

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

October 25, 2013

Re: The Life Insurance Settlement Association's Comments and Recommendations to the Florida Office of Insurance Regulation for the Hearing on the Secondary Life Insurance Market – October 25, 2013

Dear Commissioner McCarty:

On behalf of the members of the Life Insurance Settlement Association (LISA), thank you for the opportunity to testify at this hearing that was called by the Office of Insurance Regulation as part of its directive from the Florida Legislature 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.” We welcome the opportunity for the OIR and the Florida Legislature to examine this aspect of the life settlement market.

Over the past twenty years, the life settlement market has evolved from a nascent, and largely unregulated, viatical settlement market in the 1980's and early 1990's to a well-regulated market, with the capital primarily being provided by institutional investors. Throughout, the life settlement market has provided significant benefits to individuals and families. Tens of thousands of policyowners who have sold their policies have received billions of dollars in life settlement proceeds that have allowed them to live life with dignity, respond to medical and financial needs, provide for themselves and loved ones or reposition their investments and assets as life's circumstances and life cycles changed.

Today, the life settlement market continues to meet the needs of policyowners –focusing on middle-to-low income seniors in need of long-term care and retirement income. Earlier this year, also pursuant to a directive of the Legislature, a Technical Advisory Work Group recommended legislation that would encourage seniors who are about to access Medicaid to be informed about life settlements as a means to assist in paying for long-term care services. Life settlements are now being endorsed by states as a valuable resource to individuals and governments in addressing the long-term care crisis in America. The ability to keep tens of thousands of individuals off the burgeoning Medicaid rolls, and save Medicaid hundreds of millions of dollars annually, is a realization of the life settlement market's tremendous social benefits and a testimony to the growth and maturity of the market.

But the maturing and evolving life settlement market is not without challenges. Those challenges, which this hearing provides us with an opportunity to address, include: anti-consumer market conduct by life insurers that violates life settlement laws and regulations, and infringes on and impairs the life settlement market for

consumers. It is these issues, presented herein, that interfere with the life settlement market and which we believe call for further action by the OIR and the Florida Legislature to ensure that there are adequate protections for purchasers of life insurance policies through life settlements so that the life settlement market continues to exist for Florida seniors.

PREFACE: Life Settlements, the Secondary Market and Stranger-Originated Life Insurance

As a preface to specific comments that address concerns about the vitality of the life settlement market for Florida seniors, it is important to set forth clear distinctions between the life settlement market, the broader secondary market for life insurance and stranger-originated life insurance (STOLI).

The life settlement market is defined as the marketplace where life insurance policies are sold by policyowners (viators) through regulated life settlement transactions to a licensed life settlement provider. Over 90 percent of the U.S. population lives in the 42 states with life settlement laws, so this corpus of transactions is well-defined.

The secondary market for life insurance can be defined as the ownership of life insurance by investors who, while not having an insurable interest in the life insured under the policy, lawfully own such policies. The ownership by secondary market investors comes about through some form of sale of a life insurance policy from the original owner to the investor. A life settlement is, indeed, a subset of this secondary market, but not all secondary market transactions are life settlements. There are investors who own life insurance policies that were not the subject of a life settlement. These owners have obtained the policies through transactions involving parties that are expressly exempt from state life settlement laws, such as other settlement providers, banks and certain insurers and lenders, and certain trusts and financing entities, as well as through subsequent transactions of blocks of policies in a “tertiary market.” These transactions cannot be, and should not be, referred to as life settlement transactions or the policies owned by these investors considered life settled policies.

STOLI – stranger-originated life insurance – is an acutely accurate definition in and of itself. A STOLI policy is a life insurance policy that was illegally procured in violation of insurable interest laws, often involving fraud or deception in the application or initiation of the policy. Many STOLI schemes of the mid-2000’s involved the manufacturing of life policies using premium finance loans as a “cloak” for a wager, or a trust or other structure as a “straw man,” disguising the true ownership of the policy in order to deceive insurers, resulting in the policies being issued. The illegal conduct occurs at the inception of the policy and, as such, STOLI is neither a secondary market transaction nor a life settlement transaction.

