LIFE INSURANCE SETTLEMENT ASSOCIATION

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BUREAU OF SPECIALTY INSURERS

September 3, 2008

Hon. Kevin McCarty

Commissioner

Florida Office of Insurance Regulation

Florida Department of Financial Services

200 East Gaines Street

Tallahassee, FL 32399

Dear Commissioner McCarty:

Thank you again for the opportunity to testify at the OIR's hearing on Aug. 28 entitled: "Informational hearing to discuss and receive public comment on the business arrangements variously called stranger owned life insurance, stranger-oriented life insurance, stranger originated life insurance or speculator initiated life insurance."

You stated that the record would he held open for written submissions for 30 days. Enclosed, please find copies of our formal testimony and attachments which are copies of the documents referenced in the testimony.

We have added some additional text, additional citations, and otherwise cleaned up the testimony in places in reaction to issues raised at the hearing, so please consider this our formal submission in lieu of the drafts I handed you after my testimony.

We appreciated the opportunity to be part of the discussion. LISA and its members believe that our market brings significant value to consumers and we also recognize that thorough regulation is necessary. We believe that Florida has a very solid foundation to both stop improper STOLI and to regulate appropriate life settlements and we are eager to work with you going forward.

Sincerely,

Doug Head

Testimony of Doug Head, LISA Executive Director
at the
Florida Office of Insurance Regulation
Informational Hearing
on
August 28, 2008

FORMAL WRITTEN SUBMISSION SEPT. 3, 2008

Introduction

Thank you for the opportunity to participate in this important hearing. LISA recognizes that Florida has been a leader in regulating the secondary market for life insurance for the protection of its senior citizens, and we are grateful for the chance to share our views on these important issues.

The secondary market for life insurance has brought great benefits to consumers, unlocking the value of life insurance policies through life settlements and non recourse premium finance arrangements which use the market value of a policy as collateral.

The secondary market realizes the promise of well over a century of bedrock insurance law which holds that life insurance policies, after being formed with insurable interest, are freely alienable property. Despite the long standing existence of these property rights, however, there was no institutional secondary market until recent years, because there was not sufficient demand to support one: Before carriers began designing products around a market defect—"grossly inadequate cash values," as described by a leading carrier actuary—insurers paid a reasonable return on premium payments to cash value policyowners.

Today, however, institutional capital funds life settlements in response to urgent consumer demand for an alternative to carriers' "take-it-or-leave-it", cash surrender practices. The resulting secondary market vindicates property rights and represents the triumph of competition and free market economics. This is a matter of significant import since the vast majority of universal life policies lapse without ever paying a claim.

We do share an interest in stopping improper conduct with life insurers, producers, the financial markets and public policy makers. Unfortunately, life insurers have all too often responded to settlements, not by competing with, but by maligning and attempting to restrict the secondary market. This occurs to eventual detriment of consumers. Around the country, we see insurers lobby for protectionist laws which restrict the right of assignment. At the same time, some abuse existing consumer protection laws with aggressive business practices which impair consumers' property rights.

Insurers' rhetoric in proceedings like this often transcends advocacy and even spin. For instance, in a recent official statement to another state insurance department, the ACLI categorically represented that any

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discussion of lapse supported pricing and unfair cash values was irrelevant to a conversation about the secondary market because consumers only buy universal life policies for the death benefit. In that communication, the ACLI seemed unfamiliar with the old concept of term life insurance. In any case, such rhetoric is a misstatement designed to distort the issue at the very core of the debate over the secondary market.

Insurers' other arguments about insurable interest and stranger originated life insurance (STOLI) are similarly, and consistently, erroneous. Carriers routinely conflate insurable interest with the right of assignment, even though it is well established in common law and statute that, after a policy is formed with insurable interest, assignment is a fundamental property right which empowers consumers to gain the full value of the product.

As we believe, STOLI (the only acceptable definition of this acronym is "STRANGER ORIGINATED LIFE INSURANCE) occurs when a speculator convinces an insured to take out a policy on her own life as a straw purchase for the benefit of that investor. WE OPPOSE SUCH ACTIVITY. But, the courts have repeatedly held that an assignment subsequent to purchase is not evidence of STOLI unless the insured ceded her property rights in the contract to the eventual assignee as of policy inception. The protectionist NAIC Model, now promoted by insurers radically rewrites this bedrock public policy, by extending the prohibition on settling many policies to five years—regardless of whether STOLI was present at policy inception.

The NAIC Model's five year ban on settlements is inconsistent with core principles of bedrock law and public policy throughout the country, including U.S. Supreme Court precedent, the Florida common law, the Florida Viatical Settlements Act, and the recently enacted Florida insurable interest statute. The two year ban on assignment now in Florida law, the NCOIL Model, the NAIC Model prior to 2007, and most State statutes is a principled waiting period tied to the long-established contestability period. These provisions give the consumer marketable title to her asset at the same time—after two years.

The contestability and wet ink periods, combined with the well-established law of insurable interest and the ban on wager policies, both common law and statutory, provide regulators and litigants all the tools necessary to fight STOLI, as demonstrated by a careful reading of the common law. All of the issues and problems presented by STOLI schemes—the purpose and applicability of insurable interest, the dividing line between a permissible exercise of property rights and a STOLI arrangement where a speculator has induced the insured to take out a policy for the benefit of that speculator, etc.—have also been carefully considered and addressed by high courts as they decided the cases which have articulated the rules of insurable interest, STOLI, and property rights for many decades.

The NAIC Model does not ban, regulate, or address STOLI in any way. Unfortunately, and contrary to its supposed intent, it codifies protection for a market defect—shielding carriers' unfair valuation practices from competition. This model law, approved by the watchdogs of the industry, represents upside-down policymaking: Regulation is intended to remedy, not support market defects, and it is nonsensical and thoroughly anti-consumer to shut down free market innovations which empower consumers by allowing them to bargain on even footing with insurers. Insurance laws are supposed to respond to consumer

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complaints or other such proven harm. No such problems which are addressed by a five year ban were identified during the NAIC process; instead, only carriers' desire to avoid competition drove the process.

As the Executive Director of the Florida Consumer Action Network, an NAIC Funded Consumer Representative, told the NAIC A Committee: "Restricting consumer rights on what they can do with their policy clearly robs the consumer of much value from the policy. While we do not object to restrictions during the first two years, while the policy is contestable, after that, it should be the policy owner's choice, not the sellers'. We oppose efforts to lengthen this to five years or prohibit life settlements for five years. This opportunity to sell the policy, for any reason, allows the consumer to get full value from the policy. Anything less only adds to the bottom line of the insurers at the expense to the consumer, and is a hidden cost." (Attachment 35.)

Even life insurers admit that the NAIC Model does not do what it purports to do. The ACLI itself flatly stated that the NAIC Model and its five year ban on settlements "failed to address the fundamental concerns with STOLI." (Attachment 33.) The carriers only supported the Model after the author of the bill told them that he opposed an anti-STOLI bill but would provide them with an anti-settlements bill. A series of unvetted rewrites to the NAIC Model—which violated the scope of the charge given to the A Committee (which pertained only to STOLI) and which violated the NAIC's rules regarding open drafting of models by working groups (which prohibit the unilateral handing down of drafts by committee chairs without principled justification for his policy choices)—impair life settlements with unjustified provisions like excessive rescission periods, unprecedented broker bonding requirements, and required disclosure of providers' relationships with their investors. The NAIC Model thus serves life insurers' purpose by impairing competition from the secondary market, despite the ineffectiveness of its anti-STOLI provisions.

Because it is fundamentally flawed, the NAIC Model has been mostly unsuccessful in the political arena. Even though both the ACLI and the NAIC have put enormous energy and resources into passing it, the NAIC Model was rejected by NCOIL and by the vast majority of state legislatures that have considered it in 2007-2008. Instead, of the 13 new state laws adopted in 2008 so far, 10 were based on the NCOIL Model. In all but one of those 10 states, the legislatures considered – and rejected – the NAIC Model Act. And New York and California, which refused to even consider the protectionist NAIC Model, are poised to adopt legislation this year based on the NCOIL Model.

The primary answer to the STOLI problem lies in enforcement of existing law – not enactment of anti-consumer and anti-competitive bans on consumers' property rights. If Florida deems it necessary to consider additions to its code, we urge the state to base any action on the NCOIL Model, or the recent broadly approved legislation which has moved to the verge of passage in California, and which hews closely to the stated goals of insurers and LISA of attacking STOLI while protecting property rights.

We would also urge that rather than considering ill-conceived legislation which would impair the right of assignment that all Floridians enjoy in their life policies, the OIR, as the enforcer of the laws, should dig down on the real facts of improper and probably already illegal market conduct designed to impair the secondary market. As discussed below, "stranger owned life insurance" is the natural outgrowth of policyowners' fundamental property right to sell their policies on the open market. Life settlements are NOT STOLI.

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Unfortunately, some insurers are today engaging in a variety of unwise business practices—many of which tread on the Florida Unfair Insurance Trade Practices Act—which are designed to attack consumers' right of assignment. As discussed below, despite the UTPA's ban on false and/or misleading advertising, insurers induce consumers to purchase life insurance policies with public promises of full service from their agents, who have the entirely proper authority under their licenses to broker settlements, but secretly prevent their agents from providing such full service to their clients with bans on settlement activity. Occasionally insurers even mislead their own agents by providing false information about settlements or confusing settlement activity with other illicit activities or other laws.

Insurers also engage in a variety of activities designed to scare their own customer consumers away from settlements based on their resulting loss of death benefits with extreme scare tactics which are not employed in similar situations upon lapse/surrender. We believe that this may violate some provisions of the anti-twisting section of the Unfair Trade Practices Act. We have also recently seen an insurer use policy forms which prevent assignment to purchasers without insurable interest. If such forms are widespread, they would represent a clear violation of the OIR's stated policy that such market conduct violates the UTPA. Extensive documentation which has come to our attention suggests that insurers may even be colluding against applicants who use non recourse premium financing which uses the secondary market value of the policy as collateral for the loan—despite the UTPA's clear language banning boycotts.

All of this is startling given our clear understanding that the phenomenon of STOLI (properly conceived and defined as Stranger Originated Life Insurance) has been addressed by good work in the underwriting process of insurers, and is declining. Today, we see many approved carrier finance programs which themselves might be unintentionally confused with STOLI in the hot rhetoric of the past years, and this is surely not our intent nor is it the intent of the carriers with whom we have spoken informally. We, the agents, and the insurers share the goal of maximizing consumer options and benefits. If we fail to pursue this goal, we will all fail in our purpose. But the goal will not be achieved by poorly crafted or rhetorically driven legislation in Florida. LISA's concern is that demagoguery about STOLI should not serve as a pretense for passing legislation which does not stop STOLI and does not protect insurable interest—but does impair property rights by restricting the right of assignment and allowing for other abuse of consumers.

What STOLI Is—And What It Is Not

This important proceeding is entitled: "Informational hearing to discuss and receive public comment on the business arrangements variously called stranger owned life insurance, stranger-oriented life insurance, stranger originated life insurance or speculator initiated life insurance." These labels provide an appropriate place to start our submission, since they provide a window through which to study the long standing and controlling legal and public policy norms which pertain to life insurance, insurable interest, wager policies, and property rights.

"Stranger originated life insurance" and "speculator initiated life insurance" are illegal as a violation of insurable interest under long-standing Florida law, including the recent codification. As long as the policy was not **originated** or **initiated** by a stranger, however, "stranger **owned** life insurance" is explicitly condoned in controlling Florida insurance law and long standing public policy as an appropriate and

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necessary outgrowth of the original policyowner's property rights. (Stranger oriented life insurance is an imprecise term which we would avoid since it really does not convey any relevant meaning.)

STOLI cannot be the mere ownership by a third party, which can be done through a life settlement or other lawful assignment or transfer. It must be the manufacture by a stranger – an investor – who lacks insurable interest at policy inception. Simply stated, life settlements are not – and cannot be – STOLI. Equally, legitimate loans, where the policy is assigned as collateral, cannot be STOLI. Even today, just before the start of this hearing, the confusion was accentuated by a release from the National Association of Insurance and Financial Advisors who said: "it plans to testify against stranger owned life insurance".

Twin Pillars: Insurable Interest And Property Rights In U.S. And Florida Law

It is long standing public policy throughout the United States, including Florida, that a life insurance policy cannot be initiated without insurable interest. An insured has an unlimited insurable interest in her own life to take out a policy and name whomever she chooses as beneficiary. A person or entity other than the insured can only take out a policy on that insured with insurable interest, which roughly speaking means an interest engendered through love (family member) or financial ties (business partner, high-ranking employee, creditor-debtor, etc.) which gives the initiator of the policy in interest in the continued life of the insured. (Or, as most state insurable interest statutes put it, if a person other than the insured takes out the policy, then the beneficiaries must have insurable interest.) **And, most relevant to our discussion today, insurable interest is only necessary at policy inception. After policy inception, insurable interest is no longer necessary, and, in order to ensure full value to the consumer, the policy becomes an alienable asset.**

The United States Supreme Court laid out the basic rules for insurable interest, wager policies, and property rights in life insurance policies in a series of decisions.

In *Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457 (1876), the Court explained what insurable interest is and when it is necessary. "It will be proper, in the first place, to ascertain what is an insurable interest. It is generally agreed that mere wager policies-that is, policies in which the insured party has no interest whatever in the matter insured, but only an interest in its loss or destruction-are void, as against public policy." The *Schaefer* Court explained the basic concept of STOLI: "A man cannot take out insurance on the life of a total stranger." It also flatly asserted that an insured has an unlimited interest in her own life. "It is well settled that a man has an insurable interest in his own life." Most importantly, the Court established that insurable interest is only necessary at policy inception. "But supposing a fair and proper insurable interest, of whatever kind, to exist at the time of taking out the policy, and that it be taken out in good faith, the object and purpose of the rule which condemns wager policies is sufficiently attained."

The Supreme Court in *Warnock v. Davis*, 104 U.S. 775 (1881), further explained: "[I]n all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured."

The insurable interest requirement and the property rights which attach after policy inception are twin pillars. The Supreme Court in *Grigsby v. Russell*, 222 U.S. 149 (1911), definitively held that, after the

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policy is taken out with insurable interest, it is infused with a bundle of property rights, and is no different than other property with respect to its alienability. "[L]ife insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property." The Supreme Court insisted that this is not an academic point, because her right to potential resale is a fundamental part of the bargain that the policyowner strikes in purchasing a life insurance contract. "To deny the right to sell except to persons having such an [insurable] interest is to diminish appreciably the value of the contract in the owner's hands."

The *Grigsby* Court, placing its decision in the context of other property law, very clearly explained that, after a life insurance policy is taken out with insurable interest, the public policy justification for that rule vanishes going forward.

> The danger that might arise from a general license to all to insure whom they like does not exist. Obviously it is a very different thing from granting such a general license, to allow the holder of a valid insurance upon his own life to transfer it to one whom he, the party most concerned, is not afraid to trust.... The law has no universal cynic fear of the temptation opened by a pecuniary benefit accruing upon a death. It shows no prejudice against remainders after life estates, even by the rule in Shelley's Case.

The Florida statutes, discussed by the OIR at its hearing on Aug. 28, follow the same basic rules established in these U.S. Supreme Court cases. The recently passed insurable interest statute was designed to codify existing law, as stated in a drafting note: "[1]**Note.**--Section 2, ch. 2008-36, provides that '[t]he amendments to s. 627.404, Florida Statutes, made by this act are intended to clarify existing law.'" And this statute does hew to the basic tenets of long held law, establishing that :

- An insured has an unlimited insurable interest in her own life to take out a policy for her own purposes. "Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person." Fla. Stat. § 627.404.

- Insurable interest is required for persons or entities other than the insured to initiate the policy. "Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person." *Id.*

- Insurable interest is only required at policy inception. "The insurable interest need not exist after the inception date of coverage under the contract." *Id.*

This is consistent with Florida common law, which holds that, after being formed with insurable interest, however, life insurance policies, like other property, are freely alienable on the open market. "The effect of the assignment of a life insurance policy, which assignment is made in accordance with the terms of the policy, is to place the assignee in the same status with respect to all rights and liabilities under it that the insured occupied before the transfer. It may be said to amount to the substitution for the assured of the assignee as a party to the policy. ... A life insurance policy is a mere chose in action, and ... it may be assigned as other choses in action." *Moon v. Williams*, 102 Fla. 214 (1931). *See also McMullen v. St. Lucie County Bank*, 128 Fla. 745 (1937) ("[I]f the insurable interest existed at the time the insurance was secured, the fact that such interest is later cut off or for other reasons ceases to exist is of not consequence.

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The beneficiary who continues to pay the premiums may enforce collection of the proceeds of the policy. *Grigsby v. Russell et al.*, 222 U.S. 149 .... The rule is also settled that a life insurance policy is a chose in action which may be assigned in the same manner that other instruments of like character are assigned.").

As the OIR indicated at its hearing, the Florida Viatical Settlements Act, Part X of Chpt. 626 of the Florida Code, also lends important guidance to the issues surrounding STOLI and property rights. It condones the process of selling a policy for its market value by defining a viatical settlement contract (Fla. Stat. § 626.9911(10)); specifies that such transactions can take place after the contestability period, when title is clear (Fla. Stat. § 626.99287 ("Contestability of viaticated policies")); prohibits buying (Fla. Stat. § 626.9912) or brokering (Fla. Stat. § 626.9916) policies without a license; establishes extensive disclosure requirements (Fla. Stat. §626.9923) among other protections; and provides the OIR extensive authority to regulate the market (including but not limited to Fla. Stat. § 626.9927 and § 626.99272—and an exam power under Fla. Stat. § 626.9922); along with a variety of other consumer protections and powers invested in OIR. It also includes the requirement that providers establish and follow an anti-fraud plan, Fla. Stat. § 626.99278, and a host of other aggressive regulatory provisions.

Fla. Stat. § 627.409 also, as OIR noted, gives regulators and parties a valuable tool to fighting STOLI. As discussed, STOLI takes place at policy inception, so the STOLI inquiry necessarily focuses on what happened during the procurement of the policy. Fla. Stat. § 627.409 provides a focused tool for stopping STOLI on policy applications, since a "misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy" under the enumerated circumstances in the statute.

In other words, the laws on the books address the public policy issues under consideration today, by drawing clear dividing lines between insurable interest, STOLI, and property rights. The public policy considerations in the old common law and today's Florida statutes are consistent throughout. Insurable interest is required at policy inception, and property rights, including alienability on the open market, attach thereafter. *Grigsby v. Russell* held: "So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property." The Florida insurable interest statute and viatical settlement act recognize property rights in life insurance policies, and establish a regulatory system which ensures the Supreme Court's explanation that these property rights are subject to appropriate regulation to ensure "reasonable safety."

<u>High Courts Have Repeatedly Addressed Today's STOLI Issues—What Is STOLI, How Are These Schemes Set Up, What Are The Policy Issues, And What Are The Rules Which Determine Whether STOLI Is Present?</u>

The primary questions implicated by today's STOLI schemes are not new and were in fact addressed repeatedly in the common law.

For instance, NCOIL and NAIC's interest in STOLI was triggered in 2005 by a program where speculators fund premium payments on insureds, who take out the policy on their own lives but enter into an agreement which has the effect of ceding back 95% of the death benefit from policy inception to the speculators, while the insured, in consideration of allowing her insurable interest to be used in this way, is allowed to keep 5% of the death benefit for her chosen beneficiaries. The U.S. Supreme Court addressed what appears to have

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been a similar scheme over 120 years ago in the case of *Warnock v. Davis*, 104 U.S. 775 (1881), where an insured "applied ... for a policy on his life ... and, on the same day, entered into the following agreement with the Scioto Trust Association" under which the insured:

> agrees to and with the Scioto Trust Association that nine-tenths of the amount due and payable on said policy at the time of the death of the party of the first part shall be the absolute property of, and be paid by, said Protection Life Insurance Company to said Scioto Trust Association, and shall be said party of the first part be assigned and transferred to said Scioto Trust Association, and the remaining one-tenth part thereof shall be subject to whatever disposition said party of the first part shall make thereof in his said transfer and assignment of said policy.... In consideration whereof the said Scioto Trust Association, of the second part, agrees to and with said party of the first part to keep up and maintain said life insurance at their exclusive expense, to pay all dues, fees, and assessments due and payable on said policy, and to keep said party of the first part harmless from the payment of such fees, dues, and assessments, and to procure the payment of one-tenth part of the moneys due and payable on said policy after the death of said party of the first part, when obtained from and paid by said Protection Life Insurance Company, to the party or parties entitled thereto, according to the disposition made thereof by said party of the first part in his said transfer and assignment of said policy, subject to the aforesaid lien and deduction.
>
> ...
>
> The policy, bearing even date with the agreement, was issued to [the insured], and on the following day he executed to the association the following assignment....

The *Warnock* Court concluded that this arrangement was an impermissible wager policy, and the *Grigsby* Court later explained the rule which resulted from *Warnock*:

> And cases in which a person having an interest lends himself to one without any, as a cloak to what is, in its inception, a wager, have no similarity to those where an honest contract is sold in good faith. Coming to the authorities in this court, it is true that there are intimations in favor of the result come to by the circuit court of appeals. But the case in which the strongest of them occur was one of the type just referred to, the policy having been taken out for the purpose of allowing a stranger association to pay the premiums and receive the greater part of the benefit, and having been assigned to it at once. *Warnock v. Davis*, 104 U.S. 775.

Grigsby v. Russell, 222 U.S. 149.

These cases, and many others following the same rule, address the question presented by both yesterday and today's STOLI schemes: When has a stranger, who otherwise lacks insurable interest, and is thus unable to take out a policy on an insured's life, hatched a scheme whereby the stranger has effectively taken out a policy on the insured's life by impermissibly abusing the insured's insurable interest in her own life, by means of an agreement whereby the insured takes out a policy on her own life on behalf of and/or for the benefit of that stranger? In other words, has a stranger used the insured as a straw

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purchaser of a policy on her own life in order to evade his or its own lack of insurable interest at policy inception?

This was the question posed in the past, and it is the question posed in today's STOLI schemes: Has a STOLI purveyor induced an insured to take out a policy on her own life for the purpose of benefiting that STOLI purveyor? If so, the STOLI purveyor has violated insurable interest by taking out a policy on an insured without proper insurable interest; in other words, the insured did not really take out the policy on herself, but rather did so for the benefit of the STOLI purveyor at policy inception.

The U.S. Supreme Court explained that such a violation occurs when "the policy ha[s] been taken out for the purpose of allowing a stranger association to pay the premiums and receive the greater part of the benefit, and having been assigned to it at once." These cases, and many others, establish a clear rule for evaluating whether an assignment, subsequent to policy inception, can be understood to have been part of a STOLI scheme. This rule, as explained by LISA in its filing in the 4th Circuit case of *First Penn v. Evans*, incorporates several elements, and requires that a party seeking to establish a STOLI violation must demonstrate that all of the following elements were present: (1) an agreement (2) between the insured and the eventual assignee (3) in place at or before policy inception (4) to transfer the contract (5) to the eventual assignee.

Courts throughout the country have followed this rule, and refused to find that a subsequent assignment demonstrates a lack of insurable interest unless the eventual assignee contracted with the insured—at or before policy inception—for the insured to take out the policy on behalf of that assignee.

For instance, in *Chamberlain v. Butler*, 61 Neb. 730 (1901), the Nebraska Supreme Court, applying *Warnock*, explained:

> Counsel rely upon *Warnock v. Davis*, 104 U.S. 775, 26 L. Ed. 924, as an authority to uphold the judgment of the lower court. That case and this present two very different questions. In that case the insured took out the policy in pursuance of an agreement that a third party, having no insurable interest in his life, should, in consideration of certain payments to be made by it, receive at his death nine-tenths of the insurance money. In the opinion Justice Field says: "The assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name." Under the facts involved in that case the language was appropriate, for there was collusion between the insured and the party to be benefited by his death by a receipt of the amount above mentioned. **But the language is not applicable to this case, for there was no agreement between Butler and Chamberlain, at the time the policy was procured, that the latter should participate in its avails. The transaction with him was wholly independent of and subsequent to the original one between Butler and the insurance company. If their agreement had existed prior to the issuance of the policy, or contemporaneous therewith, then the words quoted would be applicable; otherwise not.** (Emphasis added.).

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This rule is followed over and over by high courts.[1] And it has been uniformly followed by courts recently called upon to address whether the various arrangements in the market are legitimate uses of the property rights of life insurance or have crossed the line to STOLI.[2]

And, just as importantly, it is the clear, understandable rule which is set down by the Florida legislature in 2008 in the insurable interest statute, in the three elements of its first paragraph:

> (1) Any individual of legal capacity may procure or effect an insurance contract on his or her own life or body for the benefit of any person, but no person shall procure or cause to be procured or effected an insurance contract on the life or body of another individual unless the benefits under such contract are payable to the individual insured or his or her personal representatives, or to any person having, at the time such contract was made, an insurable interest in the individual insured. The insurable interest need not exist after the inception date of coverage under the contract.

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[1] *See, e.g., Mutual Life Ins. Co. of New York v. Allen*, 138 Mass. 24 (1884) ("*Cammack v. Lewis,* 82 U.S. 643 (1872), and *Warnock v. Davis* [citation omitted], were both cases in which the policies were taken out, by the procurement of the assignees, in order that they might be assigned to them."); *Steinback v. Diepenbrock*, 158 N.Y. 24, 31 (1899) ("*Cammack* ... and *Warnock* ... were cases where the policies were taken out in order that they might be assigned to the assignees.... In *Warnock's* case the agreement touching the procurement of the policy and the use to be made of it, including the promise to assign it, was in writing, and executed the very day the policy was applied for, and the day following the assured executed an assignment of the policy, which had in the meantime been issued in pursuance of such an agreement."); *Rylander v. Allen*, 125 Ga. 206 (1906) ("[T]he issue of a policy to one who has an insurable interest, and its immediate assignment, pursuant to a preconceived intent, to one without such interest ... is void. ... [T]here are no allegations in the petition in the case under consideration going to show an intention on the part of Allen and Mrs. Rylander to circumvent the law against wagering policies; it not appearing from the petition that Allen, at the time he effected this insurance upon his life, intended to assign the policy to Mrs. Rylander, or that she even knew of his intention to take out the policy."); *Bussinger v. Bank of Watertown*, 67 Wis. 75 (1886) ("All the cases cited by the learned counsel in the courts of the United States were cases where it was evident the original policies were taken out for the benefit of the persons to whom they were immediately assigned, and who in fact paid the premiums on the policy from the beginning. Taking out the policies in the names of the assignors in those cases was clearly a cover for acquiring a wager policy on the life of a person in whom the person really insured had no insurable interest.").

[2] *See, e.g., First Penn-Pacific Life Ins. Co. v. Evans*, 2007 WL 1810707 (D.Md.) ("I agree that the evidence shows indisputably that Moore planned to sell all or most of his life insurance policies at the time he applied for them, but the scheme did not involve other parties working together with him to procure policies and immediately effect their assignment.... There is no evidence that anyone other than Moore was a participant in the scheme at the time Moore obtained the First Penn policy; at the time he procured the policy, he was entitled to do so. Once a policy has been issued, it is an asset of the insured and he or she is free to sell it. *See, e.g., Grigsby, 222* U.S. at 156-57."); *Sun Life Assur. Co. of Canada v. Paulson*, 2008 WL 451054 (D.Minn. 2008) ("[T]he mutual intent of the insured and the third party to avoid the prohibition on wagering contracts determines the existence of such a scheme, purpose, or agreement. [Citation omitted.] The most important factor in determining the parties' intent is 'whether or not the assignment [from the insured to the third party] was done in pursuance of a preconceived agreement.' [Citation omitted.] ... The complaint ... does not allege that a third party intended to purchase the 360 Policy at the time of its procurement, nor does the complaint allege any facts supporting such intent.").

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Fla. Stat. § 627.404.

In other words, a person has unlimited insurable interest in her own life; a person other than the insured must have insurable interest to take out a policy on the insured; and insurable interest only is required at policy inception. This statute closely hews to the rules identified above: Insurable interest is violated if there was an agreement in place at policy inception between the insured and the eventual assignee which resulted in that stranger/assignee effectively taking out the policy on the insured by abusing the insured's insurable interest in herself. That is STOLI. It is, always has been, and always will be, very simple. But, as noted above the confusion continues in press releases.

Opponents of settlements and their allies have sought to impose tortured STOLI rules in the judicial and legislative arenas which would stray from these objective indicators of STOLI. These are a ruse, where legitimate concern about STOLI is twisted in support of bans on settlements which would apply beyond the contestability period.[3] Such laws would not protect insurable interest but instead would only attack consumers' bedrock property rights. This is a perversion of insurable interest law. As LISA explained in its amicus brief in *First Penn v. Evans*:

> Insurable interest is only required—and can only be found lacking—at policy inception. If—at the only possible moment under the law that an infraction can take place—the party who is accused of committing the alleged violation (by taking out a policy on a stranger) was as yet unidentified, and the allegedly illegal contract (the agreement to assign) did not as yet exist, the law cannot possibly have been broken. But First Penn's rule—asserting that a policy is void for lack of insurable interest even when there is no assignee and no agreement to assign at policy inception—would make it so, a wholly absurd result.

We have, in the past, seen many arrangements in the market which likely violate STOLI. Regulators and courts have the tools to address these schemes. In fact, many complaints—of various degrees of merit—have been filed in federal courts in the last two years which use established tools to allege that a STOLI violation has occurred. LISA's concern is that demagoguery about STOLI should not serve as a pretense for passing legislation which does not stop STOLI and does not protect insurable interest—but does impair property rights by restricting the right of assignment. The improved and authorized use of many effective and efficient carrier approved programs for both financing policy purchase and allowing full consumer rights is another piece of evidence of the advances which can be made without interfering with consumer rights.

The common law addresses the basic issues that we confront today. As the Supreme Court explained in *Grigsby v. Russell*, SOLI occurs when "a person having an [insurable] interest lends himself to one without any, as a cloak to what is, in its inception, a wager"—but legitimate use of the subsequent right of assignment should not be impaired, because "[t]o deny the right to sell ... is to diminish appreciably the value of the contract in the owner's hands."

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[3] As discussed below, the two year ban on such arrangements in the NCOIL Model, the original NAIC Model, and most State statutes—including Florida's—is fully consistent with the traditional STOLI rules since they tie the prohibition on settlements to the contestability period, during which time policies do not have marketable title.

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The Secondary Market: A Competitive Response To A Market Defect In Life Insurance Products

The Institutional Secondary Market Grew In Direct Response To Consumer Demand To Respond To The Market Defect Of Universal Life Policies' "Grossly Inadequate Cash Surrender Values"

Further discussion of issues pertaining to drawing the line between legitimate stranger owned life insurance and illegal stranger originated life insurance in today's market must start with an understanding of why and how the secondary market has grown.

As discussed above, the property rights in life insurance policies which are the building block of the secondary market have been bedrock insurance law for well over a century. The disputes which underlay these common law decisions came about as a result of a variety of fact patterns where policies were transferred from a sellers to buyers on an ad hoc basis. The institutional secondary market only developed in the last decade in response to broad consumer demand.

Policymakers must confront what created this demand: Systemic inequity in the universal life products on which life insurers are increasingly focusing their marketing—and deriving profits. These products are characterized by a fundamental market defect: The cash values offered by carriers upon lapse/surrender, in monopolistic, take-it-or-leave-it fashion, frequently lag far behind the actual market value of the policies created by the consumers' premium payments.

As described by Northwestern Mutual Chief Actuary William Koenig, universal life policies

> depend on lapse-supported pricing, a pricing method facilitated by the absence of nonforfeiture requirements. This pricing method is unfair to consumers.... [E]ach time a policy lapses, the company's gain is much larger than would reasonably be expected. ... The vast majority of policyholders who lapse their policies before death are the "losers." They receive much less at surrender than what any reasonable person would perceive as acceptable value. ... Some permanent policies are being sold with grossly inadequate cash values. ... The current environment suggests that if an issuing company does not provide fair value, policyholders will proceed directly to a secondary market--presumably, a viatical company--to get a better deal. There will be a secondary market for these contracts, and this will not be good for the life insurance industry.

William Koenig and Stephen Frankel, "Don't Forfeit Nonforfeiture," Best's Review, June 1, 2000. (Attachment 1.)

Life Insurers' Shocking Assertion That It Is Unfair To Evaluate The Worth Of Permanent Policies By Anything Other Than The Death Benefit

Amazingly, when confronted with the obvious and unassailable fact that the secondary market is simply a competitive response to, and correction of, a market defect which is unfair to consumers, some life insurers disassemble and try to change the subject by building up straw men and repeating questionable anecdotes to deflect the conversation. This troubling behavior reached a new low in a recent official submission to the

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Maine Bureau of Insurance, which is undergoing a similar review of the issues today being studied by the OIR. The ACLI, in purportedly rebutting another submission which raised legitimate concern regarding universal life products (lapse supported pricing and "grossly inadequate cash values," per Mr. Koenig's analysis), stated the following:

> The Memorandum raises the issue of lapse rates in an attempt to confuse legislators with a snapshot analysis of actuarial sciences. It is an argument with no foundation. **Simply speaking, every insured knows that he/she gets full value for the insurance policy they own every minute that he/she is alive. The value a policy owner enjoys from a life insurance policy is knowing that his/her beneficiaries will receive the protection and comfort of the policy death benefit should he/she die during the policy term. People do not buy a policy for its cash surrender value but the protection it affords for unexpected death.** The policy's intrinsic economic value is not always realized through the death of the insured (for which the insured is usually grateful), so naturally some policies are surrendered, and some lapse and others are sold into the secondary market, all depending on the policy owner's circumstances.

