



Hon. Kevin M. McCarty, Insurance Commissioner  
Florida Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399-0305  
Attention: [SecondaryLife@flor.com](mailto:SecondaryLife@flor.com)

Dear Commissioner McCarty:

The Institutional Longevity Markets Association, Inc. (ILMA) is a not-for-profit trade association comprised of a number of the world's leading institutional investors and intermediaries in the longevity marketplace, formed to encourage the prudent and competitive development of a suite of evolving longevity related financial businesses.

Life insurance is one of the most important financial assets consumers own, and the prudent regulation of the life settlement industry is critically important to a consumer's ability to acquire and to realize the full value of this asset.

The Florida Legislature has directed the Office of Insurance Regulation (Office) to "review Florida law and regulations to determine whether there are adequate protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Florida seniors."

In accordance with the directive of the Legislature to issue a report on this matter to the Legislature by December 1, 2013, the Office is seeking input from investors in the secondary life insurance market, insurers, and other interested parties will be received at this public hearing.

ILMA is pleased to provide comments in response to the request by the Office.

ILMA's position is that a life insurance policy is an asset that is owned and can be transferred by the owner of the policy for whatever reason. As long as there is insurable interest at the inception of the policy and nothing is discovered during the two year contestability period after issuance of the policy that would void the policy, any future purchaser of the policy holds the policy in good standing. As such, an insurer has an obligation to pay the death benefits of the policy to the rightful owner of the policy upon the death of the insured, in accordance with the provisions of the policy.

Life insurance companies, life settlement providers and brokers, banks and other participants in the life settlements industry have at times disagreed as to how, and to what extent, these industries should develop and be regulated. ILMA seeks to work with the other participants in the longevity related financial businesses to nurture and develop a healthy marketplace that will benefit all participants.

In working with market participants in the Life Settlement industry, ILMA thinks that the interest of the consumer is paramount. Unless the consumer is treated fairly, equitably and sees some value in the life settlement market, no market will exist and consumers will have reduced choices to deal with their valuable asset. Consumers are entitled to transparency when engaging in life settlement transactions. Accordingly, a consumer's representative should disclose all bids received and provide full disclosure of all fees and commissions payable to such representative. When a consumer applies for a life settlement an advisor should emphasize the consumer's obligation to complete the application truthfully and accurately.

Life settlements are not appropriate for everyone. Before selling a policy a consumer should obtain advice from competent professionals to fully understand the risks involved and to determine whether a transaction is right for them. Consumers should have the ability to determine whether to hold the policy to maturity, surrender it for cash surrender value or settle it in the secondary market.

In almost every case where a policy is purchased by an institutional investor in the secondary market, the financial benefit to the policy owner is far greater than having to lapse the policy (where there is no monetary value obtained) or collect the cash surrender value of the policy. In most cases, the consumer can receive at least twice the cash surrender value of the policy and under certain circumstances; multiples of the cash surrender value can be obtained.

Life settlements are complex financial transactions and consumer representatives such as agents, brokers, and other advisors should be mindful of the fiduciary duty they owe to consumers who participate in such transactions, including helping consumers understand the value of a policy and how best to realize this value. This fiduciary duty extends to the initial underwriting of the policy as well. It is the agents and underwriters responsibility to ensure that the information obtained from the insured is accurate in order to eliminate any questions that might arise by any party upon the payment of death benefits to the owner at the time of death. A viable life settlement market that offers a consumer options as to how to deal with his asset is dependent on proper underwriting at the outset.

Included in this process is a determination at the time that the policy is issued is that an insurable interest exists. No person should pay, directly or indirectly, an inducement to any prospective policy owner or insured for taking out a life insurance policy. Offers of "rebates" "free insurance" and similar questionable incentives should be prohibited.

Additionally, industry participants should develop and implement procedures designed to appropriately safeguard the identity of insureds engaging in life settlement transactions. Medical

and financial information about an individual must be preserved in order to prevent fraudulent practices from occurring in the industry. This is ever more critical in today's environment of electronic records and in order to prevent unauthorized access to these records.

ILMA supports the position of one of its members, Fortress Investment Group, LLC (Fortress), which has submitted comments separately. In particular, ILMA agrees with the proposed legislative solutions suggested by Fortress.

The first legislative proposal includes clarifying that the insured's "intent" is irrelevant to the issue of insurable interest. As long as there is an insurable interest at the time of policy issuance, Florida law allows the transfer of a life insurance policy. Most assets are purchased for more than one purpose. When a car or home outlasts its useful life or the purpose for which it is purchased, it is probable that at the time of purchase the purchaser understands that the asset will be sold. So it should be with a life insurance policy. When it no longer is needed by the initial purchaser, that purchaser should have the freedom to sell it without any limitations.

The second proposal clarifies that after the two year contestability period, there can be no challenges to the question of insurable interest. During this two year period, as is the case in almost every other state, the insurer has the opportunity to discover any irregularities or misrepresentations that might have existed in the issuance of the policy. Any question as to whether or not a policy's validity can be challenged ad infinitum adds prohibitive uncertainty in the market for the sale of life insurance policies, depriving the consumer of the maximum value of her asset.

The third legislative suggestion is intended to create stability in the market place by ensuring that the policy that is purchased is without defect. If after two years of policy issuance the insurer has any question as to the validity of a policy, it should be prepared to make those concerns known when asked to do so by a purchaser of the policy. This provides stability in the market because it removes any issue of whether or not the validity of a policy will be challenged upon the death of the insured. This will reflect that the consumer/seller of the policy will receive maximum value for his asset.

The fourth proposal is critical to maintaining fairness and equity in the marketplace. If a policy is purchased in good faith in the secondary market and premiums have been faithfully paid by the purchaser, should the policy be declared to be invalid for whatever reason, the premiums should be returned to the owner of the policy. It is the responsibility of the insurer who issues the policy to ensure that it is issued without any defect. It is the further responsibility of the insurer during the two year contestability period to discover any irregularities in the policy that would make the policy invalid. If the insurer is unable to determine at the issuance of the policy and during the contestability period that the policy is invalid, and the insurer has been collecting premiums on the policy from the owner until the death of the insured, the insurer should be enjoined from keeping the premiums if it is later determined that the policy was invalid. If this

was not the case, this would provide an incentive for the insurer to be lax in its underwriting and its further examination as to the validity of the policy, because if it was later determined that the policy was invalid, it gets to keep the premiums that were paid in good faith by the purchaser. This would result in a chilling effect on the marketplace for life settlements.

The fifth proposal prevents discriminatory rate increases that apply to investors in life insurance policies and not to others who hold the same type of policy. Recently this phenomenon has occurred in some states and some insurers have been unresponsive as to why or the basis for this discriminatory action. Only when complaints were filed with the state insurance regulator was any response forthcoming (and an agreement to not discriminate in the future). Rate increases should only occur in accordance with the provisions of the policy. To arbitrarily and discriminatorily impose premium increases because of the status of the owner of the policy would unnecessarily and illegally reduce the value of the policy to the consumer.

ILMA appreciates your consideration of these issues when you have your hearing on October 25, 2013 as well as in its Report that it will be making to the Florida Legislature. Please let us know if you have any questions regarding the above comments.

Sincerely,



John A. Kelly  
Managing Director  
Institutional Longevity Markets Association