LISA and the entire life settlement market have been clear in their efforts to prevent and detect STOLI and to advocate for the business practices and laws that target the elimination of STOLI. Policies procured in violation of insurable interest laws are *void ab initio* and harms all parties involved, including secondary market investors at least as much as insurance companies. STOLI schemes seek to make these defective policies undetectable from insurers and life settlement companies.

Any examination of law or regulatory enforcement, or criminal or civil litigation involving STOLI schemes concludes that the illegal conduct occurs at the initiation of the policy. These enforcement and litigation matters show that life settlement transactions are NOT the subject of such actions. Rather, it is the scheme to deceive the

insurance company at the time of application of the policy that is at issue. Life settlement companies have neither been accused of nor found to be engaged in STOLI by law enforcement officials or regulators. An evaluation of more than 200 lawsuits filed by insurers shows that neither life settlement companies nor life settled policies were the subject of such litigation.

Simply put, STOLI is not a secondary market transaction. STOLI is not a life settlement. And, life settlements are not a form or type of STOLI.

Market Conduct of Insurers Related to the Life Settlement Market

A. Non-Payment of Interest on Death Claims

Life insurance companies often fail to pay statutorily and contractually required interest on death benefits, depriving beneficiaries a portion of the total proceeds due to them as part of the death benefit. The unpaid amount in aggregate costs tens of millions of dollars annually to consumers.

Owners of life settled policies are “professional” owners of life insurance and, as such, know the terms and conditions of the life insurance policy, including the requirements under the contract and under law to pay interest on death benefits. As such, when interest due on a policy that has matured is not paid by the insurer, life settlement policyowners know and seek to remedy the situation.

Information obtained by LISA for the six year period, from 2004-2010, reveals that no interest was paid where due on 3.4 percent of 1003 life settlements where a death occurred. In 70 percent of those cases, the carrier paid the interest once notified of the deficiency – in most cases within a week of the notification, but in no instance longer than six weeks. The interest paid on these cases exceeded \$150,000.

It is of concern to the life settlement market – and should be of greater concern to all beneficiaries – that life insurance carriers were not forthcoming in meeting their obligation to pay interest on death benefits unless confronted. If the beneficiary does not ask – or does not know to ask – then the interest remains unpaid.

Even when a request for interest to be paid is brought to the attention of a carrier, companies are not very forthcoming. In one instance, an insurer simply responded with a short letter that “there was no-post mortem interest due,” without further explanation. In another instance, a carrier cited an insurance law treatise – and not binding state law – to justify not paying interest.

LISA recommends the Office of Insurance Regulation examine the issue of insurers failing to pay interest on death claims and the Florida Legislature enact laws to ensure that life insurance beneficiaries receive interest due pursuant to a death claim on a life insurance policy.

B. Unauthorized Changes of Ownership Data By Insurers

Life insurance companies change ownership data on policies without authorization or knowledge of the policyowner.

LISA obtained information from a member that over a 33 month period, from November 2009 through July 2012, life insurance companies made 944 unauthorized changes to various data regarding the ownership of the policy, or almost 50 per month. Consider the following:

Description	Total Number	Percent
Completely unrelated address	82	8.69
Misspelling or missing number in street address	50	5.30
Incorrect or missing “Attention” or “c/o” line	49	5.19
Incorrect zip code	23	2.44
Address changed to different address of trust	22	2.33
P.O. Box incorrectly changed to street address	21	2.22
Wrong P.O. Box	20	2.12
Owner’s name changed/jumbled	14	1.48
Verification call notified of incorrect address but unable to reconcile why	58	6.14

LISA acknowledges that such unauthorized changes of data may not be deliberate, but they are, nonetheless, made without the knowledge or permission of the owner and are deleterious. More than 35 percent of these changes could lead to a loss of coverage.

LISA recommends the Office of Insurance Regulation examine the issue of unauthorized changes of ownership data and the Florida Legislature enact laws to ensure that ownership data for life insurance policyowners is protected from unauthorized changes.