ACLI memo to Maine Bureau of Insurance, Aug. 14, 2008. (Emphasis added.) (Attachment 2.)

This statement is shocking to us. It does not occupy the grey area of spin but rather is a demonstrably false and misleading attempt to misrepresent the very essence of the product promoted by the all insurers, the ACLI's membership.

The notion that permanent life insurance policies should not be evaluated by the fairness of their cash surrender value payouts because the "full value ... a policy owner enjoys from a life insurance policy is ... the policy death benefit," and that "people do not buy a policy for its cash surrender value but the protection it affords for unexpected death" is fundamentally flawed. It reminds us of the sort of business practices that led in the 1990s to the payment of billions of dollars in settlements and fines by major insurers in a collection of lawsuits and market conduct examinations which questioned the integrity of basic sales practices pertaining to universal life products.

The statements made by the ACLI about death benefit protection providing the full value of life insurance can only be applied to term insurance products. They simply cannot be applied to universal life. Consumers pay billions of dollars in extra premiums for universal life products for investment returns in addition to death benefits. To rebut arguments that suggest that the secondary market is a competitive response to lapse supported pricing and unfair cash surrender values by claiming that the full value that consumers receive—and intend to purchase—in universal life products is death benefit protection just an indefensible assertion, as demonstrated by the following.

Numerous courts have expounded on the differences between term and permanent insurance.

For instance, the ACLI may wish to turn to the federal court in Ohio for a primer on the products sold by its members:

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General principles of life insurance

> This case involves many of the unique attributes of life insurance. There are two basic kinds of life insurance: term insurance, which, as its name implies, provides a death benefit for a specified term of years; and whole life insurance, which provides a death benefit throughout the lifetime of the insured. Term insurance policies are priced on the basis of the actuarially-determined cost of providing the stipulated death benefit during the term of the policy. This is referred to in the insurance industry as the cost of insurance ("COI"). The premium for a term insurance policy includes a profit for the insurance company, but the contract provides no benefits to the insured other than the death benefit. Whole life policies, on the other hand, are customarily priced to permit the accumulation of value in addition to the cost of providing the death benefit. **These policies provide a benefit known as cash value, which may be accessed by the policyholder during the insured's lifetime through policy loans or withdrawals of policy value. The accumulation of cash value within the policy may be likened to a savings account.** ... Many whole life insurance policies have an additional mechanism for distributing benefits to the policyholder, known as dividends. ... Generally, dividends are paid when the insurance company's operating results have exceeded its profit expectations and there are additional funds available for distribution to policyholders. ...
>
> In the late 1970s, a new form of cash value life insurance, known as "universal life," was introduced to the market. In a universal life policy, all of the economic components of the policy are revealed. **The introduction of universal life had a significant impact on the life insurance industry by providing a product that could be marketed with an emphasis on investment goals and returns. With the introduction of universal life, the flexibility of life insurance as an investment vehicle was enhanced and the variations in the kinds of policies multiplied.**

American Elec. Power, Inc. v. U.S., 136 F.Supp.2d 762 (S.D.Ohio 2001) (emphasis added).

Contrary to the ACLI's assertion that the "full value" of **universal life** policies comes from the consumer "knowing that his/her beneficiaries will receive the protection and comfort of the policy death benefit should he/she die during the policy term," and that "[p]eople do not buy a policy for its cash surrender value but the protection it affords for unexpected death," the Ohio federal court clearly explained that these phrases nicely describe the way **term life** is designed and marketed—but are simply inadequate to describe permanent insurance policies, which are explicitly designed and marketed with separate death benefit and investment components—a distinction drawn even more clearly with the advent of universal life, with which "the flexibility of life insurance as an investment vehicle was enhanced."

In a similar description, New York State's highest court explained:

> Cash value life insurance combines "pure" life insurance **with an investment component that creates a potential accumulation of money in the policy.** [Citations omitted.] In a cash value policy, the carrier typically invests accumulated money and pays returns to the policyholder in the form of dividends or interest (Downes and Goodman, *op. cit.*, at 81). When cash value insurance first emerged, insurance companies invested accumulated money exclusively in conservative securities with fixed interest rates, such as municipal and

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> corporate bonds [citation omitted]. Commentators point out that because interest rates "soared" in the late 1970s and early 1980s, the economics of these cash value life insurance policies became unattractive to investors who sought to take advantage of the high interest rates [citations omitted] **In the mid- 1980s, the life insurance industry reacted to its diminishing market share by designing policies, like the ones here at issue, in which policyholders' accumulated money is tied to the current rate of interest [citation omitted].**

Gaidon v. Guardian Life Ins. Co. of America, 94 N.Y.2d 330 (1999) (emphasis added).

The New York high court again clearly explains that term life is "pure" life insurance—where the "full value" reaped by the consumer is death benefit coverage—and that much of the value of permanent policies like universal life comes from their investment component. This has been recognized over and over by the courts. *See, e.g., U.S. v. Mitchell*, 349 F.2d 94 (5th Cir. 1965) ("In the typical whole-life level premium life insurance policy, the annual premium is used for three purposes: current insurance protection, costs and a profit to the insurer, and as the principal of an investment on which interest accrues until maturity."); *Young v. C.I.R.*, 1995 WL 471390 (U.S.Tax Ct. 1995) ("In the typical split-dollar arrangement, an employer and an employee, or a corporation and a shareholder, jointly purchase a life insurance contract in which there is a substantial investment element. ... The insured employee or shareholder pays the portion of the annual premium that covers the annual risk charge and the administrative charge (the current cost of insurance coverage; i.e., term life insurance coverage), while the employer or the corporation pays the portion of the premium that relates to the investment component. .... Generally, the employer or the corporation is entitled to recover, out of the policy proceeds, an amount equal to the cash surrender value of the policy or at least an amount equal to the payments made by the employer or the corporation; i.e., the investment component. .... The insured's beneficiary is entitled to receive the balance of the policy proceeds; i.e., the risk component."); *Bowes v. Travelers Ins. Co.*, 173 F.Supp.2d 342 (E.D.Pa. 2001) ("As explained by The Travelers, universal life insurance, as opposed to term life insurance, combines life insurance with an investment component. '[T]he cost of insurance and expense charges are deducted from the premiums paid and the excess monies are credited with interest.'").

And many of the courts which established the fundamental property right to alienate a policy on the free market for its full value have pointed toward the investment component of life insurance policies as a prime reason why these property rights are essential. For instance, in the seminal case of *Grigsby v. Russell*, the Court grounded its holding establishing the free right of assignment of life insurance policies in the economic reality that "life insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property."

The Michigan appellate court cited *Grigsby*, quoted the passage above, and then further explained:

> The purchaser of ordinary life insurance, as distinguished from casualty or property insurance, buys not only indemnification in a specific amount against a particular peril or potential loss but also makes an investment. To terminate the rights of the owner or beneficiary of ordinary life insurance because the relationship to the life insured has changed, perhaps after many years of making premium payments, at a time when death is bound to be more imminent than it was at the time the policy was issued, would not only adversely affect

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this investment quality of life insurance but would also confer an unanticipated and unwarranted windfall on the insurer.

Secor v. Pioneer Foundry Co., 173 N.W.2d 780 (Mich. App. 1969).

Bankruptcy courts have in a very practical way demonstrated the difference between term and permanent policies. As explained by the federal bankruptcy court in Florida, "Courts have consistently held that expenses are not reasonably necessary for the maintenance of the debtor, and denied confirmation of a plan, where the expenses are for luxury goods and services, investments, investment property, or where the expenses are clearly excessive." *In re Presley*, 201 B.R. 570 (Bkrtcy.N.D.Fla. 1996). In applying this rule, bankruptcy courts have consistently distinguished between term and permanent policies, ruling that the former can be understood to be "reasonably necessary"—but that premiums attributable to the savings component of the latter cannot, because they are inherently investment products. *See, e.g., Id.* ("[T]erm life insurance is not an investment asset."); *In re Williamson*, 296 B.R. 760 (Bkrtcy.N.D.Ill. 2003) ("The courts that have found payments for life insurance to be reasonably necessary have done so only to the extent that the policy does not have any investment or cash value component."); *In re Smith*, 207 B.R. 888 (9th Cir.BAP (Idaho) 1996) ("Some types of life insurance are indeed mainly estate planning devices which ought to be treated as retirement contributions. However, other types of life insurance are intended to legitimately protect the debtor's dependents from destitution if the debtor were to die."); *In re Husemann*, 2001 WL 1757048 (Bkrtcy.D.N.H. 2001) ("The focus of the Court's inquiry is whether the policies are reasonably necessary for the support of the debtor's dependents. [Citations omitted.] Here, the Debtor has explained that he is in a high risk occupation which results in higher premiums and that his various insurance policies have no cash value to them."); *In re Heffernan*, 242 B.R. 812 (Bkrtcy.D.Conn.,1999) ("Even accepting the need for the additional insurance provided by this policy, the court cannot consider the 'savings' portion of the premiums, the portion applied to increase the policy value, as an expense that is necessary for the support of the debtors. [Citation omitted.] (To the extent that life insurance premium payments are attributable to the savings or investment component of a whole life policy, they may not be excluded from disposable income.).").

If the ACLI does not believe the courts' categorical and repeated findings that the ACLI's statements that the value that consumers pay for in universal life products goes far beyond the death benefit, perhaps it should peruse its members' websites, where it would find the following descriptions of product offerings:

- Phoenix, "Life Insurance Basics": "First, a Few Familiar Terms. At its core, life insurance policies allow you to choose a beneficiary -- generally a family member, business or institution -- to receive a payment upon your death. **And then the features begin to diverge:** Permanent life insurance can provide coverage for your entire life (as opposed to a specified term). **Permanent life insurance offers tax-deferred accumulation and income tax free death benefit.** Universal, variable universal and whole life insurance are all forms of permanent life insurance. ... Term life insurance provides you with coverage for a specified period of time. **Term life offers pure insurance protection -- it does not accumulate cash values**." (Emphasis added.) (Attachment 3.)

- Transamerica. "Term Insurance. If you die during the term, your beneficiary is paid the coverage amount subject to your policy terms. **Because it provides 'pure' insurance without any cash value accumulation, term coverage is generally less expensive initially than permanent**

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coverage. Term insurance provides a great answer to the question: How will your family manage financially if you die prematurely? ... About Universal Life Insurance **Universal life is a permanent insurance product in which the internal policy charges and interest crediting components are specifically broken out separately in the policy. Universal life insurance cash value is dependent on the investment returns credited.** With certain limits, the policy owner can choose the premium he or she wishes to pay and this determines how the policy values develop. The policy owner benefits from current investment and expense experience." (Emphasis added.) (Attachment 4.)

- MetLife. **"Why Guarantee Advantage UL?** Guarantee Advantage UL can offer you and your loved ones the following: **Guarantees:** Lifetime guaranteed protection for you. Lifetime guaranteed monthly income for your family." (Attachment 5.)

- ING. "**Universal life insurance also has a 'savings' feature, called cash value.** Each payment you make to the contract pays for your insurance coverage and then the excess is invested to build cash value that you can use in the future. The insurance company invests this cash value and credits interest to this account. Most UL contracts also offer a guaranteed minimum interest rate so you always know that your money will earn a minimum amount. The cash value in your account also grows income tax-deferred allowing it to accumulate faster." (Emphasis added.) (Attachment 6.)

- AXA. "**Term Life is the simplest form of life insurance. Coverage is for a specified period of time (the term) and provides a death benefit only**. ... **Universal life is permanent insurance that provides protection in case of death, as well as a savings or cash value component.** The cash value of a universal life policy is based on the amount of premiums you pay, the declared interest crediting rate and the policy charges of the insurance company." (Emphasis added.) (Attachment 7.)

- Columbus Life. "**Universal Life insurance offers the best of two worlds--a set amount of coverage with a tax-deferred, cash accumulation account based on current interest rates**." (Emphasis added.) (Attachment 8.)

- Northwestern Mutual. "This flexibility gives you the ability to match your protection to your needs, whatever they may be down the road. **The cash value can also help you meet a variety of other financial objectives. Northwestern Mutual Custom Universal Life-Accumulator is a flexible premium universal life insurance policy that shares in the investment performance** of Northwestern Mutual's general account." (Emphasis added.) (Attachment 9.)

- Nationwide. "Term life insurance is probably one of the most popular forms of life insurance. In exchange for a premium that stays the same for a specific period, you get a taxfree death benefit. That way, if something happens to you, your family can continue to pay for the things your income provided. ... Universal Life Insurance. With universal life insurance, you can provide a permanent death benefit to those who depend on you while earning cash value." (Attachment 10.)

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- Hartford. "**Term Life. Coverage provides lower premiums for people who cannot afford permanent life insurance premiums**. ... Universal Life. Access to cash accumulation and benefits – Since any earnings are tax-deferred until you withdraw them from the policy, your policy account values have the potential to accumulate faster. **You receive a guaranteed minimum rate of interest on the policy's cash value**." (Emphasis added.) (Attachment 11.)

- Lincoln. "**Universal Life (UL) is permanent life insurance that combines economical death benefit protection with cash value accumulation**." (Emphasis added.) (Attachment 12.)

- Penn Mutual. "Universal life is a type of permanent life insurance. **Permanent life insurance policies combine death benefit protection with the ability to build wealth within the policy, which is referred to as the 'cash value.'**" (Emphasis added.) (Attachment 13.)

- SunLife. "Universal Life Insurance. A more flexible but **intricate type of insurance that combines long term life insurance with an opportunity for tax-deferred savings**.... Payments made, in excess of required cost of insurance, can be **invested** and grow tax-deferred." (Emphasis added.) (Attachment 14.)

- New York Life. "**Universal Life Insurance.** Universal life insurance provides permanent life insurance protection and access to cash values that grow tax-deferred at competitive interest rates." (Attachment 15.)

- Pacific Life. "**In addition to death benefit protection, permanent universal life insurance offers accumulated value to use for supplemental income or other needs**." (Emphasis added.) (Attachment 16.)

- Allstate. "There are two big ways that **permanent is different from term**. First, the policy is meant to last the rest of your life (as long as you make the required premium payments, of course). Second, **part of the money you pay in is set aside in an account where it can grow cash value that you can tap into later on**." (Emphasis added.) (Attachment 17.)

- John Hancock. "Universal Life. Description: - Permanent insurance which has the potential to accumulate cash value. ... When To Consider: - You want the potential to earn a higher rate of return than a whole life account, even though there's a risk that your rate of return could drop." (Attachment 18.)

In light of the above, ACLI's statements with respect to universal life insurance products—in an official submission to a Department of Insurance—that "the value a policy owner enjoys from a life insurance policy is knowing that his/her beneficiaries will receive the protection and comfort of the policy death benefit should he/she die during the policy term" and that "[p]eople do not buy a policy for its cash surrender value but the protection it affords for unexpected death" are very troubling, and undermine the credibility of its policy prescriptions for STOLI.

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The ACLI's Statements And The Florida Life Insurance Solicitation Law

Florida law requires that consumers be given disclosures upon purchasing life insurance which educate them about the differences between products described above. If an insurer asserted, as the ACLI has, that the "full value ... a policy owner enjoys from a life insurance policy" is death benefit protection, and that "[p]eople do not buy a policy for its cash surrender value but the protection it affords for unexpected death," it would likely be in violation of the Florida Code.

Fla. Stat. § 626.99, "Life insurance solicitation," is intended "to require insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for his or her needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration, and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance." It applies "to any solicitation, negotiation, or procurement of life insurance occurring within this state," and is premised on the notion that there are great differences between term and permanent insurance products—with repeated requirements of disclosures about cash surrender values and other financial aspects of policies which differ greatly between term and permanent policies.

This statute requires that: "Any insurer soliciting life insurance in this state on or after October 1, 1980, shall adopt and use a buyer's guide, and the adoption and use by an insurer of the buyer's guide adopted October 1, 1996, by the National Association of Insurance Commissioners in the NAIC Life Insurance Disclosure Model Regulation shall be in compliance with the requirements of this section."

The NAIC Model Regulation states that: "The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration."

The Buyer's Guide which is attached to the Model Regulation includes the following:

> **IMPORTANT THINGS TO CONSIDER**
> 1. Review your own insurance needs and circumstances. Choose the kind of policy that has benefits that most closely fit your needs. Ask an agent or company to help you.
> 2. Be sure that you can handle premium payments. Can you afford the initial premium? If the premium increases later and you still need insurance, can you still afford it?
> ...
> 4. Don't buy life insurance unless you intend to stick with your plan. It may be very costly if you quit during the early years of the policy.
> ...
> 7. Review your life insurance program with your agent or company every few years to keep up with changes in your income and your needs.
>
> **What Is the Right Kind of Life Insurance?**
> All policies are not the same. Some give coverage for your lifetime and others cover you for a specific number of years. Some build up cash values and others do not. Some policies

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combine different kinds of insurance, and others let you change from one kind of insurance to another. Some policies may offer other benefits while you are still living. Your choice should be based on your needs and what you can afford.

There are two basic types of life insurance: **term insurance** and **cash value insurance**.

Term insurance generally has lower premiums in the early years, but does not build up cash values that you can use in the future. You may combine cash value life insurance with term insurance for the period of your greatest need for life insurance to replace income.
Term Insurance covers you for a term of one or more years. It pays a death benefit only if you die in that term. Term insurance generally offers the largest insurance protection for your premium dollar. It generally does not build up cash value.

...

Cash Value Life Insurance is a type of insurance where the premiums charged are higher at the beginning than they would be for the same amount of term insurance. The part of the premium that is not used for the cost of insurance is invested by the company and builds up a cash value that may be used in a variety of ways. You may borrow against a policy's cash value by taking a policy loan. If you don't pay back the loan and the interest on it, the amount you owe will be subtracted from the benefits when you die, or from the cash value if you stop paying premiums and take out the remaining cash value. You can also use your cash value to keep insurance protection for a limited time or to buy a reduced amount without having to pay more premiums. You also can use the cash value to increase your income in retirement or to help pay for needs such as a child's tuition without canceling the policy. However, to build up this cash value, you must pay higher premiums in the earlier years of the policy. Cash value life insurance may be one of several types; whole life, universal life and variable life are all types of cash value insurance.

...

Finding a Good Value in Life Insurance
After you have decided which kind of life insurance is best for you, compare similar policies from different companies to find which one is likely to give you the best value for your money. A simple comparison of the premiums is not enough. There are other things to consider. For example:
• Do premiums or benefits vary from year to year?
• How much do the benefits build up in the policy?
• What part of the premiums or benefits is not guaranteed?
• What is the effect of interest on money paid and received at different times on the policy?
Remember that no one company offers the lowest cost at **all** ages for **all** kinds and amounts of insurance. You should also consider other factors:
• How quickly does the cash value grow? Some policies have low cash values in the early years that build quickly later on. Other policies have a more level cash value build-up. A

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year-by-year display of values and benefits can be very helpful. (The agent or company will give you a policy summary or an illustration that will show benefits and premiums for selected years.)
• Are there special policy features that particularly suit your needs?
• How are nonguaranteed values calculated? For example, interest rates are important in determining policy returns. In some companies increases reflect the average interest earnings on all of that company's policies regardless of when issued. In others, the return for policies issued in a recent year, or a group of years, reflects the interest earnings on that group of policies; in this case, amounts paid are likely to change more rapidly when interest rates change.

It is thus clear that Florida law establishes the fundamental difference between term insurance (for which the "full value" is death benefit protection) and permanent insurance. Florida law very clearly recognizes that permanent policies serve a different purpose than pure death benefit protection, and it requires extensive disclosures to consumers which explain the difference—and the complications and potential drawbacks of permanent policies. Note that there is a specific reference to the downside of lapse: "It may be very costly if you quit during the early years of the policy."

It would not be a stretch to say, then, that if its members are marketing and selling life insurance policies with the same attitude that the ACLI articulated in its public filing to a Department of Insurance, they are likely violating the Florida Life Insurance Solicitation Act. At a minimum, it is clear that Florida law recognizes the starting point for a discussion about the secondary market: The investment purposes of permanent policies raise a host of consumer protection issues, and create a need for a secondary market for life insurance to remedy the market defect (of a deficit between cash surrender value and market value) that some of these products contain.

Insurers' Anti-Competitive Conduct And Florida Consumer Protection Laws

In addition to their trade association's rhetoric, which is inconsistent with Florida law, also troubling are current life insurers' efforts in the market to diminish consumers' property rights through troubling business practices which appear to violate the letter and/or spirit of Florida's Unfair Insurance Trade Practices Act.

Insurers publicly induce consumers to buy their policies by promising that their agents will provide full service commensurate with their policyowners' needs—but privately they forbid their agents from helping consumers access the secondary market value of their policies:

- Prudential promises that its agents "help you make sense of it all," and "provide assistance on a range of financial issues," so that "having a relationship with a Prudential licensed financial professional puts all of his or her experience and skill at your disposal." (Attachment 19.) But all of its agents' skills are NOT at the customer's disposal: Prudential's contracts require its agents to certify "that no Company Policy shall be sold or used in any manner to or with a viatical or life settlement company or be part of a viatical or life settlement." (Attachment 20.)

- Axa says that insurance agents will "help you determine ... how to make the most of your premium dollars" and that "a qualified professional from AXA Advisors can offer you access to an array of

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products and services." (Attachment 21.) But Axa's confidential directives to its distribution network prohibit producers from "using ... written materials with prospective purchasers of life insurance that make any representations about the ability to sell a policy or rights to its death benefits, or in any way promote, propose or orchestrate such a sale." (Attachment 22.)

- New York Life promises potential customers that its agents are "professional problem solver[s] who can help you identify the most cost-effective products to help you meet your financial objectives"; that they "provide[ ] a full range of services"; "serve as a quarterback for you and the other members of your team of advisors"; and "monitor progress, provide ongoing service as your needs and situation change over time. This is crucial. Planning is not a one-shot deal. Strategies need to be adjusted periodically. Your agent will work with you over the years to help keep your program on track with your changing needs." (Attachment 23.) But, contrary to the substance of these promises, New York Life has prohibited its agents' participation in life settlements, warning them that "you may not obtain forms or papers for the transaction, accompany a client to a meeting with a life settlement broker or provider, evaluate any proposals they receive from a life settlement company." (Attachment 24.)

We do not complain to the OIR about the confusion of these statements but rather their legality or possible lack thereof. When insurers induce consumers to buy their products by publicly promising that their life insurance agents will provide a full range of services, but then covertly prohibiting these agents from counseling their clients about a life settlement, they appear to be engaging in false and/or misleading advertising. Florida law specifically contemplates that life insurance policies come with the fundamental property right of alienation. These carriers are using forms approved by the State of Florida which contain assignment and change of ownership clauses which bring these property rights to fruition. And the Florida Code specifically makes the function of life settlement brokers part of the authority of a life insurance agent's license, with the agent granted the power of self-appointment. *See* Fla. Stat. § 626.9916 ("a person, other than a life agent licensed under this chapter, may not in this state, from this state, or with a resident of this state perform the functions of a viatical settlement broker.... Before performing the functions of a viatical settlement broker, a life agent shall appoint himself or herself with the department.").

Given this legal framework, the promise of their agents' full and comprehensive service, coupled with carrier interference with and prohibition of precisely such services, would appear on its face to put carriers in violation of the broad prohibitions against false and/or misleading advertising in the Florida code. *See* Fla. Stat. § 626.9541(1)(b) ("Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public ... [i[n any ... way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.")

And untrue and/or misleading statements by carriers about the secondary market are routine. For instance, New York Life, in trying to scare its customers away from life settlements, casts untrue aspersions against secondary market providers by telling policyowners that, after a life settlement, "[t]he new owner will name a beneficiary, who will collect the income-tax-free proceeds on your passing." (Attachment 25.) This is flatly false: The tax benefit does not travel with the policy in a life settlement.

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Insurers pile on misleading warnings to scare consumers from life settlements. New York Life shouts that settlement providers are practically stealing policies from their customers, rather than paying these policyowners several times the cash surrender value of their asset in competition with lapse: "What if you die suddenly? Without death benefit proceeds, will your loved ones have enough to help settle debts, avoid selling assets to pay bills and taxes, and run the household? They had better because only the life settlement company will gain at your death." (Attachment 25.) MassMutual will not process a change of ownership in a life settlement unless the consumer signs a series of affirmations about the results of the settlement, including admitting: "I am forfeiting a financial asset that probably has a higher rate of return than any other asset in my estate." (Attachment 26.)

Almost 90% of their policies lapse/surrender without paying a claim, but companies focus severe hyperbole—casting settlement providers as dishonest—about loss of death benefits upon the rare occasion of a life settlement. MassMutual provides a whole page of special disclosures about the loss of death benefits resulting from a settlement, but makes no such warnings at all in its surrender forms. (Attachment 26.)

The UTPA also prohibits "twisting": "Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which ... Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy," Fla. Stat. § 626.9451(1)(6); or "[k]nowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer," Fla. Stat. § 626.9451(1)(l). Some if not all of the practices discussed herein appear to be misrepresentations designed to push consumers away from life settlements and toward lapse.

Another troubling area of carrier behavior pertains to potential collusion between competitors in the primary market. The CEO of a major insurer stated on an earnings call: "We have the top 30 life company CEOs that are on the American Council of Life Insurance Board have all agreed that we will not write ... stranger owned life insurance.... So the big companies have all agreed to no longer write it. Starting we made that agreement in early 2006." (Attachment 26.)

This does accurately describe what carriers were doing in 2006. A survey circulated through the industry asked whether 20 of the largest carriers would issue a policy when the consumer used a non recourse premium finance loan secured by the policy's value on the secondary market. (Attachment 27.) Six carriers indicated they would, then quickly reversed their practices to conform with the others. (Attachment 28.) One put out a directive to its agents saying that it was "chang[ing]" its position—refusing to issue policies supported by non recourse loans—in order "to support this industry-wide stance." (Attachment 28.)

This concerted agreement not to compete appears to directly violate the plain language of Fla. Stat. § 626.9541(1)(d)'s prohibition against "[e]ntering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance."

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Carriers are also now apparently using policy forms which flout the OIR's stated position regarding the right of assignment. We recently received a copy of a policy purportedly in use by Ohio National which flatly prohibits the use of the contract in a life settlement. Its Assignment Clause states: "We will not allow an Assignment that, in our sole opinion, could result in the transfer of any rights or benefits payable under this contract to a person, entity, or trust that does not have an insurable interest in the life of the Insured at the time of the requested Assignment." (Attachment 29.)

LISA has previously corresponded with the OIR about just such a contract, and was given the following written response from Rich Robleto on behalf of the State, "in response to [LISA's] letter ... concerning insurance contracts that include limitations on the right of assignment. More specifically, your letter addresses policy language that prohibits the policy owner from viaticating the policy. The Florida Department of Insurance would also be concerned with contract language that places a limitation on policy owner rights to assign the benefits or ownership of the policy. At this time we are not aware of any approvals of the type of contract language that you have described. We appreciate you taking the time to write ... and support the NAIC in addressing any form of unfair trade practice." (Attachment 30.)

Ohio National's policy, if it is being used in Florida, would thus on its face appear to violate the UTPA based on the clear policy articulated by the OIR.

Other carrier practices which are troubling include denying coverage to applicants for insurance based on the consumer's stated intent to use non recourse premium financing to pay for the coverage. Fla. Stat. § 626.9541(g) prohibits "knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life," and this has consistently been interpreted by the courts, applying similar statutes, to prevent discrimination on factors other than mortality. *See, e.g., Trapp v. Metropolitan Life Ins. Co.*, 70 F.2d 976 (8th Cir. 1934) ("[t]he purpose of the antidiscrimination statute is to secure to the purchasers of life insurance, of the same age and condition of health, equality of treatment with respect to premiums and coverage."); *Mahone v. Hartford Life*, 561 P.2d 142 (Ct. App. Ok. 1976) ("If the decedent, for example, had been singled out from the class of employees of similar life expectancy, and had been denied the right to benefits accorded the others, or forced to pay more for these benefits than the others, the statute would have been violated."). And the Florida courts have specifically held that unfair discrimination occurs when consumers are grouped differently based on their paying status. *See, e.g., Afro American Life Ins. v. LaBerth*, 136 Fla. 37 (Fla. 1939) ("provisions in life insurance policies which discriminate between borrowing and non-borrowing insurants ... have, in most cases where the question has arisen, been held to be invalid, ... in that they violate a statute prohibiting discrimination between insurants of the same class."); *Praetorians v. Fisher*, 89 So.2d 329 (Fla. 1956) ("But the provision of the policy ... operates very differently upon borrowing and non-borrowing insurants in otherwise identical situations, and our inquiry must be whether the difference in treatment is justified by the difference in status.")

We respectfully request that the OIR carefully review carriers' market conduct and evaluate these practices for compliance with the UTPA and/or other controlling consumer protection laws. If the OIR determines that it does not have authority to act against these anti-consumer practices, we suggest that it consider supporting legislation which directly addresses these attacks on property rights, such as:

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- **A prohibition under the law on carriers prohibiting their agents from assisting their clients with life settlements.** As discussed above, life agents, after executing a simple self-appointment, have the authority under their licenses in Florida law to act as settlement brokers. Particularly since carriers advertise that one of the benefits of their policies is the full service of their agents, such a requirement as proposed above is fully consistent with the letter and spirit of prevailing public policy in Florida.

- **A requirement that consumers who are lapsing, surrendering, considering a loan or otherwise contemplating the disposition of their policies be informed of the option of a life settlement.** Florida law requires the mirror disclosure upon settlement. *See* Fla. Stat. § 626.9923(1), requiring that "[t]he viatical settlement broker, or the viatical settlement provider in transactions in which no broker is used, must inform the viator by the date of application for a viatical settlement contract ... [t]hat there are possible alternatives to viatical settlement contracts for persons who have a catastrophic or life-threatening illness, including, but not limited to, accelerated benefits offered by the issuer of a life insurance policy." Given that insurers' are aggressively thwarting consumers' efforts to settle their policies, and that the law requires that other options be disclosed upon settlement, is it not appropriate for the law to require disclosure of the settlement option in kind?

- **A prohibition under the law against insurers or agents issuing any form or requiring any owner of a policy to sign any form that is not prescribed in the settlement law.** The legislature has already set forth in the Florida code all the consumer protections requisite to a policyowner's selling of her policy, including a long list of disclosures carefully designed to address the particular risks of a life settlement. As discussed above, under the guise of providing helpful information, insurers are scaring their customers away from settlements while providing no commensurate warnings regarding lapses. To prevent against twisting or the promotion of false or misleading information, no other forms or information should be permitted to be used.

Public Policy Questions Going Forward

The two year prohibition on settlements in the NCOIL Model, the original NAIC Model, and most States, including Florida, follows the dictates of the common law. *Grigsby v. Russell* explained that, "[s]o far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property." A two year prohibition on policy sales implements the Court's vision of "reasonable safety" given concerns in today's market about the potential for clean sheeting and wet ink abuses, and is a reasonable restriction on property rights, as described below.

Two years is a principled period of time tied to one of the most fundamental cornerstones of public policy pertaining to life insurance: the two year statutory[4] contestability period. "[T]the purpose of this statute is

[4] Fla. Stat. § 627.455 ("Every insurance contract shall provide that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of disability and as to provisions which grant additional insurance specifically against death by accident or accidental means.")

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to create a reasonable time period during which insurance companies can investigate applicants and void policies issued in error, while protecting consumers from untimely efforts to void policies." *Bankers Sec. Life Ins. Soc. v. Kane*, 885 F.2d 820 (11th Cir. 1989). *See also American Life Ins. Co. v. Martinez*, 480 F.3d 1043 (11th Cir. 2007) ("[I]ncontestability clauses function much like statutes of limitations. While they recognize fraud and all other defenses, they provide insurance companies with a reasonable time in which to assert such defenses, and disallow them thereafter.").

Statutes prohibiting settlements for two years and prohibiting contestability after two years fit seamlessly together, guaranteeing that the policyowner as of a date certain holds fully marketable title to her asset and thus perfecting her property right. The NAIC minutes, not surprisingly, clearly and repeatedly demonstrate the drafters of the original NAIC Model's intent to tether these two concepts, including Florida's clear recognition that the two year proposal was based on the contestability period.[5] In fact, the tie between wet ink and contestability was so well understood that a member of the NAIC Viatical Settlements Working Group who had participated in all of the discussions on the issue asserted that the waiting period for settlements in the original Model was not a two-year ban but rather a ban on transfer during contestability. "Mr. [Bill] McAndrew [Illinois DoI assistant deputy director] said that the drafting of the model act may have not been correct. The key is not whether the policy has been held for two years, but rather whether it is in the contestability period." NAIC Viatical Settlements Working Group minutes, June 21, 2003. (Attachment 31.)

And, more to the point, the Florida code implicitly recognizes that the two year prohibition on settlements is designed to mirror statutory contestability: The title of the provision which imposes the two year prohibition on settlements is entitled "Contestability of viaticated policies." *See* Fla. Stat. § 626.99287 ("**Contestability of viaticated policies.**--Except as hereinafter provided, if a viatical settlement contract is entered into within the 2-year period commencing with the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party.").

