Suitability of Annuity and Life Insurance Transactions for Seniors

Sandi Kruise Insurance Training
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Annuity Suitability Legislation in Florida

- Important legislation, SB 2082, created a law that will enhance protections for senior Floridians who are considering the purchase of annuities.

- Annuity sales have become a big business in Florida, and seniors in particular often have fallen victim to unethical sales practices. This new law will give Florida the enforcement power it needs to better protect vulnerable senior population.

- Florida now will be a national leader in the effort to protect seniors when they purchase costly and complex annuity products.
Purpose

• The purpose of this section is to set forth standards and procedures for making recommendations to senior consumers which result in a transaction involving annuity products to appropriately address the insurance needs and financial objectives of senior consumers at the time of the transaction.

• A violation of this section does not create or imply a private cause of action.

• Nothing in this section shall subject an insurer to criminal or civil liability for the acts of independent individuals not affiliated with that insurer for selling its products, when such sales are made in a way not authorized by the insurer.
Deceptive Sales Practices when Recommending Annuities to Senior Citizens

- Annuity sales to senior citizens have significantly increased in recent years.
- However, as annuity sales have risen, so has a sense of confusion among consumers.
- This is due, in part, to questionable or deceptive sales practices employed by companies and agents looking to take advantage of uninformed consumers.
- It is extremely important, when considering whether or not to recommend an annuity, to take the necessary precautions in order to make an informed decision that is best for your clients.
The DFS has conducted over 400 investigations involving seniors and annuities over the past 3 years in Florida. Following are a few examples. More examples and details are available at:

http://www.flseniors.net/SOSInvestors.htm

• The law is named for John & Patricia Seibel, a couple in their 80’s from Venice, Florida who were sold $600,000 of annuities with 15 year Surrender Period

• Two examples of agents who were convicted:
  – Jeffrey Southland – agent - Stole 1.3. million from 16 elderly clients
  – Masciarelli & Patrarca – agents - Stole 1.2. million from 30 clients
Complaints

Examples of Investigations:

- Kikuko, 75 years old - $217,000
- 82 year old in Daytona Beach - $325,000
- Bonnie Madden, 81 years old; New Pt. Richey - $300,000
- Mary Nusser, 89, Clearwater, Florida
- Dorothy Eddy - $155,000 - Sold EIA with maturity date well beyond her life expectancy
Complaints

• Fern Wakulich; Clearwater, Florida
  – $129,000 Annuities with Maturity date after age 92

• Alice Bouchard, 94 years old
  – Agent twisted 30 times - Lost almost $300,000 - Agent made $140,000 in commissions

• Joseph Seale, 85; evicted from N.H. due to non-pay
  – Agent tied up all liquid assets for 15 years & made $13,000 in commission

• David Greene, 81 years old
  – Agent twisted existing annuities & savings plus talked him into a $60,000 reverse mortgage which was then invested in whole life insurance
Senate Bill 2082 - Overview

- This bill establishes the “John and Patricia Seibel Act,” which creates enhanced consumer protections related to annuity and insurance transactions. For senior consumers, 65 and older, the bill:
  
  - Requires that the insurer or insurance agent have an objectively reasonable basis for believing that a recommendation to a senior consumer is suitable.
  
  - Requires insurance agents, prior to recommending an annuity to a senior consumer, to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services.
Senate Bill 2082 - Overview

- Provides that a consumer who refuses to provide information requested by an agent or insurer, before execution of the sale to sign verification from the senior consumer on a form adopted by Department of Financial Services of the refusal.

- Requires the insurer or agent to provide the consumer with specified information on a form adopted by the Department of Financial Services concerning differences between the annuity product being recommended for purchase and an existing annuity that would be exchanged.
Senate Bill 2082 - Overview

- Requires an agent to disclose to the applicant that purchase or exchange of an annuity contract may have tax consequences and the applicant should contact a tax advisor for additional advice.

- Increases the “free look” period for a consumer to obtain a refund from 10 days to 14 days after purchase of a life insurance or annuity.

- Authorizes the Office of Insurance Regulation to order an insurer to rescind an annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.
Senate Bill 2082 - Overview

- Provides **criminal and civil liability** protection to insurers for the acts of independent individuals not affiliated with the insurer for selling its products, when it involves an unauthorized sale.

- Expands the scope of **recordkeeping** requirements to entities responsible for the maintenance of records.
Senate Bill 2082 - Overview

• Additional measures in the legislation:
  – Clarifies the **regulatory jurisdiction** of the agencies under the Department of Financial Services regarding the sale of annuities and grants rulemaking authority.
  – Conditional **effective date**: Section 9 related to annuity investments by seniors shall take effect 60 days after the date on which the final rule is adopted or **January 1, 2009**, whichever is later.
  – Signed by the Governor on 6/30/08 – Chapter 2008-237, Laws of Florida
Application

- This law applies to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance agent, or an insurer where no agent is involved, and which results in the purchase or exchange recommended.

- DFS regulates all insurance agents and companies that sell annuities.

The New Law Applies to ALL Annuities including Variable Annuities!
Products

Annuity Contracts
Definition of Annuity contract
Per FS 627.4554

- "Annuity contract" means a fixed annuity, equity indexed annuity, fixed equity indexed annuity, or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity.
Parties to an Annuity

- **Annuitant** - The person who receives the annuity payments during his or her lifetime.

- **Beneficiary** - The person or entity who receives the money when the insured dies.

- **Policyowner** - May or may not be the annuitant. Policyowner can change the annuity date, beneficiary, or settlement option.
Types of Annuities

- Immediate vs. Deferred
- Single vs. Flexible
- Fixed vs. Variable vs. Equity Indexed
Immediate vs. Deferred Annuities

When Annuity Payments Begin
Immediate Annuity

• With an *immediate annuity*, a single premium is paid and the annuitant immediately starts receiving payments at the end of each payment period, which is usually monthly or annually.

• There is **NO Accumulation period** with an immediate annuity.

• The income to the annuitant generally begins at the end of the first period for which payments are to be made.

• For example, if the payments were to be made monthly, then they would start one month after the date of the contract.
Deferred Annuity

- A **Deferred Annuity** is a contract where money is paid to an insurance company in a lump sum (**Single Premium** Deferred Annuity) or over a period of years (**Flexible Premium** Deferred Annuity), but benefits do not begin until some time in the future.

- This period of time is called the **accumulation period**.

- At the end of the accumulation period, commonly referred to as the **maturity date**, the annuity will provide for a payout to the annuitant.

- This **payout** might be in a lump sum, but often is paid to the annuitant as a regular series of payments, usually monthly.

- **Income taxes** on the interest earned during the accumulation period are **deferred** until the payout period.
Tax Deferred Annuities

- Deferred annuities accumulate interest earnings on a **tax-deferred** basis.
- No taxes are imposed on the annuity during the **accumulation** phase.

![Graph showing the growth of an annuity with tax-deferred and tax-annualized scenarios.](image-url)
Accumulation Period vs. Annuity Period

- The **accumulation period** is the "putting in" time and the "growth" time.
  - For a **single premium** deferred annuity, it is the time between the purchase date and the date benefits begin.
  - For a **periodic premium** deferred annuity, it includes all the time between the first and last premium payment as well as any additional time before benefits begin.

- The **annuity period** is the "taking out" time. This is the period following the accumulation of the annuitant's payments (principal and interest) during which annuity benefits are received.
Single vs. Flexible Premium Annuities

How Premiums are Paid
Single Premium Annuities

- **A single-premium annuity** is purchased with a single lump sum premium payable at the inception of the contract.

- **Single Premium** characteristics:
  - Purchased with one lump sum
  - Can fund immediate or deferred annuities
  - Lower administrative costs
Single Premium Deferred Annuity (SPDA) - A single premium or lump sum is used to purchase an annuity and benefits will begin after at least one year from the date of the contract or at some specified future date. The money will grow tax-deferred during the accumulation period.

$-----------------Accumulation------------------Annuity
             Period                  Period
Flexible Premium Annuities

- A **flexible-premium annuity** is one purchased with periodic premiums payable on a flexible schedule.

- **Flexible Premium** characteristics:
  - Purchased with many periodic payments
  - Can only fund deferred annuities
  - Higher administrative costs
  - Longer surrender charges
Flexible Premium Deferred Annuity (FPDA) – Contributions are made as often and in whatever amount the contract owner desires. Many insurers have minimum contribution limits. Payout to begin sometime after one year from the date of purchase.

\[ \text{\$\$ $ \$\$ \text{---Accumulation} \text{---Annuity}} \]
\[ \text{\text{Period} \text{Period}} \]

Note: You cannot have a Flexible Premium Immediate Annuity
Annuity Benefit Payout Options

How Long Benefits will Last
Life Income

- Payments are made only until the annuitant’s death.
- Pays the highest amount of income benefits.
- Upon death, all payments stop and the company has no further obligations.
- If the annuitant dies before payment of all the funds, the company keeps the balance, if any.
Certain and Life

- Payments are made for the life of the annuitant or for a predetermined time frame to the beneficiary.
  - If the **annuitant dies** before this period expires, their beneficiary receives payments until the end of the period.
  - If the **annuitant lives** beyond this time frame, payments will continue until their death.
Period Certain

- **Period Certain** - Payments continue for a selected period either to the annuitant or their beneficiary. No lifetime income guaranty.
  
  - **Fixed period** – The owner decides how long they want to receive income payments and the insurer determines the amount of each income payment.
  
