

No Saving Grace for Policyholders

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In *McHugh v. Protective Life Insurance*, the California Court of Appeal held that a statute requiring 60-day grace periods for term life insurance policies did not apply retroactively.

The beneficiaries of a term life insurance policy issued in 2005 challenged Protective Life's termination of the insured's policy. The policy was terminated following expiration of the policy's 31-day grace period for nonpayment of premium. The insured died four months later. The beneficiaries filed suit asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing, arguing that the insurer failed to comply with a newly enacted statute requiring a 60-day grace period.

The California statute requires that "all life insurance policies issued or delivered in California on or after [January 1, 2013] ... contain a grace period of at least 60 days" before the policy can be terminated for nonpayment of premium. Affirming the trial court's judgment, the appellate court concluded that the statute applies prospectively only to term life policies issued after January 1, 2013.

A statute applies retroactively if (1) it contains express language of retroactivity; or (2) other sources provide a clear and unavoidable implication that the legislature intended the statute to be retroactive. The McHugh court found no express language of retroactivity in the statute and concluded that the legislative history reflected that the legislature's intent was that the new law would apply only to those policies "issued or delivered" after January 1, 2013.

Because the term life insurance policy at issue in McHugh was issued and delivered to the insured in 2005 — eight years before the statute now in effect — the insured was not entitled to the extended, 60-day grace period.