The tie between contestability and the so-called "wet ink" period has always been clear. When the five year ban on settlements was originally proposed at the NAIC in May, 2006, it was referred to in the minutes as an extension of the contestability period.

> Commissioner Poolman asked the panelists' opinions on addressing the issues involved with the two-year incontestability provision. ... Mr. Cook expressed support for Commissioner Poolman's proposal to extend the incontestability period to five years. ... Mr. Newton stated that he would be opposed to extending the incontestability period to five years, as suggested by Commissioner Poolman.

NAIC Life Insurance and Annuities (A) Committee minutes, May 3, 2006. (Attachment 32.)

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[5] *See, e.g.,* Viatical Settlements Working Group minutes, Jan. 18-19, 2000 ("Mr. McCarty reminded the group that Ms. Spiezio [life insurance trade association lobbyist] had suggested limiting transfer during the contestability period."); Life Insurance and Annuities Committee minutes, March 6, 1999 ("Sale of newly issued policies (also known as 'wet paper') 'Wet paper' is a life insurance policy that is still in its contestable period.").

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NCOIL rejected the five year ban in large part because it separated the "wet ink" period from the contestability period. NCOIL Vice President, Rep. Robert Damron of Kentucky:

> The two year ban in the NCOIL model, and in every State law except one, is a principled waiting period tied to the statutory contestability period. The two year waiting period, which until June 2007 prevailed for years in the NAIC model, was established after lengthy, detailed, and thoughtful debate by a working group when it was adopted by the NAIC in 2000. Other lengths of time were considered by the working group, and rejected in favor of tying the waiting period to contestability. A five year ban impairs property rights by banning legitimate life settlements and legitimate premium finance arrangements. The tie between the waiting period on life settlements and contestability is fundamental.

(Attachment 33.)

The "principled waiting period" of two years is obliterated by the NAIC Model. The five year ban on settlements is arbitrary and capricious, and its supporters have yet to articulate how it addresses identified problems in the marketplace. The five year ban is a shotgun approach which, instead of identifying and banning problem behavior, is specifically designed to distort the free market by imposing disincentives to capital investment in the secondary market.

Proponents of the NAIC Model point to the purported exceptions to the five year ban, but these only underscore the bill's hostility to basic consumer property rights in life insurance. One exception exempts non recourse premium finance loans from the five year ban only to the extent that they are secured by cash surrender value (insurers' preferred method), while punishing consumers who secure their loans up to market value (competing with insurer programs). (NAIC Model, Sect. 11(A)(3)(a).) This is an unprecedented codification of a preference in the law for cash surrender value over the salutary workings of the free market.

The NAIC Model also deny the safe harbor of a two year waiting period to consumers who have the temerity to appraise the value of their policy. (NAIC Model, Sect. 11(A)(3)(c).) Purchasers of homes, autos, jewelry, and stocks base purchase decisions on the asset's resale value, but, contrary to well-established law which holds that life insurance policies are the same as other property, policyowners who seek to even the playing field and the information gap between themselves and their insurers are punished for appraising their asset.

In fact, the NAIC Model's focus on attacking true non recourse premium financing (where the loan is secured by the market value rather than the cash surrender value) demonstrates an improper desire to attack the secondary market and protect a market defect. Non recourse premium finance loans are made possible by the presence of the secondary market, which allows lenders to assess whether a policy's market value is high enough such that no further collateral is needed. This is fully consistent with existing law. In *Steinback v. Diepenbrock*, 158 N.Y. 24 (1899), the court recognized that consumers might borrow against a policy's market value, not just sell their asset for that amount. "[S]ound public policy would seem to require that the payee should be permitted to treat it as he may any other chose in action and go to the best

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market he can find, either to sell it or borrow money on it."[6] But the NAIC Model specifically attacks the consumer's right to "go to the best market he can find" to "borrow money on" his policy.

Just as life settlements are not STOLI, non recourse premium financing is not STOLI. STOLI occurs when strangers arrange to use insureds as straw purchasers of insurance. In a non recourse premium finance arrangement, the consumer retains full control over the policy, and can always take it to the secondary market—"the best market he can find"—as opposed to being tied down to assigning the policy to a particular speculator.

The NAIC Model, quite simply, does not ban STOLI. NCOIL member Sen. Ralph T. Hudgens of Georgia explained:

> [A]mendments to the NAIC Viatical Settlements Model act ... surprisingly do[ ] not address trust structured STOLI. I say that the NAIC's actions are surprising because ... the NAIC Model Act amendments contain[ ] a 'loophole' for this form of transaction ..., despite [the NAIC] having condemned such schemes in a 2005 resolution.

(Attachment 34.)

As revealed by NCOIL, the ACLI agreed. It specifically "insisted" in discussions with the sole author of the NAIC Model that that bill "failed to address the fundamental concerns with STOLI" because it did not ban or even regulate "finance programs permitting investor participation prior to or at issuance where the policy does not settle and the policyowner derives some modest percentage of the death benefit"—what the ACLI, and NCOIL, insisted is true STOLI. (Attachment 33.)

Insurers went along with this anti-STOLI Model which does not do anything about STOLI because, as NCOIL revealed, they were told that they would not receive any other amendments to the NAIC Model if they did not. And, despite the clear charge given to the A Committee to limit its review to STOLI, it presented carriers with a broad attack on the secondary market with a slew of provisions which, having nothing to do with STOLI, rewrote the basic nuts-and-bolts regulation of life settlements found in the existing NAIC Model. Despite the limited charge, dozens of changes were made to the Model, unilaterally

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[6] Consistent with this law, the New York high court shortly thereafter specifically upheld a non recourse premium finance arrangement—where a loan to fund premium payments for the purchase of a new life insurance policy was secured solely by the value of the policy itself—as consistent with insurable interest. In *Reed v. Provident*, 190 N.Y. 111 (N.Y. 1907), the Court explained that "it appears that all of the insurance was procured in pursuance of the contract between [the lender], the assured, and his children. It was to be maintained by [the lender] for their benefit and they were to be named as the beneficiaries; but [the lender] was to be compensated by the repayment from the proceeds of the policies of the amount of his advances of premiums, or assessments, with interest...." The *Reed* Court found insurable interest in two ways: the insured's ability to take out a policy on his life and do with it as he saw fit ("If the insurance is made upon the application of one who has no insurable interest whatever in the life insured, it is a wager policy, that is to say, a speculative contract, which the law condemns. But a person may insure his own life and provide in the contract of insurance that the money shall be payable to any one whom he may appoint, or assign the policy to."); and the lender's insurable interest in its debtor ("The assured was a debtor for the premiums paid by [the lender] to maintain the insurance on his life.").

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by the chair, without the slightest debate or justification (in clear violation of NAIC rules requiring the open drafting of all Model provisions in a working group and the documentation of rationale for all policy decisions). A few examples of the anti-assignment amendments to a Model which was functioning smoothly include:

- Sect. 3(F)(4)(b) requires the demonstration of financial responsibility of viatical settlement brokers in a high amount of $250,000, in the form of a surety bond or cash—but not the traditional method of errors and omissions insurance. Brokers and producers have repeatedly stated that they cannot meet this requirement, which led to many brokers relinquishing their licenses in North Dakota, according to published reports. This will simply make it harder for consumers to access the secondary market, thus reducing the value of their policies.

- Sect. 10(C) doubles of the rescission period for settlement contracts from the previous NAIC Model from 30 to 60 days. Thirty days was an appropriate period of time for a policyowner to decide to change their mind after signing a contract. Balance is necessary, and doubling the period to 60 days will force settlement providers to lower their offers to viators since there is a cloud over the title of the asset.

- Sect. 8(b)(3) requires settlement providers to disclose any affiliations with their investors. This is proprietary information which is not relevant to the transaction. Affiliations between providers and brokers are relevant, since the broker owes the consumer a fiduciary responsibility. But the provider and viator bargain at arms' length, and such a required disclosure is highly irregular.

The NAIC Model fails to ban or even regulate STOLI, and instead attacks the secondary market by prohibiting or restricting currently legal transactions involving changes of ownership and potential changes of ownership. Shockingly, as described above, it codifies protection for a market defect—"grossly inadequate cash surrender values"—while shutting down consumers' ability to use the free market to put themselves on even footing with insurer's monopolistic practices. It does so by equating settlements with STOLI in the five year ban, and by rewriting the existing NAIC Model with a long list of onerous restrictions on the smooth workings of the secondary market.

The nakedly protectionist and anti-consumer leanings of the NAIC Model caused the total opposition of the NAIC Funded Consumer Representatives. The Executive Director of the Florida Consumer Action Network explained in a letter to the A Committee dated May 3, 2006:

> Once a policy is lawfully obtained, and it is beyond the normal two year incontestability period, it is the property of the consumer. For example, once a consumer buys a car, that consumer can sell the car or do anything they wish with it. Imagine a law that said you could only sell your car back to the original dealer for the first five years! You certainly wouldn't expect a very good deal because the dealer knows you don't have a choice. And knowing you're stuck with the car, the dealer can manipulate the original selling price. People wouldn't stand for it. I see no difference between the ownership of a car and the ownership of a life insurance policy. ...
>
> [A]ll those consumers who get nothing when their policies lapse lose their entire investment.

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> Their loss is all gain for the insurers. Perhaps we should be more concerned with those folks and not as concerned with preserving lapse rates. ...
>
> On the issue of consumer intent to settle, I'd like to suggest that knowing that policies lapse is not the exclusive privilege of insurance companies. If a consumer understands that lapse rates, investment returns, and other factors mean the policy has a greater worth and that consumer feels the funds might be better invested elsewhere, we can't preclude them from that decision. Why should only the insurance companies be allowed to profit from the knowledge of how insurance works?

(Attachment 35.)

And the NAIC consumer representative from the Center for Economic Justice called the NAIC Model "a nuclear bomb for the secondary market." National Underwriter, Sept. 11, 2006. (Attachment 36.)

NCOIL was just as hostile to the NAIC Model as were the NAIC consumer representatives. The members of the NCOIL Life Settlements Subcommittee explained in a joint letter that the NAIC model "fall[s] short of our two core goals, which are preventing investors from manufacturing life insurance policies and ensuring that we do not 'impair, or interfere with Life Settlements or Viatical Settlements.'" (Attachment 37.) Georgia Sen. Ralph T. Hudgens criticized the NAIC for "imposing unprecedented restrictions on the right of assignment of life insurance in lieu of encouraging carriers to underwrite for insurable interest and of enforcement of other insurance laws which already protect against wagering policies." (Attachment 34.) And Kentucky Rep. Robert R. Damron explained that the NAIC model "is anti-consumer and is unacceptable because it impairs legitimate life settlements and rolls back private property rights while doing nothing about STOLI." (Attachment 33.)

NCOIL understood that STOLI occurs at policy inception. Rep. George Keiser, the Chair of the Life Settlements Subcommittee stated in the NCOIL press release announcing its newly adopted model: "STOLI occurs at the front-end of a life insurance sale. By defining STOLI, and strengthening reporting requirements and penalties for participating in STOLI, the NCOIL model gets at the heart of what needs to change. We hope that states considering amendments to existing laws, or new life settlements statutes, will be well-served by the NCOIL proposal." (Attachment 38.)

Consistent with the organization's stated goals, the NCOIL Model refrains from the NAIC's gratuitous attacks on the secondary market, instead focusing on STOLI by defining and outlawing the improper manufacturing of life insurance by speculators.

The NCOIL Model suggests in a drafting note that states incorporate the language of *Grigsby v. Russell* which defines an illegal wager into their insurable interest statutes. This directly addresses the problem—identified by the NAIC but not regulated under the NAIC Model—of STOLI arrangements where investors

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fund premium payments and take control of the death benefit through the use of a trust structure which abuses the insurable interest of the insured.[7]

The NCOIL Model also includes a definition of STOLI which several states this year have used as a template for their new anti-STOLI laws. Identifying, defining, and banning the problem: That is what policymakers do. While, as discussed above, we believe that the answer to STOLI lies in existing law, if Florida feels that it needs to use a belt-and-suspenders approach, LISA suggests that it does so by adding to its code the NCOIL insurable interest drafting note and the definition of STOLI (with the friendly amendments, adding clarity, which have been added in states which have rejected the NAIC Model and based their statutes on the NCOIL Model).

The NCOIL Model also fosters the fundamental regulatory goal of creating an informed and responsible consumer. Like many commercial transactions, non recourse premium finance arrangements do have risks which must be weighed against the benefits. The NCOIL model encourages a series of certifications made by, and disclosures provided to, applicants for insurance which directly address the legitimate concerns which have been raised about the potential consequences of using a life insurance policy's market value as collateral for a premium finance loan. The disclosures alert the consumer that a change in ownership can result in a stranger owning a policy on her life; can use up her insurance capacity; can render her later uninsurable; and/or can result in tax consequences. The certifications leave the consumer responsible for affirming, under penalty of false statement, that she has not entered into an arrangement to sell the policy; has not received consideration as inducement to entering the policy; and that the borrower of funds has an insurable interest in the insured.

The NAIC Model, which was designed to protect insurers regardless of the harm to consumers, chose to punish consumers who engage in non recourse premium financing rather than help them. This is upside-down policymaking. That is why:

- The vast majority of state legislatures that have considered the NAIC Model have rejected it.
- Of 13 new state laws adopted in 2008 so far, 10 were based on the NCOIL Model.
- Out of these 10 states, the legislatures specifically considered – and rejected – the NAIC Model Act.

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[7] The drafting note reads as follows: "Trusts that are created to give the appearance of insurable interest and are used to manufacture policies for investors are illegal STOLI schemes. As the United States Supreme Court held, a person with insurable interest cannot lend that insurable interest 'as a cloak to what is in its inception a wager.' *Grigsby v. Russell*, 222 U.S. 149 (1911). Therefore, states should consider adopting an amendment to their insurable interest laws, if necessary, to provide additional protection against trust-initiated STOLI and other schemes involving a cloak, as follows: 'In accordance with *Grigsby v. Russell*, 222 U.S. 149, it shall be a violation of insurable interest for any person or entity without insurable interest to provide or arrange for the funding ultimately used to pay premiums, or the majority of premiums, on a life insurance policy, and, at policy inception have an arrangement for such person or entity to have an ownership interest in the majority of the death benefit of that life insurance policy.'"

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- The state legislatures of New York and California are poised to adopt legislation this year based on the NCOIL Model.

- Despite the NAIC's insistence that its members introduce and actively work for passage of the NAIC Model, a growing number of state regulators are not following the NAIC's own directive to introduce and dedicate resources to the adoption of the NAIC Model. The New York Insurance Superintendent did not include the five year ban in his proposal. The Commissioner of Insurance from the District of Columbia introduced legislation that did not include the wrong-headed 5 year ban or restrictions on legitimate non-recourse premium financing. And the commissioners of Kansas, Kentucky Indiana and Connecticut, most of whom supported state legislation of the NAIC Model, endorsed their own home state legislature's decision to reject the NAIC Model in favor of the NCOIL Model.

Conclusion

We respectfully submit that, consistent with longstanding law and public policy pertaining to insurable interest, STOLI, and property rights, Florida should reject the protectionist, anti-consumer NAIC Model in lieu of enforcing existing anti-STOLI laws; monitoring anti-consumer carrier market conduct; and considering the NCOIL Model with the friendly amendments which have been adopted in the states which passed legislation based on the NCOIL, not the NAIC, Model.

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Don't Forfeit Nonforfeiture.

Best's Review

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Opinion: Eliminating laws that require surrender values for permanent life policies threatens to bruise the life industry--both financially and in the eyes of its customers.

The standard nonforfeiture law, a pillar of life insurance practice since the 19th century, remains a foundation of consumer protection. With some modification, it can serve the best interests of the life insurance industry for years to come.

The need for a standard nonforfeiture law was first identified in the mid-1800s by Elizur Wright, an actuary who was insurance commissioner of Massachusetts. On a trip to England, Wright saw speculators amassing fortunes by buying life insurance policies from the elderly and weak. These policies were bought from people whose savings had been spent and who could no longer pay their premiums. Upon his return to the United States, Wright championed reform by requiring surrender values that would benefit and protect policyholders.

Now, as then, fair nonforfeiture values continue to align the interests of the insured and the insurer. The insured wants good value for premiums paid. The insurer provides good value so policyholders will keep their policies in force, because the company will experience a gain for every year that the insured does not terminate the contract. The longer the contract stays in force, the better everybody does. The core premise of the current standard nonforfeiture law is as true today as it was in 1941 when the Guertin Committee of the National Association of Insurance Commissioners explored nonforfeiture values and concluded that a policyholder's investment in a long-term life insurance contract should be protected.

An NAIC task force will continue discussion of nonforfeiture law at its national meeting this month as some industry actuaries propose to eliminate nonforfeiture requirements. These industry actuaries argue that companies should have total freedom in product design, even if that means discarding such benefits entirely. Among other things, this would clear the way for companies to sell "cash valueless" products--life insurance products that would never build cash values, regardless of the level or number of premiums paid.

Consumer Concerns

The major consumer beef about permanent life insurance involves early surrenders. Since the mid-1990s, the Consumer Federation of America and others have decried the "billions of dollars" that consumers waste on cash-value life insurance when they terminate early. The consumerists' point is that someone who surrenders a cash-value policy in the early years receives a cash value (or nonforfeiture benefit) far less than premiums paid.

We could argue that low early cash values are a logical and necessary result of the structure of permanent life insurance. But we don't see how anyone could rationally expect consumers to embrace the idea of receiving no surrender value at all, at any point in time. Such a response to an apparent

industry vulnerability is akin to pouring gasoline on a fire.

The absence of nonforfeiture requirements has been a major contributing factor to the appearance in Canada of at least two versions of permanent policies without cash values. The proponents of eliminating nonforfeiture laws often point to the Canadian experience as proof that such policies can work. We believe the Canadian experience demonstrates precisely the opposite.

Of these two Canadian products, one is a "term to 100" plan, essentially a whole life policy with no cash values. The other is a universal life version, with annual mortality charges that remain level rather than increase. No nonforfeiture values are associated with these level charges.

What is the main attraction of these plans? It's simple: lower premiums, at least compared with plans offering the same death benefit guarantees with "regular" cash values. These policies, however, have an Achilles' heel. In order to work at such low premium levels, the policies depend on lapse-supported pricing, a pricing method facilitated by the absence of nonforfeiture requirements. This pricing method is unfair to consumers. And for insurers, it could lead to financial loss and/or unexpected increases in reserves.

Lapse-Supported Pricing

The main problem with lapse-supported pricing is that it depends on forfeiture. Simply put, companies count on policies to lapse in order to support those that don't. Without nonforfeiture requirements, a company does not have to pay a surrender value that bears a reasonable relationship to the assets it has accumulated for each policy.

Therefore, each time a policy lapses, the company's gain is much larger than would reasonably be expected. The company takes these gains to provide benefits for policyholders who don't allow their policies to lapse and who hold their policies until death. These gains are the basis of lower premiums in lapse-supported policies.

In other words, companies price such policies with the expectation that there will be a lot of "losers." If the company's original assumption for lapse rates materializes, it only must pay a few persisters, or "winners." The vast majority of policyholders who lapse their policies before death are the "losers." They receive much less at surrender than what any reasonable person would perceive as acceptable value.

When such products were introduced in Canada, the ultimate annual lapse rates used for pricing were 6% to 7%. A steady 7% lapse rate would result in about 75% of all policies lapsing with no value during the first 20 years. In other words, the companies assumed that at least 75%--and probably a much larger percentage--of policyholders would get less than "fair" value at termination. At that lapse rate, insurers could afford to pay on the remaining 25% of policies that would persist until death.

But actual experience did not turn out as expected. While the Canadian Institute of Actuaries reported that lapses in early years did range from 7% to 10%, actual ultimate lapse rates were much lower than anticipated. They dropped to 3.5% by the sixth year, and fell gradually to about 2% in years nine through 14.

What happens when lapses are lower than expected? To begin with, even a steady lapse rate of 2% would result in fully one-third of all policies lapsing with no value during the first 20 years, and almost 65% of policies lapsing with no value over 50 years (which, for many life insurance buyers, is a reasonable estimate of the number of years remaining in their lives). So even when lapse rates are lower than expected, a significant number of policies deliver no value. This does not seem like a path to consumer satisfaction.

Second, and perhaps of more concern, lapse-supported pricing could create financial problems for insurance companies. For policies already issued, companies must either encourage lapses or increase reserves. One Canadian company noted that a decrease in lapse rates on a 5-year-old policy--from 3% to 2%--would require it to increase reserves by 15% to 40%. How many companies could do this without creating financial strain?

Even so, lapse-supported pricing for permanent life insurance is now crossing over into the United States. Some permanent policies are being sold with grossly inadequate cash values. In these cases, companies typically circumvent the standard nonforfeiture law by adding so-called "no-lapse, secondary guarantees" to universal life products.

As in Canada, the primary attraction of these U. S. products is low premiums, which may look great at point of sale. But what will policyholders think about this 10, 20 or even more years down the road? Will they blithely accept nothing upon lapse or surrender? Will they recall the disclosure at point of sale, that this is a new kind of permanent policy with no cash values? The recent history of the life insurance industry suggests otherwise.

In fact, the not-so-recent history also suggests otherwise. Lapse-supported pricing already has been "field tested" in the United States, and it didn't work then, either. The tontines of 100 and more years ago were also built on lapse-supported pricing. These policies, introduced in the United States in the 1860s, provided nonforfeiture benefits only to survivors who lived to the end of a certain period of time. The consumer dissatisfaction they generated contributed to the 1905 Armstrong investigation, which led to stricter supervision of the insurance industry by New York and other state insurance departments.

Rush to Viaticals

The current environment suggests that if an issuing company does not provide fair value, policyholders will proceed directly to a secondary market--presumably, a viatical company--to get a better deal. There will be a secondary market for these contracts, and this will not be good for the life insurance industry.

Interestingly, this procession would lead to a final irony. Any mass rush to viatical companies would cause the lapse-supported pricing method to crumble altogether, because the policies just won't lapse. The viatical companies will see to that; they will continue to pay premiums to maintain the "no-lapse" guaranteed death benefit. This could result in financial problems for the issuing companies.

In short, lapse-supported pricing is not only unfair but in the long run, it's unworkable.

Revise, Don't Eliminate

The presence of nonforfeiture values is an excellent safeguard for both policyholders and companies, but the current standard nonforfeiture law should be modified.

One important modification would be to revise the law to make it clear that a fair value is required at termination for universal life, universal life with no-lapse guarantees and other nontraditional products. This revision would also help eliminate lapse-supported pricing.

Other revisions might include market-value adjustments and modified guaranteed cash values. Such revisions would permit longer-term investments, which would deliver much of the improved value that innovators attribute to "no cash value" policies.

However, one revision should not be considered: the elimination of cash values. The simple truth is that cash values for life insurance are accepted and even expected, because standard nonforfeiture law provisions have trumpeted them for years. Consumers expect cash options for life insurance contracts that require pre-funding. It would be impossible to create enough disclosure to ward off complaints at termination if neither cash options nor loan provisions were offered.

Finally, cash values are needed to strengthen the standard nonforfeiture law's ability to eliminate lapse support.

The issue of nonforfeiture values is more than just an academic exercise. Today, the prevalence of industry mergers and acquisitions is generating more and more "orphaned" blocks of lapse-supported business. Policyholders can find themselves at the mercy of "new" owners, whose emotional

attachment and commitment to them and their policies is tenuous at best. In the past, the realities of the marketplace might have prevented the new company from treating its inherited policyholders less than fairly. But with lapse-supported pricing, the company has a clear financial incentive to treat policyholders unfairly and actively encourage them to lapse. This puts policyholders in "no-win" territory--either stick with a company that doesn't want them, or lapse a policy with little or no surrender value.

What should protect policyholders is a standard nonforfeiture law that requires fair nonforfeiture values and applies to all life insurance contracts. What should protect them is a standard nonforfeiture law that requires "fair value" to help align the interests of both insurer and insured. Such a law would empower insureds by giving them some financial leverage in their otherwise mismatched dealings with insurers.

Without such laws, policyholders who find themselves in this position will be as powerless as the penniless individuals who fell prey to speculators in 19th-century England.

With some minor revisions, the standard nonforfeiture law can be as important and vital today as when it was introduced more than a century ago. To keep a great industry great, we must ensure that this law is maintained and strengthened.

William C. Koenig, FSA, MAAA, is senior vice president and chief actuary and Stephen H. Frankel, FSA, MAAA, is vice president-actuary at Northwestern Mutual Life Insurance Co., Milwaukee.

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ACLI
Financial Security. For Life.

Michael J. Bartholomew
Chief Counsel, State Relations

August 14, 2008

Mr. Thomas M. Record
Senior Staff Attorney
Maine Bureau of Insurance
Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Re: **Maine Public Law c. 543, §7, Life Settlements**

Dear Mr. Record:

At our last meeting on July 31, the Bureau received from Coventry First a memorandum dated July 31, 2008 and requested that the ACLI respond to this document (the "Memorandum"). For the reasons set forth below, ACLI entirely disagrees with the arguments put forward in the Memorandum. I have laid out our comments in order in which they appear in the Memorandum.

Let me start by stating our general concern that the Bureau not substitute, as implicitly requested in the Memorandum, new goals for those pertaining to life settlements set out by the Legislature in the captioned law. The specific legislative charges to the Bureau are:

1. The Superintendent shall develop recommendations, including any recommendations for legislation, relating to the solicitation of life insurance for the purpose of settling policies.

2. The Superintendent shall develop recommendations, including any recommendations for legislation, relating to the use of premium finance agreements in association with viatical and life settlements.

3. The Superintendent shall develop recommendations, including any recommendations for legislation, relating to the disclosures made to viators and owners of life insurance policies.

The content of the Memorandum, detailed more specifically below, shows little interest in advancing legislation that would protect elderly consumers. We are hopeful, in the spirit of cooperation to advance meaningful recommendations to the legislature, that all parties will work off the Model legislation approved by regulators and legislators and the successful legislation enacted in other jurisdictions rather than create new issues that cause distraction from our purpose and do nothing to positively advance the charge given to the Bureau of Insurance.

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Insurable Interest Requirements Are Paramount

It is clear from all authorities that the public policy protecting life against speculative wagering outweighs a consumer's interest in the property value of an insurance contract. Protecting life against speculative wagering is the basis of the insurable interest laws.

A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end. And although that counter interest always exists, ..., the chance that in some cases it may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose. The very meaning of an insurable interest is an interest in having the life continue, and so one that is opposed to crime. And what, perhaps, is more important, the existence of such an interest makes a roughly selected class of persons who, by their general relations with the person whose life is insured, are less likely than criminals at large to attempt to compass his death. *Grigsby v. Russell, 222 U.S. 149, 154-155 (1911).*

Most recently, a federal district court applying New York law highlighted the importance of testing the procurement of a policy for good faith since "Only one who obtains a life insurance policy on himself 'on his own initiative' *and in good faith – that is, with a genuine intent to obtain insurance protection for a family member, loved one, or business partner,* rather than an intent to disguise what would otherwise be a gambling transaction by a stranger on his life – may freely assign the policy to one who does not have an insurable interest in him." *Life Product Clearing LLC v. Angel*, 530 F. Supp. 2d 646, 653, 2008 U.S. Dist. LEXIS 4233 (2008) (citations omitted; italicized emphasis added).

The point of actual separation between the cases asserting the assignability and those asserting the non-assignability of policies of insurance to persons not interested in the continuance of the insured's life, seems to be that those asserting non-assignability proceed on the assumption that the question is one of law, and that if a policy is not assignable in one case, it cannot be in any case; while in the other line of cases the underlying principle is that all valid contracts are assignable, but that contracts are not necessarily valid and free from the taint of gambling because upon their face they appear to be regularly and properly issued. In order to ascertain the truth, all the facts and circumstances may be proved, and if it then appears that the parties intended by the contract to enable a third and uninterested party to speculate upon the life of another, the court will declare such contract invalid, not because of the assignment, but in spite of it. *Steinback v. Diepenbrock*, 158 N.Y. 24, 32, 52 N.E. 662 (1899).

The Issue Is Not About "Insurers' Market Behavior" But Rather Settlement Providers' Misbehavior

How did we get here? Maine outlawed stranger-originated life insurance (STOLI) in 2008 because all interested parties, including settlement industry representatives, agreed that it should be outlawed. All interested parties first decided that STOLI should be illegal when the National Conference of Insurance Legislators (NCOIL) amended its Life Settlements Model Act.[1] Settlement industry representatives had

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[1] *The amendments to the NCOIL Model were extensive. Whereas previous versions of the NCOIL Model tracked concurrent versions of the NAIC Model, NCOIL elected to modernize its Life Insurance Settlements Act in a manner sustaining the two-year settlement prohibition common to most settlement laws enacted as of the end of 2007. The NCOIL Model establishes a new public policy outlawing stranger originated life insurance, creates a new statutory offense, imposes new limits on premium financing, and levies stronger penalties for speculative originations of life insurance. NCOIL voted unanimously to amend the NCOIL Model Act in November 2007.*

asked NCOIL to recommend improvements to settlement industry practices due to their dislike of the new NAIC Viatical Settlements Model Act (2007). Among other things, the NAIC Model prohibits "subprime" settlements for five years rather than the two year limit set forth in the older version of the NAIC Model. The Maine Superintendent voted with the majority to approve the new NAIC Model. [2]

However, STOLI was not the only concern of the insurance regulators and legislators. The NAIC undertook its fourth effort to regulate life insurance settlements faced with evidence that previous attempts had proven ineffective.[3] It was clear that efforts by insurance regulators and legislators had not disciplined settlement activity despite enactment of laws in 38 states.[4] Some life settlement providers were resisting multi-state licensing and other requirements such as providing minimum settlement value to sellers of insurance policies in states where the seller resided.[5] Others were resisting functional regulation by insurance authorities.[6] The New York State Insurance Department had rebuffed a proposal to legitimize the origination of insurance policies for the benefit of investors which revealed a systematic effort by speculators to undermine the business of insurance.[7]

Another New York authority declared that the entire life settlements business exhibited "pervasive fraud".[8] Specifically, the New York Attorney General alleges that Coventry intentionally "prey[s] on the owners of life insurance policies through two main schemes." First, the company pretends to conduct

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[2] *America's insurance regulators voted 47-0 in June 2007 to approve strengthening amendments to the NAIC Model and advocate adoption of the Model to legislators in their 47 states. 2007 NAIC Proceedings, 2d Qrtr., Vol. I, pp. 38-105. The amendments to the NAIC Model were extensive. See NAIC Viatical Settlement Model Act (2007). This Model contains 19 sections totaling 53 pages of text. Every section of the Model was amended. The amendments re-assert insurance regulators' functional authority over life settlements; establish clear fiduciary duties for settlement brokers and providers; expand a policy owner's right to rescind a settlement from 15 to 60 days; provide new bonding requirements for viatical settlement brokers and providers; and requires settlement entity compensation disclosure to assure consumers received fair value for their insurance policies.*

[3] *The first attempt was in 1993; the second in 1998; and the third was in 2000. See Proceedings of the NAIC for 1993, 3d Quarter pp. 435-439; 1998, 1st Quarter 701-706; and 2000 4th Quarter 103.*

[4] *A few weeks before the insurance commissioners made their final decisions on the NAIC Model, the Fourth Circuit observed that: "Not only are the parties to insurance contracts affected by viatical settlements, but the State too has interests, especially in ensuring (1) that its residents not be subjected to unscrupulous conduct by the viatical settlement providers who might defraud, harass, or abuse insureds in the State and (2) that its residents not defraud insurance companies in an effort to realize a quick financial return by entering into insurance contracts while hiding the fact that they will soon, within a determinable time, die." Life Partners v. Morrison, 484 F.3d 284, 296 (April 30, 2007); cert. denied, 128 S.Ct. 708 (December 3, 2007).*

[5] *See Life Partners v. Morrison, 484 F.3d 284, 287, C.A.4 (Va.) (2007); cert. denied, 128 S.Ct. 708 (December 3, 2007).*

[6] *See, e.g., National Viatical v. Oxendine, 2006 WL 1071839 (N.D. Ga. 2006), aff'd 221 Fed.Appx. 899, 2007 WL 934706 (C.A.11 (Ga.) (March 29, 2007).*

[7] *New York State Insurance Department Opinion No. 05-12-15 re life insurance transactions, December 19, 2005. The New York rejection of hedge fund origination of life insurance was the basis of the development of the NAIC five-year settlement prohibition of transactions exhibiting three certain criteria. This, in turn, led to the condemnation of Stranger Originated Life Insurance as a fraudulent settlement act in the NCOIL Life Settlement Model Act.*

[8] *See People of the State of New York v. Coventry (New York Supreme Court No. 404620/06, filed October 2006; Denial of motion to dismiss and reinstatement of action for common-law fraud Ordered by Supreme Court Appellate Division at 2008 N.Y. Slip Op. 05548 (June 17, 2008)).*

auctions of a policy owner's contract to get the highest price for the owner but instead rigs the auction with secret payments to suppress competitive bids, never informing the policy owner of the true secondary market value of the policy. Second, "Coventry systematically participates in breaches of fiduciary duty by life settlement brokers that hold themselves out to policy owners as faithful agents who will go to the market and obtain the highest possible prices for their clients' insurance policies."

