FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BARBARA LINHART, on behalf of herself and all others similarly situated, *Plaintiff - Appellant*, v. NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, *Defendant - Appellee*, NEW YORK LIFE INSURANCE COMPANY, LIFE INSURANCE COMPANY OF NORTH AMERICA, NEW YORK LIFE INSURANCE COMPANY OF ARIZONA, *Defendants*.	No. 25-490 D.C. No. 5:21-cv-01640-JWH-DTB OPINION

Appeal from the United States District Court
for the Central District of California
John W. Holcomb, District Judge, Presiding

Argued and Submitted July 7, 2026

Pasadena, California

Filed September 22, 2026

Before: Johnnie B. Rawlinson, Gabriel P. Sanchez, and Eric C. Tung, Circuit Judges.

Opinion by Judge Tung

SUMMARY*

California Insurance Law

Affirming the district court's summary judgment in favor of New York Life Insurance and Annuity Corporation, the panel held that life-insurance companies are not required to send designation forms to life-insurance policyholders whose policies were issued before California Insurance Code section 10113.72 took effect on January 1, 2013.

In 2007, the Corporation issued Mr. Linhart a life insurance policy. Mr. Linhart was the policyholder, while his wife, plaintiff Barbara Linhart, was the sole beneficiary. The policy lapsed on August 3, 2021, and Mr. Linhart died four days later. In response to an inquiry from Mr. Linhart's estate, the Corporation said that the policy had lapsed and declined to pay out any amount.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Barbara Linhart sued, alleging that the Corporation failed to comply with section 10113.72(a)—which requires an "insurer [to] provide each applicant with a form to make the designation" of a third party "to receive notice of lapse or termination" before a policy is issued—by not providing designation forms to policyholders whose policies were issued prior to 2013.

The panel held that it was bound by the California Supreme Court's decision in *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213 (2021). Because section 10113.72(a) applies only to new policies, and Mr. Linhart's policy was not new, section 10113.72(a) did not apply to his policy. Therefore, the section did not require the Corporation to have sent a designation form to Mr. Linhart while he was still alive. Accordingly, the panel affirmed the judgment of the district court.

COUNSEL

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Caleb C. Wolanek (argued), John A. Little Jr., and Michael D. Mulvaney, Maynard Nexsen PC, Birmingham, Alabama; Cindy M. Rucker, Maynard Nexsen LLP, Los Angeles, California; for Defendants-Appellees.

OPINION

TUNG, Circuit Judge:

In 2012, California added a provision to the insurance code requiring that life-insurance companies send a designation form to applicants who sign up for such insurance. That form would permit applicants to designate a third party to receive copies of notices whenever the policy lapses or terminates. This case asks whether insurance companies must provide such forms to policyholders whose policies were issued before the statutory provision took effect on January 1, 2013. We answer no.

I.

In 2007, New York Life Insurance and Annuity Corporation issued Mr. Linhart a life insurance policy. Mr. Linhart was the policyholder, while his wife, Barbara Linhart, was the sole beneficiary. The policy did not require Mr. Linhart to make regular premium payments. But to keep the policy active, Mr. Linhart had to make enough payments so that the policy's account value could cover the Corporation's monthly deduction charge—the monthly cost to maintain the insurance policy plus fees.

In 2012, the California Legislature added sections 10113.71 and 10113.72 to the California Insurance Code. *See McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213, 225 (2021). These provisions enacted a mandatory grace period and notice requirements obligating insurance companies to notify policyholders before cancelling a policy for failure to make a required payment. *Id.* Relevant to this appeal, "Section 10113.72 requires life insurance policies to grant policy owners the right to designate at least one other person to receive a notice of an overdue premium and impending lapse or termination of the policy." *Id.* at 226. Specifically, section 10113.72(a) requires an "insurer [to] provide each applicant with a form to make the designation" of a third party "to receive notice of lapse or termination" before a policy is issued, and section 10113.72(b) requires the insurer to "notify the policy owner annually of the right to change the written designation or designate one or more persons." *Id.* These provisions went into effect on January 1, 2013. *Id.*

Beginning August 2013, the Corporation would send Mr. Linhart a policy summary each year containing a notice informing him of his right to make or change a designation of a third party who would receive notices of policy lapses or termination. The summaries did not include, nor did the Corporation ever send, a standalone designation form. Mr. Linhart never exercised his right to make a designation.

