



1 Hour of Self-Study CE

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HERE'S HOW IT WORKS: Read the following article and when ready to take the exam, contact Paul S. Brawner at brawner@faifa.org, and request the exam. You'll receive the exam and an affidavit testifying you received no help on the exam. Return the exam and signed affidavit via fax to (850) 422 – 2672. Upon successful completion of the exam (70% or higher), NAIFA–FL will send you a Certificate of Completion for (1) hour of DFS-approved CE within 10 (ten) business days.

THE FLORIDA LIFE AND HEALTH GUARANTY ASSOCIATION: PROTECTING THE CONSUMERS INTERESTS

Course Reading Assignment

INTRODUCTION

As an agent you have many responsibilities to your clients. Your clients have certain insurance needs – sometimes many diverse needs. Not surprisingly, your responsibilities and your clients' needs are always interwoven. One area where the agent's responsibility and the clients needs merge is the topic of an operationally and financially sound company to insure their needs. One of the most important roles an agent fulfills is the responsibility to place his or her clients with the best companies available that are best able to meet the client's needs. Most times the agent has no trouble locating reputable companies who are fully capable of meeting or exceeding this standard. But what happens when a company that was once considered great enters into difficulties? What if a company is declared insolvent? What options are available to the client?

One protection available to clients is the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which generally provides protection for consumers who reside in Florida when a Florida licensed life and/or health insurance company becomes insolvent.

HISTORY

In the 1970s many state legislatures worked with the insurance industry to form guaranty associations to protect life, health and annuity policyholders. FLAHIGA was created in 1979 when the Florida legislature enacted the Florida Life and Health Insurance Guaranty Association Act. All insurance companies licensed to write life and health insurance or annuities in Florida were required, as a

condition of doing business in the state, to be members of FLAHIGA. There are nine insurance companies that make up the FLAHIGA Board of Directors, to provide oversight and direction. The FLAHIGA office is located in Jacksonville, FL.

FLAHIGA is composed of all insurers licensed to sell direct life insurance, accident and health insurance, and certain annuities in the state of Florida. FLAHIGA ultimately joined with the other guaranty associations throughout the country in an effort to work with departments of insurance and receivers on ways to improve insolvency administration. The first priority is to identify policyholders and pay their valid claims as rapidly as possible. Since the founding of FLAHIGA, hundreds of millions in dollars have been paid out for claims and to provide underlying support for policies.

STATUTORY BACKGROUND

Florida Statute (F. S.) Chapter 631, Part III identifies the existence and arrangement of the nonprofit legal entity which came to be known as the Florida Life and Health Insurance Guaranty Association. By statute, all member insurers shall be and remain members of the association as a condition of their authority to transact insurance in the state, and further, as a condition of such authority, an insurer shall agree to reimburse the association for all claim payments the association makes on said insurer's behalf if such insurer is subsequently rehabilitated. The association performs its functions under the plan of operation established and approved under the provisions of F. S. 631.721 and exercises its powers through a board of directors established under the provisions of F. S. 631.716.

For purposes of administration and assessment, the association maintains three accounts:

1. The health insurance account;
2. The life insurance account; and
3. The annuity account.

Borrowing between accounts for payment of policyholder and contract holder claims and other obligations of the association is authorized at the discretion of the board of directors, provided that the amounts so borrowed are restored to the appropriate accounts not less than annually.

The association shall come under the immediate supervision of the department and shall be subject to the applicable provisions of the insurance laws of this state.

POWERS AND DUTIES

The powers and duties of FLAHIGA are set forth in F. S. 631.717 and are captured here as follows for reference purposes only.

If a domestic insurer becomes an impaired insurer or an insolvent insurer, or a foreign or alien insurer becomes insolvent, the association may, subject to the approval of the impaired insurer and state regulators, guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer. They may provide moneys, pledges, notes, guarantees, or other means as are proper to effectuate and assure payment of the contractual obligations of the impaired insurer pending action under. They may also loan money to the impaired insurer.

If a domestic insurer becomes an insolvent insurer, the association shall, subject to the approval of state regulators, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of persons referred to in F. S. 631.713. As noted previously, they may also provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in F. S. 631.713.

In carrying out its duties under the provisions of the statutes, the association may impose a lien on the premiums of any permanent policy or contract in connection with any guarantee, assumption, or reinsurance agreement made by it. Such lien may be enforced by a court of competent jurisdiction if the court finds that the amounts which may be assessed under this part are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations.

Before becoming obligated to guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer, the association may request that temporary moratoria or liens be imposed on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values. Such temporary moratoria and liens may be imposed if they are approved by a court of competent jurisdiction.

If the association fails to act within a reasonable period of time as provided in Florida Statute, state regulators have the powers and duties of the association under this part with respect to insolvent insurers.