In a typical transaction, Coventry it is alleged by NY, secretly provides these brokers with what is called a "gross offer" for the seller's life insurance policy. The gross offer is a lump-sum amount to be divided between the broker and the seller at the broker's discretion. It is never disclosed to the seller. Unbeknownst to the seller, the less the seller gets, the more the broker keeps. The broker thus has every incentive to convince the owner that his or her policy is worth as little as possible. The results are not pretty: in one reported instance, a broker took a gross offer of $822,500 for a policy purchased by Coventry and convinced his client to take $365,000 as a purchase price, keeping $457,500 for himself as a "commission."... In most states, including New York, Coventry makes no disclosure about its gross offers. If a seller asks about broker compensation, Coventry typically refuses to answer. In states where the law requires disclosure, such as Ohio and Nevada, Coventry sometimes generates false documents that conceal all or a portion of what the broker is getting. *People of the State of New York v. Coventry, supra, Complaint* at Paragraphs 2-5.

The attempt in the Memorandum to misdirect the Bureau away from the need for improved settlement provider disclosures to policy owners appears to be an effort to sustain the very practices alleged to be predatory by the New York Attorney General. An independent investigation by Florida insurance officials corroborated the misconduct discovered by New York, resulting in a variety of sanctions and special impositions upon the settlement provider to protect Florida insurance policy owners.[9] Coventry's business plan was cited as an example of stranger-originated life insurance that was recommended for prohibition by the Ohio insurance director this year. *See Testimony of Insurance Director Mary Jo Hudson to the Ohio Senate Insurance, Commerce and Labor Committee re Substitute HB 404,*). Consequently, there should be no question that the Maine legislative charge to recommend legislation "relating to disclosures made to viators and owners of life insurance policies" is to protect policy owners *from* settlement abuse rather than expose them *to* settlement abuse.

The business practices condemned by New York, Florida, NAIC, NCOIL and Ohio should not be the only concerns of the Bureau and the Maine Legislature "relating to disclosures made to viators and owners of life insurance policies." There are significant tax consequences to the policy owner that are not necessarily disclosed by the settlement company. Policy owners may later determine that they do need insurance but may no longer be able to obtain it if they are uninsurable or if their insurance capacity is exhausted by the policy they sold. The consumer, having settled his or her policy to a settlement provider, will no longer know who is the owner of the policy that insures his or her life; in fact, large numbers of policies often are bundled together and resold throughout the US and world via global institutional markets. Clients in settlement transactions must understand the sweeping scope of third parties that could have an interest in their death.[10]

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[9] *See Florida Office of Insurance Regulation v. Coventry (Order Show Cause No. 88270-06, resolved October 2007) (Order requires Coventry pay Florida $1.5m plus submit to special compliance audits until 2009 as well as specially report all Florida resident transactions quarterly and more).*

[10] *See, generally, S. Leimberg, "Stranger-Owned Life Insurance (SOLI): Killing the Goose that Lays Golden Eggs", Tax Analysts/The Insurance Tax Review, Vol. 28, No. 5, May 2005; L. Jones, S. Leimberg, and L. Rybka, "'Free' Life Insurance: Risks and Costs of Non-Recourse Premium Financing," Estate Planning Journal, Vol. 33, No. 7, July 2006; S. Leimberg, "Planners*

Fortunately, both the NAIC Model and the NCOIL Model provide guidance on point with the legislative charges. The NAIC Model includes a Section 8 "Disclosure to Viator" with extensive and particular recommendations for ready adoption in Maine. The ACLI, National Association of Insurance and Financial Advisors (NAIFA), and the Association of Advanced Life Underwriters (AALU) support the NAIC Model guidance for disclosures to policy owners in its entirety. We strongly recommend faithful adoption of the NAIC provisions in their entirety.

Alternatively, Maine might look to the guidance of the NCOIL Model, which in its Section 9 "Disclosures to Owners" advances specific and useful recommendations for adoption in Maine. The ACLI, NAIFA, and the AALU support the NCOIL Model guidance for disclosures to policy owners in its entirety. We also recommend faithful adoption of the NCOIL provisions in their entirety.

The Application of Existing Law to Alleged Carrier Practices Is Irrelevant to Public Policy Concerns with Stranger-Originated Life Insurance and Predatory Settlement Misconduct

This section of the Memorandum is an effort to change the subject away from the legislative remediation of settlement industry problems.

There Is No Aggression Against the Secondary Market

The rhetoric of the Memorandum attempts to turn the need for improved settlement regulation upside down. The ACLI does not oppose legitimate settlement activity in light of the national public policy established by state insurance regulators when they approved the first NAIC Viatical Settlements Model Act in 1993. However, ACLI does object strongly to artificially contrived policies originated by speculators. There is an urgent and manifest need to address STOLI as well as protect consumers from the abuses uncovered by attorneys general and insurance regulators.

The Necessary Steps to Counter Settlement Provider Misbehavior

The unanimously approved NAIC Model and the unanimously approved NCOIL Model each provide complete approaches to stopping stranger originations of life insurance and protecting consumers and policy owners from the predatory practices uncovered by numerous government officials. The ACLI, NAIFA and AALU support faithful adoption of either Model in its entirety or, alternatively, a hybrid of the best provisions of both models.

ACLI specifically rejects the proposal to require life insurers, their agents, or the life insurance contract itself to market settlements to policy owners. Insurers are in the insurance business, not the settlements business. The ACLI has already noted that the reason there is no common ground between insurers and settlement providers upon which to build consensus legislation is because a settlement fractures the insurer's relationship with its insured and imposes new obligations upon the insurer for which it did not

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Must Be Aware of the Danger Signals of "Free" Insurance, Estate Planning, Vol. 34, No. 2, Feb. 2007; S. Leimberg, "Investor Initiated Life Insurance: Really a 'Free Lunch' or a Prelude to Acid Indigestion?", 41st Annual Heckerling Institute on Estate Planning: 41 Inst. Est. Plan. Ch. 4 (2007); J. A. Jensen and S. Leimberg, Stranger Owned Life Insurance: A Point/Counterpoint Discussion, 33 ACTEC Journal II (2007); and S. Leimberg & H. Zaritsky, "New Cases Highlight Insurable Interest Problems with Stranger-Owned Life Insurance," 20 Prob. Pract. Rptr. 1 (March, 2008), Vol. 20, Number 3.

bargain.[11] There are many other reasons why insurers – and insurance regulators and legislators – should reject the notion that insurers should partner with settlement providers at the expense of consumers. One very good reason is that settlements are bad deals for most policy owners, as explained below.

Settlements Are Bad Deals for Most Consumers

A comprehensive actuarial analysis of the settlements industry quantified the value provided by the sale of a life insurance policy to a settlements company relative to other options available to a policyholder. Current literature focuses on comparing only two values of a life insurance policy: the life settlements value and the cash surrender value. The actuaries quantified the value of a third option, i.e., retaining the policy until death, which produces the policy's intrinsic economic value. The study concluded that:

- The intrinsic economic value always exceeds the life settlement value;
- The yield from a life insurance policy of an impaired policyholder that is maintained until death is likely to exceed any return realized by investing life settlement proceeds in a variety of investment options;
- Life settlement companies paid an average of $0.20 (twenty cents) per dollar of face amount of insurance for all life settlements sold from 2000 to 2003, while the intrinsic economic value averaged $0.64 per dollar for the policy.
- The lost economic value attributable to a life settlement arises from high transaction costs involved in a settlement sale. The risk profit component of life settlement costs represents only 30 percent of the lost economic value, while 70 percent represents transaction costs in the form of expenses, commissions, taxes, and the expense profit component (i.e., profit that the life settlement companies require as compensation for financing the up-front transaction costs). These combined profit and transaction costs represent between 50–67 percent of the intrinsic economic value of the insurance contract. Life settlement costs to consumers are significantly higher relative to other asset transaction costs, including illiquid assets such that they incur costs only in the 10–15 percent range. *Deloitte Consulting LLP and the University of Connecticut, the Life Settlements Market, pp. 1-2 (Executive Summary) (2005) (hereafter "Deloitte/University of Connecticut Study").*

Further, there is no substance to the allegation that the primary industry's "lapse and surrender practices" are "unfair" (see Memorandum at n. 1), as explained below.

Settlement Industry Lapse Rate Arguments Are Unfounded

The Memorandum raises the issue of lapse rates in an attempt to confuse legislators with a snapshot analysis of actuarial sciences. It is an argument with no foundation. Simply speaking, every insured knows that he/she gets full value for the insurance policy they own every minute that he/she is alive. The value a policy owner enjoys from a life insurance policy is knowing that his/her beneficiaries will receive the protection and comfort of the policy death benefit should he/she die during the policy term.

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[11] *See ACLI June 27 submission quoting Life Partners v. Morrison, supra.*

People do not buy a policy for its cash surrender value but the protection it affords for unexpected death. The policy's intrinsic economic value is not always realized through the death of the insured (for which the insured is usually grateful), so naturally some policies are surrendered, and some lapse and others are sold into the secondary market, all depending on the policy owner's circumstances. There is nothing significant about lapse rates *other than how settlements affect them*. The Fourth Circuit Court of Appeals describes why:

> The insurer is ... faced with changed economic risks that were not factored into its calculation of premiums. Under the two-party arrangement that preexisted the viatical settlement, the insured was in a class of persons that statistically surrendered a portion of its policies or let a portion of them lapse. Insurance companies rely on these surrender and lapse rates to calculate premiums to charge for life insurance policies. The viatical provider distorts these rates, however, because it will always hold onto the policy until the insured dies in order to protect its investment. Thus, as the initial actuarial risk is distorted with each new viatical settlement, the risk-spreading profile of the insurer becomes less and less reflective of its initial calculations. *Life Partners v. Morrison*, 484 F.3d 284, C.A.4 (Va.) (2007); *cert. denied*, 128 S.Ct. 708 (December 3, 2007).

Though settlements distort the insurance pricing system by distorting historical lapse expectations, they do not necessarily affect insurer profitability. "[H]ealthy lives tend to lapse and unhealthy lives tend to persist. Thus, a life settlements transaction that results in the persistency of an impaired policyholder has minimal impact on the anticipated profitability of a life insurance contract." *Deloitte/University of Connecticut Study, supra*.

In any event, recent expert conclusions underscore how empty settlement lapse arguments are:

- For all individual life insurance products combined, early policy year lapses have dropped to a 10-year low.

- The overall lapse rate for whole life plans for all product types and policy years combined was 3.5 percent on a policy basis and 4.4 percent on a face amount basis in 2003 and 2004, down from 3.9 percent and 5.8 percent respectively for the period 2001-2002.

- Total lapse rates for term insurance for all products and all policy years combined was 7.0 percent on a policy basis and 6.2 percent on a face amount basis, a decrease of 3.2 percentage points on a policy basis and 4.1 percentage points on a face amount basis from the 2001-2002 report.

- On a policy basis, the overall lapse rate for universal life products for all policy years combined declined to 4.6 percent from 5.3 percent in 2001-2002. There has been a modest reduction in lapse rates at all policy durations versus the 2001-2002 timeframe.

- The overall lapse rate for variable universal life plans covered by the current study was 5.7 percent on a policy basis (down from 8.5 percent during calendar years 2001-2002) and 6.4 percent on a face amount basis (down from 8.8 percent during calendar years 2001-2002).

Purushotham, M., and Muise, N., *U.S. Individual Life Persistency Update*, LIMRA-Society of Actuaries, pp. 9-10 (2008).[12]

Settlement Solicitations to Purchase Life Insurance Should Be Outlawed

The misdirection of the Memorandum is most apparent in its attempt in this section to substitute the author's own charge for the genuine Maine legislative charge. The relevant charge is: "The Superintendent shall develop recommendations, including any recommendations for legislation, relating to the solicitation of life insurance *for the purpose of settling policies*" (italicized emphasis added). Outlawing stranger-originated life insurance is a good beginning to attempt to stop solicitations for life insurance for the purpose of settling policies. But the ACLI respectfully urges the Superintendent to recommend to the Legislature that it specifically include two provisions of the NAIC Model that most effectively address the problem.

Maine Should Adopt the NAIC Test for "Subprime" Life Insurance Settlements

The words "insurable interest" do not appear in the NAIC Model. Rather, the NAIC provided legislative guidance to delay an insurance policy settlement for five years depending on whether the policy acquisition included significant elements of the standard scheme which most would find to be STOLI.[13] The insurance regulators recognized that the nature of investor speculation against insurance was to actively evade, or work around, static regulation. Consequently, regulators devised a dynamic set of three transactional tests from which to separate *prima facie* legitimate settlements from *prima facie* suspicious settlements (or STOLI), while not declaring any of the test elements illegal *per se*.

Using investment terms, the suspicious settlements would be "subprime" compared to settlements that are legitimate thanks to the certainty of their provenance and maturity. By requiring five rather than two years before the policy can be settled to strangers lacking insurable interest, investors will be discouraged from funding schemes to originate "subprime" settlements. The practical effect of the five-year wait removes the statutory presumption of illegality but it does not alter the necessity of insurable interest to make certain the payment of the death claim. The presumptive tests in the NAIC Model are whether, at all times up to two years after policy issue:

1. Premiums were paid with non-recourse financing (i.e., the only collateral for the loan is the insurance policy itself);

2. There is a guarantee to purchase the policy from the original policyowner, including through forgiveness of premium loan debt; or

3. Either the policy or the insured was evaluated for policy settlement.[14]

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[12] *The settlement industry's lapse argument is illogical and contrary to its own self-interest. Settlement "fair market value" greater than cash surrender value ostensibly justifies and explains the growth of the secondary insurance market. Hence, if policy cash surrender values are increased, the result will be a diminution in – and justification for – the settlements market.*

[13] *See NAIC Model (2007) § 11.*

[14] *A. It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a five-year period commencing with*

The effectiveness of the five-year settlement testing delay is attributable to mortality. Perpetrators of such arrangements to obtain insurance values for investors target affluent senior citizens. The perpetrators react to legal obstacles with hyper technical work-arounds, i.e., they try to circumvent all attempts at regulation. Hence the NAIC Model addresses the complexity of the scheme's variations with a "catch-and-release" dragnet that itself is complex. That is, the NAIC Model Act is structured to: define every relevant transaction as a "viatical settlement contract"[15]; exclude from the definition all traditional insurance transactions[16]; and exclude from the definition all traditional financing used solely for premiums plus loan costs or to secure a bank loan.[17]

The result is that only settlement transactions including financings based on death benefit values remain covered by the definition of "viatical settlement contract". The NAIC Model then prohibits settlements of such contracts for five years but protects property rights by permitting certain *any time* settlements. These include exceptions for: chronic or terminal illness (classic viatical settlements); death of the spouse; divorce; retirement; physical or mental disability; or personal insolvency.[18]
The NAIC Model then further protects consumer property interests – including latitude even for non-recourse financing of premium – by barring settlement of a policy for only two years if:

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the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:...

(3) The viator enters into a viatical settlement contract more than two (2) years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two (2) years after policy issuance, the following conditions are met:

(a) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in Section 2N(3)(e);

(b) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and

(c) Neither the insured nor the policy has been evaluated for settlement.

NAIC Viatical Settlements Model Act, § 11 Prohibited Practices (2007).

[15] *(1) "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy , in return for the viator's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. (2) "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where: (a) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or (b) the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. NAIC Model § 2N (2007).*

[16] *See NAIC Model §§ 2N (3) (e-i) (2007).*

[17] *See NAIC Model §§ 2N (3) (a-d) (2007).*

[18] *NAIC Model § 11A (2).*

The policy owner posts cash or collateral for a loan against the policy or limits the loan to the net cash surrender value of the policy; and

There is no agreement evidencing intent to settle the policy prior to two years from the date the policy was issued; and

There has been no evaluation of the insured or the policy for settlement prior to two years from policy issuance.

The remaining transactions that are prohibited from settlement for five years are speculative transactions that involve non-recourse financing, guarantees of settlement, and premature life expectancy evaluations – the chief elements of the standard scheme some settlement providers are attempting to legitimize. All "natural" settlements are protected by one or more of the exceptions, some qualifying for settlement at any time and the others settling permissibly after two years. Still, even the five-year settlement prohibition of the NAIC Model might not stop all abusive transactions because of the intrinsically evasive nature of speculative activity. It is the economic implications that follow from the NAIC Model provision that are the effective deterrent to speculation, and why settlement industry is so vehemently against the NAIC Model.

The targets of investor speculations are typically affluent seniors. Investment promoters demonstrate a willingness to risk their capital and wait two years to capture the death benefit before realizing a return on their investment. Bluntly, the premise of the effectiveness of the NAIC Model provision is that investors are willing to bet a 75-year-old will live for two years but not much longer. The odds that the 75-year old will live to 80 are too long a risk for investors, especially when they must continue to pay the premiums for the elderly policy owner. Investors need and expect a quicker return lest their planned investment asset transforms into a genuine insurance policy. This would be the result of the death of the policy owner prior to the settlement trigger date, which would deny investors a return beyond their investment because the death benefit is paid to the estate or the policy owner's natural beneficiaries. By this means, the NAIC Model effectively deters capital formation for settlement marketing and illicit originations that we call STOLI.

Maine Should Require that Transactions are Transparent

The NAIC Model also addresses that aspect of speculators' standard scheme in which all evidence of a scheme to evade the insurable interest and contestability laws are secreted away from discovery. It does so by requiring full disclosure of any plan of policy origination, including policy financing:

Prior to the initiation of a plan, transaction or series of transactions, a viatical settlement broker or viatical settlement provider must fully disclose to an insurer a plan, transaction or series of transactions, to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime before or during the first five (5) years after, issuance of the policy.NAIC Model § 9 (Disclosure to Insurer).

This provision, if enacted, helps to balance the interests of insurers and settlement entities. By requiring secondary market entities to disclose policy origination plans, insurers will be encouraged to approve a plan for general use or, alternatively, reject applications based on a plan determined too risky for proper insurance underwriting and pricing. Carrier approved plans, of course, will prevent insurers from

contesting the policies subsequently issued, thereby quieting title of policies transferred for value and providing confidence to all parties – including later market investors – that the contracts are reliable. This development should, in turn, relieve the judiciary of litigation both on the insurance and investor side of the settlement transaction.

North Dakota, Nebraska, West Virginia and Ohio enacted most provisions of the NAIC Model, including the five-year settlement prohibition for "subprime" policy originations.[19] The new Ohio settlement law provision relevant to the five-year settlement moratorium ties the legitimacy of suspicious transactions to their disclosure by the settlement provider and the approval of the insurer. This obliges the insurer to underwrite those elements of the policy origination that give rise to suspicions of STOLI. Carrier rejection of any element, of course, likely makes moot any potential violation of the statute. Insurer approval of the financing and structural arrangement of the proposed transaction likely prevents the insurer from raising either statutory or insurable interest objections to it as a defense to a claim.

There Is Nothing Unconstitutional About Preventing Fraud and Wagers Against Life

In another attempt to refocus the deliberations about the given legislatives charges, the Memorandum leaps into constitutional thin air. To repeat our earlier spoken comments, the ACLI rejects the argument. As again without foundation.

> [I]t is said that if the payee of a policy be allowed to assign it, a safe and convenient method is provided by which a wagering contract can be safely made. The insured, instead of taking out a policy payable to a person having no insurable interest in his life, can take it out to himself and at once assign it to such person. But such an attempt would not prove successful, for a policy issued and assigned, under such circumstances, would be none the less a wagering policy because of the form of it. The intention of the parties procuring the policy would determine its character, which the courts would unhesitatingly declare in accordance with the facts, reading the policy and the assignment together, as forming part of one transaction.*Steinback v. Diepenbrock*, *supra*, at 33.

What the NCOIL Model does is precisely what the court in *Steinback* recommends- it looks to the entire transaction to ascertain whether any aspect of it evidences an attempt to acquire an insurance policy for the purpose of or with an emphasis on its settlement. Such evidence indicates the policy is originated by strangers, in bad faith, for the purpose of an illegal, speculative wager against life. The Superintendent should adopt the NCOIL Model recommendation that to "issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose or with an emphasis on settling policy" is a fraudulent settlement act, and recommend appropriately severe penalties to stop the misconduct now.

~*~

The historical record makes clear that settlement industry reform is needed now. It will be a tremendous service to Maine consumers if we collectively can recommend and fashion legislation to effectively

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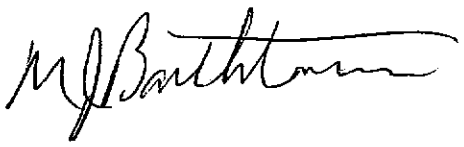
[19] *See North Dakota Century Code Chapter 26.1-33.3-10 Prohibited Practices; Nebraska Revised Statutes § 44-1110 (1) (a) et seq.; Code of West Virginia § 33-13C-11 Prohibited Practices; and Ohio Revised Code § 3916.16 (A) (1) et seq., respectively.*

defeat the problems in the secondary markets that are accurately addressed by the NAIC Model, the NCOIL Model, and the guidance of the many states taking action against settlement abuses.

ACLI welcomes a renewed regulatory and legislative effort in 2009 to stop stranger originations of life insurance and predatory settlement activity against elderly consumers and policy owners.

Thank you again for the opportunity to comment. We stand ready as an organization to assist in the accomplishment of these goals.

Sincerely,



Michael J. Bartholomew

3

Life Insurance Basics

Your tastes in almost everything have become more nuanced, more complex. In your wealth management, planning needs to include examination of every facet of your life -- and of your legacy.

For more than 150 years, Phoenix has been in the vanguard of development of new and sophisticated life insurance products to meet the evolving needs of the affluent and high net worth. While some of these products are traditional and relatively straightforward in nature, others have a variety of features and options (known as "riders") that make them clearly something your grandfather never imagined!

Let's start with a few basics, and then acquaint you with the types of life insurance products your advisor may bring to his or her planning discussions with you.

First, a Few Familiar Terms

At its core, life insurance policies allow you to choose a beneficiary -- generally a family member, business or institution -- to receive a payment upon your death. And then the features begin to diverge:

Permanent life insurance can provide coverage for your entire life (as opposed to a specified term). Permanent life insurance offers tax-deferred accumulation and income tax free death benefit. Universal, variable universal and whole life insurance are all forms of permanent life insurance.

- **Universal life insurance** offers flexible premiums, a flexible death benefit and interest sensitive, tax-deferred cash accumulation.
- **Variable universal life insurance** policies combine the features found in universal life insurance policies with additional investment choices in subaccounts managed by professional money managers. Variable products involve investment risk including possible loss of principal.
- **Whole life insurance** offers guaranteed fixed premium payments, guaranteed death benefits and guaranteed tax-deferred cash values. Policies are often eligible for dividends.

Term life insurance provides you with coverage for a specified period of time. Term life offers pure insurance protection -- it does not accumulate cash values. Term life premiums can become expensive over time and at older ages. Policies are, however, frequently convertible to permanent insurance with the same company.

Your financial advisor will work with you to determine the amount of coverage you need and which type of policy is best suited for your objectives.

An Evolution in Insurance

With its tax-advantaged status, life insurance has taken on new features and forms. Some of those include:

- **Survivorship Life Insurance**, also known as second-to-die life insurance, insures two lives and pays a death benefit upon the second death. Married couples, for instance, typically use survivorship life insurance in their estate planning. With the addition of a special rider, some

survivorship policies may also pay a benefit at the first death.

- **Joint Life Insurance** is first-to-die coverage on two or more individuals. A joint life policy pays a death benefit at the first death of those who are covered. Joint life can eliminate the need for unnecessary coverage of multiple individuals, when only the first death among several lives must be insured. So, for instance, a business may purchase joint life insurance to fund a buy-out plan that helps ensure the financial security for a deceased partner's family and business continuation for its surviving partners.
- **Executive Benefit Life Insurance** can be used to attract and retain key executives by providing businesses with efficient funding and cost recovery for their nonqualified executive benefit plans.

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Securities distributed by **Phoenix Equity Planning Corporation** (Hartford, CT), member FINRA and subsidiary of Phoenix Investment Partners, Ltd., a member of The Phoenix Companies, Inc.

Not all products and services described here are available in all states of the USA.

4

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- Variable Universal Life
- Survivorship Life
- Term Life
- Whole Life

Term Life

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Term Insurance

As its name indicates, term life insurance insures you for a specific term or span of years. If you die during the term, your beneficiary is paid the coverage amount subject to your policy terms. Because it provides "pure" insurance without any cash value accumulation, term coverage is generally less expensive initially than permanent coverage. Term insurance provides a great answer to the question: How will your family manage financially if you die prematurely?

The Advantages of Term Life Insurance

Term life insurance helps to provide peace of mind for you and your family. It also helps you protect the assets you've worked so hard to attain. And all this security reaches up to 30 years into the future, at guaranteed level premiums that are competitively priced today. The Trendsetter® Super Series policies offer valuable protection for your family or business partnership with attractive premiums.

Term Life – New York

For younger individuals and families, term life insurance is especially useful to support loved ones and help with financial obligations if you die prematurely. Transamerica Financial Life Insurance Company provides flexible term life insurance policies with coverage through age 80 and competitive premiums.

Getting Started
Contact us and let a **Transamerica representative** help you determine which type of life insurance policy may be right for you.

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TRANSAMERICA
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Universal Life
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Universal Life

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About Universal Life Insurance

Universal life is a permanent insurance product in which the internal policy charges and interest crediting components are specifically broken out separately in the policy. Universal life insurance cash value is dependent on the investment returns credited. With certain limits, the policy owner can choose the premium he or she wishes to pay and this determines how the policy values develop. The policy owner benefits from current investment and expense experience.

Each policy month, a monthly deduction to cover the cost of the insurance protection is deducted from the policy value. Transamerica Occidental was one of the first major companies to develop and promote universal life insurance.

The Advantages of Universal Life Insurance

Flexibility of payments, tax-deferred cash value accumulation, and coverage options (subject to contract requirements) are the primary advantages over term insurance. Because of these advantages, universal life can be used in estate planning and retirement planning, offering the policy owner a variety of options.

Universal Life - New York

New Yorkers can get a universal life insurance policy that offers the protection you're looking for in a permanent life insurance policy and the flexibility you need to adapt to a lifetime of changes.

Getting Started
Contact us and let a Transamerica representative help you determine which type of life insurance policy is right for you.

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5

Guarantee Advantage UL

FRIENDS COME AND GO BUT FAMILY IS FOREVER. You have the power to make a difference in the lives of people who matter the most -- your family. Guarantee Advantage UL℠ can protect your family's future.

Why Guarantee Advantage UL℠ ?*

Guarantee Advantage UL can offer you and your loved ones the following:

Guarantees*:

- Lifetime guaranteed protection for you
- Lifetime guaranteed monthly income for your family

Flexibility:

- Custom built around your life
- Adapts as your life changes

Affordability:

- Focused on affordable protection
- Competitively priced

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- Flexibility and Affordability
- Guaranteed Survivor Income Benefit
- Other Optional Riders

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***All guarantees are backed by the financial strength and claims paying ability of the issuing insurance company.**

Guarantee Advantage Universal Life Insurance is issued by Metropolitan Life Insurance Company New York, New York 10166 in New York State (policy form #1E-30-04-NY) and by MetLife Investors USA Insurance Company Irvine, California 92614 in all other states and jurisdictions (policy form #5E-30-04).

How can you determine the right amount?

Try our GSIB calculator to find out.

Like most insurance policies, MetLife's policies contain exclusions, limitations, reductions of benefits and terms for keeping them in force. For complete costs and details, see your MetLife Financial Services representative.

6

ING

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August 19, 2008

Universal Life Insurance

Universal life insurance is a more permanent type of insurance offering for people looking for long term insurance coverage. Universal Life, also called UL, offers a great deal of flexibility over term insurance.

You can pay premiums at any time, in virtually any amount, subject to certain minimums and maximums. You can also pay premiums in advance and even skip payments in certain circumstances. Plus, UL can better meet your changing needs over time because you can increase or reduce the death benefit.

Many of today's universal life policies also offer guaranteed lifetime protection to help you protect your loved ones against financial hardship if you die. As long as your premiums are paid, your policy will remain in force no matter how long you live. Some life insurance policies without this feature only pay a death benefit until a certain age, like age 100.

Universal life insurance also has a "savings" feature, called cash value. Each payment you make to the contract pays for your insurance coverage and then the excess is invested to build cash value that you can use in the future. The insurance company invests this cash value and credits interest to this account. Most UL contracts also offer a guaranteed minimum interest rate so you always know that your money will earn a minimum amount. The cash value in your account also grows income tax-deferred allowing it to accumulate faster.

If you need to access your cash value, you have a couple of options. You can "borrow" your own cash value by taking a policy loans. These loans are generally not taxed as long as your policy stays in force. You can even withdraw money from this cash value without taxes as long as the total amount of money you withdraw is not greater than the total premiums you have paid. Be aware that any loans and withdrawals may generate an income tax liability, reduce available cash value, reduce the death benefit or cause the policy to lapse.

Universal Life Offers:

- Flexible premium payments
- Guaranteed death benefit protection on some policies
- Potential "savings" feature from which loans and/or withdrawals can be taken
- Tax-advantaged cash value accumulation potential
- Income tax-free death benefit

ING's life insurance companies offer a broad spectrum of universal and survivorship universal life insurance policies that are designed to help you meet your financial goals, whether they are as simple as providing an income for your family to additional retirement income and even more complex needs like estate planning. Contact your financial professional for more information.

If the flexibility and cash values of UL intrigue you, but you'd rather be in control of where that money is invested, then variable universal life insurance may be for you.

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7

Term Life Insurance

Pure Protection for a Limited Time

Term Life is the simplest form of life insurance. Coverage is for a specified period of time (the term) and provides a death benefit only.

- Death benefit is paid if the insured dies during the specified period.
- Policy does not build cash value.
- Premiums generally remain level or increase throughout the specified period.
- Can be less expensive initially than permanent insurance and gives policyholders the alternative of using the savings to invest on their own.

Advantages of Term Life Insurance

- If your insurance need is projected for a certain number of years, for example, until a debt is paid off, or if cost is a prime consideration, Term may be right for you.
- You can choose protection for one to 30 years.
- Term can save you money or allow you to purchase a larger death benefit than would otherwise be manageable. However, the Term premiums may eventually exceed premiums on other forms of insurance.

Disadvantages of Term Life Insurance

- Term Life Insurance doesn't provide a cash value.
- Term Life Insurance doesn't provide permanent life insurance protection and costs can become prohibitively expensive as you get older.

Ready to get started? Need to learn more?

Talk to a financial professional.

Life insurance and annuities are issued by AXA Equitable Life Insurance Company (AXA Equitable) and by various unaffiliated carriers through AXA Network, LLC and its subsidiaries. Co-distributed by AXA Distributors, LLC and AXA Advisors, LLC, members FINRA, SIPC. AXA Equitable, AXA Network, AXA Distributors and AXA Advisors are affiliated companies. All guarantees are based on the claims-paying ability of AXA Equitable. The guarantees do not apply to the investment portfolios.

AXA Financial, Inc. and its subsidiaries do not provide tax or legal advice. This material is provided for informational purposes only. Please consult your tax and/or legal advisors regarding your particular circumstances.

Universal Life

More Options, But Fewer Guarantees

What Is Universal Life Insurance?

Universal life is permanent insurance that provides protection in case of death, as well as a savings or cash value component. The cash value of a universal life policy is based on the amount of premiums you pay, the declared interest crediting rate and the policy charges of the insurance company. Unlike term insurance or whole life, flexible premium universal life policies permit flexibility in the amount and timing of premium payments (within limits), and they generally offer you the ability to vary the death benefit amount based on your circumstances.

Universal Life costs less initially, and offers flexibility in the timing and amount of premium payments, but does not guarantee cash value or death benefit.

- Premium payments are flexible. After initial payment, you make additional premium payments at virtually any time and in any amount (subject to certain minimums and maximums).
- Your policy continues as long as there is enough cash value to cover monthly insurance charges.
- Cash value earns interest at a rate set periodically by the insurance company and generally guaranteed not to drop below a certain level.
- You can choose one of two death benefit options:
  - Level benefit equal to the policy's original face amount,
  - Variable benefit equal to the original face amount plus any existing policy account value.

Advantages of Universal Life

- You can determine the amount and timing of premium payments, within certain limits.
- You can increase or decrease the face amount.

Disadvantages of Universal Life

- Fewer guarantees than Whole Life.
- Skipping payments can lead to policy funding problems.
- Adding guaranteed features, like a No Lapse Guarantee or Lapse Protection Rider, can increase the cost of Universal Life.
- Growth in cash value in the policy is limited.
- No investment flexibility.
- A decrease in the death benefit may result in the imposition of surrender charges.

Ready to get started? Need to learn more?
Talk to a financial professional.

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8

- **Life Insurance**
  - Universal Life
  - Survivorship
  - Universal Life
  - Term Life
  - Variable Universal Life
- **Annuities**

Life Insurance

Life Insurance Solves a Variety of Life's Challenges
Life Insurance is an essential component of a complete financial plan, providing protection for your future. Your financial professional can help you determine the type and amount of insurance you need for your specific situation. Whether you need the temporary protection of term, or a more permanent solution such as universal life, Columbus Life has the solution. Explore the different types of life insurance that are available.

Universal Life

Universal Life insurance offers the best of two worlds--a set amount of coverage with a tax-deferred, cash accumulation account based on current interest rates. This permanent insurance plan generally provides lower premiums for those people who have life insurance needs that will stay relatively constant over their lifetimes, or who desire the cash value build-up universal life policies can provide.

Some Universal Life products offer you the flexibility to design the product to meet your needs, with the ability to increase or decrease the amount of coverage or premium payments as your circumstances or long-term needs change. It can be a flexible way to meet your long-term insurance needs.