  - **Fixed amount** – The owner decides how much the income payments are to be and the insurer will calculate how long the payments last.
Installment Refund Annuities

- **Installment Refund** - Payments continue for life. However, if the annuitant dies before the initial deposit is recovered, payments continue to the beneficiary until the balance has been recovered.
Cash Refund Annuities

- **Cash Refund** - Payments continue for life. However, if the annuitant dies before the initial deposit is recovered, the beneficiary receives the balance as a lump sum.

- The annuitant receives a lower payment amount than they would receive with the “life only” variation.
Pure Joint Life

- Guaranteed income for as long as both annuitants live.
- **First death** occurs/Income ends for both annuitants
Joint and Survivor

- This payout option provides for payments over the lives of two individuals and can also be combined with period certain options.
- It pays guaranteed income for as long as both annuitants live.
- When the first death occurs, income continues at full or partial level to second person
- When the second death occurs, the income ends
Types of Annuities According to Investment Options

- Fixed Annuities
- Variable Annuities
- Equity Indexed Annuities
Annuity - Fixed, Variable and Indexed Annuities

- Annuity accumulation values and payouts may be
  - "Fixed" - paying a stated rate of interest,
  - "Variable" - based on the value of securities such as stocks or bonds, or
  - "Equity Indexed" - linked to an index such as Standard and Poor’s 500 Composite Stock Price Index.
Fixed Annuities

- With fixed annuities, the company bears the investment risk.
- A fixed annuity provides fixed-dollar income payments backed by the guarantees in the contract.
- Guarantees minimum interest rates for the policy duration
- High level of safety but may not keep up with inflation
- Principal and interest are not subject to loss
- Once the payout or annuitization phase begins, payments are fixed and do not fluctuate based on interest rate changes.
Equity Indexed Annuities (including Market Value Adjusted Annuities)

• These annuities, either immediate or deferred, earn interest or provide benefits that are linked to an equity index, such as Standard and Poor’s 500 Composite Stock Price Index.

• Those who purchase an equity-indexed annuity own an insurance contract—not shares of any stock or index.

• According to the SEC EIAs will be regulated as securities beginning in 2010. This is still being debated, however.
  – Agents will have to have both an insurance license and a securities license to sell – Same as for Variable Annuities
Market Value Adjustments (MVAs)

- A MVA is a feature of some annuity contracts in which the value could be affected by changing interest rates on other investments.

- If interest rates are different when the annuity is surrendered than when it was purchased, a market value adjustment may make the cash surrender value higher or lower.

- The values are guaranteed if held for a specific period of time, but the nonforfeiture values may fluctuate according to a market value adjustment formula if held for shorter periods.
Variable annuities

- Earnings are based on performance of investment **sub-accounts**
- The value of a variable annuity depends upon the value of the underlying investment portfolios associated with the annuity.
- Designed to cope with inflation
- Principal & Earnings are subject to loss
- The owner or annuitant bears the investment risk for the value of the security.
- Variable annuities also allow the transfer of money from one account to another without triggering a taxable event.
Variable Annuities

• Some variable annuities provide a choice of either a variable payout or a fixed payout.

• DFS and the U.S. Securities and Exchange Commission regulate the issuers of variable annuities.

• Licensed life insurance agents who sell variable annuities must also be registered with the Florida Office of Financial Regulation and a self-regulatory organization, such as the New York Stock Exchange (NYSE) or National Association of Securities Dealers (NASD).
# Fixed vs. Variable Annuities

<table>
<thead>
<tr>
<th>FIXED ANNUITIES</th>
<th>VARIABLE ANNUITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guaranteed expenses</td>
<td>Guaranteed expenses</td>
</tr>
<tr>
<td>Guaranteed mortality</td>
<td>Guaranteed mortality</td>
</tr>
<tr>
<td>Guaranteed payout</td>
<td>Variable payout</td>
</tr>
<tr>
<td>Guaranteed interest</td>
<td>No guaranteed interest</td>
</tr>
<tr>
<td>Guaranteed principal</td>
<td>No guaranteed principal</td>
</tr>
<tr>
<td>Purchase dollars</td>
<td>Purchase units</td>
</tr>
<tr>
<td>Investment risk assumed by insurer</td>
<td>Investment risk assumed by owner</td>
</tr>
<tr>
<td>Performance based on the general account</td>
<td>Performance based on the separate account</td>
</tr>
<tr>
<td>No protection against inflation</td>
<td>Provides a hedge against inflation</td>
</tr>
<tr>
<td>DOI regulated only</td>
<td>DOI and SEC regulated</td>
</tr>
</tbody>
</table>
General Account vs. Separate Account

- With fixed annuities the premiums is invested in the insurer's **general account**.
  - relatively safe and conservative investments, such as real estate and mortgages.
  - enables the insurer to guarantee specific amounts, such as the interest rate it will pay on funds and future contract values.
General Account vs. Separate Account

• Insurers are required to maintain a separate account for variable annuities.
  – primarily of a portfolio of common stock and other equity investments.
  – Performance of the variable annuity is dependent upon the performance of the funds invested in the separate account.
  – There is investment risk to the annuitant since there is no guarantee of principal, interest or investment income associated with the separate account.

• *Transfer privileges*: Generally, the issuer of the variable annuity will permit a limited number of money transfers among the underlying investment portfolios free of charge.
Group Annuities

- Annuities may be purchased on an **individual** or **group** basis.
  - **Individual** annuities are usually purchased to provide retirement income or to fund other specific needs.
  - **Group** annuities are most often used to fund employer-sponsored retirement plans for employees.
Group vs. Individual Annuities

- Insurance companies are marketing an increasing number of annuities on a group basis.

- Group annuities typically benefit from economies of scale, which means the insurer passes on cost savings for marketing and administering the product to the consumer.

- Group annuities fund many tax-sheltered retirement programs.

- These programs, whether sponsored by employers, unions or other groups, often draw a multistate membership.
Group vs. Individual Annuities

• Differences in state laws, however, sometimes create difficulties for groups providing benefits for members from different states under a single contract.

• Many states, including Florida, enacted laws to eliminate conflicts that might prevent a group from providing benefits to its members.

• These laws allow out-of-state contracts in which groups may issue contracts in one state and send coverage certificates to members in other states.

• The terms of such annuities are subject to the laws of the jurisdiction where the master contract is issued, not Florida law.
Group vs. Individual Annuities

• To be permitted to issue individual annuity certificates through such a group, the insurer is required by law to provide proof to DFS that some savings can be expected.

• However, the amount saved may or may not offset the loss of the protections of Florida law.

• Be very careful when offering your client an annuity as part of an out-of-state group.

• Consumers with questions about group annuities should contact their insurance agent or company or call the Consumer Helpline toll-free at 1-877-MY-FL-CFO (1-877-693-5236).
Duties of Insurers and Insurance Agents
Good Agents and Bad Agents

- There are many well-qualified and capable financial professionals who provide solid advice to their clients about annuities and other financial products.
- They provide complete information to clients, about advantages and disadvantages of the products they offer, in regard to the client’s individual financial position and objectives.
- Unfortunately there are also many who prey on seniors using deception, misinformation and scare tactics to sell annuities.
Determine Objectively Reasonable Basis for Believing the Recommendation is Suitable for the Consumer

• In recommending to a senior consumer the **purchase or exchange** of an annuity that results in another insurance transaction or series of insurance transactions, an insurance agent, or an insurer if no insurance agent is involved, must have an **objectively reasonable** basis for believing that the **recommendation is suitable** for the senior consumer **based on the facts** disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her **financial situation and needs**.
Definition of Recommendation
Per FS 627.4554

- "Recommendation" means advice provided by an insurance agent, or an insurer if no insurance agent is involved, to an individual senior consumer which results in a purchase or exchange of an annuity in accordance with that advice.

- Definition of Objectively:

  Expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations; Impartially; Without bias
Standards for Making Recommendations to Senior Consumers

- The standards for determining whether agent’s recommended transactions meet senior consumer’s insurance needs and financial objectives.

- Is the senior **MATERIALLY** better off AFTER implementing the recommendation than they were BEFORE?

- Can the agent justify in writing why the client is better off after purchase than before?

- Would this justification hold up in court or investigation by the DOI?
Obtaining Information

- Before executing a purchase or exchange of an annuity resulting from a recommendation to a senior consumer, an insurance agent, or an insurer if no insurance agent is involved, shall make reasonable efforts to obtain information concerning the suitability of the recommendation.

- An insurer or insurance agent's recommendation shall be reasonable under all the circumstances actually known to the insurer or insurance agent at the time of the recommendation.
At a Minimum the Agent must collect the following Information:

1. Personal information, including the age and sex of the parties to the annuity and the ages and number of any dependents;
2. Tax status of the consumer;
3. Investment objectives of the consumer;
4. The source of the funds to be used to purchase the annuity;
5. The applicant's annual income;
6. Intended use of the annuity;
6. The applicant's existing assets, including investment holdings;
7. The applicant's liquid net worth and liquidity needs;
8. The applicant's financial situation and needs;
9. The applicant's risk tolerance; and
10. Such other information used or considered to be relevant by the insurance agent or insurer in making recommendations to the consumer regarding the purchase or exchange of an annuity contract.
Exceptions

- An insurance agent, or an insurer if no insurance agent is involved, shall not have any obligation to a senior consumer related to any recommendation if the senior consumer:
  - Refuses to provide relevant information requested by the insurer or insurance agent;
  - Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance agent; or
  - Fails to provide complete or accurate information.
  - Agents must get the refusal to provide information in writing signed by the client.
Client’s Financial Situation

• Purchasing an annuity usually means making a long-term commitment; one that carries costs (i.e. surrender charges) if the senior is forced to prematurely surrender the contract for such reasons as a change in financial status.