SCOPE

Insurance is monitored and regulated by state insurance departments, and one of their primary objectives is protecting policyholders from the risk of a company in financial distress. When a company enters a period of financial difficulty and is unable to meet its obligations, the insurance commissioner in the company's home state initiates a process—dictated by the laws of the state—whereby every attempt is first made to help the company regain its financial footing. This period is known as rehabilitation.

If it is determined that the company cannot be rehabilitated, the company is declared insolvent, and the laws of the state require the commissioner to ask the state court to order the liquidation of the company.

Role of the Insurance Commissioner

The insurance commissioner, either appointed by the governor or elected, heads the state insurance department and monitors and regulates insurance activity within the state. The commissioner also has the responsibility to determine when an insurance company domiciled in the state should be declared insolvent and to seek authority from the state court to seize its assets and operate the company pending rehabilitation or liquidation.

Role of the Receiver

By obtaining control of a company, the state Insurance Commissioner or the Department of Financial Services is, by law, the rehabilitator or liquidator of the company. In this capacity, the commissioner or

department takes control of the company's operations. Rather than do so directly, the commissioner may retain a special deputy receiver to supervise the company's activities. The receiver may be an employee of the state insurance department or an independent professional experienced in legal, accounting, and actuarial issues.

The receiver oversees an accounting of the company's assets and liabilities and administers the estate of the company. In doing so, the receiver seeks to maximize the company's assets, transfer them to cash, and then distribute that cash to creditors having valid claims against the insurer in accordance with payment priorities specified by state law.

Role of the Guaranty Associations

State life and health insurance guaranty associations are state entities (in all 50 states as well as Puerto Rico and the District of Columbia) created to protect policyholders of an insolvent insurance company. All insurance companies licensed to sell life or health insurance in a state must be members of that state's guaranty association.

The guaranty association cooperates with the commissioner and the receiver in determining whether the company can be rehabilitated or if the failed company should be liquidated and its policies transferred to financially sound insurance companies. Once the liquidation is ordered, the guaranty association provides coverage to the company's policyholders who are state residents (up to the limits specified by state laws).

Guaranteed Coverage

While laws governing maximum limits and types of policies covered vary from state to state, most states set basic limits of:

- \$300,000 in life insurance death benefits
- \$100,000 in cash surrender or withdrawal value for life insurance
- \$100,000 in withdrawal and cash values for annuities
- \$100,000 in health insurance policy benefits

The overall benefit "cap" in most states for an individual life is \$300,000, though some states have maximums that are higher. More detailed information on covered and uncovered policies is provided later in the text.

The FLAHIGA Act, known in legal circles as F. S. Chapter 631 Part III, is contained in a multi-volume set of law books entitled The Florida Statutes. A new set is published every two years after the legislative sessions end. The volumes contain all state laws. Every public library will have a current set in its resource section.

The purpose of FLAHIGA is to provide underlying protection to policyholders in the event of a liquidation. FLAHIGA as an entity is able to provide some basic information as to policyholder options but does not dispense legal advice, or specific advice regarding a specific course of action. The consumer must always seek professional assistance from legal counsel or their insurance agent. Additionally, in many areas the public library system has a wealth of information on insurance matters and as such can be a viable resource

Life and health insurance guaranty associations cover individual policyholders and their beneficiaries. Typically, persons protected by certificates of insurance issued under policies of group life or group health insurance are also covered. Annuities that are directly issued to and owned by individuals, or annuities that directly guarantee benefits to individuals by the insurer are generally covered. What are known as "unallocated" annuities are not covered. Limits on benefits and coverage are established by the FLAHIGA Act.

Coverage is determined by Florida law, policy language and other circumstances at the time FLAHIGA is activated (when the member insurer is found to be insolvent and ordered liquidated by a court). Any coverage is subject to the legal limits set forth in the FLAHIGA Act.

Alternative or reissued policies must contain at least the minimum statutory provisions required under this code and provide benefits that are reasonable with respect to the premium charged. The association must set premium rates in accordance with a table of rates adopted by the association. The premiums must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured occurring since the original policy was last underwritten.

Alternative policies issued by the association must provide coverage of a type generally similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

PROCEDURE

Insurance company operations are very involved and many companies operate in different ways. Some companies handle everything from premium collection, policyholder record development, claims handling and policy administration and retention, and they do it all in one location. Other companies farm almost everything out so that work is done in multiple locations, sometimes dozens of locations, some of which may be thousands of miles from the home office. FLAHIGA may have to search across the country to piece together all the parts necessary to make sense out of what a liquidated company was doing with records and claims. Moreover, companies that fail tend to be poor at record keeping and lack modern methods of processing data. The process of putting everything back together in the right order is sometimes a daunting task.

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, the Florida Life and Health Insurance Guaranty Association Act enables FLAHIGA to provide protection, up to the limits stipulated in the Act, to Florida residents who are holders of life and health insurance policies and certain annuities with the insolvent insurer.

