficiary

Florida law has a long-standing prohibition against life insurance agents being named as beneficiary of the policies they sell. Unless the agent has a bona fide insurable interest in the life of the insured, being named as beneficiary poses a serious conflict of interest. The Safeguard Our Seniors Act extends this prohibition to the naming of the agent's family members as beneficiary of a policy sold by the agent. Family members are defined as the agent's spouse, parents, grandparents, children, siblings, aunts or uncles, nieces or nephews, first cousins (as well as any of these in-law, half- or step- relations). There are two exceptions to this prohibition: when the policy's insured is a family member of the agent or if the agent has a bona fide insurable interest in the life of the insured (for example, the insured is a business partner of the agent). The new law also prohibits agents from selling life insurance to a client in which the agent or a family member of the agent acts as the client's guardian, trustee or has power of attorney over the client's affairs.

Ongoing agent requirements

Florida law requires an agent to notify the Department of Financial Services in writing, within 60 days, of any changes to his or her name, residence address, business street address, mailing address, phone numbers or email address. Change of name/address forms are available on the [Department website](http://www.fldfs.com). (www.fldfs.com)

Under Florida law any agent who has been found guilty (or plead guilty or *no lo contendere* ("no contest")) to any felony or a crime punishable by imprisonment of 1 year or more must notify the Department in writing within 30 days.

Continuing education

To maintain a life or health license, agents must complete at least 24 credits of continuing education every two years in courses approved by the Department. *Florida Statutes Chapter 626.2815* The rules provide exceptions for persons with certain professional designations (CLUs, ChCFs, etc.). Agents licensed less than six years may earn credit in courses rated basic, intermediate or advanced. Those who have been licensed for more than six years must complete only 20 credits every two years, but these credits must be in intermediate or advanced level courses. Each agent must complete, as part of his or her required number of continuing education credits every two years, a minimum of three credits of continuing education on the subject of ethics approved by the Department. Life-licensed agents must also complete three credits on the subject of suitability — which can also be used to meet the ethics requirement. *This course qualifies for that suitability requirement.*

Agents will not be able to renew their appointments, reinstate old ones or obtain new ones, if they are out of compliance with the continuing education requirements.

Agent Appointments

A licensee may not transact insurance until he or she is appointed by an authorized insurer for the class of licensure held. For example, if an individual is licensed for the classes of life, health and variable annuity, and wishes to market all three types of products, he or she must be appointed by either an insurance company authorized in its certificate of authority to transact all three of these lines of business or by separate companies for each line.

Appointments need to be renewed every two years. If the agent fails to comply with continuing education requirements, the Department will not allow renewal.

Premium payments

Under the law of agency, an agent is the lawful representative of the principal, which in this case is the insurance company. Payment of premiums or other sums to the agent is the same as paying them to the insurance company. Because of this, the agent has a fiduciary responsibility to turn the funds over to the insurance company immediately, and not to use them for his or her own purposes. If held by the agent, these funds should be held in a segregated account, i.e., separate from personal funds. Converting those funds to personal use is a crime known as embezzlement or conversion. The severity of the crime depends on the amount of funds that were misapplied. Florida

law requires agents to keep records for at least three years if the transaction pertains to premium payments.

Commissions

Generally speaking, agents will show proposals for companies that have appointed the agent. Agents may, however, show proposals for other companies – provided the agent is licensed and appointed for that particular line of insurance. The agent may furnish materials and show proposals for any company authorized to sell that line in Florida. However, if the agent actually writes the business, the company must formally appoint the agent when the agent submits the application. Furthermore, the company may not pay the agent a commission until the appointment is actually issued.

Agents may split their commissions with another agent who is Florida-licensed and appointed for that line of insurance. Splitting of commissions with non-licensed persons is considered “rebating”, which is permitted only under tightly regulated circumstances.

For example, John Williams holds a life license and is an appointed life agent. While he feels comfortable discussing traditional life insurance and fixed annuities with his clients, when it comes to variable annuities he refers his clients to Maria Perez, a licensed life and variable annuity agent. Maria cannot pay John a referral fee or split the commissions on variable products with John, since he does not hold a variable annuity license. (She could, however, split a commission on an equity indexed or fixed annuity with John, as he is licensed and appointed for that line of business.)

Annuity Disclosure Procedures

Variable annuities originated as a supplement to fixed dollar annuities. Fixed annuities provide safety of principal but are subject to inflation risk. Variable annuities provide a hedge from inflation but are subject to investment risk. The two types of annuities complement each other. When soliciting variable annuities, Florida agents must inquire as to the prospect’s sources of income. The purpose of this inquiry is to call attention to the client’s overall financial situation. It does not require or prohibit any other action on the part of the agent or prospect. The agent must simply ask the question. This requirement applies to all prospects regardless of age.