While Universal Life insurance policies maintain certain guarantees, they provide benefits that are based on current assumptions for the underlying interest, mortality, and expense formulas. These current assumptions are based on current market conditions and actuarial assumptions, which may change over periods of time. Changes in these assumptions may require additional premium payments in order to meet your needs. These products should be purchased with a thorough understanding of the impact changing circumstances will have on policy benefits and values. A flexible universal life policy can address a wide variety of financial planning needs such as:

- Tax-deferred accumulation
- Charitable bequests
- Efficient transfer of assets to beneficiaries
- Business indemnity against loss of a key employee
- Funding for buy-sell agreements at death or upon disability or retirement[1]
- Supplemental benefit programs for key people (e.g., DBO salary continuation, split dollar)
- Income replacement at death for dependents
- Final expense cash needs

[top]

Indexed Universal Life

Indexed universal life offers growth potential through Indexed

QUICK LIN
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RELATED T
- Insurance
- Life Insur
- Ratings

9

Life Insurance

Permanent
- 90 Life
- 65 Life
- Single Premium Life Insurance

Term
- Term 80
- Term 10
- Level Term 20
- Level Term 10

Combination
- Adjustable CompLife®
- Survivorship CompLife®
- Estate CompLife®
- Corporate CompLife®

General Account Universal Life
- Custom Universal Life-Accumulator
- Custom Universal Life-Protector
- Survivorship Universal Life

Variable
- Custom Variable Universal Life
- Executive Variable Universal Life
- Survivorship Variable Universal Life
- Variable CompLife®
- Variable Executive Life
- Variable Joint Life
- Fund Information

Northwestern Mutual Custom Universal Life - Accumulator

Offered through The Northwestern Mutual Life Insurance Company

This material is not for use in Mississippi, pending state approval

Northwestern Mutual Custom Universal Life-Accumulator is designed for those with sophisticated financial and insurance needs. The flexibility it provides can help you meet a wide array of insurance objectives from the most basic to the most complex. By offering a high level of death benefit and premium flexibility, you can "customize" the policy to meet your specific objectives today and in the future when those needs change. This flexibility gives you the ability to match your protection to your needs, whatever they may be down the road. The cash value can also help you meet a variety of other financial objectives.

Northwestern Mutual Custom Universal Life-Accumulator is a flexible premium universal life insurance policy that shares in the investment performance of Northwestern Mutual's general account.

Death Benefit
Premiums
Cash Value
Interest Crediting Rate
Expenses
Policy Loans
Policy Withdrawals
Policy Lapse

Death Benefit
The specified amount of death benefit is chosen by the policyowner at issue. The minimum amount is $1 million. Three death benefit options are available and can be changed after issue from time to time (although some states prohibit certain option changes after issue). For details on the differences between the types of benefits and the availability of option changes after issue, contact a Northwestern Mutual Financial Network Representative.

BACK TO TOP

Premiums
After paying the initial premium, you can determine the amount and timing of any future premiums you pay. The minimum first year premium amount is $25,000.

BACK TO TOP

Cash Value
Like Northwestern Mutual's traditional whole life policies, the cash

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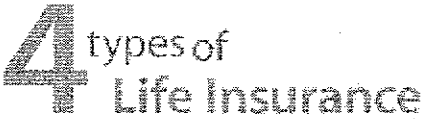
Term Life Insurance

Take care of what's most important

Term life insurance is an inexpensive and easy-to-understand way to protect your home and family.

Term life insurance is probably one of the most popular forms of life insurance. In exchange for a premium that stays the same for a specific period, you get a tax-free death benefit. That way, if something happens to you, your family can continue to pay for the things your income provided.



Compare the differences.

Want to learn more?

- **5-minute guide to term life insurance** (PDF)
- **How much do I need?**
- **Choosing a beneficiary**
- **Nationwide YourLife℠ Term**

Already own a term life insurance product? **Log in** to see your account information.

Advantages and disadvantages

Term life insurance is easy to understand, inexpensive and can provide essential protection for your family. Because it typically doesn't cost a lot, you can buy larger amounts without having to spend tons of money.

The downside is that term isn't a permanent life insurance solution. Once the tern ends, the premiums can increase dramatically. And, the older you are, the more expensive it gets. Fortunately, you can convert many term life insurance policies to a permanent insurance policy like **whole, universal** or **variable universal life insurance.**

Keep in mind that as your life changes, for example marriage, birth of a child or a job promotion, so will your life insurance needs. Make sure this type of product suits your long-term needs. You should weigh any associated costs before making a purchase. Life insurance has fees and charges include costs of insurance that vary based on the insured person's gender, health and age. There are additional charges for riders that customize a policy to fit your individual needs.

Not a deposit • Not FDIC or NCUSIF insured • Not guaranteed by the institution • Not insured by any federal government agency • May lose value

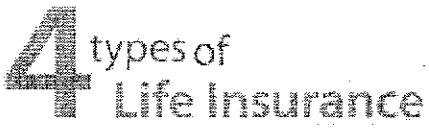
Universal Life Insurance

Life insurance that grows as you do

Universal life insurance provides death benefit protection for those who depend on you — while you earn cash value.

Universal life insurance offers a fixed interest rate and guarantees that your life insurance coverage will be around as long as you will be, as long as premiums are paid.

With universal life insurance, you can provide a permanent death benefit to those who depend on you while earning cash value. Universal life insurance offers a fixed interest rate and guarantees that your life insurance coverage will be arounc as long as you will be — as long as premiums are paid.



Compare the differences.

Want to learn more?

- **5 minute guide to universal life insurance** (PDF)
- **Fees and charges**
- **Choosing a beneficiary**

Advantages and disadvantages

A universal life insurance policy has the flexibility to adjust to your changing needs. It's more transparent than other types of fixed life (life insurance that doesn't invest in the stock market) because you can watch your account value increase as it earns interest and decrease when charges are deducted.

Your policy's cash value earns interest based on the company's current interest rate, and this growth is tax-deferred. You can access your cash value almost anytime.[1]

However, universal life insurance also puts greater responsibility on you — you are in charge of making the coverage changes that are right for you, and you take on the investment and mortality risks.

As your personal situations change (i.e. marriage, birth of a child or job promotion), so will your life insurance needs. Take care to ensure this type of product is suitable for your long-term needs. You should weigh any associated costs before making a purchase. Life insurance has fees and charges associated with it that include costs of insurance that vary based on the insured person's gender, health and age, and has additional charges for riders that customize a policy to fit your individual needs.

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Hartford Investor

Term Life

Term life insurance is basic life insurance coverage that provides protection for a specific period of time ("term"). It is a suitable life insurance product if you need short-term death benefit protection and have temporary financial obligations, such as mortgage payments, car payments, or short-term debts. Coverage provides lower premiums for people who cannot afford permanent life insurance premiums. Should you decide you want permanent life insurance, you can convert your policy later on (within certain parameters).

Death Benefit	Provides level death benefit[1] that becomes payable only if the insured dies during the term of the policy; it is not guaranteed for the insured's lifetime.
Lower Premiums	Generally a way to afford life insurance coverage at less expensive premiums than other types of life insurance because it allows you to purchase higher levels of coverage at a younger age, when your protection need is greatest. However, term premiums may increase with age.
Tax Advantage	Upon the death of the insured, the death benefit of a term insurance policy generally passes federal income tax-free[1] to the policy's beneficiary.
Guaranteed Level Premium Payments	Level premiums are guaranteed for a pre-determined period of time. You can specify the frequency, often a choice of annual, semiannual, quarterly, or monthly.
Renewal and Conversion Options	Annual renewal at increasing term rates at the end of the original contract period. Some term policies can be converted to permanent insurance (within certain parameters).

[1]The death benefit may be included in your estate for federal estate tax purposes.

All guarantees within the policy are based on the claims-paying ability of the issuing company.

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The Hartford is The Hartford Financial Services Group, Inc. and its subsidiaries, including the issuing companies of Hartford Life Insurance Company (HLI) (New York) and Hartford Life and Annuity Insurance Company (HLA) (Outside New York), Simsbury, CT. The mailing address for both issuers is PO Box 2999, Hartford, CT 06104-2999.

LIF 6483

Updated 01/11/2008

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Hartford Investor

Universal Life

The Hartford offers five universal life (UL) products – four single-life products and one survivorship product – with these key features:

- **Generally income tax-free death benefit** – Select whether the death benefit will be level or increasing. The death benefit becomes payable when the insured dies and may be included in your estate for federal tax purposes.
- **Premium payment flexibility** – Choose the amount and frequency of your premium payments. Be sure to consult with a tax advisor before you change the amount of frequency of premium payments as there may be federal tax consequences.
- **Access to cash accumulation and benefits** – Since any earnings are tax-deferred until you withdraw them from the policy[1], your policy account values have the potential to accumulate faster. You receive a guaranteed minimum rate of interest on the policy's cash value
- **Affordability** – Because UL is designed for the long term, premiums may be more economical than certain other life insurance products.

Guarantees are based on the claims-paying ability of the issuing company.

[1]Both loans and withdrawals from a permanent life insurance policy may be subject to penalties and fees and, along with any accrued loan interest, will reduce the policy's Account Value and Death Benefit. Assuming a policy is not a Modified Endowment Contract (MEC), loans are free from current Federal taxation and withdrawals are taxed only to the extent that they exceed the policyowner's basis in the policy. Distributions from MECs are subject to Federal income tax to the extent of the gain in the policy and taxable distributions are subject to a 10% additional tax, with certain exceptions.

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UNIVERSAL LIFE INSURANCE

Universal Life Insurance - at a glance
Universal Life (UL) is permanent life insurance that combines economical death benefit protection with cash value accumulation. It is known for its flexibility in premium and death benefit.

Single Life

- Lincoln LifeCurrent℠UL
- Lincoln LifeGuarantee℠UL
- Lincoln LifeGuarantee℠Plus UL
- Lincoln LifeReserve℠UL
- Lincoln LifeReserve℠Exec UL
- Lincoln LifeElements℠ UL
- Lincoln LifeElements℠Indexed UL

Survivorship Life

- Lincoln LifeCurrent℠ SUL
- Lincoln LifeGuarantee℠ SUL
- Lincoln SUL LPR-6
- Lincoln SUL DB

New York Products

- Lincoln LifeCurrent℠UL
- Lincoln LifeGuarantee℠UL
- Lincoln LifeGuarantee℠Plus UL
- Lincoln LifeReserve℠UL
- Lincoln LifeReserve℠Exec UL
- Lincoln LifeElements℠ UL
- Lincoln LifeElements℠Indexed UL
- Lincoln LifeCurrent℠ SUL
- Lincoln LifeGuarantee℠ SUL
- Lincoln SUL LPR-6
- Lincoln SUL DB

Life insurance policies are issued by The Lincoln National Life Insurance Company, Fort Wayne, IN. The Lincoln National Life Insurance Company is not authorized nor does it solicit business in the state of New York. In some states, contract terms are set out and coverage may be provided in the form of certificates issued under a group policy issued by The Lincoln National Life Insurance Company to a group life insurance trust. **Contractual obligations are backed by the claims-paying ability of The Lincoln National Life Insurance Company.**

Policies sold in New York are issued by Lincoln Life & Annuity Company of New York, Syracuse, NY. **The contractual obligations are backed by the claims-paying ability of Lincoln Life & Annuity Company of New York.**

Product and features subject to state availability.

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Planning & Products
- Your Financial Goals
- Insurance
  - Term Life
  - Whole Life
  - Universal Life
  - Variable Universal Life
  - Joint or Survivorship Life
- Annuities
- Reports & Prospectuses

Universal Life

Universal life is a type of permanent life insurance. Permanent life insurance policies combine death benefit protection with the ability to build wealth within the policy, which is referred to as the "cash value." While all permanent policies are designed to last a lifetime, different types are suited to specific needs, including tax and non-tax planning strategies.

Universal life insurance offers significant flexibility -- to change the level of coverage, or to stop and resume premium payments. As a result, universal life policies can be adjusted to meet the owner's changing needs. In addition, universal life insurance builds up cash value based on declared credited interest rates.

New! Guaranteed Protection UL: Flexible Lifetime Protection
Guaranteed Protection Universal Life provides coverage that is permanent and guaranteed that can adapt to your changing life. With enhanced cash values and flexible premium options, Guaranteed Protection Life offers the protection you need with the flexibility you desire.

Accumulation Builder[SM] IUL: Life Insurance That Protects, Assets That Grow
Accumulation Builder IUL, a new indexed universal life insurance policy, combines flexible, permanent protection and the potential to build strong cash value with minimal downside risk. You have two ways to accumulate cash value-a fixed account and an indexed account that credits interest based on the performance of a leading market index. You also have an array of flexible options to customize your policy to meet your needs.

Estate Protection UL: Guaranteed Survivorship Universal Life Insurance Helping Preserve Your Estate For Future Generations
Estate Protection UL is a flexible premium, fixed-interest guaranteed survivorship universal life policy that covers both spouses up to age 121. (All guarantees are based upon the claims-paying ability of the insurer). So no matter how long either spouse lives, he or she can relax, knowing that the estate has death benefit protection to help cover federal estate taxes, debts, legal fees and other final expenses. In other words, their children and grandchildren may be protected from the full responsibility of taxes and other final expenses.

Protection For Life UL: Guaranteed Coverage for a Lifetime
Now with Protection For Life Universal Life (UL) insurance, you can have the permanent death benefit protection you need with flexible and affordable premiums, plus guarantees that your death-benefit coverage will be there when it's needed most.

Protection Builder UL
When guaranteed, cost-effective death benefit protection is your

Related F
>> Protectio
>> Wealth A
>> Retireme
>> Estate Pl
>> Business

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Life insurance summary

- **What is it?**
- Do I need it?
- How much do I need?
- What does it cost?

Related links:
- Need advice?
- Participating life insurance
- Sun Simple Solution

Mortgage
- Options for protecting my mortgage
- Life insurance or mortgage insurance?

Leaving a group plan?
- Transitioning out of a job

Life insurance - What is it?

Life insurance is used to **protect the financial security** of the people you love most.

A life insurance policy **pays a cash benefit, tax free,** to your beneficiaries when you die. The amount of money for which you are insured and the type of insurance you buy depends on your needs.

People can get life insurance **through work** (some employers offer it through group benefits plans. This type usually ends when you leave the employer.) or they **buy it on their own** (usually from an insurance advisor).

There are 3 types of life insurance: term, permanent and universal.

	Term insurance	Permanent insurance	Universal life insurance
Summary	**Low cost, temporary protection** for times of high financial risk (e.g. when you have a mortgage)	**Stable lifelong protection** without the complexities of universal life. Over the **long term**, it offers generally a **better financial choice** than buying and renewing **term**	A more **flexible** but **intricate** type of insurance that combines **long term life insurance with an opportunity for tax-deferred savings**

		insurance.	
Duration	Coverage will end at a certain age	Guaranteed lifetime protection	Typically lifetime protection
Amount of insurance	Once chosen, doesn't change	Once chosen, doesn't change	Choice of level or increasing amount of insurance
Cost	Lowest initial cost, but cost may increase each 5, 10 or 20 years. Cost can rise dramatically in later years.	Typically guaranteed not to change for the life of the policy but some products are adjustable. Premiums tend to be higher than term insurance when you're younger but will be lower than term when you're older.	Cost of the insurance may be: • guaranteed and level, • increase each year or • be a combination of both.
Cash value	None	A cash value usually accumulates, and is paid to you upon cancellation.	Payments made, in excess of required cost of insurance, can be invested and grow tax-deferred.
	More details on term insurance	More details on permanent insurance	More details on universal life insurance

As a member of the Canadian Life and Health Insurance Assocation (CLHIA), we're committed to the insurance industry's initiative to give consumers clear information about insurance products and companies.

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Universal Life Insurance

Universal life insurance provides permanent life insurance protection and access to cash values that grow tax-deferred at competitive interest rates.

Universal Life Insurance Advantages

- **Flexible Protection**
  Universal life products give you the flexibility to choose the amount of protection that best suits your family or business. It allows you to increase or decrease coverage as insurance needs change. Increased coverage may be subject to underwriting requirements. You may not decrease your coverage below the required minimum. A decrease may result in a surrender charge being applied against the policy's cash value.

- **Flexible Premiums**
  With universal life insurance, you control the amount and frequency of payments. Looking towards the future? You have the option to increase the premium or make lump sum contributions, subject to limits as specified in the policy. The extra dollars grow tax-deferred, and may increase the cash and death benefit values. On the other hand, in a temporary cash crunch, you can pay less than the scheduled premium and let the policy's accumulated cash value pay the remainder of the monthly charges.

- **Flexible Design**
  Universal life products can be customized with innovative policy features to fit your lifestyle. Contact a local New York Life agent to learn more about how universal life policy riders can protect your spouse and children, protect your ability to cover monthly policy charges during disability, and increase the benefit to your family if you should die accidentally.

Universal Life (Target Life Insurance) policies are issued by New York Life Insurance and Annuity Corporation (A Delaware Corporation), which is a wholly-owned subsidiary of New York Life Insurance Company.

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Questions about this article or about New York Life, our subsidiaries and the products that we offer? Please call this toll-free number 800-710-7945 to arrange for a discussion with a New York Life agent or a NYLIFE Securities LLC financial services professional.

This material is for informational purposes only. Neither New York Life nor its agents provide tax, legal or accounting advice. Please consult your own tax, legal or accounting professional before making any decisions.

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= external link that opens in new window...more

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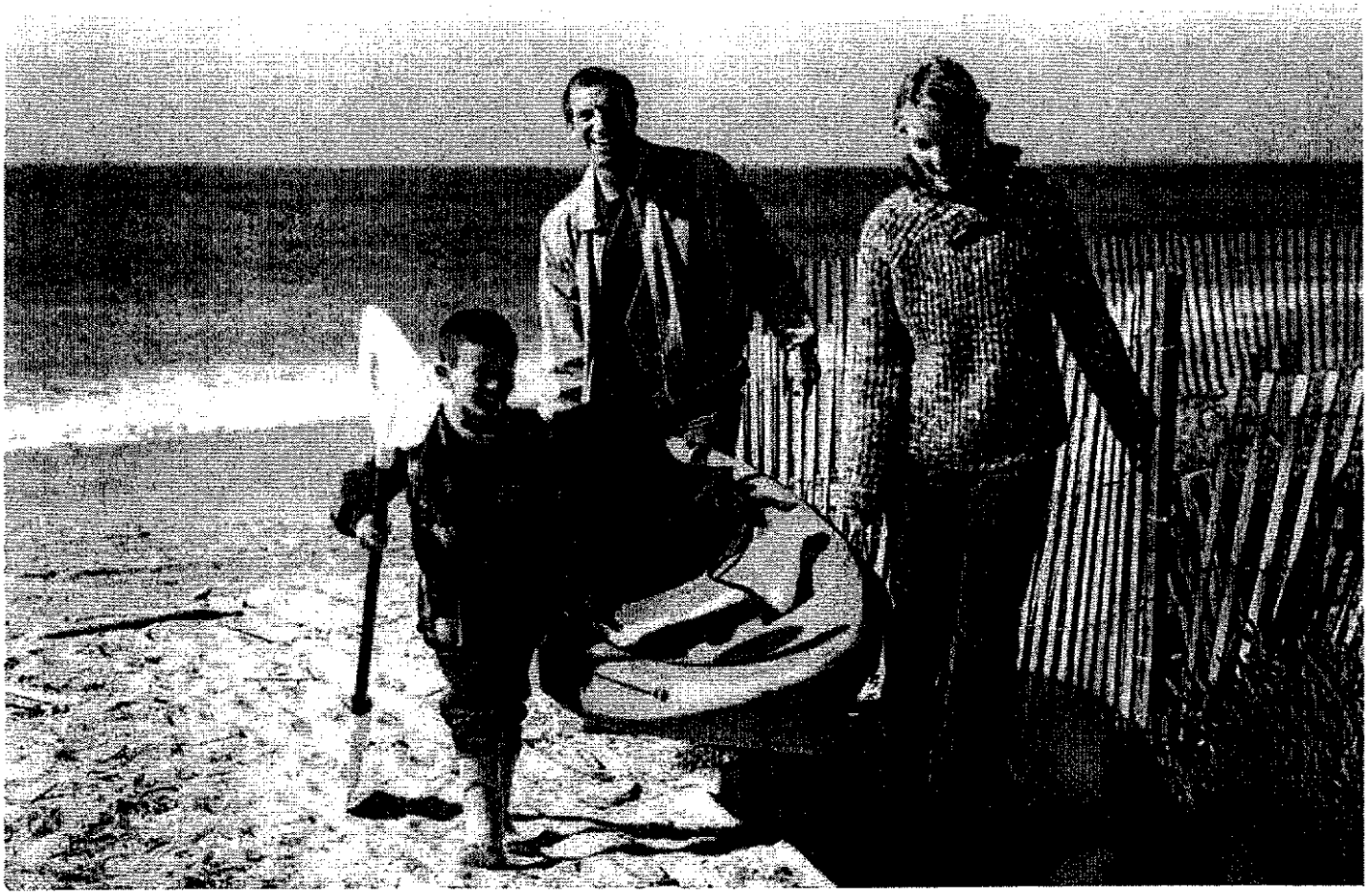
Versa-Flex PRO

Client Brochure

Flexible Premium Adjustable Life Insurance



PACIFIC LIFE

VFPRO-1A

Pacific Life Insurance Company

Death Benefit Protection & Growth Potential

As your legacy grows, a Versa-Flex PRO life insurance policy can grow with it.

In addition to death benefit protection, permanent universal life insurance offers accumulated value to use for supplemental income or other needs.

Whether you're providing for your heirs, your estate or your business, combining death benefit protection and accumulated value into one product gives you a wide range of flexibility over time.

Versa-Flex PRO offers permanent death benefit protection and accumulated value growth potential within a versatile, flexible universal life insurance product that you can adjust to fit your specific financial goals.

For example, by purchasing one of the optional surrender value enhancement riders, you can establish a higher accumulated value (relative to premiums paid) ratio in the early policy years compared to a policy without an enhancement rider.

See page 8 for descriptions of the Surrender Value Enhancement Rider-Individual (Form #R08SEI) and the Surrender Value Enhancement Rider-Trust/Executive Benefit (Form #R08SET).

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http://www.myallstatefinancial.com/financial/financial-products/life-insurance.aspx

Life insurance is pretty simple. If you're protected and you pass away, your beneficiaries receive a cash benefit. They can use this for just about anything—paying off debts, replacing income that you're no longer providing and of course, medical and funeral expenses.

Now that you understand life insurance, let's take a look at two basic kinds of life insurance. Here's each of them in a nutshell:

Term Life Insurance: This coverage lasts for a "term" you choose, usually 10, 15, 20, or 30 years. During that time, your premiums are guaranteed not to increase. If you pass away during that time period, your beneficiaries get a cash death benefit. If you live longer than the term period, you have the option to continue coverage for an annual, renewable premium, which is generally much higher. You can usually convert a term policy to a permanent one without getting a new medical exam.

Permanent Life Insurance: There are two big ways that permanent is different from term. First, the policy is meant to last the rest of your life (as long as you make the required premium payments, of course). Second, part of the money you pay in is set aside in an account where it can grow cash value that you can tap into later on. There are several types of permanent life insurance, each with different advantages.

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TYPE	DESCRIPTION	WHEN TO CONSIDER	PRODUCTS TO YOUR NEEI
TERM LIFE	- Purchased for a specific length of time, or term - generally one to 20 years. - The amount of the pay-off or face value varies depending upon your needs. - Upon the policy owner's death, the face value is paid to the beneficiary(ies).	- You want to ensure that your family can meet major needs if something happens to you. - You are just starting out in life and need to keep expense low. - You want a policy that offers a relatively high face value for a relatively low premium.	Hancock YRT1 Signature Term Life Term Series Survivorship Term
UNIVERSAL LIFE	- Permanent insurance which has the potential to accumulate cash value. - Increase or decrease policy's face amount to meet your changing protection needs - Increase or decrease the dollar amount of your premium payments and make additional lump sum payments to your policy.	- You want to ensure that your family can meet major needs if something happens to you. - You want the option to borrow against your policy's cash value to meet pressing needs. - You want the potential to earn a higher rate of return than a whole life account, even though there's a risk that your rate of return could drop	Protection Universal Life UL-G Performance Universal Lif Performance Survivorship Survivorship UL-G
VARIABLE LIFE	- Variable life is permanent insurance, which allows you to invest a portion of your premium in stocks, bonds, or money market funds in order to build your policy's cash value - Involves an element of risk because investment performance is not guaranteed	- You want to ensure that your family can meet major needs if something happens to you. - You want the option to add to your account value by paying an amount above your regular premium. - You want the potential to earn a higher rate of return on your account investments, even though your rate of return could also drop.	Medallion Variable Life Ed Medallion Variable Life Plu VUL Protector SPVL Survivorship VUL Performance SVUL Variable Estate Protection
WHOLE LIFE	- It's permanent life insurance that you own for your entire lifetime. - Premiums, or payments, are fixed and can be paid monthly, quarterly, semi-annually, or annually. - Because your premiums are invested by your insurance company, your policy accrues a cash value, which grows untaxed.	- You want to ensure that your family can meet major needs if something happens to you. - You want to have a policy that you own for your entire lifetime and accrues cash value, which you can borrow against for any purpose.	Mod Plus Whole Life Insur Premiere Whole Life (PWL Level Premium 100 Survivorship Whole Life (T Level Premium Estate Pro Modified Premium Estate F
LONG TERM CARE	- A long term care (LTC) insurance policy helps cover the cost of long term care, picking up where health and disability insurance leave off - LTC refers to help with daily activities -- such as eating, bathing or dressing -- over an extended period of time. - It can also include help for those suffering from a severe cognitive impairment such as Alzheimer's disease.	- Because: (1) at some point in your life there is a strong probability that you may need LTC (2) LTC is very expensive. - If you want access to the highest quality of care and don't want to trade the wealth you've accumulated over a lifetime to pay for your care, LTC insurance can help achieve those goals - Remember, too, that the need for LTC can happen to anyone, even in the prime of life.	Click here to find out more Term Care Insurance prod

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The Value of a Prudential Financial Professional

Volatile markets. New tax laws. Upcoming retirement. Teaming up with an experienced financial professional to help you make sense of it all may be the smartest decision you'll ever make. But how do you know who is qualified to help you? We have a few tips we think may help.

Look for Experience and Knowledge

You need someone who knows how to help you grow and protect your wealth. A licensed financial professional can provide assistance on a range of financial issues—matching your investment portfolio with your risk tolerance, time horizon and investment objectives to suggesting alternatives to help protect your assets. Having a relationship with a Prudential licensed financial professional puts all of his or her experience and skill at your disposal.

Insist on A Full Range of Choices

Why limit yourself? Serving as your gateway to our wide array of insurance and investment products, your relationship with a Prudential financial professional gives you access to:

- A full range of insurance and investment products designed to help you meet your goals.
- World-class research from our highly regarded team of 60 strategists, economists, and analysts-covering hundreds of companies in both the U.S. and overseas.
- A rich history encompassing over 125 years of experience.
- And, most importantly, a personalized relationship that can help you identify and prioritize your financial needs and goals. We assist in evaluating your existing situation and suggest strategies to help meet your financial security needs.

Expect the Best in Online Services

If you think online services should be fast, free, and easy-to-use, we agree. To enhance your relationship with your Prudential financial professional, we offer you Online Account Access that includes:

Insurance & Investment

- Update contact information
- Access your product values
- Access your mutual fund and annuity statements/tax forms
- Reallocate among Life and Annuity subaccounts

Investments & Securities

- Access real-time account information and quotes
- Get the latest news, market information, and daily commentaries
- Use online bill payment and

- Process exchanges and on-demand purchases into existing mutual fund accounts
- Track, view, and print your mutual fund account history since inception
presentment
- Access eStatements, eConfirms, and consolidated statements (1099s)
- Download to Quicken and Microsoft Money

Want to learn more about how a Prudential financial professional can help you? We can match you with a financial professional in your area who has the experience and knowledge you need. Visit our Find a Prudential financial professional page right now.

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IFS-A126946 ed. 7/2008

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IFS-A125824 Ed. 11/2007

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AMENDMENT TO BROKER AGREEMENT

Amendment to Broker Agreement made this [redacted] by and between The Prudential Insurance Company of America, Pruco Life Insurance Company and Pruco Life Insurance Company of New Jersey (hereinafter collectively, the "**Company**") and [redacted] (hereinafter, the "**Broker**").

W I T N E S S E T H

WHEREAS, Company and Broker have entered into a Broker Agreement dated [redacted] (hereinafter the "Agreement"); and

WHEREAS, the parties desire to amend the agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties agree as follows:

1. The following section is added to the end of the provision entitled, "Limitations of Broker's Authority":

   p. engage in any insurance transaction that requires compensation disclosure, as determined by the applicable law, without making such required compensation disclosure.

2. The following sections are added to the end of the provision entitled, "Broker's Representations":

p. that no Company Policy shall be sold or used in any manner to or with a viatical or life settlement company or be part of a viatical or life settlement.

q. to complete a permanent registration for the PrudentialXpress website at www.pruxpress.com (hereinafter, the "Website") within 30 days of the effective date of the Agreement. Use of the Website will be subject to the terms and conditions of the Website.

r. for the term of the Agreement, to access the Website no less frequently than once every 90 days and to read and review the "Notices & Schedules" page of the Licensing section.

s. for the term of the Agreement, to maintain an active Website registration.

3. The last paragraph in the provision entitled, "Complaints, Investigations and Proceedings" is replaced by the following:

   The Broker shall have the responsibility for maintaining accurate and complete records of all transactions relating to the solicitation of applications and the sale of Policies for the Company as required of it by applicable federal and state laws and regulations. These records will be made available to the Company for inspection upon request, including after termination of this Agreement. The records maintained

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Life Insurance

Types of Life Insurance

Term Life

Whole Life

Variable Life

Universal Life

Variable Universal Life

Survivorship Life

Key Features

Life Insurance Glossary

Choosing a Life Insurance Company

Life Insurance

Prin

Products & Services Home

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What Is Life Insurance?

A multipurpose financial planning tool

Life insurance is designed primarily to protect your family's financial security after you die. But some types of life insurance can also help you build assets to meet needs during your lifetime. So it's a smart addition to any financial plan — because it can serve different functions within your overall investment strategy.

Learn more about the different types of life insurance.

Security for your family should something happen to you

Life insurance can help:

- Pay off your debts and taxes after your death.
- Allow your family to maintain its standard of living.
- Support your dependents' goals and dreams.
- Provide immediate access to cash.[1]

Life Insurance: Is Not a Deposit of Any Bank • Is Not FDIC Insured • Is Not Insured by Any Federal Government Agency • Is Not Guaranteed by Any Bank or Savings Association

Financial support during your lifetime

Certain types of life insurance also may serve as:

- A supplement for your retirement income.
- A funding vehicle for a college education, starting a business, an emergency, or buying a second home.

How Much Insurance Do You Need?

One rule of thumb is to buy life insurance equal to five to seven times your annual gross income*. However, there is no substitute for a careful evaluation and review of your life insurance needs with your financial advisor.

A Must-Have for Your Financial Plan

No matter what kind of life insurance you choose, there's no substitute for the peace of mind it can provide. Life insurance is one of the ways you can protect your family's financial security should something happen to you.

Talk to your financial advisor/licensed insurance agent about your long-term needs, and he or she can help you determine:

- Which type of insurance is right for you.
- How much protection you and your family need.
- How to make the most of your premium dollars.

* Source: American Council of Life Insurance, December 2001.

Learn more about the different types of life insurance.

Ready to get started? Need to learn more?

Talk to a financial professional.

[1] Withdrawals from life insurance policies may be subject to fees, penalties, and income taxes depending on the specific life insurance policy and the policyholder's tax situation. Withdrawals reduce the policy value and death benefit.

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GE-31860 (4/05) (exp 4/07)

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August 18, 2008

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AXA EQUITABLE

AXA Distributors
Field Bulletin

October 5, 2007
AD 07-108

A Message from Gary Hirschkron and Tim Herr...Prohibited Sales Practices

To: Life Producers

We have been vocal in our abhorrence of Stranger-Owned Life Insurance (SOLI), which is life insurance initiated by or purchased with the intent to speculate on longevity by an unrelated third party, or otherwise to sell in the secondary market (See **AD 07-013** and memos dated **October 30, 2006, September 29, 2006 and January 19, 2006**). We believe that, if left unchecked, SOLI sales practices will increase life insurance costs to consumers and undermine the business of life insurance.

We have been in the life insurance business for 148 years and are committed to defending it for the benefit of the millions of policy and contractholders we serve – and the millions we look to serve in the future. To protect that business, we have taken and are continuing to take a variety of steps to help ensure that we do not unwittingly participate in SOLI transactions of either our products or those of other companies. Similar precautions are being taken by our retail distribution channel. Those steps include, but are not limited to, the following:

Prohibited Marketing Practices. These practices are prohibited for producers appointed by AXA Equitable and its affiliates:

- Using or permitting others to use written materials with prospective purchasers of life insurance that make any representations about the ability to sell a policy or rights to its death benefits, or in any way promote, propose or orchestrate such a sale.
- During the sales process, participation in (or knowledge of) any scheme or plan that contemplates (i) the sale or possible future sale of a policy or rights to its death benefits to the secondary market; or (ii) any other change of policy ownership (including changes of beneficial ownership) in order to facilitate a secondary market transaction or sale.
- Applying for multiple policies as part of a scheme or plan that contemplates the sale of any or all of the policies or rights to their death benefits.
- Selling life insurance in excess of amounts that are actually needed (or expected to be needed) by the purchaser to protect its legitimate insurable interest.
- Providing or offering any consideration to a person directly or indirectly in exchange for the purchase of a policy (for example, through an offer of free insurance or forgiveness of a debt, or through a trust to the insured's family).
- Directly or indirectly arranging for use of premium financing without disclosure to AXA Equitable.