• Before recommending any insurance or annuity product, it is essential to understand the senior's current financial status and how that may be likely to change during the term of an annuity.

• It is vital to evaluate these considerations from both a present and future perspective.
Current Financial Situation

- Existing assets, including investment holdings
- Applicant's annual income
- Tax status (i.e. tax bracket, filing status, etc.)
- Applicant's liquid net worth and liquidity needs
Considering Tax Status

- The consumer's tax status
- The senior's income tax bracket
- The income tax bracket of beneficiaries
- The tax consequences of exchange
Considering Financial Status

- The senior's risk tolerance and return expectations
- The senior's investment horizon
- The senior's liquidity needs
- The investment frequency
- The consumer's investment objectives
  - Long-Term vs. Short-Term
- Other information to be used or considered relevant
Future Financial Considerations

- Medical care concerns
- Retirement age preference
- Endowments
- Financial support of family members
  - Spouse
  - Children
  - Grandchildren
Medical Care Concerns

• Medicare
  – Parts A, B, C & D
• Medicare Supplements
• Retiree Coverage
• Long Term Care
Intended Use of the Annuity

- Annuities can meet some important financial needs
  - Income for Retirement
  - Qualified Retirement Benefits for Employees
  - Structured Settlements
  - Long-Term Accumulation Vehicles
  - Divorce Decree
  - Payment for Long-Term Care

- Annuities can play a vital role in any financial plan where a stream of income is needed – if only for a few years or for a life-time.
Source of Funds to be used for Purchase of Annuities

- Savings Account
- Certificate of Deposit
- Securities
- Reverse Mortgage
- Existing Mortgage

- Existing Life Insurance
- Inheritance
- Structured settlement
- 401K Rollover
- Spouses Death Benefits
Other Financial Needs

- Travel and recreation
- Grandchildren’s education
- Property taxes
- New business expenses
Retirement Planning

Pre-retirement Planning

Post-retirement Planning
## Pre-retirement vs. Post-retirement

<table>
<thead>
<tr>
<th>Pre-retirement</th>
<th>Post-retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Identify retirement objectives early on so that investments can be tailored to meet future needs.</td>
<td>• After retirement, seniors need to make sure that funds accumulated can sustain their cost of living and retirement objectives over their remaining lifetime.</td>
</tr>
<tr>
<td>• Have a comprehensive financial plan addressing all financial contingencies.</td>
<td>• Focus shifts from emphasizing growth to on safety and asset preservation.</td>
</tr>
</tbody>
</table>
Investing Retirement Assets

• **Diversification** - A diverse portfolio helps reduce risk in general and assure that gains will balance losses.

• **Preservation Of Capital** - The assets used to generate retirement income should be focused on preserving capital.

• **Fighting Inflation** - Since goods and services are likely to cost more in the future than they do today it is important for investments to keep up with inflation.
Social Security Retirement Benefits

- **Early Retirement** - Age 62 with a permanent reduction in benefits

- **Normal Retirement** - 65 for those born before 1938. Beginning with those born in 1938 there is a gradual increase reaching age 67 for those born in 1959

- **Delayed Retirement Benefits** - Boost in benefits given to those who delay collecting. Those born 1943 or later will receive an 8% increase for each year they delay collecting after eligible. No boost in benefits beyond age 70.
## The Social Security Full-Benefit Retirement Age, 2002-2025

<table>
<thead>
<tr>
<th>Year of Birth</th>
<th>Year Individual Will Reach Age 65</th>
<th>Full Benefit Age (Years/Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1937</td>
<td>2002</td>
<td>65</td>
</tr>
<tr>
<td>1938</td>
<td>2003</td>
<td>65/2</td>
</tr>
<tr>
<td>1939</td>
<td>2004</td>
<td>65/4</td>
</tr>
<tr>
<td>1940</td>
<td>2005</td>
<td>65/6</td>
</tr>
<tr>
<td>1941</td>
<td>2006</td>
<td>65/8</td>
</tr>
<tr>
<td>1942</td>
<td>2007</td>
<td>65/10</td>
</tr>
<tr>
<td>1943-1954</td>
<td>2008-2019</td>
<td>66</td>
</tr>
<tr>
<td>1955</td>
<td>2020</td>
<td>66/2</td>
</tr>
<tr>
<td>1956</td>
<td>2021</td>
<td>66/4</td>
</tr>
<tr>
<td>1957</td>
<td>2022</td>
<td>66/6</td>
</tr>
<tr>
<td>1958</td>
<td>2023</td>
<td>66/8</td>
</tr>
<tr>
<td>1959</td>
<td>2024</td>
<td>66/10</td>
</tr>
<tr>
<td>1960 and later</td>
<td>2025 and later</td>
<td>67</td>
</tr>
</tbody>
</table>
Social Security Blackout Period

- The **blackout period** is the period of time after the youngest child is 16 years of age and before the **surviving spouse** becomes eligible for retirement benefits at age 60.

- During this period, Social Security may not provide the income benefit a surviving spouse needs.

- Annuities can be used to provide, or supplement, income to the spouse during the blackout period.
Individual Retirement Annuities (IRAs)

- These are **tax-qualified retirement plans** available to individuals.

- Almost any individual with earned income who is under the age of 70½ is eligible to open an IRA.

- IRAs help individuals save money to finance their retirement by allowing them to deduct contributions to these accounts from their pre-tax incomes for income tax purposes.

- These deductible contributions are a form of deferred compensation, and will only be taxed when the individual withdraws them from the account at retirement.
Individual Retirement Accounts

The total contributions allowed per year to all IRAs are limited as seen below (this total may be split up between any number of traditional and Roth IRAs. In the case of a married couple, each spouse may contribute the amount listed):

<table>
<thead>
<tr>
<th>Year</th>
<th>Age 49 and Below</th>
<th>Age 50 and Above</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998–2001</td>
<td>$2,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>2002–2004</td>
<td>$3,000</td>
<td>$3,500</td>
</tr>
<tr>
<td>2005</td>
<td>$4,000</td>
<td>$4,500</td>
</tr>
<tr>
<td>2006–2007</td>
<td>$4,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>2008–2009</td>
<td>*$5,000</td>
<td>$6,000</td>
</tr>
</tbody>
</table>

*Starting in 2009, contribution limits will be assessed for a potential increase (in $500 increments) based on inflation, though the 2009 contribution limits have remained unchanged.*
Traditional IRA

- The earnings on any IRA are taxed-deferred. Depending on how much money they earn, people may also be eligible to deduct their IRA contribution from their gross income for tax purposes. But, there are penalties for withdrawing money from a traditional IRA before they reach the age of 59½, and withdrawals will be taxed as ordinary income.

  - **Contributions** might be deductible
  
  - **Earnings** are not subject to income tax in the year earned

  - **Distributions** of contributions and earnings generally are income taxable

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Roth IRA

- This type of IRA was named after former Senator William Roth of Delaware, who championed the Taxpayer Relief Act of 1997. Eligibility is determined by the amount of annual income. Participants may not deduct contributions to Roth IRA from taxable income, but growth in a Roth IRA is tax-free.

  - **Contributions** are not deductible
  
  - **Earnings** are not subject to income tax in the year earned
  
  - **Distributions** of contributions and earnings generally are not income taxable.
Additional Information

• Any other information used or considered by the agent or insurer in making recommendations to consumers regarding the purchase or exchange of an annuity contract.

• Refer to DFS Annuity Suitability Questionnaire to ensure minimum required information is collected.

• (This questionnaire will be part of FAC 69B-162.011 which is currently under rule development. The questionnaire will be available when the rule development process is complete.)
DFS Form

• This information shall be collected on a form adopted by rule by the department and completed and signed by the applicant and agent.

• Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer.

• A true and correct executed copy of the form shall be provided by the agent to the insurer within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.
If currently holding an annuity or annuities, determine:

- Type of contract(s)
- Issue date(s)
- Maturity date(s) or Annuitization date(s)
- Allocation of funds within contract
Terms of Surrender Charges

- Dollar Amount and surrender charge percentage
- Number of years in length
- Comparison to life expectancy of applicant
- Waiver of surrender charge provision
Annuity Free Look Period

• As of January 1, 2009, every annuity contract that is initially delivered or issued for delivery to a senior citizen in Florida may be returned within 14 days from the date received for a full refund by returning it to the insurance company or agent who sold the policy.

• After the 14 days, cancellation may result in a substantial penalty, known as a surrender charge.

• Additionally, the insurer must also provide each prospective purchaser a buyer's guide to annuities and a contract summary as provided in the NAIC Model Annuity and Deposit Fund Regulation.
Annuity Surrender Charges

- Once an individual buys an annuity, and the "Free Look" period expires, companies will not usually refund the premium without applying surrender charges.

- Before recommending the purchase of an annuity or replacement of an existing one, agents should always review the contract with their clients to be sure they fully understand the charges that may be made if they decide to surrender their annuity prior to maturity.

- The agent should consider carefully whether a specific annuity is suitable for his or her clients with respect to the purchaser’s age (life expectancy) in relation to their need for liquidity and benefits.
Annuity Surrender Charges

• Deferred annuity contracts often contain provisions which allow a company to charge a penalty commonly referred to as "Surrender Penalties" or "Surrender Charges" when an annuity contract is cancelled or surrendered during its first few years.