Specifically, when a member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays valid claims under the policies. Additionally, FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. Those rights may include canceling the policy if the insurer could have done so, but normally the policies are continued until they can be transferred to a new, stable insurer with approval of the State. In any event, FLAHIGA would be required to pay all valid claims for which the insurer would have been liable.

In general, a court of competent jurisdiction will work with state regulators in determining when an insurance company requires special regulatory control. Some steps that might be taken are not publicly announced, but may include supervision of some kind. If early steps do not turn the company around, a period of public rehabilitation may follow. This means a receiver is appointed for purposes of operating the company more effectively. The receiver's power allows for strong actions to be taken, some of which might affect policies. In rare cases, the problems cannot be worked out and the court decides the company should be liquidated. This means that the receiver now becomes a liquidator who is charged with selling off the company assets for the benefit of policyholders and creditors, as well as accessing any reinsurance that could be used to pay claims.

Any person receiving benefits under this part shall be deemed to have assigned her or his rights under the covered policy to the association to the extent of the benefits received, whether the benefits are payments of contractual obligations or continuations of coverages. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association has subrogation rights against the assets of any insolvent insurer.

At the point of liquidation, FLAHIGA takes on the obligation of protecting Florida policyholders. The policyholder or contract owner will receive a notification from the receiver and/or FLAHIGA if the representative insurance company is found to be insolvent and ordered liquidated. They obtain the policy records and history from the liquidator, collect premiums that become due, administer the policies and pay all valid claims. FLAHIGA also provides payments if a policyholder surrenders a policy. As you can see, this is a very labor intensive process, and as such FLAHIGA may solicit servicing agents to help with these functions.

FLAHIGA will normally continue coverage as long as premiums are paid or cash value exists. This might be done this directly with policyholders, or through service agents. Since FLAHIGA is a safety net and not an insurance company, it would seek to transfer policies to a sound insurer as soon as it is practical to do so. If no viable market exists for the policies of the liquidated insurer, FLAHIGA may cancel the policies but only if that right was available to the insurer had a liquidation not occurred. Adequate notice must be given to the policyholder and all valid claims must have been paid. Depending on the type of policy, state or federal law may impose extensions of the time for which coverage is available even after a cancellation. FLAHIGA also has the authority under the FLAHIGA Act to offer substitute policies of substantially the same type.

In most insolvency situations, FLAHIGA works with other state guaranty associations to develop an overall plan to provide protection for the failed insurer's policyholders. The amount of protection provided, and when a policyholder receives it, may depend on the particular arrangement worked out, but the policyholder will be entitled to the benefits of FLAHIGA protection and coverage to its limits. Additionally, 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 of \$100,000, unless they are annuitized before liquidation, then the maximum would be \$300,000.

Generally, direct individual or direct group life and health insurance policies as well as individual and allocated annuity contracts issued by FLAHIGA's member insurers are covered by the association. Such coverage is limited by the terms of the FLAHIGA Act. The guaranty association covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. If the policyholder or

contract owner is a Florida resident on that date, then they may be covered by FLHIGA, even if they subsequently move to another state. Conversely, if they were a resident of another state on the liquidation date, but subsequently moved to Florida, they would not be covered by FLHIGA. Instead, the guaranty association for their original state would cover them. Your clients who were residents of another state on the date of liquidation or rehabilitation should contact that state's department of insurance for information for information on how to contact the guaranty association.

Portions of a variable annuity that are guaranteed by the insurer (fixed accounts) are covered by the Florida Life and Health Insurance Guaranty Association. However, any portion of a variable annuity not guaranteed by the insurer (mutual funds and other variable accounts) would not be covered by FLHIGA Florida Life and Health Insurance Guaranty Association.

There are limits to FLAHIGA coverage set by the Florida Legislature through the FLAHIGA Act. A policy must meet coverage requirements, and there are limits to the amounts FLAHIGA pays as a maximum. If your insurance company fails, the maximum amount of protection provided by FLAHIGA for any one person is:

- Life Insurance Death Benefit: \$300,000 per insured life
- Life Insurance Cash Surrender: \$100,000 insured life
- Health Insurance Claims: \$300,000 per insured life
- Annuity Cash Surrender: \$100,000 per contract owner
- Annuity in Benefit: \$300,000 per contract owner

Example: An individual owns three annuities and each has a cash surrender value of \$100,000, and the insurance company fails. How much will FLAHIGA pay if the owner wants to cash surrender the annuities?