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NP07820 (10/07)
AXA Distributors, LLC, New York, NY 10104. AXA Equitable Life Insurance Company is the parent company of AXA Distributors, LLC.

- Participation in (or knowledge of) any scheme or plan that masks the true source of funds for premium payment.
- Arranging for the purchase of a "put option" on a policy.
- Coaching applicants to provide false or misleading answers to application or inspection questions.
- Using any other practice designed to procure (or to help procure) life insurance for the benefit of an undisclosed party.

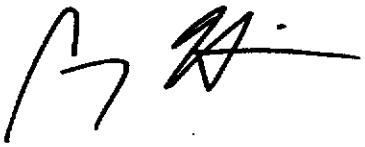
Enhanced Pre- and Post-Sale Inspections: We expect to increase the number and frequency of pre- and post-sale inspections. We will seek to rescind and/or deny claims to the fullest extent permitted by law whenever we find a misrepresentation or other basis justifying such action, including but not limited to the absence of the requisite insurable interest, scheme or plan that contemplates the sale in order to speculate on longevity. We will also seek to recover all commissions associated with such improper sales and seek other appropriate disciplinary action.

Referral to Law Enforcement of Cases Involving Fraud: Misrepresentations on insurance applications may constitute insurance fraud under applicable law. If we identify potentially fraudulent conduct, we will make referrals to law enforcement and other appropriate regulatory authorities for investigation and further action as appropriate.

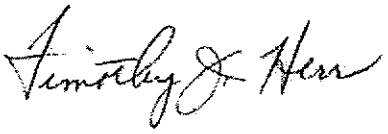
We believe that the large majority of life insurance sales continue to protect beneficiaries from the economic loss caused by the death of the insured. We look forward to earning the right to as much of that business from you as possible through competitive products, value-added sales support and quality service.

But we have no interest in writing business designed to allow a disinterested investor to speculate on the lifespan of one of our insureds. We will do everything we can legally to avoid that business and to avoid producers who traffic in it.

We thank you for your business and look forward to a long-standing relationship based on mutual trust and respect.



Gary Hirschkron
Senior Vice President
AXA Equitable



Tim Herr
Senior Vice President
AXA Equitable

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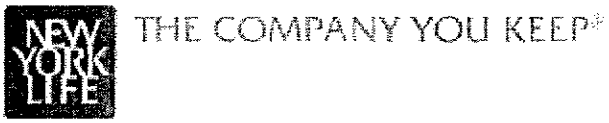

The Role of a Financial Professional

The key to achieving long-term objectives is planning. Your goal may be to fund your children's college education, protect your family during your working years, or guarantee your own retirement security. These things won't happen by accident. You must plan. You need to know what you want to achieve and then map out a strategy that will help you achieve it.

The Good News
You don't have to do it alone. Your New York Life insurance agent does more than just sell insurance policies. He or she is a professional problem solver who can help you identify the most cost-effective products to help you meet your financial objectives.

Your New York Life agent provides a full range of services. These include working with you to:

1. **Review your individual situation and personal objectives.** Perhaps your needs are so clear that life and health insurance can be determined after a few minutes of conversation. Or it may quickly become apparent that nothing short of a full-blown, detailed "fact finding" session is required, going beyond such basic vital statistics as birth dates, income assets, etc.

   Why is it important to probe and ask questions? Three reasons: First, your situation and needs are different from those of your neighbors. Your agent needs to understand those differences. Second, money is not a goal in and of itself; it is merely the means to an end. (Your goal may be a comfortable, secure retirement. However, the means to achieve that, for example, might be a retirement nest egg of $600,000.) Finally, the more your agent knows about you, the more precise and on-target will be the recommendations you receive. As a result, your agent may take some time to discuss — and even appear to be a bit nosy about — your hopes, dreams and objectives — the things that really matter to you. By the way, all information will remain strictly confidential.

2. **Analyze and review your needs.** As needed, your agent will work with you to identify and prioritize your objectives, then help establish benchmark goals. This is important because we live in a world in which there are unlimited resources. People often fail to achieve objectives because they try to accomplish too much at once, or they don't attach specific deadlines to their goals.

   For instance, you may have a desire to retire in comfort, make sure your children are able to graduate from college debt-free, plus vacation in the Caribbean every winter. But your resources may say that you cannot do it all.

   Your New York Life agent can work with you and help you focus on what's most important to you. Together, you may find it helpful to break down these goals into quantifiable objectives: accumulate $600,000 by age 65; have a college fund of $40,000 in 15 years; set aside $10,000 each year for vacationing. Then you can look at available resources and decide which goals are realistic, which need to be adjusted and scaled down, and which simply must be abandoned.

3. **Develop and implement a strategy to help you achieve your goals.** Based on the information you share and the goals and means you establish, you'll receive specific recommendations on where life and health insurance products can help.
4. **Coordinate your financial activities.** If desired by you, your agent can also serve as a quarterback for

you and the other members of your team of advisors.

5. **Monitor progress, provide ongoing service** as your needs and situation change over time. This is crucial. Planning is not a one-shot deal. Strategies need to be adjusted periodically. Your agent will work with you over the years to help keep your program on track with your changing needs. By the way, there is no charge for advice, planning, or ongoing service provided by your New York Life agent.

Your Role

It's a crucial one. Your agent cannot do it alone. It's a two-way street. The key to getting maximum value from your relationship with your agent is communication and candor. Do the following:

1. **Get acquainted.** It's recommended that you contact your agent and arrange a meeting to discuss the full extent of available services, and to review your situation.
2. **Educate your agent.** Don't expect a mind reader. Your agent may anticipate many of your needs, but will not assume anything. That's why it's so important that you be candid in providing information.
3. **Educate yourself.** At the same time, you too should be sure to ask a lot of questions. Be nosy. Ask for details and explanations about recommendations and how certain plans may work. Remember, the only "dumb question" is the one that isn't asked.
4. **Make it a team effort.** Work together. Listen carefully to the recommendations, but remember — all decisions are yours. Make sure you're comfortable with the outcome.

Questions about this article or about New York Life, our subsidiaries and the products that we offer? Please call this toll-free number 800-710-7945 to arrange for a discussion with a New York Life agent or a NYLIFE Securities LLC financial services professional.

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Viatical and Life Settlements - Ground Rules and Opportunities

To: Agents and Field Management
From: Scott L. Berlin, Senior Vice President in Charge of Individual Life
Gerard A. Rocchi, Senior Vice President and Chief Operating Officer, Agency
MDRT Code: 4450.00 *(Life Insurance: Special Contracts)*

Summary
While New York Life maintains that life settlements are usually not the best solution for our policyholders, we recognize that a limited segment of policyholders may wish to use some of the features they offer. Moreover, as the secondary market for life insurance continues to grow, we know that clients may come to you seeking advice on life settlements. This *Field News* clarifies the Company rules regarding viatical and life settlements, provides advice on talking to clients about their options, and includes information about Access Plus, our innovative alternative to life settlements. Please see the August 23, 2004 *Field News,* Participation in Viatical and Life Settlements Prohibited, for additional information.

Life Settlements Are Not the Best Solution for Policyholders

Over the past two decades, the secondary market for life insurance policies, in the form of viaticals and life settlements, has grown significantly. New York Life has consistently viewed these arrangements with caution because they rarely serve the best interest of policyholders, or those whom the policies were intended to protect. Life settlement companies know that the policies have value, and are willing to offer policyholders more than their policies' surrender value, but far less than the death benefit. These companies also are inclined to pay high broker commissions that are sure to draw the interest of regulators. Moreover, life settlements remain unregulated in about half the states. For these reasons, the Company continues to prohibit agents from receiving payment for participating in a life settlement.

Talking to Clients About Life Settlements

Although you are prohibited from negotiating, selling, soliciting, or receiving any form of compensation on a viatical or life settlement transaction, you may discuss a full range of planning alternatives with clients, including viatical and life settlement transactions under appropriate circumstances.

Should your clients raise the topic or should you decide to discuss the issue with your clients, we recommend that you provide them with a copy of the brochure, "Life Settlements - They Come at a Price" (#14204-02/08), which explains both the benefits of keeping their policies and some of the risks of dealing with settlement companies. If they meet the eligibility requirements, you may also talk with your clients about Access Plus, which provides many of the benefits of a life settlement, while keeping the policy in force, with the death benefit still in place for the clients' beneficiaries. (See below for more on Access Plus.)

If after exploring the contractual and extra contractual options we offer, your clients decide that they still want to proceed with a life settlement, you should inform them that your position with New York Life does not allow you to engage in that business. You may indicate that they may want to contact more than one life settlement company, because settlement offers may vary substantially from company to company. The Life Insurance Settlement Association's web site includes a list of life settlement companies by state.

However, you may not obtain forms or papers for the transaction, accompany a client to a meeting with a life settlement broker or provider, evaluate any proposals they receive from a life settlement company, or receive any referral fee or any other type of compensation from a viatical settlement transaction.

Your professional liability policy will not cover any claims against you arising from advice you give regarding, or your involvement in a life settlement transaction that is prohibited by Company rules, including the

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THE COMPANY YOU KEEP®

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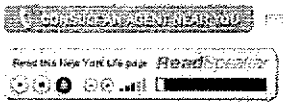
Personalize this site with a Personal Folder!
Why would I do this?

Click here to speak with a local agent/ registered rep.

Life Settlements: They Come at a Price



Have you been approached by a life settlement broker asking to purchase your life insurance policy?

If so, you owe it to yourself to get the facts about these complex financial transactions, because such a decision could have very serious and far-reaching consequences -- for you and your beneficiaries.

By selling your policy you will give up valuable benefits and put your financial plans at risk. Life settlement brokers are aggressively courting people like you who want or need cash and have been led to believe that the easy way to get it is by agreeing to sell their policy for more than the cash value. The life settlement companies making this pitch are positioning themselves as service organizations by appealing to consumers through Internet ads such as "Untap hidden wealth. Sell your life insurance policy now. Fast offers."

The Risks of Dealing with Life Settlement Companies

Despite such come-ons, the life settlement industry, as a whole, doesn't have a long record of service to the public. In fact, many of the participating private enterprises [1] have been in business a relatively short time. Moreover, unlike life insurers, which are regulated individually by each state, life settlement companies may have little, if any, oversight in some states. Furthermore, those who broker life settlements may not be properly trained, licensed, or sufficiently experienced in these intricate transactions to adequately counsel consumers about their life insurance, making people they're doing business with vulnerable to inappropriate sales.

What They're Offering: The Short-Term Gain of Life Settlements

Let's say, for example, that you've incurred large, unexpected expenses recently, but are short on cash. You have a $1 million life insurance policy, with $200,000 of cash value, and you are approached by a life settlement company that offers you a lump sum of $300,000 for your policy. Part of this payment may be taxable, by the way.

Still, this chance to sell your life insurance policy for quick cash may seem like a pretty good deal. And, the opportunity to get money immediately to pay your bills may not only give you a sense of relief, but also give you the impression that you've regained control of your finances.

But bear in mind that life settlement companies typically purchase policies from people who have had an unfavorable change in health. To sell your policy at that time — when it is more valuable than ever before — just doesn't make sense. In the example above, you would be losing a death benefit of $1 million — usually free from federal income tax — for a possibly taxable payment of $300,000. While the offer is $100,000 more than the policy's surrender value, it is $700,000 less than the policy's actual value. A life settlement company will not give you the real value of your policy.

What Consumers May Lose in the Long Term: The Down Side of Life Settlements

In addition to possibly putting yourself at financial risk in the event of a serious illness, you and those you care about may face considerable losses as a consequence of selling your life insurance policy. These losses include: Protection. By selling your policy, you'll deprive your beneficiaries of a death benefit when you die. The new owner will name a beneficiary, who will collect the income-tax-free proceeds on your passing. Without a death benefit, your beneficiaries may have to rely on other assets after your death, assets vulnerable to inflation or a plunge in the stock market. Furthermore, the sale of assets to pay bills could have an unpleasant consequence for those you leave behind — taxes.

The growth of cash value. This will end with the sale of your 1 Life settlement companies are not considered insurance companies, according to the Federal Trade Commission. permanent life insurance policy. Since cash value grows tax-deferred, that could mean a substantial loss for you and your beneficiaries. Additionally, if you own one of our whole life insurance policies2 and sell it, you would not be eligible to receive dividends if they're declared [3] — extra income that can be used to pay bills or your life insurance premiums or to repay policy loans.

Privacy. Strangers will have ready access to personal information about you, including your medical history, if you sell your policy. After you sell your policy, you will be contacted regularly by someone you do not know to see if you are still alive!

Peace of mind. No one knows what the future holds. What if you die suddenly? Without death

Looking for a life insurance quote?

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benefit proceeds, will your loved ones have enough to help settle debts, avoid selling assets to pay bills and taxes, and run the household? They had better because only the life settlement company will gain at your death.

In addition to these potentially devastating losses, consider this: If you sell your life insurance policy to a life settlement company, you will be involved with a policy-for-cash business that has no policyholders, no life insurance risk, and no requirements for solvency or reserves. Furthermore, a life settlement broker may sell your policy to an investor, who will have a major stake in your early death and stands to make a substantial profit from it. At your death, someone whom you do not know will be enriched. Is this really the answer you're looking for?

There Are Better Alternatives

Life settlements are not a good solution for the vast majority of policyholders. If you need money for an emergency — or simply to meet a changing need — you may have more alternatives than you realize. They include:

- Borrowing against the cash value of your permanent life insurance policy — taking either a loan or a partial withdrawal — as your needs change over time[4]
- Using your policy as collateral for a bank loan
- Asking your agent about adding a Living Benefits Rider on your life insurance policy, which gives you tax-advantaged access to a portion of your policy's eligible life insurance benefit during your lifetime, should you be diagnosed with a terminal illness.

Talk Things Over with a New York Life Agent First

The purpose of life insurance is to help build your financial foundation and protect your financial resources. So it's important that you sit down with your New York Life agent to carefully review your situation before you make a decision about dropping or selling your life insurance policy. Together, you can gather the facts, assess your financial situation, and explore alternatives that better meet your needs.

You owe it to yourself — and those you love — to ask any questions you have and find out the full, long-term implications of accepting a life settlement. Our agents, who are the best-trained in the industry, are eager to work with other members of your financial team in developing the right plan for you and your beneficiaries— one that won't jeopardize your future or short-change theirs.

[1] Life settlement companies are not considered insurance companies, according to the Federal Trade Commission.

[2] Whole Life, Modified Premium Whole Life, Custom Whole Life, Survivorship Whole Life.

[3] Dividends are based on the policy's applicable dividend scale, which is neither guaranteed, nor an estimate of future results. Although dividends cannot be guaranteed, New York Life has paid dividends for more than 150 consecutive years.

[4] Policy loans incur interest and reduce the policy proceeds at death by the amount of the unpaid loan plus interest.

Rate This
Rating: 4.0/5 (6 votes cast)

BE THE FIRST TO COMMENT

Arrange for a **New York Life agent** to call you at your convenience. Simply fill out this short form below and we will match you with a **professional local agent in your community**.

First Name * = required
Last Name
Address
City
State **Zip Code**
Phone
Home or work phone? Home Work*
Best time to call select day select time
Date of Birth mm-dd-yyyy Why?
Send (please click only once)

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Massachusetts Mutual Life Insurance Company
and affiliates, Springfield, MA 01111-0001

www.massmutual.com

Disclosure and Acknowledgement of Risk

To be completed when transferring ownership to a Viatical or Life Settlement Company

Insured _____	Policy Nos. _____

I understand that:

- The person(s) assisting me, including the Financial Representative named below (if any), with the sale of my insurance policy to the Viatical or Life Settlement Company:

  _____

  is/are not acting on behalf of Massachusetts Mutual Life Insurance Company or any company or person affiliated with MassMutual (all such entities and persons are referred to as "MassMutual"),
- MassMutual is not a party to, nor assumes any responsibility for, this transaction;
- MassMutual has in no way recommended this transaction to me, and
- I will have no recourse against MassMutual if I become dissatisfied with this transaction.

I further acknowledge and understand that by selling my insurance policy:

- I may be forfeiting valuable rights and benefits available under that policy;
- The beneficiary listed in the policy will not receive the proceeds from this policy;
- Persons or entities unknown to me may obtain an interest in my death;
- Persons or entities unknown to me may obtain access to my personal health records;
- My policy may be sold and resold many times without my knowledge or consent;
- There may be ongoing tracking of my health until I die; and
- I am forfeiting a financial asset that probably has a higher rate of return than any other asset in my estate.

I confirm that I have had the opportunity to consult with my legal, tax and financial advisors and have done so to the extent I felt necessary.

The following is applicable if this form is executed in California or the transfer of this policy is subject to California law.

Current owner hereby specifically waives the benefits of the provisions, if applicable, of Section 1542 of the Civil Code of the State of California, which reads, in part, as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with the debtor."

_____
Print Name of Owner

_____
Signature of Owner Date

_____
Print Name of Viatical or Life Settlement Company Representative

_____
Signature of Viatical or Life Settlement Company Representative Date

_____
Signature of Financial Representative Date

MassMutual
FINANCIAL GROUP

Request to Surrender Policy

Not for use with Qualified Plan or Keogh (H.R. 10) Plan owned policies

Massachusetts Mutual Life Insurance Company
and affiliates, Springfield, MA 01111-0001

www.massmutual.com

Policy Number _____
Insured 1 _____
Insured 2 _____

Client and Surrender Provision Information *(please complete all boldfaced areas)*

Owner's Taxpayer Identification Number (Required) _____ **Owner's Date of Birth** _____
(If not supplied, applicable taxes will be withheld)

In consideration for payment of the surrender value, the undersigned releases all right title and interest in the policy and agrees to hold the Company harmless from any and all claims, actions, causes of action, suits, and liabilities in connection with the policy. This includes any agreements, provisions, or riders relating to the policy. The undersigned represents that they have the authority to surrender the policy and, to the best of the knowledge of the undersigned, the policy has not been given to and is not in the possession of any other person. The undersigned is returning the policy or represents that the policy is not locatable. This agreement shall be binding on the estate, successors, and assigns of the undersigned. Unless a later date is requested, the surrender will be effective on the date this form, properly signed, is received at our administrative office. For the purpose of this form "policy" also means, "contract." Each of the undersigned certifies that he or she is of legal age and that the policy is not assigned, pledged, or subject to any bankruptcy proceeding, attachment, lien, or other claim. If this policy is assigned as collateral, the collateral assignee must also sign this form. The full surrender of your policy results in the distribution of all of your surrender value—including both guaranteed and non-guaranteed elements; and the termination of all rights and benefits, including all of the life insurance coverage previously provided under the terms of the policy.

Pay the Proceeds to: ☐ Insured ☐ Owner ☐ Assignee ☐ Other _____
Payee Address: _____

☐ Apply $ _____ on policy _____ for _____

Tax Information

Withhold Federal Income Tax ☐ **Yes** ☐ **No**
If no election is made, any applicable taxes will be withheld. If taxes are withheld, receipt of your payment will be delayed by the calculations required.

Note: If you elect Federal Income Tax withholding, you will also elect State Income Tax withholding if applicable under relevant state law.

Important
The distributions you receive from this Company are subject to Federal Income Tax withholding unless you elect not to have withholding apply. Withholding will apply only to the portion of your distribution that is includable in your income and subject to Federal Income Tax. There will be no withholding on the return of your own after-tax contributions to the contract. If you elect no withholding or if you do not have enough withheld, you may be responsible for payment of estimated tax. You may incur penalties under the estimated tax rules if your withholding and estimated tax payments are insufficient.

An IRS form 1099 (if required) will be issued to the owner of this policy regardless of whether surrender proceeds are payable to a third party. Any additional tax reporting required to be made to a third party is the responsibility of the owner.

Tax Warning
On surrender, you must include in gross income any gain that has accumulated in your policy. If your policy carries a loan, the amount you must include in gross income could be much higher than the net payment you actually receive. This Company must report the income to the Internal Revenue Service. Once you surrender your policy, you cannot offset the reportable income even if you return the unendorsed surrender check to us. *Before surrendering your policy, you should consider requesting a calculation of the income that will be reported to the IRS.* **If you would like to obtain this information prior to surrender, please do NOT submit this surrender request until you have received written confirmation of the amount includable in your income. Once we receive a surrender request, we must process it under our standard procedures and your policy could be surrendered before you know the income amount.** ***To obtain this information, please contact the MassMutual Life Service Center at 1-800-272-2216.***

Please note: The above provision may not apply if you are surrendering your policy in connection with a 1035 exchange and your existing loan is assumed on your new policy.

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Warning: If your policy has been designated a Modified Endowment Contract (MEC), and you are under the age of 59½, any taxable gain may be subject to a 10% tax penalty. Please consult your tax advisor.

Section 1035 Exchange

If this surrender is part of a Section 1035 exchange for a policy to be issued by another insurance company, this surrender form must be signed by an officer of the other insurer. If the person executing the surrender request is not an officer, we require evidence of his authority to sign on behalf of the other insurer. We must also be provided with the policy owner's absolute assignment of this policy to the other insurer for purposes of the Section 1035 exchange. The Company has no liability or responsibility for the tax treatment of any surrender proceeds paid to another insurance company, whether as part of an exchange of contracts or for any other purpose. Not all exchanges qualify for tax-deferral under Section 1035 of the Internal Revenue Code. You should consult your own tax advisor.

Amount of policy loan (including accrued interest) to be assumed by new insurance carrier: $_____

Signature Requirements *(please see below for corporate signature requirements)*

Owner Name (print or type) Date

Owner Signature Date

Owner Address _____

Is this your permanent address? ☐ Yes ☐ No

Name of Corporation, Partnership, or Trust (type or print)

Signature & Title Date

1st Assignee Name (print or type) Date

Assignee Signature & Title Date

2nd Assignee Name (print or type) Date

Assignee Signature & Title Date

Signature & Title Date

Signature & Title Date

Signature Guarantee

A Medallion signature guarantee (Medallion imprint or stamp) is required for disbursements greater than $25,000.00 if checks are to be made payable to someone other than the owner, if proceeds are sent to an address other than the address of record, or if proceeds are sent to an address that has been changed within the last 30 days.

A signature guarantee can be obtained from a commercial bank, savings bank, credit union, or broker/dealer that participates in one of the Medallion signature guarantee programs. Signature guarantees must be originals.

Signature Guarantee (if applicable) Date

Corporate Signature Requirements – *For Policies Owned By or Assigned To a Corporation*

Include full name of corporation and print full name and corporate title of each officer who signs.

Two Corporate Officers: We require the signature of two different corporate officers. Their corporate titles must be indicated. One signature will be accepted only if the officer is not the insured or a family member of the insured.

Sole Corporate Officer: If the insured or family member is the sole officer, his / her signature is acceptable if accompanied by a notarized statement to that effect, or if the corporate seal is affixed.

Customer Service

To submit your request, please mail this form to:

MassMutual Financial Group
Life Customer Service Hub
1295 State Street
Springfield, MA 01111-0001

For additional information regarding your policy, please use any of the following resources:

Internet Service Connection
www.massmutual.com

MassMutual Customer Service Center
1-800-272-2216
Monday through Friday, 8 a.m. - 8 p.m. Eastern Time

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Visit us daily for the latest industry news and insight.
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Q4 2006 ING Groep NV Earnings Conference Call - Final

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OPERATOR: Ladies and gentlemen, thank you for standing by. Welcome to the ING full-year results conference call on the 15th of February, 2007. Throughout today's recorded presentation all participants will be in a listen-only mode. After the presentation there will be an opportunity to ask questions. (OPERATOR INSTRUCTIONS). I would now like to hand the conference over to Ms. [Gemma Bux].

GEMMA BUX, IR, ING GROEP: This is Gemma Bux for ING Groep welcoming you to ING's conference call on the figures for the full-year results of 2006. Before turning this over to Michel Tilmant, CEO of ING Groep, Cees Maas, Chief Financial Officer of the Groep and Tom McInerney, Chairman and CEO of ING U.S. financial services, let me first say that any forward-looking statements in today's comments are subject to a number of variables including interest rates, foreign exchange rates, inflation rates, movements in securities markets including equity markets and underlying economic health and changes. The realization of forward-looking statements could be materially altered by unexpected movements in any or all of these and other variables. That said, good morning, Michel, Cees and Tom, or good afternoon. Over to you.

MICHEL TILMANT, CHAIRMAN, CEO, ING GROEP: Good afternoon, good morning to all of you. This is Michel Tilmant speaking here. Let me first, as an introduction, say we have experienced record results in the fourth quarter of 2006, which illustrates the solid earning capacity of the Groep. And as you have seen, while interest rate environment is challenging for some of our businesses, we have benefited in other parts of the group from strong equity markets, the (indiscernible) environment and favorable underwriting experience in long life.

I have to say that what is the most satisfactory in this is that we are reaping the benefits of our strategy commenced two years ago. And first of all, you have seen through the numbers that there is a very strong momentum in the three growth engines, life insurance in developing markets posted 23.5% increase in sales; ING Direct has added $5.4 billion in mortgage only in the last quarter and retirement services accumulation product sales in the U.S. increased 21% in the fourth quarter. So all growth engines are performing according to our expectation and what we have stated in the past.

At the same time, and we are also very happy to see that a number of parts of our strategy in mature markets is showing that we have in those mature markets a number of profit boosters. In this let me speak first of a number of them. First of all, asset management you have seen that our net inflow has been $43.8 billion in 2006. Asset management is the third leg of ING and has shown strong growth in assets under management, net inflow in 2006.

Second in retail banking we have seen nice growth in mortgage and savings. And sometimes people say that the Benelux market is not very exciting but when I see over two year period an increase of 25% in the mortgage volume I can say that this market has embedded growth.

We have also been able to take advantage of our strategy started two years ago, three years ago to

before filing for requested approval. So I think all this takes a while, and that is why we, although we are progressing well, we are not ready yet to announce a launch.

UNIDENTIFIED COMPANY REPRESENTATIVE: In the individual life we have at least in U.S. where Tom probably you can elaborate on that and on Canada.

TOM MCINERNEY: The first thing I would say on individual life is you have to keep in mind that the priorities of the businesses in the U.S. are retirement services, variable annuity and then individual life. Individual life only represents about 15% of the earnings and even a lower amount of the value of new business. But we think it is an important product because our focus is really on the 78 million baby boomers, and they are going to want life insurance particularly estate planning life to be able to protect the taxes on their assets they have accumulated. So we think it is important there. UL for older Americans and particularly the baby boomers.

And then on the younger people just starting out, they buy term insurance and so our focus is there to really hopefully get them as a client when they are just starting out and using a term life product and keeping them over time. We clearly have had some challenges in the business. However, on the term side the strategy is finally kicking in. We have a number of strategic alliances with banks, and we think that we are now up to about an annual run rate of 100,000 term policies and that is up from about 15,000 a few years ago. So I think that is on track.

On the universal life, big challenges. We have the top 30 life company CEOs that are on the American Council of Life Insurance Board have all agreed that we will not write STOLI which is stranger owned life insurance or investor owned life insurance because we've gotten a lot of pushback from Congress because the whole premise of life insurance is to provide tax benefits. But if you are going to let the investment banks, Wall Street firms use the tax arbitrage the Congress is saying they will take it away. So the big companies have all agreed to no longer write it. Starting we made that agreement in early 2006. So I think you've seen for the large life companies a fall-off in STOLI or IOLI. Stranger owned life insurance or investor owned life insurance, and that has been a significant issue for us.

For the smaller life companies have still continued to be willing to write it. But my guess is over time that will probably be ruled out by Congress. So really I would say it is an important part of our business. It is certainly much smaller than the retirement services and annuity. It is important we think to the overall strategy and we think we have good plans on the term that are working, and we are launching a few products, additional products on the universal life side.

And Canada basically I think you know that the strategy there and one of the reasons we did the IPO is our strategy is to acquire smaller property casualty companies as the market consolidates. And so we are very interested in doing that right now; while the cycle has turned and is starting to come down the returns are still very high in the industry so there is not a lot of opportunities to acquire. But our ING Canada is earning a lot of excess capital so I thought for now until acquisition opportunities come up is to return excess capital to the shareholders and the intention would be to buy back equally with the public markets so that for now we retain our 70%, 30% split between the ING share versus the public share.

CEES MAAS, VICE CHAIRMAN OF EXECUTIVE BOARD, CFO, ING GROEP: First of all let me say that Japan is been very profitable year for Japan, and therefore we don't have a profitability problem at all in Japan. It is going very well and the reason is that in 2005 we had a record year of selling SPVA, and therefore assets under management is at a very, very high level. That is number one.

Now you got to realize in 2005 the SPVA market was very hot in Japan. And we were able to take a very large portion in market share in that hot market behind what would be normally our natural market share. But it was very nice, but so nice and I think I would say that early last year that when

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Non Recourse Premium Financing Business Survey

January, 2006

Do you accept nonrecourse premium finance business?

If yes, what types of products (NLG or Current Assumption or Both) do you allow?

Company	Response
AmerUs	Does not accept
AXA	The primary lender we use is AI Credit. Theirs is not a non-recourse loan. We don't prohibit policyowners from arranging their own financing. An outside company may be offering them a non-recourse loan. We use the lapse protected Athena II in some cases and current assumption Athena II in others. We only allow permanent, non-variable life policies to be financed.
Columbus Life	Does not accept
Jackson National	Does not accept
Jefferson Pilot	Does not accept
John Hancock	Does not accept
Hartford	Does not accept
ING	We do accept nonrecourse cases for current assumption products only.
Lincoln Life	Does not accept
Metlife	Does not accept
Midland National	Does not accept
New York Life	While we have identified banking organization that we prefer our agents to work with, any loan requirements are directly negotiated between the client and the bank. Generally, the cases we've been involved in require collateral. This consist of policy cash values and additional assets as required by the bank. Generally, the cases have been involved in have been fixed UL contracts. The NLG rider has often been utilized.
North American	Does not accept
Pacific Life	Does not accept
Penn Mutual	Does not accept
Phoenix	Yes we do, current assumption and we have a form that must be completed, as we do not accept all types.
Principal	Does not accept
Sun Life	works with CMS and we allow both the NLG and our Current Assumption products to be used.
Transamerica	We do accept nonrecourse cases but it's selective.We issue a current assumption plan (TransUltra).
UNIFI (Union Central & Ameritas)	Does not accept

Survey conducted by: Christi Reis, ING

1/5/2006

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AXA EQUITABLE

To: The Life Brokerage Community

From: Gary Hirschkron

Re: Non-Recourse Premium Financing and Life Settlements

Date: January 19, 2006

AXA Equitable has previously announced that we will not accept new applications for life policies where there is an intent or a likelihood of a future settlement to a life settlement company. Due to the proliferation of transaction structures in the last year, we wanted to restate and clarify our position.

AXA Equitable believes that life insurance should not be purchased to be used as a purely speculative instrument by a third party, but rather to fortify our clients' financial planning to protect their families and estates. Our entire system of regulation and tax treatment is based on this assumption. State laws require insurable interest in the making of a life insurance policy in order to prevent unrelated parties from benefiting from the early death of a policyholder.

Identifying Inappropriate Life Insurance Policy Structures

Many structures involve the use of non-recourse premium financing where the original owner, the insured or a trust, may decide to pay off the loan at some point. If the loan is not repaid, the policy will revert to the beneficial ownership of the lender who, in turn, may either settle the contract or retain the contract and effectively fill the shoes of a settlement company. Because of the likelihood of the second scenario coming to pass, AXA Equitable will not accept business with this structure.

Another common aspect of these transactions is that the insured, the trust, or the insured's designee receives cash or an additional non-recourse loan at the inception of the contract in exchange for entering into the contract. We believe that all such features are also contrary to public policy.

Acceptable Non-Recourse Premium Financing Transactions

Subject to further review, we will accept *some* non-recourse premium financing transactions which contain both annuity and life contracts, where the guaranteed payments from the annuity are sufficient to pay future life premiums. In this circumstance, the benefits under the annuity contract offset the benefit from the life insurance contract.

A Review of AXA Equitable's Rules

- **AXA Equitable will not accept insurance contracts funded using non-recourse premium financing except where a life and annuity combination is purchased. We will require documentary evidence of the purchase of the annuity prior to issuance of the life contract.**

- **Insurance contract purchases in which the insured or the insured's beneficiaries receive payment or any other material financial benefit in exchange for being insured will not be accepted by AXA.**

We Want to Hear from You

New deals seem to be invented every day. No set of rules can adequately cope with treatment of tomorrow's structures. We want open two-way communication with our clients in the brokerage community. If you have questions or concerns about a new transaction, please give Richard Whitbeck or me a call or send us an email.