Prospectus

Variable annuities are treated as securities under federal securities laws. A “prospectus” must accompany sales presentations of these products. A prospectus contains information about the nature and purpose of the annuity, the separate account(s) and the risks involved. It is a primary source of information for the prospect. Materials, such as direct mail letters or brochures, that advertise variable products also must have prior approval by the SEC.

Buyers Guides and Contract Summary

Under Florida's General Solicitation Law, a Buyer's Guide and a Contract Summary must accompany sales of all types of annuities. The Buyer's Guide is a generic brochure designed to provide consumers with basic information regarding the purchase of insurance and annuities. The Contract Summary will summarize the details of the annuity contract, set forth in a format consistent with NAIC guidelines. The Contract Summary will contain information on the specific type of contract and any applicable riders, premiums, dividends, benefit amounts, cash surrender values, charges and fees, etc.

The Safeguard Our Seniors Act requires all annuity contracts to have a coversheet stating the Free Look period (see below), contact information for the issuer and the agent, as well as DFS's toll-free consumer assistance number.

Replacement

Often a client will wish to replace or exchange an existing contract for a new one offered by the agent. While replacement is a legitimate activity, there have been problems in the past with agents who encourage contract exchanges as a way to generate commissions for themselves. Agents and insurers must make several disclosures when proposing a new contract if they know (or should now) that an existing policy or contract will lapse or be significantly reduced in value.

Provisions of the Seibel Act

The Senior Suitability provisions were the primary focus of the 2008 update, but the Seibel Act included a number of other important amendments to Florida's Insurance Code. These provide additional protections to the general insurance-buying public, not just "senior consumers".

Buyers Guides & Contract Summaries

Under prior state law, these documents were not required in the sale of variable annuities. (A prospectus, a federal disclosure requirement, must accompany the sale of variable annuities.)

The Seibel Act now requires a Buyer's Guide and Contract Summary for the sale of all annuity contracts -- fixed, variable or indexed -- for purchasers of all ages. (Sales of variable annuities must still be accompanied by a prospectus.) As noted above, the Safeguard Our Seniors Act requires all annuity contracts sold to senior consumers to have a coversheet stating the Free Look period (see below), contact information for the issuer and the agent, as well as DFS's toll-free consumer assistance number.

Free Look

Prior to the Seibel Act, state law mandated a 10-day "Free Look" period for the sale of all life insurance products and fixed annuity contracts. The "free look" provision is designed to give purchasers an opportunity to review the terms of the contract, and if they choose, to return the contract within the first ten days for a full refund on the premiums. Issuers could avoid the "free look" refund provision by giving the prospective purchaser a Buyer's Guide and Policy Summary (for life insurance)/Contract Summary (for annuities) ten days prior to purchase. But if these documents are delivered at the time of purchase — as they usually are — the contract must include the refund provision.

The Seibel Act extended the "Free Look" period from 10 days to 14 days for purchasers of all ages. The Act also broadens the Free Look refund provision to include variable, as well as fixed, annuities.

The Safeguard Our Seniors Act extends the Free Look provision to 21 days for senior consumers who purchase any type of annuity. (For younger purchasers, the Free Look period remains 14 days.)

Indirect Churning

Florida law prohibits both "twisting" and "churning". Both practices rely on misrepresentations, and therefore are considered unethical. Twisting is the replacement of one insurance product for another issued by a different company, based on false or misleading information with the agent's intent to earn a commission. Churning is sometimes called "internal twisting": the client is induced to exchange one company's product for another product issued by that same company. A related, prohibited practice, is known as "stripping" -- in which the cash value in one insurance product is used to finance the purchase of another insurance product (again, based on misrepresentations).

The Seibel Act modifies the definition of "churning" to cover direct or indirect churning. Indirect churning occurs when a policy is surrendered and the resulting funds are used to purchase an immediate annuity (specifying payments to begin at once) which is then used to fund a deferred annuity or a life insurance policy. It is often done because the agent can receive a double commission for the immediate annuity and the deferred annuity or life insurance policy that it funds.

Florida Statutes Chapter 626.9541(1)(l) and (aa), Florida Administrative Code 69B-215.215

Fraudulent Signatures / Forgeries

One commonly used type of insurance fraud involves forged signatures on applications and other documents.

The Seibel Act creates a new prohibited act and makes it a third degree felony to willfully submit

to an insurer an insurance application or policy-related document on behalf of a consumer that contains a false or fraudulent signature.

Florida Statutes Chapter 626.9541(1)(ee)

Unlawful designations or credentials

Another type of misrepresentation occurs when agents use credentials to mislead prospects into thinking the agent is more experienced and knowledgeable than is indeed the case. There are a number of organizations that, for a fee, will simply hand out credentials and official-looking designations to bolster the agent's resumé.