• The amount of these charges varies widely among insurance companies and may change over the life of the contract.

• Penalties can be as high as 25 percent - 30 percent in some cases, or as low as 1 percent or 2 percent.

• These penalties may be assessed any time during what is known as the “surrender period,” which can be applicable for as long as 20 years.
Waiver of Surrender Charges

Free withdrawal provisions:

- Allows withdrawal of a limited amount of funds on an annual basis without a surrender penalty—the IRS Code may charge a penalty for those younger than 59½ who make such withdrawals.

- Allows the surrender of the contract with no penalty or surrender charges if the annuitant or owner of an annuity to becomes terminally ill, disabled and/or confined to a hospital, nursing home or extended care facility for a specified period.

Bailout provision:

- Provision offered by some companies that allows clients to withdraw all of their money without penalty if the interest rate drops below a specified rate.
Contract Riders or Endorsements

- There are many riders and endorsements available to customize an annuity to suit the needs of your clients.
  - **Rider** - An attachment to an insurance policy that adds benefits to the original contract for an additional cost.
  - **Endorsement** - An addition to a policy that modifies its benefits.

- Following is a description of some of the most common riders in the marketplace:
Annuity Riders

- **Guaranteed minimum living income benefit** - Guarantee that the annuitant will get back the amount put in plus some small interest after a waiting period, typically seven to 10 years.

- **Increased Liquidity** - give clients both systematic withdrawals and the lifetime annuity.

- **Extra Credit** - a sign-up bonus or a form of “matching” contribution of 1 to 6 percent when they first purchase the annuity.

- **Death Benefits** - Ensures that if the purchaser dies before the annuity starts paying out, his beneficiary will receive either the current value of the annuity or the total premiums paid (minus any withdrawals), whichever is greater.
Annuity Riders

- **Estate Protection Rider** - increases the contract's death benefit by a certain percentage in the event the owner dies before annuitization to help offset the income tax payable on the contract's gain.

- **Term Insurance Rider** – an increasing term life insurance rider helps to pass more of the accumulated wealth to beneficiaries

**Taxation Of Life Insurance Rider Benefits** - Death benefit proceeds under the rider are taxed as life insurance and not taxed as annuity proceeds. Rider charges, to the extent extracted from the account value, are taxable distributions under the annuity policy.
Long-Term Care Riders

- There are generally two types of long-term care riders - underwritten and non-underwritten.
  - **Underwritten riders** typically offer richer benefits closer to those found in stand-alone LTC policies than non-underwritten riders.
  - **Non-underwritten riders** can be useful for applicants who do not qualify to purchase LTC insurance.

- **Suitability Of LTC Riders** - LTC riders on annuities are usually more limited than conventional LTC policies and may also be subject to different, often stricter, coverage triggers. LTC riders may not receive the favorable income tax status of tax-qualified LTC policies under HIPAA.

**There is no standard LTC rider!**
Liquidity of Contract

- Prior to maturity
  - The contractholder retains important rights during the accumulation period – such as the ability to surrender the contract, withdraw funds from the contract and exchange the contract for a more suitable contract.
  - The contract will outline what those rights are.
  - Most insurers charge contractholders for withdrawal or surrender of deferred annuities in the early years of the contract.
Liquidity of Contract

• At maturity
  – The contractholder may annuitize the annuity or may take the proceeds in a lump sum or rollover the proceeds into another annuity or investment.
  – Once the contractholder decides to annuitize the account, he or she loses control of the contract and the company will simply pay the promised income payments to the annuitant who may or may not be the contractholder.

Definition of maturity:

The period when the insurance contract becomes payable to the policyholder.
No Cash Value Annuities

• These annuities *do not* provide any cash surrender values until the maturity date.

• Clients *should not* consider this type of annuity unless they are certain they will not need their money in a lump sum but as monthly income beginning at the maturity date.

• In some cases these have been sold as short-term investments similar to Certificates of Deposit.

• In most cases this is not a valid use of annuities since they are intended to be long-term savings.
Loan Provisions

- Found in most qualified annuities and in some newer nonqualified annuities.
- Typically available at a low cost or no cost.
- Annuity loans are considered distributions from annuity contracts and therefore are taxable.
- If a loan is taken before the annuitant reaches age 59½, a 10 percent early withdrawal penalty also applies.
Free Withdrawals

• Allows a contract owner to withdraw a stipulated amount from his or her annuity without incurring any surrender charges.

• A typical free withdrawal provision would allow up to 10% of the annuity value to be withdrawn each year before a withdrawal charge would be applied.

• Funds taken out of an annuity before age 59½ will be subject not only to ordinary income tax but an ADDITIONAL 10% PENALTY tax as well.
Replacement or Exchange of an Annuity
If exchanging an annuity provide a comparison of difference between contracts:

• Before the execution of a replacement or exchange of an annuity contract resulting from a recommendation, the insurance agent shall also provide, on a form adopted by rule by the department, information concerning differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer.

• A true and correct executed copy of this form shall be provided by the agent to the insurer within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

• Refer to DFS Disclosure and Comparison Form

• (This form will be part of FAC 69B-162.011 which is currently under rule development. The questionnaire will be available when the rule development process is complete.)
If exchanging an annuity provide a comparison of difference between contracts:

- The information shall include, at a minimum:
  - A comparison of the benefits, terms, and limitations between the annuity contracts.
  - A comparison of any fees and charges between the annuity contracts.
  - A written basis for the recommended exchange, including the overall advantages and disadvantages to the consumer if the recommendation is followed.
  - Such other information used or considered to be relevant by the insurance agent or the insurer in making recommendations to the consumer regarding the replacement or exchange of an annuity contract.
Qualified or Non-Qualified

- A **Qualified annuity** is an approved IRS Pension vehicle used for IRAs, 401K rollovers, Tax Sheltered Annuities (TSA's) and other approved pension plans.
  - Contributions to qualified annuities are generally tax deductible, and taxes on interest are deferred until withdrawal.

- A **Non-Qualified annuity** is an annuity where contributions are not tax deductible.
  - Contributions to a Non-Qualified annuity are not tax deductible, however, the interest accumulation in the contract is still deferred.
1035 Contract Exchanges

• Under Section 1035 of the Internal Revenue Code, investors may make tax-free exchanges of certain kinds of financial products, including annuity contracts.

• Annuities may be exchanged for annuities; life insurance may be exchanged for life insurance or annuities. Annuities may NOT be exchanged for life insurance under Section 1035.

• This tax-free exchange privilege allows investors to change from a fixed annuity to a variable, or vice versa. Or to switch to a contract offering more advantageous provisions – higher rate of return, smaller surrender charges, etc. – or to switch from one carrier to another.

• Agents should note that these exchanges may be considered a replacement and subject to additional disclosures. Agents should be careful when discussing this type of change with clients.
Disclosure
Crediting Methods and Potential Tax Implications

- Source of Interest Credits
- Income Taxation of Interest Credits
- When income tax deferral is advantageous
- Crediting Formulas
- Guaranteed Interest Credits
Tax Consequences of Replacement

- Prior to the execution of a purchase or exchange of an annuity contract resulting from a recommendation, an agent shall also disclose to the consumer that such purchase or exchange may have tax consequences and that the applicant should contact his or her tax advisor for more information.

- Agents should be aware of their clients’ tax situation to be sure:
  - that the **tax advantages** of the policy meet the client’s objectives and
  - that the client is aware of any **adverse tax consequences** the policy or contract may cause.
Income Taxes During the Accumulation Period

- Withdrawals from the annuity may be taxable. The IRS assumes that funds withdrawn from the annuity contract are earnings first and then return of principal.
  
  - For example, Mitchell purchases a deferred variable annuity contract and paid annual premiums of $7,000 for the past 5 years for a total of $35,000. Over the past five years, the value of his contract has grown to $55,000. If he were to withdraw funds from the contract, the first $20,000 withdrawn would be taxable as earnings; the last $35,000 in withdrawals would be tax-free return of contributions. Earnings are taxed at the ordinary rate (not as a capital gain).

- Deferred annuities are also subject to a 10% penalty if funds are withdrawn prior to age 59½ in addition to any taxes owed on the withdrawal.
Taxation of Benefits
The Exclusion Ratio

• Annuity benefit payments are a combination of principal and interest.

• The portion of the benefit payments that represents a return of principal (i.e., the contributions made by the annuitant) are not taxed; the portion representing interest earned on the declining principal is taxed.

• The portion of each payment that is tax-free return of investment is known as the “exclusion ratio”.
Interest - Fixed Annuities

• A fixed annuity has two interest rates: a minimum guaranteed rate and a current rate.

• The insurer credits the contract with the current rate on a regular schedule (typically each year), but that rates cannot be less than the minimum guaranteed rate.

• The annuity company bears the investment risk.

• From the contract owner’s point of view, the accumulation of funds in a fixed annuity is certain and the contract owner's principal is secure.
Benefits – Fixed Annuities

• When the contract is annuitized, a fixed annuity provides guaranteed income payments of a fixed amount to the annuitant.

• The contract will usually display possible payout in terms of dollars per $1,000 of accumulated value.
  – For example, an annuity promises a 65-year annuitant lifetime monthly payments of $5.06 per $1,000 of value.
  – At age 65 the contractowner annuitizes the account when the annuity had accumulated to $100,000.
  – The annuitant will receive $506 per month for the rest of his life.
Benefits - Fixed Annuities

- This fixed amount is based on an interest rate that is fixed and guaranteed at the point of annuitization.

