



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

John D. Darer
4Structures.com, LLC
43 Harbor Drive, Unit 309
Stamford, CT 06902

January 26, 2009

RE: Life Insurance Guaranty Corporation of New York ("LIGCNY") advertising

Dear Mr. Darer:

I write regarding your inquiry, which asks whether a life insurance agent or broker may lawfully use, in soliciting structured settlement annuities, a brochure published by a trade association that states that "state insurance guaranty associations provide an additional level of protection for future structured settlement recipients."

Question presented:

May a life insurance agent or broker, in soliciting structured settlement annuities, lawfully use a brochure published by a trade association that states that "state insurance guaranty associations provide an additional level of protection for future structured settlement recipients"?

Conclusion:

No. N.Y. Ins. Law § 7718 (McKinney 2000 and Supp. 2009) broadly prohibits any person from using the existence of the LIGCNY for the purpose of selling, soliciting, or inducing the purchase of annuity contracts. Thus, a statement that "state insurance guaranty funds provide an additional level of protection for future structured settlement recipients," which is aimed at New York residents, runs afoul of the Insurance Law.

Facts:

Your question is of a general nature, without reference to particular facts.

Analysis:

Insurance Law § 7718 governs prohibited advertisements of the LIGCNY, the guaranty fund that covers life insurance policies, health insurance policies, annuity contracts, funding agreements and contracts supplemental to life and health insurance policies, annuity contracts or

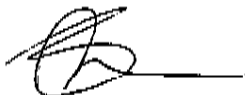
funding agreements issued to a New York resident by a life insurance company licensed to transact life or health insurance or annuities in New York at the time the policy, contract or agreement was issued. See Insurance Law § 7703. Insurance Law § 7718 reads as follows:

No person, including an insurer, agent or affiliate of an insurer and no broker shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the corporation for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by this article, provided, however, that this section shall not apply to the corporation or any other entity which does not sell or solicit insurance, or to prohibit the furnishing of written information in a form prepared by the corporation and approved by the superintendent by a member insurer directly to a policyholder in response to a written request therefor.

Thus, Insurance Law § 7718 broadly prohibits any person from using the existence of the LIGCNY for the purpose of sales, solicitation or inducement to purchase annuity contracts, including structured settlement annuities. However, the statute has no application to: 1) the LIGCNY itself; 2) any other entity that does not sell or solicit insurance; or 3) an insurer that responds directly to a policyholder upon written request and on a form prepared by the corporation and approved by the Superintendent.

Life insurance agents and brokers clearly come within the scope of the prohibition contained in Insurance Law § 7718. The fact that the statement "states insurance guaranty associations provide an additional level of protection for future structured settlement recipients" is general in nature, and does not specifically reference the LIGCNY, is irrelevant. When the statement is directed at New York residents, whose only coverage is from the LIGCNY if a life insurer fails in its obligations, it is an implied reference to LIGCNY, and thus proscribed by Insurance Law § 7718 in the absence of any of the statute's express exceptions. And based on the facts presented, none of those exceptions is applicable here.

Very truly yours,



Sapna Maloor
Senior Attorney