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**BASIC (02-05)**

## PS 01815.011 Florida

### A. PS 05-078 Request for Legal Opinion Number Holder - Eleanor G~, SSN ~

DATE: January 25, 2005

#### 1. SYLLABUS

The beneficiary gave 50,000.00 to a relative. In exchange for the 50,000.00, a private annuity was created between the beneficiary and the relative. The annuity stated that the beneficiary would receive a specified amount of money over a specified period of time. This agreement was irrevocable and the beneficiary did not have the right to sell her interest in the private annuity. Florida law stated that the private annuity established between the beneficiary and her relative was valid under state law. The resource transfer was developed Per [SI 01150.003](#) and [SI 01150.005](#). It was found that the beneficiary did receive the fair market value for the resource transfer. Therefore, a period of ineligibility did not apply and the annuity was a not a countable resource.

#### 2. OPINION

You have requested our opinion as to whether a private annuity contract between two individuals is permitted under Florida law. We believe that such a contract is permitted.

Eleanor G~, NH, and her sister entered into a private annuity agreement that NH funded with \$50,000 that she received from a personal injury suit. The terms of the agreement provide her with monthly income of \$5.00 for the first 123 months of the contract, with the remaining \$60,682.70 to be paid in the final month. NH was approximately 78 years of age when she entered into the contract. Based upon the actuarial tables in POMS ([SI 01150.005](#)), a 78 year old female has a life expectancy of approximately 10.25 additional years. The annuity contract is based on a life expectancy of 10.24 years. Accordingly, it appears that NH is receiving a fair market value in return for the funds she used to establish the annuity contract.

Florida insurance regulations apply only to “insurers,” which is defined as a person engaged “in the business of entering into contracts of insurance or of annuity.” West's F.S.A. Sec. 624.03. Florida courts have held that individual self-insurers or out-of-state benefit societies are not “insurers” within the meaning of Florida law and therefore are not required to qualify under Florida insurance statutes. *See Government Employees Insurance Company v. Wilder*, 546 So.2d 12 (Fla. 1989) (self-insurer); *Brotherhood's Relief and Compensation Fund v. Cagnina*, 155 So.2d 820, 823 (Fla. 1963) (benefit society). A family member engaged in an isolated transaction would not be an “insurer” and accordingly would not be subject to Florida's insurance laws, which require a certificate of authority, among other requirements. F.S.A Sec. 624.11. According to an attorney in Florida's Department of Financial

Services, which regulates the insurance industry in Florida, there is no specific prohibition against private annuity contracts in Florida.

This contract, however, like other insurance contracts, would be subject to laws generally pertaining to insurance contracts. *Brotherhood's Relief and Compensation Fund*, 155 So.2d at 823-24. This contract appears to meet these requirements as NH is getting a fair return on her investment and the obligor (sister) cannot change the contract to modify NH's benefits.

Because we believe the private annuity contract would be valid in Florida, the annuity would be an excluded resource for SSI purposes. *See generally*, 20 C.F.R. Sec. 416.420 (2004); [SI 01110.115](#) (assets that are not a resource); [SI 01110.100](#) (distinction between assets and resources).

Very truly yours,

Mary A. S~

Regional Chief Counsel

Laurie G. R~

Assistant Regional Counsel

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PS 01815.011 - Florida - 07/23/2008



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