- Because fixed annuities provide a specified benefit payable for life (or any other period the annuitant desires), they offer security and financial peace of mind.

- However, since the benefit amount is fixed, annuitants may see the purchasing power of their income payments decline over the years due to inflation.

- For investors concerned with inflation (or purchasing power) risk, variable annuities might be preferable.
Interest - Variable Annuities

- Inflation poses a real threat to those relying on a fixed income.

- Even relatively modest rates of inflation can seriously erode the purchasing power of those fixed income payments – for example, at 4% inflation prices will double in less than 20 years.

- What might have seemed an adequate retirement income, may no longer maintain an adequate standard of living. In the early 1950s, an association representing teachers reviewed the fixed annuity assumptions of their pension plan.

- To address inflation risk, they developed the concept of a variable annuity.
Interest - Variable Annuities

• The same underlying principles of variable life insurance apply to variable annuities.

• Variable annuities shift the investment risk from the insurer to the contract owner.

• If the investments supporting the contract perform well, the owner will probably realize investment growth that exceeds what is possible in a fixed annuity.

• However, the lack of investment guarantees means that the variable annuity owner can see the value of his or her annuity decrease in a depressed market or in an economic recession.
Separate Account

- The distinguishing feature of a variable annuity (and variable life insurance) is the ‘separate account’.

- The contractholder’s premium contributions are credited to a separate investment account – not the annuity company’s general account.

- The separate account will invest in securities designed to protect against inflation, primarily common stocks.

- The during the accumulation period, the value of the contract will vary according to the investment results in the separate account.
Separate Account

• When the account is annuitized, and annuity payments begin, the size of those payments will also be based on the investment results of the separate account.

• This exposes the annuitant to investment risk. Variable annuity payments vary based on market conditions.

• Most companies offer a selection of separate accounts, and during the accumulation period of the contract, the contract owner decides which separate accounts to invest in.
Prospectus

• Since variable annuities are securities, a prospectus disclosing extensive information about a company’s investments and investment strategies must be delivered to a prospect before, or at the time of, sale.

• Information contained in a prospectus includes:
  – Charges and fees
  – Listing of subaccounts
  – Description of what investments can be made in each subaccount
  – Description of the subaccount objective
  – Additional benefits
  – How to determine the death benefit
Methods of Crediting Interest

• **Guaranteed Minimum Interest Rate**: Lowest interest rate a company may credit to a fixed annuity accumulation fund, as stated in the contract.

• **Excess Interest**: Interest credited beyond the contractual guarantee. Please note that this can change at the company’s discretion.

• **Initial credited interest rate**: Interest rate the insurance company credits to the premium when first issuing the policy—the company may guarantee this rate for an initial guarantee period of one or more years. Otherwise, the rate is not guaranteed, which means it may change at the company’s discretion.

• **Interest rate credited on renewal**: Interest rate credited on the premium dollars paid into a policy after the first year—companies may advertise a high initial interest rate, but after the first anniversary credit a much lower interest rate. Explain to your client how the renewal interest rate compares with the initial interest rate, being sure to discuss what is and is not guaranteed.
Bonus Credits

• To attract investors, many variable annuities offer bonus credits that can add a specified percentage to the amount invested ranging from 1% to 5% for each premium payment made.

• In order to fund them, insurance companies typically impose high mortality and expense charges and lengthy surrender charge periods.

• The more bonus interest offered, the higher or longer the surrender charge will be.

• Bonuses are not inherently bad, but the buyer must understand the necessary trade-off he or she accepts when purchasing a bonus annuity.
Bonus Credits

• Agents who market bonus annuities must avoid unnecessary replacement activity and must diligently disclose the ultimate cost of the bonus to their clients so they can make an informed decision.

• The agent must advise the client to consider whether the bonus is worth more than its cost by evaluating the following factors:
  - Amount of the bonus credit
  - Amount of the increased charges
  - How long the client plans to hold the annuity contract
Balancing Risk and Return

Risk and the Senior Client

Risk Factors
Risk Factors

- Loss of principal
- Known versus expected interest
- Reallocation limitations
- Changes in market or company financial conditions

The two primary risks for seniors are:

Outliving their assets
Income that keeps up with inflation
# Product Features Comparison Chart

<table>
<thead>
<tr>
<th>Item Feature</th>
<th>Deferred Annuity (Fixed Rate)</th>
<th>Money Market Fund</th>
<th>Corporate Bond</th>
<th>Certificate of Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the principal guaranteed?</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Is the money free from market risk and price fluctuation?</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Is the interest free from current taxes?</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the interest compounded and reinvested automatically with no current income taxes?</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can small additional contributions be made?</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can cash withdrawals be made without penalty</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Is there a provision to provide a guaranteed lifetime income with additional tax advantages?</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there automatic avoidance of probate expenses and delays?</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the contract owner have to pay commissions?</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
The Investment Risk Pyramid

- **High Risk**
  - Commodities, Mining and Exploration.

- **Moderate Risk**
  - Investment Real Estate, Speculative Stocks, Limited Partnerships and most Mutual Funds.

- **Conservative Risk**
  - Blue Chip Stocks, Corporate Bonds, Some Mutual Funds, Muni Bonds and Utility Stocks.

- **Foundation Investments**
  - Fixed Annuities, Home Equity, Money Market Accounts, Passbook Savings, Life Insurance, Government Issues and CD's
Asset Allocation

- Asset allocation involves choosing and maintaining the right combination of investments to reach clients' goals, based on their risk tolerance and time horizon.

- Seniors can achieve peace of mind by using asset allocation to allocate money across different asset classes, like stocks, bonds, cash, annuities, and real estate. Here are the steps involved:
  - Define Goals
  - Gauge Risk Tolerance
  - Look at the Big Picture
  - Match Products to the Profile
  - Choose a Mix that Suits Clients Needs
## Asset Allocation Models

<table>
<thead>
<tr>
<th>Investor Profile</th>
<th>Investment Objective</th>
<th>Possible Asset Class Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservative</td>
<td>Preservation of Capital</td>
<td>Fixed Income: 80%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Equity: 20%</td>
</tr>
<tr>
<td>Moderately-Conservative</td>
<td>Moderate Growth</td>
<td>Fixed Income: 59%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Equity: 41%</td>
</tr>
<tr>
<td>Moderate</td>
<td>Steady Growth In Asset Values</td>
<td>Fixed Income: 41%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Equity: 59%</td>
</tr>
<tr>
<td>Moderate-Aggressive</td>
<td>Moderately High Growth In Asset Value</td>
<td>Fixed Income: 24%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Equity: 76%</td>
</tr>
<tr>
<td>Aggressive</td>
<td>High Growth In Asset Value</td>
<td>Fixed Income: 6%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Equity: 96%</td>
</tr>
</tbody>
</table>
Full Disclosure

• Full and accurate disclosure is the cornerstone of the product presentation.

• The ethical agent informs clients fully about all aspects of the products he or she recommends — the limitations as well as the benefits.

• The agent is responsible for communicating relevant information in an understandable manner.

• The agent also must explain these facts so the client understands the ramifications of a given decision in relation to his or her particular situation and objectives.
Guidelines for Required Disclosures in Annuity Sales

- Identification of the product as an annuity
- Identification of the issuing insurer
- Specific description of when surrender charges apply
- Explanation of how the current interest rate will be credited, the period during which the initial rate applies, the guaranteed minimum rate, and how future interest rates will apply
- Statement regarding availability of a death benefit
- Description of the effect of current tax law on annuity accumulations and withdrawals
- Statement of any other policy charges and fees
Refer to DFS Disclosure and Comparison Form

- New Rule has been drafted to adopt new forms.
- The forms record the consumer’s financial information and guides the seller in making the appropriate product recommendation.
- The forms must be used for every sale of an annuity to a senior in which an exchange of an existing annuity or life insurance policy is recommended.
- The effective date for the new law is January 1, 2009.
If an Insurer, Insurance Agency or Managing General Agent

• An insurer, managing general agent, or insurance agency must develop a supervisory system to ensure recommendations are appropriate and in accordance with rules.

• **Written procedures**
  – To supervise recommendations of its insurance agents which is reasonably designed to achieve compliance with this section.

• **Periodic reviews**
  – Conduct periodic reviews of records that are reasonably designed to detect and prevent violations of this section.
  – The insurer shall perform any procedures necessary to conduct the review which are reasonable under the circumstances.
If an Insurer, Insurance Agency or Managing General Agent

An insurer, managing general agent, or insurance agency is **NOT** required to:

- Review all transactions solicited by an insurance agent; or
- Include supervision of an insurance agent's recommendations to senior consumers of products other than the annuities offered by the insurer, managing general agent, or insurance agency.
If an Insurance Agent

• Insurance agents must develop procedures to ensure recommendations are appropriate and in accordance with the rules.

• **Written procedures**
  
  – Agents are required to maintain procedures that are reasonably designed to detect or prevent violations of this law.
  
  – Agents are also required to maintain records relating to senior transactions for five years.
  
  – The insurer may maintain these records on behalf of the agent.
  
