

# Avoiding Fraternal Strife

## New Tools For Dealing with Troubled Fraternal

James Kennedy, Counsel to the Receiver, Texas Department of Insurance

Todd Martin, Partner, Stinson LLP

Kim Yelkin, Partner, Foley & Lardner LLP

# Background on fraternal benefit societies

- Non-stock, not-for-profit membership organizations
- Common bond of members and fraternal mission
- Operating on the lodge system
- Representative form of governance (direct election or convention)
- Offering life/ annuity benefits
- 58 members of the American Fraternal Alliance
- Most around 100 years of history
- Wide range in size/ mission/ focus

# What events led to consideration of enhancements to fraternal solvency laws by the fraternal system?

- Close calls (successful transfers but at the 11<sup>th</sup> hour)
- ACA Assurance
- Grand Court Order of Calanthe
- Challenges to recovery following financial impairment

# How did the fraternal system begin efforts toward solvency enhancement legislation?

- Task force with leaders in the fraternal system
- Development of "model" discussion draft
- Work with regulators in IL, MN, WI, TX & PA to improve and address state-specific issues
- These states selected because significant majority of US fraternal domiciled there

# What were the objectives of the solvency legislation?

- Early intervention and resolution (ideally by the society before further intervention needed)
- Prompt and efficient transfer of certificates in the event of impairment - before receivership and liquidation if possible
- Avoiding assessments that harm consumers/ members

# What Were Some Of The Keys to Making This Effort Successful?

- Cooperative effort with fraternal system & regulators
- Focus on consumers/ members (interests aligned)
- Work within the existing framework (RBC and receivership & liquidation statutes and regulations)
- Focus on practical solutions to address potential impediments to prompt and efficient resolution of solvency issues

# What were the key elements of the solvency legislation?

- Assessments require notice to regulators and opportunity to disapprove if not in best interests of certificate holders.
- Trigger point for new tools for regulators at authorized control level RBC
- Requirement for fraternal to immediately remedy hazardous condition or transfer certificates
- Ability of board of fraternal in a hazardous condition to act even if convention/ assembly is the supreme governing body
- Open up possible options for other fraternal that may consider a transfer
- Clarify ability to transfer to commercial insurers
- Ability to move immediately to liquidation if impairment not promptly remedied
- Necessary assessments after receivership/ liquidation proceedings avoid transfer of assets from certificate holders to creditors of a lower statutory priority

# What were the issues that Texas addressed and considered that were specific to its laws and circumstances?

- Avoid amendment to receivership/ liquidation statutes outside the receivership/ liquidation statutes
- Avoid unintended application to situations other than fraternal benefit society solvency
- Texas- specific solution to post-liquidation assessments



# Other States

- Legislation enacted in
  - Illinois
  - Minnesota
  - Pennsylvania
  - Wisconsin
- Other states with multiple domestic fraternal:
  - Ohio
  - Michigan
  - Indiana
- Legislation is focused on domestics. May not be worthwhile under cost/benefit analysis for state with 1 or no domestic fraternal.

Final Thoughts?