Gary Hirschkron
Email: Gary.Hirschkron@axa-financial.com
Phone: 212-314-4658

Richard Whitbeck
Email: Richard.Whitbeck@axadistributors.com
Phone: 860-723-1806

Life

ING

Date: February 28, 2006

From: Jim Gelder
President of ING Life Distribution

Non-Recourse Premium Financing Programs

In the past, ING made certain insurance products available to applicants with a true insurance need using non-recourse premium financing programs, under guidelines described in my memo dated February 7, 2006. However, because of changing reinsurance market standards and increasing industry and regulatory scrutiny of non-recourse programs, effective March 1, 2006 ING will no longer accept applications for non-recourse financed policies. To ease the transition, we have established the following rules for in-process business:

1. Cases for which completed formal applications have been received by the ING Life New Business Department by close of business March 1, 2006 will be considered for policy issuance. In our sole discretion, we may also consider cases for which an informal application has been received by that date. Each case will be reviewed in accordance with the policies and procedures set forth in my February 7th memo.

2. We have received notice that facultative reinsurance underwriting will be required for any non-recourse premium financed case that has not been issued by March 31, 2006, which may affect whether the applicant is offered coverage and/or under what terms.

If you have any questions about these rules, please call your Sales Vice President or Chris Layeux from the ING National Sales Support Team's Advanced Marketing Department at 1-866-ING-SELL, ext. 27349.

As always, we appreciate your business.

For agent use only. Not for public distribution. **cn54981022007**

ING Capital Accumulator UL (form #131906) and ING Protector UL (form #86-728) are issued by ReliaStar Life Insurance Company.

ING Capital Accumulator UL NY (form #132149) and ING Protector UL NY (form #86-810) are issued by ReliaStar Life Insurance Company of New York.

ING LifeDesign Explorer UL (form #1161-9/96) is issued by Security Life of Denver Insurance Company.

Only ReliaStar Life Insurance Company of New York and its products are admitted in New York. 1000 Woodbury Rd., Suite 208, Woodbury, New York 11797.

All companies are members of the ING family of companies.

New York Life Insurance Company
Advanced Markets Network
11400 Tomahawk Creek Parkway, Ste. 200
Leawood, KS 66211
T 888 695 4748
T 913 906 4003
jvavra@newyorklife.com

James R. Vavra
Vice President
Retail Marketing

The Company You Keep®

April 27, 2006

To: All New York Life Advanced Market Networks Brokerage General Agents and Producers

New York Life Insurance Company highly values its brand and sets very high standards for Market Conduct and Sales Practices. Of particular concern to us is the prolific growth of non-recourse premium financing programs that fund policies as part of life settlement programs and/or other sales practices intended to provide policies for the secondary market. We believe that these practices violate the concept of insurable interest and potentially jeopardize the good standing of the life insurance industry overall.

In recent weeks a number of sales materials have come to my attention that involve the unauthorized use of the New York Life company name. These have included:

- Use of the New York Life name on web sites that promote life settlements through non-recourse premium financing programs.
- The direct mailing of Sales Literature to producers (including New York Life Career Agents) that includes the New York Life company name.
- Distribution of Sales Literature at sales seminars that includes authorizations to release medical information for "Underwriting or Settlement purposes" that include the New York Life name.

The use of New York Life's name in association with any of these sales practices, by inference, suggests we endorse or condone these practices, and we do not. Further, any use of the New York Life name or logo, without the written approval of NYL Advanced Markets Network is a violation of your Producer or BGA Contract with New York Life. Additionally, your contract requires that you submit your mailing list for review prior to use in distributing material promoting products or concepts relating to New York Life.

We are very concerned about this issue. Effective immediately, Producers or BGA's who persist in the unauthorized use of New York Life's s name or logo in association with these sales practices, or who distribute literature without mailing list approval will be subject to having their contract with New York Life terminated.

KEY TALKING POINTS

Phoenix has been consistent in its desire to avoid purchases of insurance designed solely to create stranger owned life insurance. Non-recourse financing while not an automatic indication of a scheme to create stranger owned life insurance is a strong potential indicator and can facilitate this practice.

Early cases of non-recourse were difficult to detect. Phoenix initiated an information form to detect the presence of non-recourse financing and additional information in an attempt to determine if the case was motivated by a legitimate insurance need or not.

Since that time we have become aware of regulatory agencies that have questioned the legitimacy of these sales practices. In addition, we have been made aware of increased activity in the settlement market involving non-recourse transactions. This increases our concern with respect to the quality of this business.

We have come to the conclusion that at this time, with the procedures available to us, that there is too much risk in attempting to differentiate the good from the bad. Until further notice and effective immediately, we will not accept business where non-recourse financing facilitates the purchase.

Sun Life Financial®

Claude Accum
Vice President & General Manager
Individual Insurance

Sun Life Assurance Company of Canada

Memo

Date: March 27, 2006

To: All Distributors

Re: Non-Recourse Premium Financing Programs

Last April I communicated Sun Life Financial's position that we will not participate in Stranger Owned Life Insurance ("SOLI") or Investor Owned Life Insurance ("IOLI") programs. A copy of that communication, which remains in effect, is attached for your reference.

Recently, reinsurers have expressed a preference against non-recourse premium financing, and other insurers have also issued guidelines prohibiting non-recourse financed insurance. This memorandum is intended to confirm Sun Life Financial's position with regard to non-recourse financed insurance. Specifically, we want to reiterate that we have not endorsed any non-recourse premium financing program. For greater clarity, we will not issue policies where premiums will be funded through non-recourse premium financing *(whether or not they involve IOLI/SOLI)*.

We will continue to monitor industry developments in this area. Unless and until an acceptable basis for use of non-recourse financed insurance is developed within the industry, we ask for your cooperation by not submitting applications to us where non-recourse premium financing will be utilized.

We will continue to vigilantly look for proposed sales that are not consistent with our approach. We are making changes in our applications and other administrative forms that are designed to help us distinguish acceptable sales from unacceptable sales. We may also request additional information and disclosures from applicants and producers.

This memorandum is adopted as part of our operating rules and guidelines. Thank you for your cooperation and compliance.

From: President, Transamerica Insurance & Investment Group
To: General Agents
Subject Non-Recourse Financing Business
Date: March 3, 2006

The purpose of this communication is to bring you up-to-date on recent developments related to non-recourse financing programs and to advise you of our updated policy (which is effective immediately) for this business segment.

Industry Update on Non-Recourse Business
The concerns and controversies related to programs which use non-recourse funding as a key element in the sale of life insurance to people 65 and older continue to grow more intense.

The AALU has now joined the ACLI, NAILBA and NAIFA in making a strong statement to the public and, most notably, to the National Association of Insurance Commissioners (NAIC) and the federal government, insisting the window on non-recourse funding deals--or investor-owned life insurance--be closed. Please read the attached press release regarding the strong and unified industry position and the possibility of forthcoming regulations and/or tax law amendments.

At the federal level, one of the possibilities being discussed is some form of excise tax on such business. At the state level, legislatures across the country are considering new or strengthened legislation to grant insurance departments authority to control and curb these transactions. The NAIC will hold a national hearing in May to pursue additional limitations on investor initiated sales of life insurance.

Transamerica has been notified by reinsurers of the withdrawal of automatic binding for these cases. Select reinsurers say they'll consider non-recourse cases on a facultative basis; however, those cases will be closely scrutinized with disclosure requirements, strict medical underwriting and due diligence to review the actual programs.

We want you to be aware of these developments so that you do not spend time or energy developing strategies aimed at this source of life insurance sales. While such programs or sales strategies may be well intentioned, the position taken by the life industry at large is that this business could constitute a misuse of the historical, traditional purposes of life insurance and a violation of what constitutes insurable interest.

Transamerica's Updated Policy on Non-Recourse Business
Listed below are the changes we are making immediately to support this industry-wide stance.

- Effective with the close of business on March 7, we will not accept trial or formal applications for cases which intend to use non-recourse financing in any context. All trial and formal applications must be received at the Kansas City Administrative Office by this date.

- Because of changes in the availability of reinsurance coverage on an automatic basis, any pending trial or formal applications for coverage that will be funded with a non-recourse loan must be issued by May 1. Cases that are issued by May 1 will be subject to normal underwriting/issues rules, which means they must be paid within the normal delivery period. Every effort will be made to review and issue these cases by May 1.

- As communicated at the January Agency Management Meeting, all UL cases of $1 million and over face amount on applicants age 65 and older must be accompanied by the TOLIC Non-Recourse Loans Checklist (attached). This form is required for all pending trial applications and pending formal applications and needs to be received by the Kansas City Administrative Office by March 17.

- If non-recourse information was purposely not disclosed at the policy's inception to create the false impression that it is a traditional life case, we reserve the right to rescind coverage if the case turns out to be part of a non-recourse program after the fact and take appropriate disciplinary action.

- Please be assured that all normal underwriting rules and requirements will be strictly adhered to.

We realize this is a short time frame and there's a lot to do. Please feel free to turn to your Regional Marketing Center for the help you need.

Ken Kilbane

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Proof of Insurability

When this policy requires the Insured to provide proof that he/she can be insured, the proof must be in a form that is acceptable to us. We will supply the forms or instructions for the Insured to provide such proof.

General Provisions

Annual Statement

We will send you a statement at least once each year showing, as of the date of the statement: (1) the Accumulation Value; (2) the Cash Surrender Value; (3) any interest credited since the last statement; (4) all premiums paid since the last statement; (5) any charges taken since the last statement; and (6) any loans then in effect. Upon request, we may send statements more frequently; however we may charge an additional fee, not to exceed $25 for each statement.

Once this policy is in force and upon receipt of Notice requesting it, we will provide a complete proposal showing tables of Accumulation Values and death benefits based on guaranteed and current rates as well as any other necessary assumptions. However when provided, we may charge an additional fee, not to exceed $25.

Assignment

You may assign your rights under this policy as security for a loan or debt subject to the terms and provisions of the Entire Contract provision; however, we are not bound by a permissible Assignment until we receive Notice of it. Your assignee has a first claim on Death Proceeds ahead of you and the Beneficiaries, except for any Irrevocable Beneficiary named prior to our receipt of the Notice of the Assignment. We will not be responsible for the validity of any Assignment.

We will not allow an Assignment that, in our sole opinion, could result in the transfer of any rights or benefits payable under this contract to a person, entity, or trust that does not have an insurable interest in the life of the Insured at the time of the requested Assignment.

Beneficiary

You may name Beneficiaries in an application. You may change Beneficiaries, subject to the terms or provisions of the **Entire Contract** provision, by providing Notice to us. Unless otherwise provided in an application or later Notice, beneficiary designations are revocable and you may change them at any time up to the Insured's date of death, subject to any payment made or action taken by us before we receive Notice of such change. An irrevocable beneficiary designation may be changed only with the consent of such Irrevocable Beneficiary. The consent of the Irrevocable Beneficiary will also be required for any Assignment, surrender, or partial surrender, decrease in Stated Amount, policy loan, choice or change of a Death Proceeds Payment Option, or other changes to this policy.

Beneficiaries have rights in the proportion and order indicated in an application or in any Notice. Unless otherwise indicated in an application or Notice, Beneficiaries of the same class will share the Death Proceeds equally. Contingent Beneficiaries will only receive Death Proceeds if no Primary Beneficiary survives the Insured. The rights of a Beneficiary who dies before the Insured will pass to living Beneficiaries of the same class. If no Beneficiary survives the Insured, Death Proceeds will be paid to you or to your estate.

We will not allow a change in Beneficiary or Contingent Beneficiary that, in our sole opinion, could result in the transfer of any rights or benefits payable under this contract to a person, entity, or trust that does not have an insurable interest in the life of the Insured at the time of the requested change of Beneficiary or Contingent Beneficiary.

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THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

November 4, 2002

Doug Head, Executive Director
Viatical & Life Settlement
Association of America
800 Mayfair Circle
Orlando, Florida 32803

Dear Doug:

I am writing on behalf of Treasurer Gallagher in response to your letter of September 30 concerning insurance contracts that include limitations on the right of assignment. More specifically, your letter addresses policy language that prohibits the policy owner from viaticating the policy.

The Florida Department of Insurance would also be concerned with contract language that places a limitation on policy owner rights to assign the benefits or ownership of the policy. At this time we are not aware of any approvals of the type of contract language that you have described.

We appreciate you taking the time to write to Treasurer Gallagher and support the NAIC in addressing any form of unfair trade practices.

Sincerely,

Richard A. Robleto, Chief
Bureau of Life and Health Forms and Rates

RAR:ayh

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Viatical Settlements Working Group

New York, New York

June 21, 2003

The Viatical Settlements Working Group of the Life Insurance and Annuities (A) Committee met in New York, NY, on June 21, 2003. Lester Dunlap (LA) chaired the meeting. The following working group members were present: Richard Robleto (FL); Bill McAndrew (IL); Roger Strauss (IA); Marlyn Burch (KS); Brian Staples (KY); Darryl England for Dalora Schafer (OK); and Gwen Fuller (SC).

1. Discuss Appendix B of Viatical Settlements Model Regulation

Mr. Dunlap said that the working group will begin by considering the comments received on the changes made to Appendix B during the last conference call. Ken Kline (Living Benefits) asked that the entry in Section One that talked about release of collateral assignment be changed to just refer to an assignment. There are some instances when a policy has been assigned where it is not being used as collateral. The working group agreed to make that change.

Mr. Dunlap said that both the American Council of Life Insurers (ACLI) and Prudential Insurance Company suggest that the release form for the policy owner be included as part of the first page of the verification of coverage form to facilitate review. Brian Freeman (Benefits America) said the policyholder has to sign a form, but the provider or broker does not usually give that person a copy of the whole verification of coverage form. He noted that the form needs to be approved in some states and that would require it to be refiled. George Coleman (Prudential) said the reason for the suggestion is because insurers are being asked to provide an expanded set of information. Some is historical and he said he would like the policy owner to see the form so that he knows the extent of the questions that the insurer is being asked to answer. Mr. Staples noted that recommended language is included in the ACLI comment letter. It states "I hereby consent by my signature below to release of information request by this form by the insurance company to the Viatical Settlement Broker/Viatical Settlement Provider. Name of insured (or owner) if different from insured) _____ date _____." Jack Yanosky (PA) suggested that it would violate financial privacy rules not to have an authorization. Mr. Freeman said viatical settlement providers and brokers already get a signed release; however, it is usually a separate document. The wording of the ACLI suggestion limits the information to that in the form. Mr. McAndrews said that it is a good idea. The release forms that companies may have used before are not enough under the Gramm-Leach-Bliley Act. Mr. Freeman said his company uses two release forms, one for medical information and one for insurance policy information. Mr. Coleman said that, if the authorization is part of the form, the insurer will have no question about the extent of the authorization. The working group agreed to add that language to Section One of the verification of coverage form.

Next the working group turned its attention to the questions in Section Two. As the working group progressed through the discussion, regulators noted that there was some duplication in the questions and that some questions that were similar in nature were in different places in the form. Mike McNerney (Brinkley McNerney) agreed that it is a good idea to put all the questions that are related in one spot and then the working group could look at them again to eliminate duplication.

The working group first considered questions related to the face amount of the policy. Question 2a refers to the original face amount of the policy and Mr. Coleman said it is not relevant to a viatical settlement. He said insurers would like to limit the number of questions. When historical information is requested, it is difficult for an insurer to provide. They also might get several requests for information about the same policy. Mr. Freeman said the

company can complete the form once and then send the same form for later requests. Mr. Coleman responded that some information will be the same, but the insurer will have to check that nothing has changed. Mr. McAndrew asked what information is being requested in Question 2 that is not also included in Question 9. Mr. Dunlap asked if the committee could delete all of Question 2 because all of the relevant information is in Question 9. Mr. Freeman responded that the provider will need to know the current face amount so it can be sure the insurer deducted a loan. Mr. Yanosky pointed out that for a participating policy, the death benefit could be higher than the face amount. Mr. Coleman said the instructions on Questions 9 and 10 give exactly what information is needed so that the provider could be sure that loans, dividends, etc. have been considered. He said the person who fills out the form has the face amount but may not have all the details being requested in this section. Mr. McAndrew said the information being requested is to get the number that viatical settlement providers will use to calculate the offer of a viatical settlement. He said that the form does not need to set up all the numbers for the calculation, but the insurer can provide the final number for the company. He asked what will happen if an insurer fills in the wrong number. Is there any recourse for the provider? Mr. Strauss agreed with that comment. He said all this detail is not needed; just give the final number. Mr. Freeman said the provider needs to know what loans might exist on the policy so it can decide whether to repay them. If the loan is made at a high interest rate, it would save the provider money to pay the loan back.

The group next considered the issues raised in Question 3 in regard to the conversion of a group term life policy. Mr. Freeman said the problem is that practice is varied. In some companies the incontestability period starts over when the conversion occurs, in some the person is credited for the amount of time he was a member of the group, and some companies make all conversion policies incontestable immediately. Mr. Dunlap said the effective date of the group policy, which is being requested in Question 3, is not relevant. What is relevant is the amount of time the individual has been covered under the group policy. Mr. Freeman agreed that the provider needs to know the certificate holder's effective date, rather than the effective date of the group policy. Lou Nathan (Viaticus) said that this question raises more complex issues than can be answered by a yes or no. Mr. Freeman said the providers often go to the employer and get from them the effective date of that employee's coverage. Mr. Dunlap said he recognizes this as a problem but he is not convinced that the insurer is the appropriate place to get that information. This section asks a question that may be unanswerable. Mr. Yanosky noted that Question 18 asks whether the policy is in the incontestability period so this question is not needed. The date of issue of the group policy has no bearing and asking an insurer to provide information on a policy that is no longer in force on this individual is not appropriate.

Mr. Freeman noted that the model act says that viatical settlement providers cannot buy conversion policies unless they are at least two years old. He read the information from Section 10 of the Viatical Settlement Model Act that stated that requirement. Mr. McAndrews said that the drafting of the model act may have not been correct. The key is not whether the policy has been held for two years, but rather whether it is in the contestability period. Mr. Nathan said that the provider should have responsibility to seek out the information. The insurer may not have it and the provider may need to seek it out from various sources. Mr. Coleman said that Prudential would like to comment that Question 18 should be removed. He said he did not want the service staff at his company to make a judgment on whether a policy is contestable. He suggested giving the information about the policy date and letting the viatical settlement provider decide whether it is in the contestability period. Victoria Femia (ACLI) also objected to Question 18 on incontestability. Mr. Robleto that some states allow a permanent contestability period when there is fraud. He agreed with the approach of giving information about the policy issue date and letting the provider decide whether it is contestable.

Carolyn Johnson-Speck (NAIC) suggested that two or three members of the working group get together to rearrange the entire Section 2 to clump together the questions by topic as was done in the comment letter from Living Benefits. Then the working group could review the document more easily. Mr. Dunlap asked Mr. Staples and Mr. Robleto to work with Ms. Speck to rearrange the form. A conference call will take place after that has been completed for further comments on the form.

2. Discuss the Requirement for Appendix D

Mr. Staples said he had worked with Ron Kreiter (Brinkley McNerney) to develop forms for Appendix D to gather information from providers and brokers. He suggested getting information from brokers on the individual state and all states activity and getting information from providers on individual states, all states, and an individual mortality report (Attachment Four-A). Mr. Kreiter said the information on these reports covers all of the issues in Section 6. He said the language in Section 6 could just refer to the reports and eliminate the long list there. Mr. Freeman asked why a broker's report is necessary. Mr. Staples said it gives an opportunity to cross-reference reports. He said regulators do not understand how this business operates and will benefit from getting this information to understand the process. Mr. Freeman said that it is a new industry and many of the brokers are life insurance agents who are not used to this type of reporting. He asked if this report would be required before renewal of the license. Mr. Staples agreed that it would be required in Kentucky and said that states that allow someone to do business with only a life insurance license will have to decide how they want to get the form and whether it will contain the same information. Mr. Freeman asked why the form requests information about how many policies are turned down. He opined that may be overly burdensome. He said some of these are not even put in the provider's system because they are rejected out of hand. Mr. Staples said that from his perspective it is good information to have.

3. Adopt Minutes of April 25 and May 29, 2003 Conference Call

Mr. Staples moved and Ms. Fuller seconded a motion to adopt the minutes of the two conference calls (Attachment Four-B). The motion passed.

Having no further business, the Viatical Settlements Working Group adjourned.

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Life Insurance and Annuities (A) Committee

6/11/06

Drafted: 6/14/06

Life Insurance and Annuities (A) Committee

New York, NY

May 3, 2006

The Life Insurance and Annuities (A) Committee met in New York, NY, May 3, 2006. A quorum was present, and Jim Poolman (ND) chaired the meeting. The following Committee members were present: Glenn Jennings, Vice Chair (KY); Julie Benafield Bowman (AR); John Garamendi represented by Jennifer Chambers (CA); Kevin McCarty represented by Dan Keating (FL); Susan Voss (IA); Sandy Praeger (KS); Tim Wagner (NE); Howard Mills (NY); Ann Womer Benjamin (OH); and Diane Koken (PA). Julie Bowler represented by Matthew Regan (MA) and Eleanor Kitzman (SC) also participated.

The Committee had a charge in 2006 to consider changes to the NAIC Viatical Settlements Model Act (Viatical Model) in response to concerns about investor-initiated life insurance. The Committee held a public hearing on "Premium Financing of Life Insurance, Life Settlements, and the Relationship with State Insurable Interest Laws" to hear testimony from industry representatives on the issues involved with respect to this charge. The hearing consisted of six panels of speakers representing life insurers, life insurance agents and advisors, life settlement companies and premium financing companies (Attachment One-A). Superintendent Mills stated that his department released an opinion late last year finding that the specific transaction that was the subject of the inquiry violated New York's insurable interest law. He explained, although New York law expressly allowed an individual to procure and immediately transfer or assign to another a policy on his or her own life, irrespective of the existence of an insurable interest in the assignee, it appeared that some of these transactions would permit strangers to profit on the deaths of other individuals, which was contrary to the long established public policy against gaming through life insurance purchases. He welcomed the discussion of this issue by the panelists.

1. Panel 1

Seymour Sternberg (New York Life) stated that it was dangerous to permit gambling on human lives. The life insurance industry drafted provisions to prevent gambling, but now the industry was faced with this anew with the rise of these contrived transactions. Investor-owned life insurance arrangements speculate on human life. Mr. Sternberg urged the Committee to amend the Viatical Model to stop this practice. Patrick Manning (Unity Mutual Life) focused his testimony on the importance of ensuring that there was an insurable interest when a policy was issued. Mr. Manning provided some background on the concept of insurable interest. He noted that, in the 1700s, because of concern about the widespread use of life insurance to speculate on human lives, particularly the lives of famous individuals, the British Parliament enacted legislation prohibiting the issuance of life insurance when there was no insurable interest. He concluded that maintaining the concept of insurable interest was a matter of good public policy. Bruce Boyea (Security Mutual Life) expressed support for the American Council of Life Insurers' (ACLI) proposed revisions to the Viatical Model. He also expressed support for the comments made by Mr. Sternberg and Mr. Manning. Mr. Boyea added that stranger-owned life insurance (STOLI) was a threat to the tax advantage of life insurance proceeds. He also stated that the secondary market was not regulated. There have been rulings that these entities were not in the insurance business. Also, these types of arrangements could impact the ability of the insured to purchase additional life insurance in

the future. There was a limit on an individual's insurance capacity. Mr. Boyea urged the Committee to adopt the ACLI amendments as soon as possible.

David Woods (National Association of Insurance and Financial Advisors-- NAIFA) expressed his concerns about STOLI on behalf of NAIFA, the Association for Advanced Life Underwriting (AALU) and the National Association of Independent Life Brokerage Agencies (NAILBA) (Attachment One-B). NAIFA, AALU and NAILBA believe that STOLI arrangements were not consistent with the intended purposes of the state insurable interest statutes. These were arrangements where a life insurance policy was taken out with resources provided or guaranteed by those who had no insurable interest in the insured and who expect to control the beneficial ownership of the policy in the future. Mr. Woods emphasized, however, that NAILBA's, AALU's and NAILBA's concerns were not with premium financing arrangements where the motivation was to help the insured finance life insurance that he or she needs and expected to keep, or with life settlements where the transaction was not contemplated in advance, but was necessitated by a change in the insured's circumstances. He concluded by stating that STOLI arrangements were contrary to the intended purpose of state insurable interest laws and could potentially undermine the intended use of life insurance products to the great detriment of the insurance industry and the American public.

Commissioner Poolman questioned the panelists' positions with respect to life settlements and premium financing and STOLI. How could they be opposed to STOLI, but not opposed to life settlements and premium financing? Mr. Sternberg stated that life settlements involved in-force business and were used in situations where the insured's circumstances had changed. STOLI involved situations where there was no in-force policy.

Commissioner Poolman asked the panelists' opinions on addressing the issues involved with the two-year incontestability provision. Mr. Sternberg suggested that the Viatical Model could be revised to include wording to discern the applicant's intent at the time the policy was issued. If the intent was not to sell the policy on the secondary market, an investor may be wary of buying the policy on the secondary market because he or she may not gain control of the policy after the two-year incontestability period ended. Commissioner Koken stated that it was clear that the problem was trying to figure out what arrangements were legitimate, such as life settlements, and should be allowed to continue and those that were not legitimate, such as STOLI transactions, and should be prohibited. The hard part for regulators was to determine where to draw the line so that consumers were not prohibited from using premium financing arrangements to buy a policy to protect their family and financial interests or selling their policy in the secondary market due to a change in circumstances. If intent was used, as Mr. Sternberg suggested, the issue would be whether this would cause the consumer additional problems by increasing fraud investigations. Mr. Boyea stated that insurance companies had already started adding questions on their applications that go toward trying to determine intent in order to ensure there was an insurable interest at the time the policy was issued.

Commissioner Poolman asked for clarification from Mr. Boyea regarding his concerns about the tax implications. Mr. Boyea stated that, at this point, there was no Congressional legislation related to the STOLI issue. However, this did not mean that in the future the U.S. Congress would not look at this issue. Mr. Sternberg agreed with Mr. Boyea. He added that the best way for state regulators to prevent any future Congressional action would be to tighten up state insurable interest laws.

2. Panel 2

Bryan Freeman (Life Insurance Settlement Association--LISA) stated that for his organization the issue was ensuring that consumers' legitimate right to sell their life insurance policies continued. Among its 108 member companies, his organization includes those in the life settlement business and the viatical settlement business. Mr. Freeman explained the purpose of LISA and its goals to develop, promote and create a competitive market for the life settlement industry. LISA has supported comprehensive life settlement legislation in 14 states. All of which were opposed by life insurers. Mr. Freeman stated that the more accurate

term to use was investor-initiated life insurance instead of STOLI or investor-owned life insurance (IOLI). Mr. Freeman stated that his organization was aware of some of the abuses and acknowledged that some of the abuses could impact the tax protections currently enjoyed by the life industry. Mr. Freeman concluded that problems with invested-initiated life insurance should be clearly defined and current laws applied to address them.

Brian Smith (Life Settlement Institute--LSI) explained the purpose and goals of his organization. He also provided some legislative history of the Viatical Model stating that LSI was active when it was amended in 2000 to include provisions related to life settlements. Mr. Smith also stated that the life settlement industry should be regulated to help prevent some of the abuses experienced by consumers. He also expressed concern about the violations of state insurable interest laws. He added, however, that consumers should have continued access to the secondary market and should not be hindered by life insurers.

Commissioner Poolman asked how the market value of policies was determined and what information potential investors receive about the insured. Mr. Smith explained that the competitive market sets the price. Multiple investors compete for the policy giving the insured the best price. The insured owner of the policy completes an application and signs a release to allow his or her personal health information to be disclosed to other persons. His company, Life Equity LLC, a licensed life settlement provider based in Hudson, Ohio, uses outside underwriting companies to determine life expectancy.

Mr. Smith continued his testimony by stating that it was inappropriate to link life settlements with other arrangements that may use premium financing. He also added that it was inappropriate for life insurers to include questions on applications about the applicant's future plans to sell the policy in the secondary market and to reject applicants because they were using non-recourse premium financing to enable them to purchase the policy. Mr. Smith concluded his testimony by recommending that the Committee adopt revisions to the Viatical Model that would address the abuses with investor-initiated life insurance.

Alan Buerger (Coventry First) referred the Committee to his testimony at the Committee's public hearing on investor-owned life insurance during the 2005 NAIC Summer National Meeting. The Viatical Model had serious loopholes. It should be revised to eliminate those loopholes to address the abuses with investor-initiated life insurance - that was the creation of a policy for the sole purpose of selling it to an investor. Mr. Buerger also specifically suggested that the Committee revise the Viatical Model to close the loophole associated with charitable trusts. He suggested that the Committee look at what Pennsylvania did. Commissioner Poolman asked for more specifics as to what amendments Mr. Buerger would suggest. Mr. Buerger suggested that revisions should include closing loopholes that did not serve the primary or secondary market well. He suggested the Committee look at what New York and California did in this respect. He also suggested that the Committee look at Florida's language to address the matter of policies issued from out-of-state in order to avoid the laws of the insured's state of residence. Mr. Buerger added that he believed the abuses with investor-initiated life insurance were connected with lapse-supported pricing.

Commissioner Poolman asked the panelists whether all could agree that there was premium financing with the intent to settle the policy in the secondary market. Mr. Smith stated that the issue for him would be how to determine such intent. Commissioner Poolman agreed. He also asked what would be the panelists' position if the Viatical Model were revised to prohibit the settlement of a policy, with certain exceptions, within a specified time period, possibly as long as five years. Mr. Buerger stated that this proposal would reward life insurers for their lapse-supported pricing. Consumers have a property right in the policy and this proposal was contrary to years of case law. It would hurt consumers.

Commissioner Wagner stated that he believed that the crux of the issue involved non-recourse loans. He requested clarification from the panelists on premium financing arrangements. Mr. Buerger explained that some of these arrangements pay the insured 2 or 3% of the face value of the policy up-front. Clearly, this was an inducement. He stated that other arrangements did not include such a provision. Mr. Buerger offered to provide materials

to the Committee on the types of premium financing arrangements. Commissioner Koken requested the panelists to provide comments on ACLI's proposed amendments.

3. Panel 3

William Newton, a NAIC funded consumer representative (Florida Consumer Network) agreed with the testimony of the previous panels that there must be an insurable interest at the time the policy was issued and that unscrupulous transactions must be stopped (Attachment One-C). Mr. Newton stated that not all premium financing arrangements were bad. Such arrangements could be a useful tool for consumers who could not otherwise afford a policy. He also stated that including application questions asking whether the applicant had heard of or knows of life settlements were improper. Mr. Newton stated that he would be opposed to extending the incontestability period to five years, as suggested by Commissioner Poolman. Restricting what the insured could do with the policy robs the insured of their rights. Mr. Newton suggested, instead of extending the incontestability period, the Committee should examine why policies are lapsing. Marketing practices should be changed to prevent lapses. The Committee should ensure that state insurable interest laws are preserved and prohibit creative transactions that are threatening these laws.

Commissioner Poolman questioned Mr. Newton's statement that life settlements would increase policy premiums. Mr. Newton stated that the idea of basing profits on lapse rates was wrong. No other lines did this. So, if this practice were eliminated, policy premiums would increase. But, as long as the consumer owned that policy to dispose of, as the consumer desires, then the increased prices would not be a concern.

4. Panel 4

Robert Thompson (InsCap Management, LLC--InsCap) stated that his company was in the permanent insurance business. It did not enter into premium financing arrangements with the goal of selling the policy. There had to be a need for the insurance. Commissioner Poolman asked how many policies his company was involved in financing were sold in the secondary market. Mr. Thompson stated that none had been sold. In order to finance a policy through his company, the insured was prohibited from settling the policy. He added that the goal of his company was to identify consumer need and tailor financial options to meet those needs by operating within the four-corners of the regulatory framework. Lauren Welles (InsCap) concurred with Mr. Thompson's testimony.

Commissioner Poolman asked for clarification on the differences between recourse and non-recourse premium financing. Mr. Thompson questioned whether it really mattered whether the premium financing was recourse or non-recourse. The real issue concerned intent and the reasons for obtaining the insurance. Commissioner Poolman asked Mr. Thompson whether he had experienced reluctance from other companies to do business with his company. Mr. Thompson stated that he had, due to a lack of understanding and confusion about premium financing.

5. Panel 5

Frank Keating (ACLI) stated that life insurance provided guaranteed financial security for millions of American families (Attachment One-D). It serves a critical social purpose - enabling families to sustain financially if a breadwinner died and allowed businesses to continue to operate when owners and key employees die. Congress had long afforded special tax treatment for life insurance benefits in recognition of the important role the product plays in our society. He stressed the importance of the doctrine of "insurable interest". Mr. Keating emphasized that ACLI has no quarrel with traditional, legitimate viatical settlements or life settlements. ACLI understood that insureds may have to sell their policies in the secondary market when faced with extraordinary medical expenses or when their financial protection needed change. ACLI also supported legitimate premium financing arrangements that

permitted consumers to afford or maintain their life insurance coverage. ACLI did have a strong objection to STOLI transactions that were initiated by some investor groups for the sole purpose of selling the life insurance policy in the secondary market. Mr. Keating stated that STOLI transactions violate the spirit of the insurable interest doctrine. He urged the Committee to revise the Viatical Model to prohibit these types of transactions.