  – (Compliance with the National Association of Securities Dealers (NASD) Conduct Rules in effect on January 1, 2004, will satisfy the requirements of the law regarding recommendations to seniors).
If an Insurance Agent

- Periodic reviews

  - Agents must conduct periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this section.
Ethical Considerations
Ethical Conduct

• Ethics is The study of human conduct with an emphasis on right and wrong

• Traditional definition of ethics is centered on various themes as:
  – “doing what is right for the client”
  – “putting the clients’ interests first”
  – “do no harm”
  – “always leave them in a better position than where they were”, etc

• Being ethical isn't just a matter of knowing what's right or wrong; it's a matter of doing what's right and avoiding what’s wrong.
How Ethics is Learned

- Personal ethics are an accumulation not only of what people learn, but also of what they failed to learn.
  - Childhood Experiences
  - Adolescence
  - Family’s Values
  - School and Church
  - Life Experiences
Ethics and Success

• How We Define Success in the U.S.
  - Wealth, Big House, Expensive Cars, Lavish Lifestyle

• Long Term vs. Short Term
  - Don’t jeopardize your future for short-lived gains today

• Beliefs
  - Stand up for what you believe to be right no matter what

• Honesty
  - It’s a lot easier to keep your stories straight when you are honest!

• Rationalization
  - All of the other agents do it so why shouldn’t I?
Ethics & Competition

- Main causes of ethical dilemmas include:
  - Competition
  - Stress of meeting performance (sales) quotas
  - Ethics is not rewarded as much as production
    - How many insurers or MGAs give out awards, bonuses and trips to agents based on their ethics vs. their sales volume?
False or Misleading Advertising

• In every state it is unlawful for an agent or any other person to formulate or use an advertisement or make a statement which is untrue, deceptive or misleading regarding any insurer or person associated with an insurer.

• Many companies allow only the use of preapproved sales materials, and may provide agents with sample preapproved letters and brochures on agent letterhead.

• The following ads were aimed at Agents rather than at Clients.
  – Promising big commissions and easy sales by “mining” the elderly they appealed to the most greedy and least ethical agents
Mining the elderly

A sampling of fliers produced by marketing consultants who promise to reveal the secrets of selling to senior citizens.
Greed & Ethics

• When an industry is perceived to be dishonest, the ethical individuals often find themselves tainted by the activities of others.

• When sales volume is linked to financial rewards the goal becomes volume of sales and not necessarily determining the best product for the client.

• Encouraging financial gain exclusively is a disservice to clients, to agents and to the insurance industry as a whole
Ethical Decision Making

• To consistently make ethical decisions, one must accomplish two things:
  – Evaluate alternative courses of conduct based on ethical principles.
  – Choose the action that best advances those principles.

• Ethics must be a part of each and every sale.
Core Ethical Values

- Responsibility
- Integrity
- Caring
- Selflessness
- Courage
- Excellence
The Golden vs. the Platinum Rule

- **Golden Rule**: “Do unto others as you would have them do unto you.”
  - "Treat others as you would like them to treat you."

- **Platinum Rule**: “Do unto others as they would like you to do unto them.”
  - "Treat others the way they would like to be treated."

- When people apply the Platinum Rule in their dealings with clients, they do not force their values upon others. They genuinely listen to the other person’s needs and then strive to meet those needs.
Conflicts of Interest

• An inherent conflict of interest arises in the case of any person who, for a fee, is expected to provide an objective, unbiased financial plan for the client, while also offering financial products for sale on which he will be paid commission.

• When a situation clearly involves a conflict of interest, the agent is required to set aside his or her self-interest and act in the best interests of the prospect.
The Role of the Sales Professional

- Selling is not something that a salesperson does to someone else; instead, it is something that the professional does for and with a buyer that results in an exchange of value.

- Basic to the success of the sales process is the salesperson’s ability to develop trust and create rapport with a prospect.

- Sales people’s ethics and values contribute more to the success of the sales process than any sales techniques or strategies they might use.
Suitability
Definition of Suitability

• The appropriateness of recommended transactions when considering the risks associated with a transaction relative to a customer’s assets, current insurance holdings, financial situation (income and net worth), financial needs and investment objectives.
Selling to Needs

- Ethical agents properly assess client needs, make recommendations based solely on those needs, and educate their clients as to product features.

- Each client’s situation will be different, and the solutions the agent proposes will have to match those unique situations.

- Suitable recommendations are those “made on the basis of the client's needs, financial circumstances, and investment objectives.”
Suitability of Recommended Products

- Once the clients needs have been assessed, the ethical agent will recommend insurance products to meet those needs.

- This involves asking questions such as:
  - What are the client's needs?
  - What product(s) can help meet those needs?
  - Does the client understand the product and its provisions?
  - Does the client have the capability — financially and otherwise -- to manage the product?
  - Is this product in the client's best interest?
Suitability

• The recommendation of a given annuity must be appropriate for any particular client in light of his or her financial objectives, circumstances, and needs. The agent should:
  
  – have a solid foundation of the issues surrounding annuities in general.
  
  – understand the provisions, features, and limitations of the annuity they intend to sell.
  
  – take time to understand the client's unique circumstances including, but not limited to, financial status, tax status and investment objectives.
Suitability

• Think about the client’s long term goals.
  
  – Will they need access to their money for unexpected family emergencies?
  
  – Will they need access to their money for long-term care or health care?
  
  – Can they afford to lock up their money for a period of several years?

• Some of these products carry high surrender charges during the initial years of the contract in order to withdraw their money.
When To Use Annuities

Some form of annuity would be useful in the following circumstances:

- When a tax deferred accumulation of interest is desired. The interest earned inside an annuity owned by an individual grows income tax free and is not taxed until it is withdrawn.

- When liquidity is desired, owners may usually withdraw cash, within limits, before the annuity starting date.

- When an investment with immediate and high collateral value is needed.

- When a person wants a retirement income that can never be outlived.
When To Use Annuities

- When the person would like to **avoid probate** and pass a large sum of money by contract to an heir to reduce the possibility of a will contest.

- When an investor wants to be **free of the responsibility** of investing and managing assets.

- As a replacement for, or an **alternative to, an IRA**. The annuity contribution can be much more than the IRA limitations.

- When a retired individual wants a monthly income equal to or higher than other **conservative investments** and is willing to have principal liquidated.
When To Use Fixed Annuities

• **Fixed annuities**, in particular, would be indicated:

  – when **safety of principal** is a paramount consideration. This is particularly important for retirement planning;

  – when an investor wants a **guarantee** that a given level of **interest** will be credited to his investment for a long period of time; and

  – when a **conservative** complement to other investment vehicles is desired.
When To Use Variable Annuities

- **Variable annuities**, in particular, would be indicated:
  - when an investor wants more control over his or her investment and is **willing to bear the risk** associated with his or her investment selections;
  - when a person is looking for potentially **increasing retirement income**.
Advantages & Disadvantages of Annuities

**Advantages**
- Tax-Deferral
- Annuitization
- Liquidity
- Probate Avoidance

**Disadvantages**
- Pre-59½ Distribution Penalty
- Annuitization
- Tax Treatment Of Gains
- Surrender Charges
Using an Annuity to Accumulation Funds

• **Tax-deferral** of earnings is perhaps the single greatest benefit of the annuity.

• Unlike other investments, such as certificates of deposits and mutual funds, the earnings in an annuity are not subject to ordinary income taxes until they are withdrawn.

• This gives the annuity owner control over when earnings are taxed.

• Only when funds are withdrawn are the earnings taxed.

• This greatly enhances the product’s ability to build assets for the long term.
Using an Annuity to Provide Income

• Annuities are long-term vehicles specifically designed to supply retirement income.

• They can supply retirement income that cannot be outlived.

• With annuities, there are no IRS imposed annual contribution limits and any earnings grow tax-deferred until they are withdrawn or annuity income payments begin.
Working with Seniors or Disabled Clients
Definition of Senior Consumers
Per FS 627.4554

- "Senior consumer" means a person 65 years of age or older. In the event of a joint purchase by more than one party, a purchaser is considered to be a senior consumer if any of the parties is age 65 or older.

All insurers, brokers, agents and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing.
Seniors Present Unique Ethics and Compliance Issues

- Product Complexity
- Mental and Physical Impairments
- Poor Hearing and Eyesight
- Vulnerability to Fraudulent Agents
- Special Laws Protecting Seniors
Product Complexity

• Misconceptions about Federal and State Programs
  – Social Security
  – Medicare
  – Medicaid

• Numerous sources of funding

• Various financial and insurance alternatives and choices
Buyer Competence

- The recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product
  - The home environment is in disarray
  - The person’s appearance is untidy or disheveled
  - Another family member seems to be making all of the decisions for the client
  - The person is unable to remember facts or locate information
  - The person forgets appointments or to return phone calls
Documentation

- The ethical agent documents each client meeting and transaction.
- He or she uses fact-finding forms and obtains the client's written agreement as to the needs determined, the products recommended and the decisions made.
- Agents will retain some documentation simply because it is good business practice to do so – and in some cases, state law requires agent to preserve that documentation.
- Ethical agents know these laws and follow them precisely.
Buyers' Guides and Policy Summaries

- Agent must deliver a Buyer’s Guide to the client.

- **Buyers’ Guides** explain various types of *annuities* in a way that the average consumer can understand.

- In Florida Buyers’ Guides must comply with the NAIC guidelines.
Consumer bill of rights

- 626.9641 Policyholders, bill of rights.

- The principles expressed in the following statements shall serve as standards to be followed by the department, commission, and office in exercising their powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in adopting rules:
Consumer bill of rights

- Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.

- Policyholders shall have the right to obtain comprehensive coverage.

- Policyholders shall have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.

- Policyholders shall have a right to an insurance company that is financially stable.
Consumer bill of rights

– Policyholders shall have the right to be serviced by a competent, honest insurance agent or broker.

– Policyholders shall have the right to a readable policy.

– Policyholders shall have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses.

