



CLIENT BULLETIN

South Carolina Enacts Law Governing Rescission of Life Insurance Policies

On May 16, 2022, the Governor of South Carolina signed South Carolina General Assembly Bill 744, which amended the Law in South Carolina by adding Section 38-63-230 and amending section 38-6-220(d). The law takes effect immediately and may significantly impact our clients' rescission efforts in South Carolina going forward.

Section 38-63-230 provides as follows:

- (A) *An insurer may rescind a life insurance policy by:*
- (1) *a mutual agreement executed by all parties; or*
 - (2) *proving a fraudulent or material misrepresentation by clear and convincing evidence in a court of competent jurisdiction.*
- (B) *Mutual rescission of a policy may be accomplished within the two-year contestability period in Section 38-63-220(d) by:*
- (1) *mailing a certified letter to the last known address on record of the policy owner or, if the owner is deceased, the beneficiary, notifying the owner or beneficiary that the insurer is seeking a mutual rescission of the policy. The letter must inform the owner or beneficiary the policy is being rescinded for false statements included in the application and includes the important notice language set forth in subsection (C);*
 - (2) *including a check reimbursing the policy owner or beneficiary the premium paid to the insurer with language stamped on the*

back of the check stating that cashing the check means the policy owner agrees the policy is void and no benefits will be paid under the policy; and

(3) *the owner or beneficiary signing and cashing or depositing the premium reimbursement check, which will be deemed an acceptance of the proposed mutual rescission of the policy.*

- (C) *Any certified letter proposing the rescission of a life insurance policy during the contestability period must include the following language in bold face type:*

IMPORTANT NOTICE:

This letter proposes to void and rescind the policy issued to you for material misrepresentation based on statements made on your application for insurance. The rescission of a policy means the policy is void and no benefits will be paid under the terms and conditions of the policy. You do not have to agree to the rescission of this policy. If you do not agree, you must return or destroy the premium reimbursement check enclosed with this certified letter. By cashing or depositing the premium reimbursement check, you are agreeing to the rescission of this policy which means the policy is void as of the original date of issuance and no benefits will be due or paid under the terms and conditions of the policy. If you do not agree to rescind this policy, the insurer has the right, in its sole discretion, to



bring a legal action to rescind the policy in accordance with South Carolina law.

You have the right to speak with an attorney concerning this notice. You also have the right to bring an action in court if your policy is canceled or your claim for benefits is denied for material representation. If you have any questions concerning this proposal, please contact the insurer at the number listed in the letter.'

- (D) Insurance policies that are guaranteed issue or are not underwritten are not subject to mutual rescission."

* * *

Section 38-36-220(d) was amended with the following underlined addition:

- (d) a provision that the policy and any rider or supplemental benefits attached to the policy are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. Any rider or supplemental benefits subsequently attached to the policy are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. If an insurer institutes proceedings to vacate a policy on the ground of the falsity of the representations contained in the application for the policy, the proceedings must commence within the time permitted in this subsection. Nothing in this section precludes the parties from reaching a mutual agreement to terminate or rescind a policy pursuant to Section 38-63-230;

* * *

These changes to the law are designed to prevent unilateral rescissions as indicated in Insurance Bulletin 2019-02 of the South Carolina Department of Insurance. Moreover, the new section and amendment to 220(d) were designed in tandem to make clear that rescission of life insurance policies, either by way of "instituting proceedings to vacate a policy," or by refund of premiums, must occur within the two-year contestability period.

Given the enactment of § 38-63-230, any rescission of a life insurance policy held by a South Carolina resident must occur by mutual agreement or by proving fraudulent or material misrepresentation "by clear and convincing evidence in a court of competent jurisdiction." An insurer does not need to obtain a signed release to rescind a policy within the two-year contestability period so long as the insured or beneficiary cashes or deposits the premium refund within that period. However, an insurer must take care to include the required language in its certified correspondences and on the back of the check reimbursing premium payments pursuant to Sections 230(B)(2) and 230(C). If these steps are followed, agreement to mutual rescission will be recognized so long as the owner or beneficiary signs and cashes the check.

Chittenden, Murday & Novotny LLC will continue to monitor developments on this issue and report as they arise.

For more information, please contact:

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