



**ARKANSAS INSURANCE DEPARTMENT
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**“NEGATIVE OPTION” CLAIM PAYMENT PROCEDURES AND
“BENEFICIARY ACCESS” CHECKBOOK ACCOUNTS**

The Insurance Department has become aware of a growing and disturbing trend amongst life insurers to utilize a death claim payment procedure which takes substantially away from beneficiary-payees their right to handle their policy proceeds as they choose. Insurers refer to this system, variously, as a “Beneficiary Access Account.” A “S.A.F.E. Account” or a “Benefits Checkbook Account.” Regardless of the nomenclature used by the companies, however, each of the plans appears to have two things in common, viz:

- i. Death proceeds are “deposited” by the insurer in an account in the beneficiary’s name either with the *insurer itself* (therefore never actually being “paid”), or they are deposited in a *banking institution chosen by the insurer* and with whom the insurer has contracted; and,
- ii. The proceeds are *automatically* so deposited unless the beneficiary, with or without help of an agent, either modifies the printed proof of loss form or writes a separate letter requesting his or her proceeds to be paid directly.

Some insurers with whom this office has communicated have defended this practice by noting that the receipt of a “Benefits Checkbook” is, economically speaking, tantamount to receipt of a check payable to the beneficiary. The argument is that since the beneficiary could make himself or herself a payee of one of the checks in the Benefits Checkbook and draw all of the money out of the Beneficiary Access account, it is the same thing as having the money in hand.

Whether or not that is true from an “economic perspective,” this Department does not believe, from a legal and practical perspective, that the sending of a beneficiary access checkbook to a beneficiary constitutes “settlement” by the insurer as required by Ark. Code Ann. §23-63-106. Further, it is the opinion of the Department that any payment or settlement mechanism which requires that the beneficiary affirmatively elect against the language and provisions of the printed proof of loss form in order to assure receipt of true settlement, is a “negative option” payment mechanism and an unfair claims practice.

It is also the position of the Arkansas Insurance Department that the supposed “agreement” with the beneficiary evidenced by the beneficiary’s signature upon such a pre-printed adhesion form does not evidence a valid contractual assent to the establishment of such an account. As a consequence, the procedure is violative of the requirement of Ark. Code Ann. §23-81-116(b) that an insurer hold policy proceeds only under an “agreement” with the beneficiary.

Insurers should note that the Department has no objection the “Beneficiary Access” concept as long as:

- i. The beneficiary plays a “meaningful role” in the choice of such an option, and,

- ii. The beneficiary is guaranteed to receive interest at no less than eight percent (8%) per annum in accordance with Ark. Code Ann. §23-81-118(b).

The beneficiary will be presumed to have exercised a meaningful role in the election of his or her settlement option by having checked the option desired from a list of the options available prior to signing the proof of loss. The pre-printed “negative option” method of determining the manner of payment, however, will not be permitted in this state.

Insurers should be mindful of the fact that identical negative option techniques when used as sales or marketing tools in most trades are uniformly determined to be unfair trade practices and are routinely the subject of prosecution by Attorneys General of the several states . Negative option techniques are inherently unfair in all business, including the business of insurance and insurance settlement, and will be treated as such by this Department from and after January 1, 1992.

Lee Douglass
INSURANCE COMMISSIONER