On June 1, 2021, Mr. Linhart's policy entered into a grace period prior to expiration because the account value contained insufficient funds to cover monthly deduction charges. The Corporation mailed Mr. Linhart a notice informing him that to prevent the policy from lapsing he needed to make sufficient payment by August 3, 2021. The policy lapsed on August 3, 2021, and Mr. Linhart died four days later. Mr. Linhart's estate contacted the Corporation to inquire about the payout under the policy. The Corporation said that the policy had lapsed and declined to pay out any amount.

Mr. Linhart's wife sued. She sought relief from the Corporation not only for herself, but on behalf of a class. Ms. Linhart alleges that the Corporation failed to comply with section 101132.72(a) of the Insurance Code by not providing designation forms to policyholders whose policies were issued prior to 2013. The district court granted summary judgment for the Corporation, concluding that, pursuant to the plain language of section 10113.72(a) and the California Supreme Court's decision in *McHugh*, 12 Cal. 5th 213, the Corporation was not required to send Mr. Linhart a Designation Form. The district court then denied Ms. Linhart's motion for class certification. Ms. Linhart now appeals. We have jurisdiction under 28 U.S.C. § 1291.

II.

Ms. Linhart's appeal turns on whether section 10113.72(a) applies to Mr. Linhart's policy, which predates the enactment of that section. In our view, the California Supreme Court has already answered the question, and we are bound by its conclusion.

In *McHugh*, the California Supreme Court stated that "[o]ne provision, section 10113.72, subdivision (a), unmistakably applies only to new policies." 12 Cal. 5th at 236. The Court's reasoning appears clear and compelling:

> Section 10113.72, subdivision (a) relates to the right to designate at least one third party recipient to receive a missed premium notice. This provision applies only to new, postenactment policies. The language refers repeatedly to the "applicant" making a written designation, rather than the "policy owner," clearly indicating it applies only to new policies. [The insurance company] also persuasively argues that the particular phrasing of subdivision (a)'s command – it instructs that a policy "*shall not be* issued or delivered . . . until" an applicant has been

> given the written designation right – further supports that it applies only to new policies as of 2013, since "shall be" commands often signify a statute's forward-looking nature.

Id. (citations omitted).

That resolves this case. Because section 10113.72(a) applies only to new policies, and Mr. Linhart's policy is not new, section 10113.72(a) does not apply to his policy. Therefore, section 10113.72(a) does not require the Corporation to have sent a designation form to Mr. Linhart while he was still alive.

Resisting this conclusion, Ms. Linhart points to other parts of *McHugh* that in her view suggests that section 10113.72(a) applies to old policies as well as new ones. She quotes language from *McHugh* stating that "sections 10113.71 and 10113.72 apply to all life insurance policies in force when these two sections went into effect, regardless of when the policies were originally issued." *McHugh*, 12 Cal. 5th at 220.

But that argument is unavailing. The California Supreme Court's general statement that section 10113.72 applies to *all* policies (existing and new) does not answer the specific question whether one of its sub-provisions—section 10113.72(a)—applies to existing policies. Section 10113.72 contains two other sub-provisions—sub-provision (b), which requires insurers to notify a policy owner annually of his right to make or change a designation, and sub-provision (c), which prevents an insurer from "ending a policy for an unpaid premium without giving policy owners at least 30 days' notice." *McHugh*, 12 Cal. 5th at 226. That sub-provisions (b) and (c) apply to all policies is compatible with sub-provision (a)'s application to new policies only.

Sub-provisions (b) and (c) govern *ongoing* notice requirements, whereas sub-provision (a) requires the provision of a designation form at a *particular* point in time—when an applicant *applies* for life insurance *before* a policy issues. To require the provision of designation forms *after* the policy has issued would make nonsense of sub-provision (a)'s text. Each sub-provision can thus work together, even as some "apply to both new and existing policies" while another "unmistakably applies only to new policies." *Id.* at 236. Contrary to Ms. Linhart's argument then, the California Supreme Court's conclusion that the provisions "create a single, unified pretermination notice scheme" reinforces (rather than undermines) our conclusion. *Id.* at 240.

For these reasons, we affirm the judgment of the district court.

AFFIRMED.