C. Obstruction in Obtaining Verification of Coverage and Other Information Related to Life Settlements or Life Settled Policies

Insurers obstruct policyowners and life settlement providers and brokers from obtaining verification of coverage (VOC) information on policies that are either the subject of a life settlement or settled policies, as well as other pertinent information to process a life settlement or secondary market transactions.

A number of insurers have taken to circuitously processing verification of coverage requests by imposing requirements that are not necessary to complete the request. These actions impair the life settlement market for seniors. In addition, with the increased frequency of tertiary transactions involving settled policies, insurers are refusing to honor the owners request for information about the policy, such as illustrations.

One life company requires that life settlement providers seeking a verification of coverage submit “all applicable licenses and certificates,” despite the fact that the request for the VOC is accompanied by a power of attorney from the policyowner. Another life insurance company imposes its own conditions to providing a VOC that circumvent state laws, stating that it “is under no obligation to provide a VOC where the insured and policyowner reside in a state that does not impose a VOC response obligation,” and only if the policy was in force for at least five years. One insurance company sends letters to policyowners that contain false statements about life settlements and require the policyowner to sign additional disclosures and certifications before they will

release information, despite having received a power of attorney from the owner for the life settlement provider to obtain the information.

LISA recommends the Office of Insurance Regulation examine the unauthorized obstruction in obtaining a VOC and other policy information related to life settlements and life settled policies and the Florida Legislature enact laws to ensure that VOC and policy information is transmitted to secondary market owners and others lawfully empowered to obtain such information.

D. Insurers' Threats to Insurance Producers and Gagging Producers Who Advise and Assist Policyowners with Life Settlements, including Term Conversion Life Settlements.

Life insurance companies prohibit licensed life insurance producers from advising and assisting policyowners with life settlements, using false information, threats of economic sanctions and termination.

One life insurance company requires all insurance producers to sign a "Broker Agreement" which, as part of the "Broker Representations," states "no Company Policy shall be sold or used in any manner with a viatical or life settlement company or be part of a viatical or life settlement." This is a false statement that likely constitutes and Unfair Insurance Trade Practice under Florida Laws.

Several companies have instructed their force of insurance agents and brokers that they are prohibited from discussing with or assisting policyowners with life settlements ("[Company Name] prohibits agents from participating in fee-based referrals, or sales of clients' life insurance policies to viatical companies," and "all [Company Name] agents are prohibited from participating in the viatical settlement market.").

Another life insurance company requires policyowners who are entering into a life settlement to sign an additional set of disclosures that are not prescribed or approved by any law in the nation and which include intentionally misleading information about the life settlement transaction. This company includes the following statement in the disclosure: "I am forfeiting a financial asset that probably has a higher rate of return than any other asset in my estate." This insurer does not include any such or similar statement in its form for the surrender of a life insurance policy.

Another insurer requires policyowners entering into a life settlement to receive the following:

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 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.

LISA recommends that the Office of Insurance Regulation examine life insurers for violations of the Florida Viatical Settlement Act and the Unfair Insurance Trade Practices Act related to life settlements, including prohibiting insurance producers from advising and assisting policyowners with life settlements and recommends the Florida Legislature enact laws to ensure that insurance companies do not engage in unfair insurance trade practices and do not impair insurance producers from being able to advise and assist their clients with life settlements.

Life Expectancy Provider Registration Requirement

The provisions of Part X of Chapter 626 of the Florida Insurance Law are outdated, fail to provide consumer protection and impair the functioning of the life settlement market for seniors.

In 2012, the Florida Office of Insurance Regulation proposed deleting provisions requiring registration of life expectancy providers pursuant to Part X, the Viatical Settlement Act (HB635). The proposal was made because of the law's ineffectiveness and reflected the broad recognition by the Office and the industry that it provided no consumer protection and that the registration was improperly viewed as a validation of registered life expectancy providers.

