

California Passes Life and Annuity Electronic Transactions Law

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On January 1, 2016, Section 38.6 of the California Insurance Code will take effect permitting consumers to conduct certain life, disability, and annuity transactions electronically. The new law *attempts to* meet California consumers' increasing demand to conduct business electronically, and take advantage of the convenience of e-delivery and e-signatures in life insurance. A closer look at Section 38.6, however, reveals that it contains several requirements not included in the laws of any other states, the Uniform Electronic Transactions Act (UETA), or the Electronic Signatures in Global and National Commerce Act (E-Sign). Section 38.6 also imposes some burdens on electronic life insurance transactions that are not applicable to paper transactions. Several of Section 38.6's most onerous requirements may actually impede the ability to conduct life insurance business electronically in California, as discussed below:

- If California insurance law requires transmission of a record by return receipt, registered mail, certified mail, signed written receipt of delivery, or other delivery method evidencing actual receipt by the person, to transmit the record electronically, the licensee must: (a) maintain a process or system that **demonstrates proof of delivery and actual receipt of the record** by the person, (b) document and retain information demonstrating delivery and actual receipt so that it is retrievable, upon request, by the department at least five years after the policy is no longer in force; and (c) if delivery and actual receipt of an electronic record cannot be demonstrated, the record must be resent to the person in the manner originally specified by the underlying California insurance law provision.
- When a licensee receives information that the record sent by electronic transmission was not received by the person, generally, the licensee shall, within five business days, either: (i) contact the person to confirm or update the person's email address, resend the record by electronic transmission, and demonstrate the transmission was received by the person; or (ii) resend the record by regular mail to the person at the address shown on the policy, or, if the underlying statute requires delivery in a specified manner, send the record in that manner.

- No discount or incentive may be provided to any person for opting into receiving electronic records, and no charge may be assessed against any person who declines to opt in to receive electronic records.
- A copy of the signed opt-in consent disclosure must be maintained with the policy information while the policy is in force and for five years thereafter.

Additionally, some Section 38.6 requirements require further clarification, such as:

- If a consumer's opt-in consent is acquired verbally, how may it be confirmed using an online or paper record?
- Does Section 38.6 require a person's opt-in consent be obtained before obtaining the electronic signature of the person on an application or other document?

Based on the onerous requirements of Section 38.6 and the outstanding questions regarding its implementation, many providers may decide to stop doing life insurance business electronically in California, or will not bother to begin doing so. Therefore, California consumers are unlikely to enjoy an increased ability to conduct electronic life insurance transactions for some time.

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