

Class-Action Complaint Says Banner Life Insurance Company Violated California Law

A lawsuit filed by law firm Gianelli & Morris alleges Banner Life unlawfully allowed life insurance policy to lapse for nonpayment of premium

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Robert S. Gianelli

November 30, 2021, the California insurance law firm [Gianelli & Morris](#) filed a lawsuit in the United States District Court for the Central District of California alleging Banner Life has acted unlawfully in allowing a life insurance policy to lapse without first complying with California legal requirements designed to protect policyholders. The class action complaint seeks damages for breach of contract and violation of the Unfair Competition Act, plus declaratory relief. The case is Aphrodite Tina Weinstein-Nernberg v. Banner Life Insurance Company (case no. 2:21-cv-9270).

As detailed in the plaintiff's complaint filed with the court, the case concerns a life insurance policy issued to the plaintiff's husband in 1998. A premium payment was missed in November 2020, and when the plaintiff notified the insurance company of her husband's death in March 2021, she was told that the policy had lapsed due to nonpayment and was not in effect to cover her loss.

The complaint alleges that Banner Life violated sections 10113.71 and 10113.72 of the California Insurance Code when it terminated the policy for nonpayment of premium. The laws provide the following requirements for all life insurance policies issued in the State of California:

1) The policy must contain a grace period of not less than 60 days from the premium due date to allow policyholders to make up a missed payment. The policy is to remain in force during the grace period.

2) An applicant must be given the right to designate at least one person in addition to the applicant to receive notice of a lapse or termination for nonpayment. The insurer must provide a form for the applicant to make such a designation and must notify policyholders annually of

their right to change their designation or designate one or more persons to receive notice. The notice of termination for nonpayment must be mailed within 30 days of the premium due date.

3) A notice of pending lapse and termination is not effective unless it is mailed to the named policy owner, designee and known assignee or other person having an interest, at least 30 days prior to the effective date of termination for nonpayment of premium.

Although the laws were passed in 2013 and the plaintiff's policy was issued in 1998, the complaint cites a recent California Supreme Court case (McHugh v. Protective Life Insurance Company (2021) 12 Cal.5th 213) that held the laws apply to life insurance policies issued before 2013.

The complaint also cites a recent decision from the United States Court of Appeals for the Ninth Circuit that states "[a]n insurer's failure to comply with these statutory requirements means that the policy cannot lapse." Thomas v. State Farm Life Insurance Company (9th Cir., Oct. 6, 2021, No. 20-55231)

The complaint further cites the official legislative analysis of the law when it was introduced in the 2011-2012 legislative session of the California Assembly as AB 1747. This analysis describes the purpose of the legislation as follows:

"According to the author, the bill provides consumer safeguards from which people who have purchased life insurance coverage, especially seniors, would benefit. Under existing law, individuals can easily lose the critical protection of life insurance if a single premium is accidentally missed (even if they have been paying premiums on time for many years). If an insured individual loses coverage and wants it reinstated, he or she may have to undergo a new physical exam and be underwritten again, risking a significantly more expensive, possibly



Robert S. Gianelli, Los Angeles Insurance Attorney



Gianelli & Morris

unaffordable premium if his or her health has changed in the years since purchasing the policy. Therefore, the protections provided by this bill are intended to make sure that policyholders have sufficient warning that their premium may lapse due to nonpayment.”

The plaintiff’s complaint alleges that since the passage of the law in 2013, Banner Life has not provided the required 60-day grace period and has not mailed a notice of termination within 30 days of the premium due date and at least 30 days before the termination date as required by law. Instead, the complaint details that Banner Life has applied a 31-day grace period and has failed to follow the required notice periods.

Rob Gianelli, lead attorney for plaintiffs in the class-action lawsuit, said that Banner Life’s illegal acts impacted the plaintiff and all other California policyholders who had a policy lapse: “Mr. Nernberg paid all the annual premiums due under his policy from November 1998 through November 2019. When he missed his November 2020 payment due to ill health, Banner Life applied the wrong grace period, failed to give the required notice, and canceled his policy in violation of California law, leaving his widow with nothing after he had dutifully paid the insurance company for more than 20 years. It committed these illegal acts on Mr. Nernberg’s policy and the policies of all other California policyholders whose policies were canceled for nonpayment of premium.”

Carter P. Spohn
Gianelli & Morris, A Law Corporation
+1 213-489-1600

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