

Kansas Administrative Regulations

Kansas Department of Insurance

Article 2.—Life Insurance

40-2-12. Replacement of life insurance and annuities.

(a) Definitions.

(1) "Agent" means each agent, broker, or other person representing an insurer in the sale of any type of policy.

(2) "Company" or "insurer" means each company, society, association or other financial institution which issues a policy subject to the supervision of the Kansas insurance department.

(3) "Life insurance" means each life insurance policy, annuity, or variable annuity contract, unless specifically exempted in subsection (b).

(4) "Substantial cash values" means each transaction in which an amount exceeding 50 percent of the tabular cash value may be released on one or more of the existing policies.

(5) "Substantial borrowings" means each transaction in which an amount exceeding 50 percent of the tabular cash value may be borrowed on one or more existing policies.

(6) "Securities," as used in this regulation, shall not include any insurance or endowment policy, or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period.

(7) "Replacement" means each transaction in which new life insurance may be purchased from an agent who knows, or reasonably should know that, as a part of the transaction or in consequence of it, a previously existing life insurance has been or is likely to be:

(A) Lapsed or surrendered;

(B) converted into paid-up insurance, continued as extended term insurance or another form of non-forfeiture benefit;

(C) converted to effect a reduction either in the amount of the existing life insurance, or in the period of time the existing life insurance will continue in force;

(D) reissued with a reduction in amount so that substantial cash values are released;
or

(E) assigned as collateral for a loan or subjected to substantial borrowing of loan values in single or multiple transactions.

(8) "Sales proposal" means individualized, written sales aids. Sales aids of a general nature, which are maintained in the insurer's advertising compliance file, shall not be considered a sales proposal.

(b) This regulation shall not apply when:

(1) The application for the new life insurance is made to the same insurer that issued the existing life insurance, and a contractual policy change or conversion privilege is being exercised;

(2) the new life insurance is provided under:

(A) A group life insurance policy; or

(B) policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods;

(3) the existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed;

(4) the solicitation is made by direct mail and:

(A) All sales material is standard and printed;

(B) the insurance company notifies the existing insurance company within three business days that the proposed insured has answered "yes" to the replacement question in the application; and

(C) concurrent with the notice to the existing company, the insurance company mails to the applicant a copy of the "notice to applicant regarding replacement of life insurance" described in subsection (h); or

(5) the policy is issued in connection with a pension, profit sharing, an individual retirement account or other benefit plan qualifying for an income tax deduction of premiums.

(c) Each life insurance agent shall:

(1) Obtain a statement signed by the applicant as a part of each life insurance application as to whether the new insurance will replace existing life insurance; and

(2) submit to the insurer in connection with each life insurance application a statement as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.

(d) When a replacement is involved, each life insurance agent shall:

(1) Include as part of each application a list of all existing life insurance policies to be replaced and the name of each insurer which issued the insurance being replaced;

(2) present to the applicant, when the application is submitted, a copy of each sales proposal used, and a "notice to applicants regarding replacement of life insurance" described in section (h) in a form acceptable to the commissioner. The agent shall leave the forms with the applicant after explaining their content;

(3) submit with the application a copy of each sales proposal used; and

(4) have the applicant acknowledge receipt of the "notice to applicant regarding replacement of life insurance."

(e) Each insurer shall:

(1) Inform its field representatives of the requirements of this regulation;

(2) require with each application a statement signed by the applicant as to whether the insurance will replace existing life insurance; and

(3) require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.

(f) When a replacement is involved, the replacing insurer shall:

(1) Require with each application a list prepared by the agent of all existing life insurance policies to be replaced;

(2) obtain a copy of any sales proposal used, proof of the receipt by the applicant of the "notice to applicant regarding replacement of life insurance," and the name of each insurer whose insurance is being replaced;

(3) within three working days, notify each insurer whose insurance is being replaced by another insurer;

(4) delay, if it is not the existing insurer, policy issuance for 20 days after sending the notification required by subparagraph (3). The replacing insurer may issue its policy immediately when:

(A) The policy or a separate written notice states that, except as provided in K.A.R. 40-2-15 with respect to adjustments necessary to reflect investment risk on variable annuity contracts and variable life insurance policies, the applicant has a right to an unconditional refund of all premiums paid, within 20 days after delivery of the policy; and

(B) notice to the existing insurer is sent within three working days of the date its policy is issued;

(5) maintain copies of each sales proposal used, proof of receipt by the applicant of the "notice to applicant regarding replacement," and the applicant's signed statement with respect to replacement, in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later. Each insurer receiving notice that its existing insurance may be replaced shall maintain a copy of the notice, indexed by insurer, for three years after receipt or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later; and

(6) either by inclusion in the replacement policy or by a rider attached thereto, provide that the new life insurance issued by the replacing insurer will not be contestable by the replacing insurer, in the event of the insured's death, to any greater extent than the replaced life insurance would have been contestable by the insurer providing the replaced coverage had a replacement not occurred. Subsection (f) (6) shall not apply to any amount of insurance provided by the replacement policy which exceeds the amount of insurance provided by the replaced policy.

(g) With the exception of the reference to a comparative information form, the forms set forth in exhibits A, B, and C of the national association of insurance commissioners' model life insurance replacement regulation, December 1978 edition, are hereby adopted by reference. Equivalent forms may be adopted with the prior approval of the insurance commissioner. If the forms adopted by reference require modification for replacements involving annuity contracts or contracts sold by direct mail methods, each company shall modify the form and submit the modified form to the insurance

commissioner for approval. A copy of the modified forms shall be filed with the insurance commissioner.

(h) If an agent, who holds both a life insurance license and a securities license, proposes to sell securities to a policyholder which will result in situations set forth in paragraph (7) of subsection (a), the agent shall give written notice to the policyholder before consummating the proposal. Each written notice shall:

(1) Be dated and signed by the licensed agent, and state the agent's address;

(2) state the name and address of the policyholder;

(3) describe the insurance which has been or is to be affected, including the policy number, amount of insurance, plan of insurance, issue age, effective date, and the total premium;

(4) state how the insurance will be affected, the amount of cash value affected and the facts which support replacement; and

(5) list the company or companies involved.

(i) Each agent, who holds both a life insurance license and a securities license, shall keep a file containing a copy of each written notice. The agent shall keep a copy of each notice for three years. The file shall be subject to inspection and review by the insurance department, upon written request.

(j) When any licensed agent solicits life insurance in connection with the sale of securities not prohibited by K.S.A. 40-232, this agent shall, in addition to complying with the requirements of subsections (c) and (d), submit a copy of the notice required by subsection (i) to the insurer. Each notice shall be attached to and become a part of exhibit A referenced in section (g) of this regulation.

(k) Any violation of this rule shall be presumed to constitute a misleading representation for the purpose of inducing or tending to induce an insured to lapse, forfeit or surrender the insured's existing insurance.

(Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 1991 Supp. 40-2404; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-72-20, Sept. 1, 1972; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 15, 1989; amended Jan. 4, 1993.)

***** Authenticated Kansas Administrative Regulation *****