The total annuity cash surrender protection per owner per member company is \$100,000. That per person limit is a maximum that applies without regard to the number of annuity contracts. As a result, if an individual owned three \$100,000 annuities with the same insolvent insurance company, FLAHIGA would pay a maximum total of \$100,000 in cash surrender values. It's important to note that the value in excess of this statutory coverage limit can be submitted as a claim by the policyholder or contract owner for \$200,000 against the estate of the failed insurer. The receiver will furnish claim forms and set a bar date for filing during the course of the receiver's administration of the estate.

The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date that the coverage is replaced by another similar policy by the association. Any reissued, reinsured, or alternative policy must, however, be subject to association coverage if the replacement insurer becomes impaired or insolvent as otherwise provided for in this part.

LIMITATIONS

The FLAHIGA Act specifies that policies and contracts from non-licensed insurers are not covered. Beyond that, the FLAHIGA Act excludes all of the following:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer
- any portion or part of any policy or contract under which the risk is borne by the policyholder
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued
- fraternal benefit society products
- health maintenance insurance
- dental service plan insurance
- pharmaceutical service plan insurance
- optometric service plan insurance
- ambulance service association insurance
- preneed funeral merchandise or service contract insurance
- prepaid health clinic insurance
- certain federal employees group policies
- any annuity contract or group annuity contract not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate

ADVERTISING

F. S. 631.735 states, "Prohibited advertisement of Florida Life and Health Insurance Guaranty Association Act in sale of insurance" directs that no person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Florida Life and Health Insurance Guaranty Association Act. However, this Section shall not apply to the Florida Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

In other words, the law prohibits insurance agents and companies from using the existence of FLAHIGA for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by FLAHIGA. The guaranty association is not and should not be a substitute for the consumer's or agents' prudent selection of an insurance company that is well managed and financially stable.

UNAUTHORIZED ENTITIES

Unauthorized entities engaging in insurance are a serious and growing problem in Florida for consumers and agents. Consumers are substantially harmed with these entities failing to pay claims and defrauding through deception. Agents are unwittingly (sometimes knowingly) representing these entities and placing clients and themselves at risk. Florida law is violated under the guise of these unauthorized entities claiming to be ERISA exempt or some type of association plan that claims to not be insurance or to be exempt from Florida regulation. All of this is simply not true! This is a problem in the state of Florida and other states.

The problem of unauthorized entities selling unauthorized products originated in the health insurance arena, although the problem now seems to be spreading into property-casualty arena as well. These unauthorized entities promised low health insurance premiums, a promise fueled by skyrocketing health insurance premiums with legitimate health insurance carriers. In the current market, low health insurance rates just do not exist. The public and certain agents, apparently, were ripe for the picking by these scam artists. Remember, these are scams and the intent is to collect as much premium as possible without having to pay claims, or very few claims.

Unsuspecting licensed insurance agents are also vulnerable to this type of scam because representatives of the unauthorized entity will contact the licensed agents and send them (or give them in person) printed marketing materials touting the unauthorized entity and their bogus products which, again, gives the impression of legitimacy and credibility.

Maybe the agent is asking too many questions of the representative – is just a little too inquisitive – about who they are, where they're located, how long they've been in business, etc. The agent may even question the legitimacy of the product. Some of the scam artists are telling agents that their products do not have to be authorized by the Department because the plan is an ERISA plan, or that the plan is part of a MEWA (multiple employer welfare arrangement) or it's to be sold to labor unions – all the while stating that under any of these previously-mention circumstances, the products do not have to be approved or authorized by the Department.

The representative of the unauthorized entity might say, "It doesn't require approval, because this is an ERISA plan." Or, "It doesn't require approval because this is plan is part of a MEWA plan." Or "This plan doesn't require approval because it's for labor unions." None of this is correct! Any product which contains an insurance component is required, by law, to receive authorization of that component by the Department before it can be sold in Florida. Any legitimate company representative who approaches you about selling and representing their products should not mind the scrutiny you put them under by verifying their status with the Department.

626.902 Penalty for representing unauthorized insurer.—

(1) In addition to any other penalties provided in the insurance code:

(a) Any insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of F. S. 626.901 commits a felony of the third degree, punishable as provided in F. S. 775.082 or F. S. 775.083.

(b) Any person other than an insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in F. S. 775.082, F. S. 775.083, or F. S. 775.084.

(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefore, for payment of taxes payable on account of such insurance under F. S. 626.938.

Agents or any other persons are prohibited from representing or aiding an unauthorized insurer. If an agent or any other person represents an unauthorized insurer, they are subject to severe penalties, including possible civil and criminal action. Agents are subject to suspension or revocation of their

licenses and/or monetary penalties for violation of the unauthorized insurer law. Agents can be held liable for claims and losses not paid by unauthorized insurers. Agents who represent or aid an unauthorized insurer commit a felony of the third degree.

Don't be fooled by phony products that sound too good to be true! Investigate before you sell or buy these plans. Check to see if an entity or plan is an authorized insurer by calling the Department of Financial Services at 800-342-2762.