South Carolina
Department of Insurance
Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

BULLETIN NUMBER 2019-02

TO: Insurers Writing Life Insurance in South Carolina

FROM: Raymond G. Farmer
Director of Insurance

SUBJECT: Compliance with S.C. Code §38-63-220(d) Rescission of a Life Insurance Policy

DATE: April 3, 2019

I. PURPOSE

It has come to the attention of the South Carolina Department of Insurance (DOI) that there may be some life insurers who may be attempting to rescind life insurance policies in a unilateral manner inconsistent with the requirements of the South Carolina insurance laws. The purpose of this bulletin is to remind insurers who issue life insurance policies in the State of South Carolina that they are required to include and comply with the Required Provisions set forth in S.C. Code Ann. §38-63-220.

II. DISCUSSION

Life insurance policies issued in South Carolina must strictly adhere to the statutory provisions set forth in S.C. Code §38-63-220, specifically S.C. Code §38-63-220(d). This provision provides, in pertinent part, that policies must include:

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; (emphasis added).

Thus, the South Carolina General Assembly mandated that if an insurer wanted to challenge the truthfulness of the application for insurance, it must do so during the first two years of the policy. After the policy has been in effect for two years, the application cannot be challenged on this basis. Section 38-63-220(d) has been interpreted as the authority to rescind a policy based upon false statements in an application discovered during the contestability period of the policy (i.e., the first two years of the policy). See, e.g., Carroll v. Jackson National Life Insurance Company, 307 S.C. 267, 414 S.E.2d 777 (1992) (insurer must challenge truthfulness of matters in the application during the first two years).

Based on the language of § 38-63-220(d), individual life insurance policies cannot be unilaterally rescinded. Section 38-63-220(d) provides a specific process for rescission (i.e., vacating) of the policy. According to the language in the statute, any rescission of the life insurance policy within the two-year contestability period based upon alleged false representations contained in the insured’s application must be accomplished through “proceedings to vacate a policy” and must commence within the two-year timeframe set forth in the statute. (emphasis added). To vacate a policy means to cancel or declare it void. A letter or other notice to the insured stating that the policy has been canceled or rescinded does not qualify as a proceeding to vacate a policy under South Carolina law. A proceeding to vacate a policy is a judicial proceeding commenced to cancel the policy or have it declared null and void. Generally, the rescission issue may arise in an action brought by the insured on the policy, or in an action brought by the insurer to have the policy declared null and void. See Insurer’s Right to Rescind Insurance Contract for the Insured’s False Statements, 21 Am. Jur. POF 3d 565. Some insurers that have sought to rescind policies have done so through declaratory judgments and other civil actions.

Insurers are encouraged to confer with counsel about the type of proceeding necessary to vacate a life insurance policy in accordance with S.C. Code Ann. §38-63-220(d). Unilateral rescissions of life insurance policies violate South Carolina law. A violation of S.C. Code §38-63-220(d) may result in civil liability and/or disciplinary action initiated in accordance with S.C. Code Ann. § 38-2-10.

III. QUESTIONS

Any questions or concerns about this bulletin should be submitted in writing to the attention of:

David E. Belton
Senior Associate General Counsel
South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, SC 29202

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