The Seibel Act prohibits the agents from using designations or misrepresenting the agent qualifications:

- ◆ When making a sales presentation or solicitation for insurance, an agent is prohibited from utilizing designations or titles that falsely imply that he or she has special financial knowledge or has obtained specialized financial training or is certified or qualified to provide specialized financial advice to senior citizens.
- ◆ Terms such as “financial advisor” may not be used to falsely imply that an agent is licensed or qualified to discuss, sell, or recommend financial products other than insurance products.
- ◆ When making a sales presentation or solicitation for insurance, an agent is prohibited from falsely implying he or she is qualified to discuss, recommend, or sell securities or other investment products in addition to insurance products.

The law makes exceptions for bona fide credentials. An agent who also holds a designation as a certified financial planner (CFP), chartered life underwriter (CLU), chartered financial consultant (ChFC), life underwriter training council fellow (LUTC), or the appropriate license to sell securities from the Financial Industry Regulatory Authority (FINRA) may inform the customer of those licenses or designations and make recommendations in accordance with those licenses or designations.

Florida Statutes Chapter 626.9541(1)(ff)

Enhanced Penalties

Prior to the passage of the Seibel Act, those violating the “Unfair Insurance Trade Practices Act” (which include twisting and churning) could be fined for up to \$2,500 for each non-willful violation up to an aggregate \$10,000 fine. Willful violations could result in fines up to \$20,000 for each willful violation up to an aggregate \$100,000 fine. Willful violations of these provisions was also subject to criminal prosecution as a second-degree misdemeanor

The Seibel Act increases the penalties for agents or insurers who engage in certain unfair trade practices, such as twisting, churning (directly or indirectly), deceptive use of credentials or fraudu-

lent signatures. Violations of these rules are now punishable with a \$5,000 fine for non-willful violations up to an aggregate of \$50,000. Willful violations could result in fines up to \$50,000 per incident, up to an aggregate \$250,000 fine. Willful violations of the twisting, churning or misleading use of credentials are also subject to criminal prosecution as a first-degree misdemeanor. Willfully submitting fraudulent signatures on policy-related documents is a third-degree felony. The Safeguard Our Seniors Act increases the possible fine for twisting, churning or submission of fraudulent signatures to \$75,000 per willful violation.

Florida Statutes Chapter 626.9521(3)(a-b)

And as noted in Chapter 1, the Seibel Act also gives the Office of Insurance Regulation the power to rescind unsuitable contracts — which may impose additional financial losses on companies. Likewise, the Department of Financial Services may take reasonable corrective action against agents for harm their unsuitable recommendations cause clients. While technically not "penalties" — the mitigation provision should act as additional disincentive for unsuitable recommendations.

Licensing & Jurisdiction

As mentioned in Chapter 1, The Safeguard Our Seniors Act extends the jurisdiction of the Department of Financial Services to cover third-party marketers who assist an agent in violating the Insurance Code during a sale to a senior consumer. This law also authorizes the Department to initiate disciplinary action against an agent who has been disciplined under a securities broker-dealer license or other related licenses.

If a licensed agent has his or her insurance license revoked as a result of a solicitation or sale of insurance or annuities with a senior consumer, the Safeguard Our Seniors Act prohibits the Department from reinstating that agent's license or issuing any other insurance license. Likewise, agents whose licenses have been revoked twice (for any cause) may not be relicensed. Effectively, this law permanently bans such agents from the Florida insurance market.

Agent Education

Since 2005, Florida has required life and health insurance agents, as part of their CE requirement, to complete a minimum of three credits of continuing education on the subject of "ethics".

Under the Seibel Act, for compliance periods beginning in January 2009, any agents licensed to sell annuities -- that is, all Florida life-licensed agents — must complete at least three credits in the subject of "suitability". [This course meets that suitability requirement.] Credits earned to meet the "suitability" requirement may be used to meet the "ethics" requirement (but not vice versa).

Florida Statutes Chapter 626.2815

Agent Email & Phone Number

The Seibel Act requires all Florida-licensed insurance agents to provide the Department of Financial Services with their email address, home phone and business phone numbers. If the agent changes any of these, he or she must notify the Department of the change within 60 days. Failure to do so could result in a \$500 fine. (These are the same rules that apply to notifying the Department of changes in the agent's home, mailing or business address.) Changes can be filed electronically at the [Department of Financial Service's website](#).

Other Regulatory Organizations

National Association of Insurance Commissioners

All state insurance commissioners or directors are members of the National Association of Insurance Commissioners (NAIC). This organization has standing committees that work regularly to examine various aspects of the insurance industry and to recommend appropriate insurance laws and regulations. The NAIC has four broad objectives:

- ◆ to encourage uniformity in state insurance laws and regulations;
- ◆ to assist in the administration of those laws and regulations by promoting efficiency;
- ◆ to protect the interests of policyowners and consumers; and
- ◆ to preserve state regulation of the insurance business.