– Policyholders shall have the right to a balanced and positive regulation by the department, commission, and office.

• This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer.
Utmost Good Faith

• Both the insurer and the insured are entitled to rely on the representations made by the other.

• If those representations are found to be not in good faith (fraudulent or untrue), the injured party may be entitled to void the policy from the beginning.
Agent's code of ethics

- **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.

  - *Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.797 FS. History–Repromulgated 12-24-74, Formerly 4-9.01, 4-9.001, 4-215.210.*
A Personal Code of Ethics

• Ethics are synonymous with a person’s own personal behavioral code.
  – Personal integrity and confidence
  – Respect, politeness and communication

• If a sale can't be made with honesty, fairness and objectivity, it must not be made at all.

• Ethics emphasize the interests of clients and company over an agent’s own interests
Professional Codes of Ethics

• Some points commonly included in codes of conduct for members of professional insurance organizations:
  – Place the customer's interest first
  – Know your job - and continue to increase your level of competence
  – Identify customers needs and recommend products and services that meet those needs
  – Accurately and truthfully represent products and services
Professional Codes of Ethics

- Use simple language; talk the layman's language when possible
- Stay in touch with customers and conduct periodic coverage reviews
- Protect your confidential relationship with your client
- Keep informed of and obey all insurance laws and regulations
- Provide exemplary service to your clients
- Avoid unfair or inaccurate remarks about the competition
NAIFA Code of Ethics
Example of a Professional Code of Ethics

• **PREAMBLE:** 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,*
NAIIFA Code of Ethics

• **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.
NAIFA Code of Ethics

– 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.
The Difference Between Codes of Ethics and Laws

• Codes specify those attributes we aspire to but may never fully attain

• Laws specify the minimum acceptable behavior

• Be careful not to confuse the two!

• Just because it isn’t against the law doesn’t mean it’s right!

• If you have to ask someone else if what you considering doing is unethical, then it probably is.
The Agent as a Fiduciary

- A “fiduciary” is defined in law as one who has the legal duty to act in the best interest of another.

- A “fiduciary duty” is an affirmative duty of good faith that compels the fiduciary to place the client's interest before even the fiduciary.

- An insurance agent must understand the fiduciary nature of his or her responsibility to clients.

- Fiduciaries are held to a higher standard of conduct than is required in the usual course of events.
Agent's Fiduciary Responsibility to Client

- Does applicant understand basic concepts of annuities?
- Does applicant have sufficient assets to meet or exceed current financial objectives?
- Are other financial vehicles more suitable to meet the applicant financial objectives?
- Is the sale in the best interest of the client and his family?
- Does the transaction make sense?
Agent's Fiduciary Responsibility to Client

- Case law: 718 So.2d 199, 201 (Fla. 4th DCA 1998); 218 So.2d 807, 808-809 (Fla. 3rd DCA 1969)
  - These cases established that insurance agents **DO** have a fiduciary responsibility to their clients in addition to and separate from the responsibilities of the insurance companies they represent.
Mitigation Of Responsibility

Corrective Actions
Mitigation Of Responsibility
PER F. S. 627.4554 (5)

• The DFS may order an insurer to take reasonably appropriate corrective action, including rescission of the policy or contract and a full refund of the premiums paid or the accumulation value, whichever is greater, for any senior consumer harmed by a violation of this section by the insurer or the insurer's insurance agent.
Pertains to Insurer, Agent and/or MGA

- The department may order:
  - An insurance agent to take reasonably appropriate corrective action for any senior consumer harmed by a violation of this section by the insurance agent.
  - A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to senior consumers to take reasonably appropriate corrective action for any senior consumer harmed by a violation of this section by the insurance agent.
Pertains to Insurer, Agent and/or MGA

- Any applicable penalty under the Florida Insurance Code for a violation of paragraph (4)(a), paragraph (4)(b), or subparagraph (4)(c) 2. may be reduced or eliminated, according to a schedule adopted by the office or the department, as appropriate, if corrective action for the senior consumer was taken promptly after a violation was discovered.
What Constitutes Harm to a Consumer

- Is the overall position of the consumer substantially better after the annuity transaction than before it?
- Does the transaction result in unfavorable tax treatment, new or longer Surrender Period, higher amount of surrender charges, additional or higher fees and charges, lower financial rating of insurer, lower growth of interest rate, more risky investment portfolio
- Under Federal Law (Section 5 of the FTC)
  
  “…buying a product that would not have been bought but for deception constitutes ‘harm’ to a Consumer…” in and of itself. “Evidence of actual injury is not required;” to show harm.

  **Case Law:** DFS vs. National Foundation of America, Richard K. Olive, Susan L. Olive, et al., Case # 89911-07
Harm to a Customer

- In the case of an annuity, a transaction which involves harm to a customer is one that
  - requires the insured to pay a surrender charge for the annuity that is being replaced and
  - does not confer substantial financial benefit over the life of the new annuity to the purchaser (so that a reasonable person would believe that the purchase is unnecessary).
Harm to a Customer

- If all other provisions are equal and:
  - The proposed annuity contains a lower interest rate than the replacement annuity.
  - The existing annuity features a guaranteed interest rate while the replacement annuity does not.
  - The existing annuity has better settlement options than the replacement immediate annuity.
  - Replacing a guaranteed rate annuity with an equity indexed or variable annuity.
Unfair Methods of Competition and Unfair or Deceptive Acts

(Per FS 626.9541, FS 626.9521)
Unfair or Deceptive Insurance Practices

- Imposes increased fines and penalties for the unfair and deceptive insurance practices known as "twisting" and "churning," and adds a prohibited practice of submitting a document with a false signature to an insurer on behalf of a consumer.

- Makes it an unfair or deceptive insurance practice for an agent to use designations or titles that falsely imply that he or she has special financial knowledge or training.
Twisting and Churning

• "**Twisting**" and "**churning**" involves misleading representations in an attempt to induce a consumer to cash in funds from a current investment or insurance product to purchase another product.

• The only reason for these activities is to generate additional commission for the agent who perpetrates them.

• Not all replacement activities are illegal or unethical.
  
  – Sometimes it is in the client’s interest to replace insurance policies or annuities.
  
  – Agents must be sure that the transaction is for the client’s benefit and that the client is materially better off after the transaction than before.
Churning

- A fraudulent practice in which insurance agents mislead consumers into giving up the cash value of, or taking loans against, current life policies or annuities to buy new coverage with the same company.

- These schemes usually include the misrepresentation or omission of pertinent information about the consumer’s existing policy or annuity and how it will be affected by the use of its value to fund the new policy.
Churning
F.S. 626.9541 (1)(aa)

• **Churning** is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation:

• Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;

• License Suspension – 9 months
Churning
F.S. 626.9541 (1)(aa)

- In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;

- When the applicant is not informed that the policy values including cash values, dividends, and other assets of the existing policy or contract will be reduced, forfeited, or used in the purchase of the replacing or additional policy or contract, if this is the case; or

- Without informing the applicant that the replacing or additional policy or contract will not be a paid-up policy or that additional premiums will be due, if this is the case.

- Churning by an insurer or an agent is an unfair method of competition and an unfair or deceptive act or practice.
Churning
F.S. 626.9541 (1)(aa)

• Each insurer shall comply by disclosing to the applicant at the time of the offer on a form designed and adopted by the DFS if, how, and the extent to which the policy or contract values (including cash value, dividends, and other assets) of a previously issued policy or contract will be used to purchase a replacing or additional policy or contract with the same insurer.

• The form must include disclosure of the premium, the death benefit of the proposed replacing or additional policy, and the date when the policy values of the existing policy or contract will be insufficient to pay the premiums of the replacing or additional policy or contract.
Churning
F.S. 626.9541 (1)(aa)

• Each insurer shall adopt written procedures to reasonably avoid churning of policies or contracts that it has issued, and failure to adopt written procedures sufficient to reasonably avoid churning shall be an unfair method of competition and an unfair or deceptive act or practice.
**Twisting**

- **Twisting** is a fraudulent practice in which insurance agents mislead consumers into giving up the cash value of current life policies or annuities to buy new coverage with a **different company**.

- Like churning, twisting involves the misrepresentation or omission of pertinent information about the consumer’s existing policy or annuity.
Twisting
F.S.626.9541 (1)(I),

• Knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

• License Suspension – 9 months
Twisting
69B-215.215

• 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.
Fraudulent signatures
F.S. 626.9541 (1)(ee)

Fraudulent signatures on an application or policy-related document.-- Willfully submitting to an insurer on behalf of a consumer an insurance application or policy-related document bearing a false or fraudulent signature.

"Forgetting" to obtain a client’s signature may lead to the agent forging the client’s signature. Forging a client’s signature is much more common in business than most people realize. Forging a signature is not only unethical, but also illegal.

- Imprisonment not exceeding 5 years
Senior Designations

• Many seniors have been targeted by salespersons who used dubious “designations” and lost their life savings because they were steered toward investment instruments that were unsuitable for them, given their retirement needs and life expectancy.

• Each state will have a list of the designation agents may use in that state which may differ from those in another state.
A **Pretext Interview** occurs when a person, in an attempt to obtain information about another person, pretends to be someone he or she is not, misrepresents the true purpose of the interview, or refuses to properly identify him or herself.

