

# Florida Court Rejects "Date of Death" Trigger for Escheating Life Insurance Death Benefits Under Florida's Unclaimed Property Act

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On August 5, Florida's First District Court of Appeal reversed a ruling issued by Florida's Department of Financial Services ("DFS") that would have triggered an insurer's duty to escheat life insurance benefits under Florida's Disposition of Unclaimed Property Act (the "Act") based upon an insured's date of death. In [\*Thrivent Fin. for Lutherans v. Fla. Dep't of Fin. Servs.\*, No. 1D13-5299, --- So. 3d ----, 2014 WL 3819476 \(Fla. 1st DCA Aug. 5, 2014\)](#), the court held that the DFS's interpretation of the Act was "clearly erroneous," and rejected the DFS's opinion that current law required life insurers to search the government's Death Master File ("DMF") for insureds that might have died. The case arose out of an unclaimed property audit initiated by the DFS on Thrivent Financial for Lutherans. At the beginning of the audit, the DFS refused to explain its position on when life insurance proceeds were reportable under the Act, causing Thrivent to file a petition for a declaratory statement. On October 4, 2013, the DFS issued a declaratory statement stating that life insurance proceeds become "due and payable" immediately on the insured's death, and the dormancy period under the Act begins to run from the insured's death. The DFS also concluded that life insurers were obligated to search the DMF for deceased insureds. In reversing the DFS, the appeals court ruled that the Act's "plain language" triggered potential unclaimed property reporting based on when life insurance benefits "become due and payable as established by the records of the insurance company." The court noted that the Florida Insurance Code required all insurance contracts to state that "settlement shall be made upon receipt of due proof of death and surrender of the policy." Thus, the court ruled that an insurer's records "do not establish funds as 'due and payable' under [the Act] until the insurer receives proof of death and surrender of the policy." Moreover, the court noted that the

Act explicitly provided for escheatment absent due proof of death based on the "limiting age," and that the DFS's date of death trigger would have rendered this provision meaningless. The court also squarely rejected the DFS's argument predicated on language in the Act that unclaimed property is payable "notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment." The court held that this "general rule" did not control over the Act's specific provision addressing life insurance policies. Turning to the DFS's conclusion that insurers had an affirmative duty to search the DMF for deceased insureds, the court found there was nothing in the Act imposing such a duty, and rejected the DFS's attempt to rewrite the statute based on policy considerations. The Florida court's decision interprets a version of the 1981 Uniform Unclaimed Property Act. The decision is consistent with those of every other court that has considered whether a life insurer has a legal duty to search the DMF.

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