

# Hold the "Processes": N.Y.'s New Unclaimed Benefits Law May Be Changing

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**Stephanie A. Fichera**



**Steven Kass**



**Irma Reboso Solares**

January 28, 2013 -- With the ink barely dry on the newly adopted and not yet effective New York Insurance Code Section 3213-a ("Unclaimed Benefits"), new legislation has recently been introduced that purportedly "clarifies and modifies the statutory procedures that [life] insurers must follow [under this Section] in order to ensure that insurers identify and locate the greatest number of beneficiaries possible."

Section 3213-a, *available here*, was signed into law on December 17, 2012, and will take effect on June 15, 2013. This Section applies to individual and group life insurance policies and annuity contracts under which benefits are to be paid upon the death of the insured, including certain lapsed or terminated policies (collectively "policies"), as well as "accounts" established under such policies for settling proceeds, such as a retained asset account, that are either issued by New York domestic insurers or delivered or issued for delivery in New York by authorized foreign insurers, subject to certain limited exceptions. Insurers issuing policies within the scope of Section 3213-a would be required, commencing upon its effective date:

- To request information, at or prior to policy delivery or establishment of an account and upon any change of insured, owner, account holder, or beneficiary, sufficient to ensure that all benefits or other monies are distributed to the appropriate person(s);
- To use the Social Security Death Master File (DMF), or equivalent database acceptable to the N.Y. Superintendent of Financial Services, to cross check every policy no less frequently than quarterly, subject to certain exceptions;
- Upon receiving notification of the death of an insured or the identification of a DMF match:
  - To search all covered policies and accounts to determine whether the insurer has any other policies or accounts for the insured or account holder, and to notify all of the insurer's affiliates and entities it contracts with which may maintain records relating to covered policies, who shall then perform a similar search; and
  - To begin to locate beneficiaries within 90 days pursuant to procedures established by the insurer to reasonably confirm the death of an insured or account holder, and if the insurer cannot locate beneficiaries within 90 days, to continue to search for beneficiaries until the benefits escheat.
- After locating beneficiaries, to provide information to the beneficiaries necessary to make a claim; and
- Pursuant to a request through a "lost policy finder" service to be established by New York to assist requesters with locating unclaimed life insurance benefits, to search the insurer's records for policies and accounts that insure the life of, or are owned by, an individual named as the decedent in the request, and within 30 days:
  - Report back to the Superintendent the findings of the search;
  - If the requestor is the beneficiary of record, provide the information necessary to make a claim; and
  - If the requestor is not the beneficiary of record, provide the requested information to the extent permissible to be disclosed and to take other steps necessary to facilitate the payment of any benefit that may be due.
- To provide the following additional reports:
  - To the Superintendent, within 30 days of the final disposition of a lost policy finder request, a report of any benefits paid and any other information requested by the Superintendent; and
  - As part of the insurer's reporting under Section 703 of the abandoned property law, any information on unclaimed benefits due pursuant to Section 3213-a and the number of policies and accounts the insurer had identified pursuant to Section 3213-a for the prior calendar year that have not been paid or distributed by the end of such year, with a copy of such report to be filed with the Superintendent.

The newly proposed amendment, *available here*, contains both non-substantive and substantive clarifications and modifications to Section 3213-a and would take effect on the same date as the act referenced above (i.e., June 15, 2013). The more far-reaching substantive changes to Section 3213-a would, among other things, broaden the reach of Section 3213-a's new requirements, including:

- An expansion of "accounts" that are subject to the Section to include all policy settlement options, as opposed to only retained asset accounts; and
- An extension of the insurer's responsibility to include policy and account records that are maintained **or controlled** by an insurer's affiliates, including parents and subsidiaries and non-affiliates with which the insurer has contracted.
- Among the specific proposed substantive changes to Section 3213-a is one that affects subsection (e) and would expand the insurer's duty to notify affiliates and others who maintain record for the insurer to include:
  - That the insurer also notify any entity with which the insurer contracts that may maintain **or control** records relating to policies or accounts; and
  - That "[a]n Insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search [of every policy or account to determine whether the insurer has any other policies or accounts for the insured or account holder]."

Section 3213-a, in the form already adopted and set to take effect on June 15, 2013, will require insurers that have issued policies or accounts falling within its scope to implement operational and reporting procedures not previously required by law. The proposed amendments, if adopted, would broaden the reach of these new requirements and raise additional interpretive issues.

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