- Pretext interviews are **prohibited and unethical**.
- These are often used in connection with **free lunch seminars** where the real purpose of gathering information is to sell annuities.
- These are often linked to the use of dubious **senior designations**.
Unlawful or Deceptive use of Designations – F.S. 626.9541 (1)(ff)

• **Unlawful use of designations; misrepresentation of agent qualifications**

• A licensee may not, in any sales presentation or solicitation for insurance, use a designation or title in such a way as to falsely imply that the licensee:

  – Possesses special financial knowledge or has obtained specialized financial training; or

  – Is certified or qualified to provide specialized financial advice to senior citizens.
Unlawful or Deceptive use of Designations – F.S. 626.9541 (1)(ff)

- A licensee may not use terms such as "financial advisor" in such a way as to falsely imply that the licensee is licensed or qualified to discuss, sell, or recommend financial products other than insurance products.

- A licensee may not, in any sales presentation or solicitation for insurance, falsely imply that he or she is qualified to discuss, recommend, or sell securities or other investment products in addition to insurance products.
Unlawful or Deceptive use of Designations – F.S. 626.9541 (1)(ff)

- A licensee 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, and in so doing does not violate this paragraph.
Senior Designations Subject to Scrutiny by the Senate

- Senator Herb Kohl (D-WI), Chairman of the U.S. Senate Special Committee on Aging, introduced a bill to offer states the resources necessary to protect seniors from unscrupulous financial advisors who prey on the retirement savings of the elderly by touting misleading or fraudulent “senior designations.”

- The *Senior Investor Protection Act of 2008 (S.2794)* would create a new grant program to encourage state regulators to adopt a uniform standard for the accreditation of senior financial advisors and to assist states in their efforts to protect seniors from being duped by these misleading designations.
Senior Designations Subject to Scrutiny by the Senate

- Last September, Chairman Kohl held a hearing to examine some of the questionable practices used by so-called senior financial investment specialists in order to gain access to the retirement savings of older Americans.

- An investigation conducted by the Aging Committee revealed that many of the designations that have been cropping up represent limited or no value with respect to advising seniors on financial matters, and that often these designations are obtained simply by attending a weekend seminar and passing an open-book, multiple-choice test.
Penalties
Provisions Related to Criminal Penalties:

- The bill imposes increased fines and penalties for the unfair and deceptive insurance practices known as “twisting” and “churning.”
  - Classifies this practice of "twisting" and "churning" as a first degree misdemeanor, and willfully submitting a false signature would now be a third degree felony.

- Increases fines (administrative penalties) for these practices:
  - $5,000 for each non-willful violation (previously $2,500), up to a maximum aggregate amount of $50,000 (previously $10,000).
  - $30,000 for each willful violation (previously $20,000), up to a maximum aggregate amount of $250,000 (previously $100,000).
Twisting & Churning
Per F. S. 626.9521 (3)(a)

- If a person violates s. 626.9541(1)(I), the offense known as "twisting," or violates s. 626.9541(1)(aa), the offense known as "churning," the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than $5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than $40,000 shall be imposed for each willful violation.

- To impose criminal penalties the practice of "churning" or "twisting" must involve fraudulent conduct.
Fraudulent or False Signatures
Per F. S. 626.9521 (3)(b)

• If a person violates s. 626.9541(1)(ee) by willfully submitting fraudulent signatures on an application or policy-related document, the person commits a felony of the third degree, punishable as provided in s. 775.082, and an administrative fine not greater than $5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than $40,000 shall be imposed for each willful violation.

• Imprisonment of not longer than 1 year.
Penalties related to DFS Rule 69B-231

• 69B-231 rules that govern suspension and revocation of insurance licenses
  – 69B-231.130 Penalties for Violation of Department Rules.
    • Non-willful violation Suspension - 3 months
    • Willful violation Suspension - 6 months
  – 69B-231.140 Penalties for Violation of Department Orders.
    • Non-willful violation Suspension - 3 months
    • Willful violation Suspension - 6 months
Education Requirements

Senior Suitability CE Course
Continuing Education Requirements  
FS 626.2815

- **Application** – this requirement applies to:
  - Any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions.

- **Exceptions** – CE credit also applies to ethics requirement.
  - A licensee may use the hours obtained under this paragraph to satisfy the requirement for continuing education in ethics.
Recordkeeping

F.S. 627.4554 (6)
Maintain Files Five Years

• Insurers, managing general agents, insurance agencies, and insurance agents shall maintain or be able to make available to the department or office, as appropriate, records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance agent.

• Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.
Records that Should be Maintained

- Applications
- Questionnaires
- Illustrations
- Correspondence
- Account review documents
- Account statements
- Any other documentation used in making the recommendations that were the basis for the transaction.
Representing Unauthorized Entities

Prohibited under F.S. 626.901
Unauthorized Entities
Updated Verbiage:

The State of Florida has taken a very strong position on the issue of unauthorized entities. An unauthorized entity is an insurance company that is not licensed by the Florida Department of Financial Services. Agents and Brokers have responsibility for conducting reasonable research to ensure that they are not writing policies or placing business with unauthorized entities. Lack of careful screening can result in significant financial loss to Florida residents due to unpaid claims and/or theft of premiums. Agents may be held liable when representing these unauthorized entities. It is the Agents and Brokers responsibility to give fair and accurate information regarding the companies they represent. Any question about the authorized status of a company can be checked by calling the Florida Department of Financial Services at 1.877.693.5236 (inside Florida) or 850.413.3089 (outside of Florida). We urge all Agents and Brokers to adhere to this admonition.
Prohibited under F.S. 626.901

- No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:
  - The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
  - The dissemination of information as to coverage or rates;
  - The forwarding of applications;
  - The delivery of policies or contracts;
Prohibited under F.S. 626.901

– The inspection of risks;
– The fixing of rates;
– The investigation or adjustment of claims or losses; or
– The collection or forwarding of premiums;
– or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the provisions of subsection (4), insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.
Unauthorized Entities Engaging in Insurance Are a Serious and Growing Problem in FL

- Agents Representing Unauthorized Entities Place Themselves and Their Clients at Risk

Florida Agents Beware

- The Florida Department of Financial Services reminds agents to ensure the insurance companies they consider representing are authorized in Florida, before offering their products to consumers.

- Protect your license and your clients. Report contacts from unauthorized insurers to the Florida Department of Financial Services, Bureau of Investigation at (850) 413-3136 or TALSIU@FLDFS.COM.
Penalties for Agents Representing or Aiding an Unauthorized Insurer

- If you choose to offer insurance from this or any unauthorized entity, you will be violating Florida Law (§626.901, Florida Statues, among others), you will be liable for losses sustained by your client when not paid by the unauthorized entity, and you will be committing a third degree felony (§626.902, Florida Statutes), punishable by imprisonment for up to five years and a fine of up to $5,000 on the first offense.
Agent Requirements to Perform Due Diligence

Duty to Investigate

- Agents should not rely solely on representations of the plans’ principals or managing members.

- Such reliance will not generally insulate the agents from disciplinary action and criminal or civil action.

- Typical due diligence includes reading all marketing materials and website, verification of licensure with the state department of insurance or exemption from licensure, and verification of an reinsurance.
Reliability and Stability of Companies

- Independent rating organizations rate the financial stability of insurance companies.
  - Be sure to check out ratings of any insurance company before recommending the purchase an annuity.

- Make sure that the insurance company is licensed in Florida.
  - Owners of annuities issued by companies licensed in Florida may be partially protected by the Life and Health Insurance Guarantee Association in the event of the financial failure of the insurer.
  - Any portion of the contract not guaranteed by the insurer, or under which the risk is borne by the purchaser is excluded.
Company Financial Stability & Rating Services

- Five major insurance rating organizations grade insurance companies on their financial health and ability to pay claims.
  - These organizations are:
    - **A. M. Best**
      (908) 439-2200
      [www.ambest.com](http://www.ambest.com)
    - **Fitch IBCA, Duff & Phelps**
      (800) 753-4824
      [www.fitchratings.com](http://www.fitchratings.com)
    - **Moody's Investor Service**
      (215) 553-0377
      [www.moodys.com](http://www.moodys.com)
    - **Standard & Poor's Insurance Ratings**
      (212) 438-2000
      [www.standardandpoors.com](http://www.standardandpoors.com)
    - **Weiss Ratings, Inc.** (Fee for Service)
      (800) 289-9222
      [www.weissratings.com](http://www.weissratings.com)
**FL Life and Health Insurance Guaranty Association**

- The Florida Life and Health Insurance Guaranty Association (FLHIGA) generally provides protection for consumers who reside in Florida when a Florida licensed Life & Health Insurance Company becomes insolvent.

- If the insurance company is licensed to sell annuities in Florida, and the annuity owner is a Florida resident, then the annuity would be guaranteed by FLHIGA for up to an aggregate amount $100,000, unless they are annuitized before liquidation, then the maximum would be $300,000.
FL L&H Insurance Guaranty Association

- FLHIGA normally does not provide coverage for individuals who are not residents of Florida, regardless of where they purchased their annuity contract.

- Portions of a variable annuity that are guaranteed by the insurer (fixed accounts) are covered by FLHIGA.

- However, any portion of a variable annuity not guaranteed by the insurer (mutual funds and other variable accounts) would not be covered by FLHIGA.

- Reference: Florida Statute 631.717(9)
Advice to Agents

- Consistently do the ‘Right Thing’
- If something feels wrong it probably is – don’t do it!
- Understand the Importance of Ethics
- Surround yourself with ethical people
- Remember ethical training you received as a child
- Combine that with knowledge of laws and ethics regarding insurance specifically
- Commit to continually improving product knowledge and communication skills as well as knowledge of ethics and laws
Thank you!

Sandi Kruise Insurance Training

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