Robert Cook (John Hancock) stressed that his company and other life insurance companies oppose STOLI transactions and urged the Committee to take action to prohibit these types of transactions (Attachment One-E). He also emphasized the possible tax ramifications if these types of arrangements proliferate. Mr. Cook expressed support for Commissioner Poolman's proposal to extend the incontestability period to five years. Commissioner Poolman asked Mr. Cook his opinion on whether the five-year moratorium would cause a sell-off of policies. Mr. Cook stated that he did not think so. He added that at least one effect of the five-year moratorium would be to slow STOLI transactions because of increased uncertainty. Mr. Cook also expressed support for the ACLI proposed amendments. He stated that regulators should approve policy forms that included questions to ensure that there was an insurable interest at the time the policy was issued.

Stanley Tulin (AXA Equitable) stated that he was not concerned with the viability of the insurance industry because of STOLI. His concern with STOLI went to the purpose of life insurance and protecting that franchise. Mr. Tulin explained that state nonforfeiture laws prohibited insurers from giving more money for a policy to a customer over another. This was where life settlements come into the picture. Life settlement companies could discriminate on the market value of the policy. He would like to see more regulation and more disclosure requirements for the life settlement industry. STOLI should be prohibited altogether. Commissioner Poolman asked whether Mr. Tulin believed that one could regulate intent. Mr. Tulin stated that that would be impossible to discern through regulation, which was why he would support Commissioner Poolman's five-year proposal. Mr. Tulin also expressed concern for the tax benefits afforded consumers if STOLI transactions were allowed to proliferate. STOLI was nefarious speculation on human life.

Superintendent Mills stated that there appeared to be a place and/or need for the secondary market, but the question with these types of transactions were the cash surrender values. Mr. Tulin explained that cash surrender values were largely a function of nonforfeiture laws. He explained the workings of the life settlement market. In concluding his testimony, again, Mr. Tulin urged the Committee to enact additional disclosure and other regulatory requirements for the life settlement industry.

6. Panel 6

Jim Sinnott (Life Insurance Finance Association--LIFA) stated that his testimony was not meant to defend every transaction that may label itself as premium financing, but rather only legitimate premium financing transactions (Attachment One-F). Premium financing transactions should reflect best practices - no up-front inducements, no owner-by-investors and there must be full disclosures. Premium financing arrangements that followed these best practices did not violate state insurable interest laws. Mr. Sinnott expressed concern that some suggested amendments to the Viatical Model would regulate legitimate premium financing arrangements out of the market thereby restricting their availability to consumers who needed to use premium financing in order to purchase life insurance. His organization would oppose anything that would limit consumer choice. Life insurers should not discriminate against consumers because of the method chosen to procure a policy. In response to previous questions about non-recourse financing, Mr. Sinnott explained that non-recourse premium financing were loans that held no risk to the insured. The individual insured was not personally liable to pay 100% of the loan with their assets. Commissioner Poolman asked whether Mr. Sinnott believed that there were problems in the premium financing industry. Mr. Sinnott admitted that there were problems and acknowledged regulators' desire to act to minimize and mitigate the abusive practices. However, he believed that regulators must keep in mind that there were legitimate premium financing transactions that met a need.

Mark Ross (LIFA) stated that his organization did not have one consolidated position about premium financing transactions (Attachment One-G). Mr. Ross stated that a best practice of a premium financing company should be to determine the intent of the applicant by asking whether he or she intended to sell the policy on the secondary market. If the applicant intended to settle, then the vast majority of LIFA's members would not pursue this policy. Mr. Ross expressed opposition to extending the incontestability period to five years. He characterized the proposal as being anti-consumer and beneficial only to the insurance companies.

7. Adjournment

Commissioner Poolman stated that the Committee would continue this discussion at its next meeting during the 2006 NAIC Summer National Meeting. At this meeting, the Committee would review ACLI's proposed amendments to the Viatical Model and any other suggested amendments submitted by other interested parties after this meeting.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

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Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

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39th LEGISLATIVE DISTRICT

MEMORANDUM

To: Members of the NCOIL Subcommittee on Life Settlements

From: Rep. Robert R. Damron (KY)

Date: July 17, 2007

NCOIL has always been the leader in identifying and condemning stranger originated life insurance (STOLI). NCOIL has also been the leader in developing, after a thorough dialog between policymakers, regarding the proper legislative and regulatory response to STOLI schemes, responsible and complete legislative solutions that can be used by all member states.

The recent amendments to the NAIC Viatical Settlement Model Act purport to address STOLI by imposing an expansive five year ban from policy inception on life settlements. This provision is decidedly anti-consumer. The two year ban in the NCOIL model, and in every State law except one, is a principled waiting period tied to the statutory contestability period. The two year waiting period, which until June 2007 prevailed for years in the NAIC model, was established after lengthy, detailed, and thoughtful debate by a working group when it was adopted by the NAIC in 2000. Other lengths of time were considered by the working group, and rejected in favor of tying the waiting period to contestability.

A five year ban impairs property rights by banning legitimate life settlements and legitimate premium finance arrangements. The tie between the waiting period on life settlements and contestability is fundamental. During our last meeting in Washington, DC on the subject of STOLI, the ACLI's representative triggered a debate over extending the contestability period to five years. When confronted by disbelief from many of us on the committee, he specifically reiterated his intention to pursue this rollback of a consumer protection which dates back nearly a century. Thus, the stakes on the five year ban are high for consumers' property rights.

The NAIC model's supposed anti-STOLI provisions also, for the first time, codify a preference in the law for cash surrender value over market value, seeking to reverse the overwhelming financial benefit that has been delivered to consumers as this market has

grown, and which is symbolized by the recognition of market value by the Financial Accounting Standards Board. In ignoring the benefits of life settlements and the actions of an established oversight body, the NAIC has overstepped its bounds in trying to limit the value of a policy to its cash surrender value.

Even worse, the NAIC revisions demonstrably fail to address in any way the purest form of STOLI, as the ACLI itself acknowledged in the attached Memorandum from the ACLI dated October 29, 2006. According to this document, the ACLI complained in a special meeting with the then chair of the NAIC Life Committee (Commissioner Jim Poolman, ND) that the NAIC Model Act amendments "failed to address the fundamental concerns with STOLI" because they do not regulate the very scheme that was the impetus of the 2005 NAIC resolution. The ACLI told Commissioner Poolman that, because the model act amendments did not stop "finance programs permitting investor participation prior to or at issuance where the policy does not settle and the policy owner derives some modest percentage of the policy death benefit," they were ineffective as an anti-STOLI measure.

The ACLI apparently gave in to Chairman Poolman's determination to protect the INSCAP (which is known to many by its former corporate name, LILAC) program identified by the ACLI as STOLI, following his threat to retaliate against any lobbying to make the bill's language meet its purpose. Commissioner Poolman apparently told the ACLI (again according to the attached Memorandum) that "he intended to be the architect of whatever the final product of the Committee might be – if any – and that he disapproved of industry efforts to identify leadership on the committee beyond his own." He backed this up with a warning that he would kill the bill: "the only choice for the industry was to agree to address STOLI settlement schemes now or risk receiving any useful NAIC guidance on STOLI this year."

NCOIL has recognized the gaping loophole in the NAIC model amendments which the ACLI complained of to Commissioner Poolman. Echoing the ACLI memorandum, Senator Hudgens's April 2007 letter to the NCOIL Life Settlements Subcommittee correctly summarized that the new NAIC model "only seeks to regulate potential changes of ownership resulting from using the policy as security for a loan and, surprisingly, does not address trust structured STOLI."

NCOIL's Model Act should not overlook true STOLI schemes. It is our responsibility to correct the inadequacies of the NAIC model by taking the policymaking lead on this subject of significant commercial importance. This is what legislators – not regulators – are elected to do.

Therefore I urge you to consider the following:

- The NAIC model as written is anti-consumer and is unacceptable because it impairs legitimate life settlements and rolls back private property rights while doing nothing about STOLI.

- The NAIC's recent amendments which ban life settlements for a five year period is contrary to the established laws of every state with a settlement law (except one). Previously, the NAIC Model, like the NCOIL model, has always tied the settlement waiting period to contestability, as it truly should.

- Insurance carriers have told their stockholders through various earnings calls that they have detected and prevented STOLI through proper controls and procedures during the application and underwriting for new insurance by applying insurable interest, life settlement, and rebating laws. But the NAIC model ignores NCOIL's resolution earlier this year encouraging them to enforce these existing core insurance laws, before creating new laws and restrictions on personal property rights.

- By the author of the NAIC new amendments' own admission, the NAIC model does not address STOLI schemes where investors provide the funds for premiums and receive 95% of the death benefit *at policy inception*.

- NCOIL should therefore adopt a model that addresses STOLI. These amendments should include a series of disclosures and affirmations which will impose greater transparency at the inception of the policy and will enable insurers to investigate and deny applications and applicants that clearly evidence STOLI, but just as clearly protect private property rights and the rights of policy owners to sell their polices to achieve the highest market value, as they see fit.

- The NCOIL model should also clarify and codify the century-old leading U.S. Supreme Court case -- where the court instructed that schemes where investors fund premiums and take the lion's share of the death benefit from policy inception violate insurable interest -- under which regulators should have already been attacking STOLI for the last three years.

It is my hope that these comments and suggestions build on NCOIL's two resolutions on this subject and on the outstanding work done to date by the members of our Life Settlement Subcommittee.

Thank you for your attention to this important matter and your consideration of these suggestions. This is an extraordinarily important matter in which true policymakers -- legislators -- should be drafting the leading model law for consideration by the States, and the enforcers of the law, the regulator-members of the NAIC, should be following these policy instructions.

Yours truly,

Robert R. Damron
State Representative

Attachment

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MEMORANDUM FOR THE STOLI TASK FORCE
DATE: 29 October 2006
SUBJECT: Meeting with Commissioner Jim Poolman

The following met for two hours on October 27 to discuss the industry recommendations to amendments proposed to the Viatical Settlement Model Act by NAIC Life Insurance (A) Committee Chairman Jim Poolman ("Poolman 2"):

Commissioner Jim Poolman (ND)
Patrick Baird (AEGON)
George Coleman (Prudential)
Tom Korb (AALU)
Gary Sanders (NAIFA)
Michael Lovendusky (ACLI)
Brett Palmer (NAIC)
Diana Marchesi (AEGON)
Bill Fisher (Mass Mutual)
Tim Hanford (AALU consultant)
Bruce Ferguson (ACLI)

Chairman Poolman asserted that a majority of members of the NAIC (A) Committee agreed that "insure to settle" and "finance to settle" transactions should be prohibited and that a five year settlement ban might be achievable. However, he also represented that neither he nor a consensus of Committee members supported industry recommendations to prohibit finance programs permitting investor participation prior to or at issuance where the policy does not settle and the policyowner derives some modest percentage of the policy death benefit. The INSCAP concept was specifically discussed and Commissioner Poolman expressly defended it.[1] Poolman indicated he was willing to work from Poolman 2 going forward; that he had advised other NAIC Committee members to consider Poolman 2 as the text for further discussion; but that industry should expect him to offer his own changes to the industry recommendations to confine model amendments to transactions that settle and <u>not</u> finance programs benefiting investors where the policy does not settle. Poolman further made clear that he intended to be the architect of whatever the final product of the Committee might be – if any – and that he disapproved of industry efforts to identify leadership on the committee beyond his own. All industry participants insisted that model amendments that failed to address all financing schemes primarily benefiting investors failed to address the fundamental concerns with STOLI. Poolman replied that the industry should not expect to address all STOLI problems in the context of the model act and that the only choice for the industry was to agree to address STOLI settlement schemes now or risk receiving any useful NAIC guidance on STOLI this year. Mr. Baird proposed that industry agree to address only STOLI settlement schemes now on the condition that finance-without-settlement transactions expressly be held for further study and resolution in 2007. Poolman initially agreed to this approach but later seemed to retreat from supporting it. These matters will be discussed on our teleconference Thursday, November 2 @ 2:00 pm Eastern. Call 973.935.8545 Code 846933 to participate.

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[1] Staff understands the INSCAP concept to involve: full financier disclosure to the applicant and insurer of the transaction details benefiting investors at a commercially respectable rate of return; (2) the transaction includes an inducement to an applicant with apparent insurable interest to obtain the policy and sustain its ownership without settlement with eventual payment of some percentage of the death benefit to the estate; and (3) express consent by the insurer to the transaction stopping policy rescission. The investors might also purchase an annuity to defray premium payment costs and protect against extended policy owner lifetimes, thereby arbitraging life insurance versus annuity underwriting values

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The State Senate

The Honorable George Keiser
Chairman
Life Settlements Subcommittee

Members of the Life Settlements Subcommittee

Dear Chairman Keiser and Members of the NCOIL Life Settlements Subcommittee:

I am a member of the Life Settlements Subcommittee. I would first like to thank both Chairman Ripley of the Life Insurance and Financial Planning Committee and Chairman Keiser of this Subcommittee as well as all the committee members for all of their efforts to date on a very difficult and contentious issue. It is with that in mind that I respectfully offer the following, as it relates to the issues regarding the secondary market, life settlements, and stranger originated life insurance (STOLI)/investor initiated life insurance (IOLI).

First, insurable interest must be defended at policy inception. This should be the priority for any legislation pertaining to STOLI. In an effort to combat STOLI, the NCOIL Model Act should explicitly ban any scheme whereby investors fund premium payments and take an interest at policy inception in insurance or insurance products on the insured. These types of pure STOLI arrangements – in which, from inceptionof the policy, neither the insured nor the insured's beneficiaries can receive the benefits of the policy, while the investors in the trust receive the vast majority of the death benefit– triggered NCOIL's interest and a policy statement via a 2005 resolution that condemned such schemes.

The current draft of amendments to the NAIC Viatical Settlements Model Act only seeks to regulate potential changes of ownership resulting from using the policy as security for a loan and, surprisingly, does not address trust structured STOLI. I say that the NAIC's actions are surprising because the Chairman of the NAIC Life Insurance and Annuities Committee has acknowledged that the NAIC Model Act amendments contained a "loophole" for this form of transaction and, despite having condemned such schemes in a 2005 resolution, stated that IF the loophole were exploited, "only then regulators would address it.". I believe that the NCOIL Model Act should make sure not to overlook these true STOLI schemes.

Second, we should consider to what extent government should be imposing unprecedented restrictions on the right of assignment of life insurance in lieu of encouraging carriers to underwrite for insurable interest and of enforcement of other insurance laws which already protect against wagering policies. I would encourage the Committee, before it outlaws commercial transactions which are currently legal and which involve the exercise of a property

right, to make sure that it creates a record which documents whether the give and take of the marketplace has stemmed any excesses which threaten insurable interest.

In a simple review of carrier filings and earnings calls, I discovered that numerous insurers have concluded that they have successfully prevented STOLI and IOLI through aggressive underwriting without the need of new statutes or regulations. Consider the following:

- "We have the top 30 life company CEOs that are on the American Council of Life Insurance Board have all agreed that we will not write STOLI which is stranger owned life insurance or investor owned life insurance.... **So I think you've seen for the large life companies a fall-off in STOLI or IOLI.**" (ING CEO during Q4 2006 earnings call; February 15, 2007.)

- "**[W]e've put up some great screens, we think we have a good idea of where that business is being produced.**" (Nationwide Sr. VP at 32nd AIFA conference, March 2007.)

- "[M]any of our competitors are following in our footsteps as evidenced by -- if you look at total life sales for the industry, what you would see is that it really started off with a bang and ended with kind of a whimper.... And so what you can see is that many of our competitors are getting out of this business and **we can actually see a time possibly a year from now when there is no more IOLI business.** So we see the market is coming back to us over time, and we **are going to continue to stick to strong fundamentals of the business and doing the business in the right way.**" (MetLife Chief Admin. Officer, Q4 2006 earnings call; February 14, 2007.)

- "Both old Lincoln and old JP have continuously tried to prevent IOLI and SOLI [Stranger-Originated Life Insurance] products from being sold by the two organizations. Over the past 18 months, **we have been diligent in trying to keep that business from growing.**" (Lincoln National and Jefferson Pilot call quoted in BestWire, March 13, 2007; March 13, 2007.)

- "**[W]e greatly strengthened our measures to eliminate the IOLI cases coming through that we all want to prevent from issuing.**" (John Hancock CEO, Q4 2006 earnings call; February 13, 2007.)

- "As we discussed at our investor day, in the latter half of 2006 you began to see the industry tighten down on the investor-owned life insurance sale. **We believe we took a leading position in trying to tighten that down and stem the tide of that. We, like several other companies, did it through a combination of changes in our underwriting process, certifications by both agents and by customers, reviewing trusts, and generally reviewing the entire process, specifically in the older age marketplace at the higher face amounts where that type of business tended to come in. We stemmed the tide fairly successfully,** so much so that we saw a fairly significant drop in our universal life sales at the older ages. In the second half of 2006, we indicated to you, as I believe has come true, that we were going to establish a fairly new baseline from which to grow. **We believe that that has occurred and we have indicated that we**

believe most of the investor-owned life insurance sales have stopped coming through our reported numbers." (American General CEO on Q4 2006 AIG earnings call; March 2, 2007.)

- "**In an effort to screen out IOLI sales, the company stopped accepting premiums financed on a non-recourse basis in February 2006, and it has taken proactive steps to improve its surveillance/detection capabilities and its product designs.**" (Phoenix Life, Fitch report quoted in BestWire, Feb. 27, 2007.)

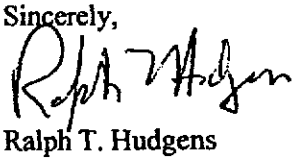
- "And then U.S. retail life sale, the rebound in the last quarter, a lot of it came actually from the Transamerica Group where **there was a period of time there where the IOLI, the industrial life sales and our stance on that slowed things down a bit. But we think that, as a whole, we're back to work there and doing better.**" (Aegon President and CEO on Final Year Earnings Call; March 8, 2007.)

These reports of life insurers on their own efforts to stem STOLI are precisely what this Committee intended when it passed the March 2007 resolution which stated that "**the first step in combating STOLI schemes lies with the enforcement of existing state insurable interest, life settlement, and/or other consumer protection laws.**" Based on these reports, I believe that it is reasonable for us to create a record which establishes to what extent existing laws have been used and can be used to attack STOLI, and to specifically identify any perceived shortcomings which exist in the current law, and to tailor our drafting to that analysis.

Thus, if there has been a problem, it appears to have been largely solved by the market, which calls into question how aggressively government should be intervening.

I look forward to the opportunity to further discuss this information at the special meeting this coming week.

Sincerely,



Ralph T. Hudgens

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FLORIDA
Consumer Action
NETWORK

May 3, 2006

Honorable Commissioner Jim Poolman
Chair, Life Insurance and Annuities (A) Committee
National Association of Insurance Commissioners
2301 McGhee St Suite 800
Kansas City, MO 64108

Commissioner Poolman,

Here are my comments as delivered to the A Committee public hearing on Premium Financing of Life Insurance. Please include my comments in the record on this issue.

As a consumer representative, I believe we have a somewhat different perspective than the industry groups you have heard from.

First, I certainly agree that there must be an insurable interest. And everyone here seems to agree we must stop unscrupulous characters that might offer deals that are too good to be true. I have heard stories of advertising and marketing of investor initiated policies that are very troubling. It is essential that the long held principle of insurable interest be preserved and all schemes aimed at getting around it be detected and stopped. I include the various premium financing schemes that border on fraud or are fraudulent in their attempt to get around the insurable interest requirement. But I do not mean to preclude **all** premium finance because it is a useful tool and can save consumers money.

In their haste to avoid schemes that get around insurable interest laws, insurers are now asking consumers questions on the applications for life policies that I consider improper. I do believe thorough underwriting should be done and that while it is an expense, it is irresponsible to sell insurance without it. The problem we are seeing now is that insurers might ask if the consumer has ever even heard of life settlements and deny the policy if there is any suspicion that the consumer might, at some future time, consider selling the policy to someone other than the insurer. Insurers may defend this as a way to avoid fraudulent schemes, but it is not a crime to know you can get a better value for your policy than your insurer may be willing to offer. Instead, this knowledge may define a prudent insurance consumer.

Once a policy is lawfully obtained, and it is beyond the normal two year incontestability period, it is the property of the consumer. For example, once a consumer buys a car, that consumer can sell the car or do anything they wish with it. Imagine a law that said you could only sell your car back to the original dealer for the first five years! You certainly wouldn't expect a very good deal because the

dealer knows you don't have a choice. And knowing you're stuck with the car, the dealer can manipulate the original selling price. People wouldn't stand for it. I see no difference between the ownership of a car and the ownership of a life insurance policy.

Restricting consumer rights on what they can do with their policy clearly robs the consumer of much value from the policy. While we do not object to restrictions during the first two years, while the policy is contestable, after that, it should be the policy owner's choice, not the sellers'. I oppose efforts to lengthen this to five years or prohibit life settlements for five years. This opportunity to sell the policy, for any reason, allows the consumer to get full value from the policy. Anything less only adds to the bottom line of the insurers at the expense to the consumer, and is a hidden cost.

There seems to be much concern about lapse rates. We are going to see less policies lapse. This will cause an increase in the cost of insurance, but it will also mean more sound pricing and more value for consumers. Those consumers will get something for their premium payments. On the other hand, all those consumers who get nothing when their policies lapse lose their entire investment. Their loss is all gain for the insurers. Perhaps we should be more concerned with those folks and not as concerned with preserving lapse rates. Perhaps we should be working to improve sales practices and to educate consumers so they take care not to lose the value in their policies.

On the issue of consumer intent to settle, I'd like to suggest that knowing that policies lapse is not the exclusive privilege of insurance companies. If a consumer understands that lapse rates, investment returns, and other factors mean the policy has a greater worth and that consumer feels the funds might be better invested elsewhere, we can't preclude them from that decision. Why should only the insurance companies be allowed to profit from the knowledge of how insurance works?

Returning to the main topic, in my opinion, what this committee must craft is a regulation that preserves insurance interest absolutely, and preserved consumer ownership rights. The difficulty lies in prohibiting creative transactions that seek to undermine these principles and regulating advertising that entices consumers into questionable deals.

In conclusion, I ask you to carefully consider the steps you might take to rein in abuses by investor initiated life insurance schemes. Let's get tough on fraud and make sure policies are issued properly. But don't restrict or take away the property rights that consumers have paid for.

Thank you.

Bill Newton
NAIC Funded Consumer Representative
Executive Director, Florida Consumer Action Network

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National Underwriter Life & Health
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September 11, 2006

Volume 110; Issue 34

Life settlements, compact rules to get airing at NAIC meeting.
National Association of Insurance Commissioners

TWO ISSUES THAT WILL BE discussed this week when the National Association of Insurance Commissioners meets for its fall meeting in St. Louis are a new draft of the Viatical Settlements Model Act as well as the procedure for establishing product standards for the Interstate Insurance Product Regulation Commission.

In the latest effort to reach consensus on changes to the viatical model, North Dakota Commissioner Jim Poolman, who also chairs the NAIC's Life & Annuities "A" Committee, released a 39-page draft of a revised model.

Key points in the model indude a ban on settling a life insurance contract for 5 years after contract issuance or at any time prior to the application or issuance of the policy.

The draft leaves exceptions for circumstances such as the death of the viator's spouse or divorce of that spouse.

The model also includes disclosure requirements for viatical settlement brokers, viatical settlement providers and life insurance companies.

STARTING POINT

Poolman says the draft is a starting point for discussion that he hopes will move the model out of "A" committee to executive and plenary by the end of the year so that it can be ready for commissioners and state legislatures at the start of 2007.

The initial reaction of insurers and producers is support for the concept, says Michael Lovendusky, associate general counsel with the American Council of Life Insurers, Washington. Lovendusky says industry support includes the Association for Advanced Life Underwriting and the National Association of Insurance and Financial Advisors, both in Falls Church, Va.; and the National Association of Independent Life Brokerage Agencies, Fairfax, Va.

Lovendusky notes that the draft helps prevent inappropriate life settlements while offering protections to a broader group of consumers including those consumers facing divorce.

"It is a step in the right direction. There are many good elements here," says Doug Head, executive director of the Life Insurance Settlements Association, Orlando, Fla. The one point that LISA would disagree with, says Head, is the limitation on the sale of a contract outside of the contestability period.

The 5-year moratorium on selling a contract is still "troublesome," says Scott Cipinko, an industry interested party. However, he notes that the draft does include interesting points such as clarifying the definition of premium financing.

But Birny Birnbaum , executive director of the Center for Economic Justice, Austin, Texas, and a NAIC funded consumer representative, maintains that "it is a terrible proposal. It not only takes away fundamental consumer rights of ownership and disposition of policies," but also does not address the issue of stranger-owned life insurance.

It will be "a nuclear bomb for the secondary market," he adds.

One of the things that is a concern, according to Birnbaum, is that "regulators are letting insurance companies kill the secondary market without a policy debate. It reinstalls a monopoly for insurers." Birnbaum says it is a matter of product pricing that incorporates lapse assumptions. If policies do not lapse, those assumptions create a problem for insurers, he notes.

As a point of reference, Birnbaum notes that insurers are trying to include wording in product standards for the Interstate Insurance Product Regulation Commission that would allow insurers to ask consumers whether they had ever considered a life settlement prior to purchase of a contract.

Insurance representatives have stressed that they need to ask such questions in order to properly underwrite contracts.

ISSUE OF PROCEDURE

The issue of procedure was one raised during a discussion by the interim Management Committee of the commission.

During a conference call, the commission voted to expose one draft rule for establishing public inspection procedures and copying of information as well as product standards for flexible premium adjustable life, joint last to die survivorship flexible premium adjustable life, flexible premium variable adjustable life, joint last to die survivorship flexible premium variable adjustable life, and modified single premium adjustable life.

Bimbaum says in a Sept. 4 letter to the commission that the proposals under consideration were developed in non-public meetings and that with their release only 2 business days before a conference call, there was no real interest in public comment.

In his letter, Bimbaum also notes that the rule on public access fails to declare that filings to the commission are public information upon filing.

In a letter of resignation dated Aug. 31, Bonnie Burns, a consumer advocate and a training and policy specialist with California Health Advocates, Scotts Valley, Calif., wrote that one of the reasons for her resignation was that views of consumer advocates "have generally not been well received" by commission members. Another reason she cited was "some meetings have not been open to public participation and decisions made in those meetings are later voted on during conference calls without much discussion, or adequate time for review and comment."

Burns proceeded to say that she has a "long record of supporting state-based regulation and opposing federal regulation when it could deprive consumers of their rights or effective regulatory oversight." But, she continues, "based on my experience representing consumer interests before the commission, I believe the compact is failing to protect consumer interests."

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
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CONSUMER AFFAIRS, CHAIRMAN

INSURANCE
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Indiana State Representative Michael Ripley
Chairman
Life Insurance and Financial Planning Committee
National Conference of Insurance Legislators
385 Jordan Road
Troy, New York 12180

Dear Representative Ripley:

We are members of the NCOIL Life Settlement Subcommittee, appointed in November 2006 to fulfill a 2007 charge of the full Life Insurance and Financial Planning Committee: "to work on developing an appropriate policy position regarding life settlements, and continue to monitor, investigate, and report on issues related to the life settlement market, insurable interest laws, and investor-initiated life insurance."

Since that time we have participated in several conference calls to discuss and work on this task. We felt it critical to report on our activities and to respectfully submit recommendations regarding investor-initiated life insurance, or stranger-originated life insurance (STOLI) in response to our charge.

We reviewed the proposal under consideration at the NAIC and believe it is not the appropriate model to follow because it is contrary to NCOIL's stated policy goals and does not correct the primary problems associated with STOLI. The NAIC Proposal's five year ban on life settlements from policy inception and ban on so-called non-recourse premium financing, while well-intentioned, ultimately fall short of our two core goals, which are preventing investors from manufacturing life insurance policies and ensuring that we do not "impair, or interfere with Life Settlements or Viatical Settlements." Since the NAIC Proposal only focuses on the potential subsequent transfer of ownership in a life insurance policy, it does not correct the problem of investors taking an interest in a life insurance policy from policy inception – while inadvertently attacking policyowners' right of lawful and proper assignment in an attempt to discourage investors from investing in problem STOLI schemes.

In addition to our substantive concerns about the NAIC Proposal, the members of both this Committee and the Subcommittee have voiced our belief that NCOIL should provide independent leadership on this issue. As legislators, we apply a different perspective than regulators, allowing us to serve an oversight function that the NAIC cannot. We were the first to identify and address this problem, in NCOIL's resolution on this topic dated March, 2005, and we traditionally in the states exercise oversight over the regulatory function both by passing laws and evaluating whether they are being enforced.

The problem of strangers attempting to initiate life insurance on strangers is not new. The case books are full of discussion which makes clear that the insurable interest laws have been used for centuries to combat inventive stranger origination of life insurance schemes. The laws established over the years – such as insurable interest laws, anti-inducement laws and life settlement laws – are essential tools to combat STOLI. The strength of these laws are a primary reason that state legislatures refused many attempts last year to impair the established property rights and value of life insurance in combating STOLI. In line with this history, we should seek enforcement of the existing laws passed by state legislatures to combat STOLI schemes before considering broad bans on commerce which eviscerate life insurance consumers' existing rights in their property.

We, therefore, advocate that the Life Insurance and Financial Planning Committee take the following actions:

- **Pass a resolution urging state departments of insurance to promote enforcement of exiting insurance laws that combat STOLI.** A few State Insurance Departments have already issued opinions and bulletins that use existing state laws to give guidance to insurers on how to detect and prevent various STOLI schemes, but most have failed to act despite their jurisdiction. Regulators have the primary responsibility for addressing this problem through executive action before asking legislators for a panacea solution.

  Update the insurable interest and life settlement laws with model language tailored to the existing laws which adds specific reference to premium finance schemes whereby an investor takes most of the death benefit at policy inception, makes an arrangement to purchase the policy, or pays an inducement to the consumer to take out the policy. This would reinforce to regulators their obligation to use the tools in the code to attack STOLI.

- **Adopt consumer disclosures for premium financing.** Since many of today's STOLI schemes are disguised as premium financing, all premium financing programs which use the policy as collateral should be required to disclose risks associated with premium financing, which will serve to empower consumers to avoid the STOLI schemes by exposing the insidious marketing techniques under which such loans are marketed as "free insurance." .

- **Authorize life insurers to require an applicant for new life insurance to certify that she or he is not participating in a STOLI scheme.** This will not only help consumers avoid such schemes, it will be a powerful tool for insurers to detect STOLI schemes and, therefore, allow them to not issue the policy.

NCOIL has been the leader to date and must continue to provide needed guidance and direction on the STOLI matter. As members of the subcommittee we respectfully submit our report and these recommendations. We believe that, if the action of the full Life Insurance and Financial Planning Committee follows our suggestions, NCOIL will have stayed true to our stated goals and struck the proper balance on behalf of consumers.

Sincerely and respectfully submitted,

Robert W. Godshall
State Representative
53rd District

RWG

GEORGE KEISER
STATE REPRESENTATIVE
MONTANA

TEXAS House of Representatives

RONALD CRIMM
KY House of Representatives

Ralph T. Hudgins
State Senator
Nevada

James L. Seward
N.Y.S. Senate

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NCOIL

National Conference of Insurance Legislators

...for the states

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NCOIL CLOSES IN ON ILLEGAL STOLI, UNANIMOUSLY ADOPTS AMENDED MODEL ACT

Troy, New York, November 20, 2007—Following more than 35 hours of debate over the past 16 months, the National Conference of Insurance Legislators (NCOIL) unanimously adopted an amended NCOIL *Life Settlements Model Act* on November 17, during the NCOIL Annual Meeting here. The model law is a targeted attempt to prohibit controversial stranger-originated life insurance (STOLI) transactions while encouraging legitimate life settlements.

According to Life Insurance & Financial Planning Committee Chair Representative Michael Ripley (IN), "The end product of our work represents a thoroughly vetted proposal that takes aim only at what's wrong with the life insurance market—STOLI. The tireless work of our Life Settlements Subcommittee resulted in a model law that will offer important guidance to states looking to stop this inappropriate activity. "

Representative George Keiser (ND), Subcommittee chair, said, "STOLI occurs at the front-end of a life insurance sale. By defining STOLI, and strengthening reporting requirements and penalties for participating in STOLI, the NCOIL model gets at the heart of what needs to change. We hope that states considering amendments to existing laws, or new life settlements statutes, will be well-served by the NCOIL proposal."

The Subcommittee first met in special session on Wednesday, November 14, to continue its discussion from an October 25 interim meeting in Chicago, Illinois, and to consider proposed amendments submitted in accordance with a November 2 comment deadline. Members furthered their discussion during an impromptu lunch meeting on November 15 and unanimously reported the amended draft to the full Committee, which met later that day.

Among the adopted amendments was a first-of-its-kind definition of STOLI, requirements that a provider report information regarding settled policies to an insurance commissioner as part of an annual statement, and requirements regarding the disclosure of broker compensation information

to policyowners. The Subcommittee had previously made the decision to impose requirements for settling policies that would parallel a two-year incontestability period.

Participating in the Annual Meeting were representatives of the American Council of Life Insurers (ACLI), Association of Advanced Life Underwriting (AALU), Institutional Life Markets Association (ILMA), Life Insurance Finance Association (LIFA), Life Insurance Settlement Association (LISA), Life Settlement Institute, and North American Securities Administrators Association (NASAA), among others.

The Annual Meeting took place from November 14 through 18 at the Rio All-Suite Hotel & Casino in Las Vegas, Nevada.

NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. Most legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at www.ncoil.org.

For further details, please contact the NCOIL National Office at 202-220-3014, or by email at mhumphreys@ncoil.org.

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