The NAIC has been instrumental in developing guidelines and model legislation that help ensure that the insurance industry maintains a high level of public trust by conducting its business competently and fairly. This group also develops standards for policy provisions, helping ensure that policies become more uniform across the country. The NAIC has no enforcement powers.

Unfair Trade Practices Act

The McCarran-Ferguson Act exempts insurance activities from federal anti-trust laws – “to the extent they are governed by state law.” Shortly after passage of McCarran Ferguson, each state passed laws to address this concern and preserve state regulation of insurance. Most jurisdictions, including Florida, have adopted some version of the NAIC's Model Unfair Trade Practices Act. (*Florida Statutes Chapters 626.9521 and 626.9541*) This act gives state regulatory officers the power to investigate insurance companies and producers, to issue cease and desist orders and to impose penalties on violators. The act also gives officers the authority to seek a court injunction to restrain insurers from using any methods believed to be unfair or deceptive. Violations of Florida's Unfair Trade Practices Act can also result in revocation or suspension of an agent's license (*Florida Administrative Code 69B-231*). Misrepresentation and false advertising, coercion and intimidation, unfair discrimination, and inequitable claims settlements are all considered unfair trade practices.

The Department considers violations of Florida's Senior Consumer Law as an aggravating factor when assessing possible penalties.

Annuity Suitability

One recent NAIC Model law of is of particular interest to agents selling annuities: the Senior Suitability in Annuity Transactions Model Regulation. This model law focuses on "senior consumers" and requires agents to adequately document the suitability of their recommendations to those age 65 or older. The NAIC is in the process of expanding the scope of this model law to cover all consumers regardless of age. To date, Florida has adopted a version of the "senior customer" version of this model act — which was covered in detail in Chapter 1.

NAIFA

The National Association of Insurance and Financial Advisors (NAIFA) is an organization of life insurance agents dedicated to supporting the life insurance industry and advancing the quality of service provided by insurance professionals. NAIFA's Code of Ethics that stresses the high professional duty expected of underwriters toward their clients, as well as to their companies. The Code emphasizes the ethical balance needed to avoid conflict between these two obligations.

NAIFA Code of Ethics

Those engaged in offering insurance and other related financial services occupy the unique position of liaison between the purchasers and the suppliers of insurance and closely related financial products. Inherent in this role is the combination of professional duty to the client and to the company as well. Ethical balance is required to avoid any conflict between these two obligations.

Therefore, I Believe It To Be My Responsibility:

- ◆ To hold my profession in high esteem and strive to enhance its prestige.
- ◆ To fulfill the needs of my clients to the best of my ability.
- ◆ To maintain my clients' confidences.
- ◆ To render exemplary service to my clients and their beneficiaries.
- ◆ To adhere to professional standards of conduct in helping my clients to protect insurable obligations and attain their financial security objectives.
- ◆ To present accurately and honestly all facts essential to my clients' decisions.
- ◆ To perfect my skills and increase my knowledge through continuing education.
- ◆ To conduct my business in such a way that my example might help raise the professional standards of those in my profession.
- ◆ To keep informed with respect to applicable laws and regulations and to observe them in the practice of my profession.
- ◆ To cooperate with others whose services are constructively related to meeting the needs of my clients.

FAIFA

The Florida Association of Insurance and Financial Advisors (FAIFA) fulfills a similar function to NAIFA in Florida. FAIFA's Code of Ethics specifically addresses misrepresentations, twisting, rebating, and defamation. FAIFA's Code of Ethics has been adopted into the Department of Financial Services' rules (*Florida Administrative Code 69B-215*):

69B-215.210 Scope.

The Business of Life Insurance is hereby declared to be a public trust in which service all agents of all companies have a common obligation to work together in serving the best interests of the insuring public, by understanding and observing the laws governing Life Insurance in letter and in spirit by presenting accurately and completely every fact essential to a client's decision, and by being fair in all relations with colleagues and competitors always placing the policyholder's interests first.

69B-215.215 Twisting.

Twisting is declared to be unethical. No person shall make any misleading representations or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any insurance policy, or to take out a policy of insurance in another insurer.

69B-215.220 Rebating.

Rebating is declared to be unethical. Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity or disability insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow, or give, directly or indirectly as an inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract.

69B-215.225 Defamation.

Defamation is declared to be unethical and defined as making, publishing or circulating any oral, written or printed statement which is false, or maliciously critical of or derogatory to the financial condition of any insurance company, or which is calculated to injure any person engaged in the business of life insurance, and this practice is declared to be unethical.

69B-215.230 Misrepresentations.

(1) Misrepresentations are declared to be unethical. No person shall make, issue, circulate, or cause to be made, issued, or circulated, any estimate, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

(2) No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.