The law regarding life expectancy providers is impairing the functioning of the market. The law does not allow for life settlement providers who purchase for themselves, as opposed to investors, to develop and utilize life expectancies generated in-house. The law forces the provider to engage third-party underwriters, which unnecessarily increases the cost of the transaction and does not provide any consumer or investor protection. A life settlement provider, or any investor, investing for its own account, should not have to be required to use a registered underwriter.

By requiring providers and investors to rely on a small set of registered life expectancy providers, the law is, de facto, endorsing these third-party life expectancy providers. Most institutional investors today – which include insurance companies and re-insurance companies – have developed their own internal underwriting expertise, or have their own view of mortality and frequently it does not relate to the current approved providers. For instance, several providers and investors use disease specific practicing physicians or medical statisticians to determine the life expectancy. In other words, with increased mortality experience, investors may have superior underwriting to that of the registered life expectancy providers and this underwriting should not be prohibited.

LISA recommends the Florida Legislature repeal all provisions in Part X of Chapter 626 related to life expectancy providers. The repeal should include the provision of HB635 and the provision that prohibits a viatical settlement provider or viatical settlement broker from directly or indirectly being an owner or officer, director, or employee of a life expectancy provider.

The full repeal should be adopted because the Office, by proposing repeal of any registration requirement or oversight by the Office related to life expectancies and life expectancy providers, recognized that these provisions were not necessary or effective. Retaining the one provision related to common control of life expectancy providers is unenforceable, as the state cannot regulate out-of-state activities, including who owns or is an officer or director of a non-Florida life expectancy provider. In addition, the current provision would prohibit viatical

settlement providers and investors from performing their own life expectancy evaluations, forcing the provider to use third party life expectancy providers – for both in-state and out-of-state transactions.

Return of Premiums

For over 150 years, the law has recognized that when an insurance policy is rescinded or otherwise invalidated the premiums shall be returned to the owner of the policy. Insurers, however, are issuing policies that violate insurable interest laws, failing to take the proper steps to prevent or detect such improperly issued policies, refusing to respond to request from owners to verify the validity of policies, and then, after collecting premiums for years and years, attempting to keep those premiums.

LISA recommends the Florida Legislature amend Section 627.404, by amending subsection (5) as follows:

(5) (a) A contract of insurance upon a person, other than a policy of group life insurance or group or blanket accident, health, or disability insurance, may not be effectuated unless, on or before the time of entering into such contract, the person insured, having legal capacity to contract, applies for or consents in writing to the contract and its terms, except that any person having an insurable interest in the life of a minor younger than 15 years of age or any person upon whom a minor younger than 15 years of age is dependent for support and maintenance may effectuate a policy of insurance on the minor.

(b) With respect to life insurance, in any instance that an insurance contract is rescinded, void or otherwise terminated or extinguished in accordance with the law for the reason that such insurance contract was procured by a person not having an insurable interest, as defined in s. 627.404, the insurer shall pay to the owner of the insurance contract at the time such contract was void or otherwise terminated or extinguished an amount equal to the total premiums paid with interest as to premiums at the rate of interest specified in s. 625.121(6)(e), provided, however, that:

(i) This subdivision does not apply to the owner of a life insurance policy who engaged directly in a violation of s. 627.404;

(ii) This subdivision applies to all life insurance policies in effect prior to and issued after the effective date of the law.

(c) The provisions of subdivision (b) of this subsection shall apply to any viaticated policy, as defined in s. 626.9911(13) or an insurance contract that has been the subject of a viatical or life settlement contract regulated by any other state, provided such state has a provision substantially similar to s. 626.99278.

This amendment clarifies that whenever a life insurance policy is rescinded, void, terminated or extinguished because the policy was improperly issued in violation of the state insurable law, the premiums paid must be returned to the owner of the policy. No premiums will be refunded if the owner was engaged in the improper procurement of the policy in violation of the insurable interest laws.

The amendment also makes clear that premiums must be returned to the owner of any “viaticated policy,” which is a policy that has been the subject of a viatical or life settlement contract, in this state or any other state. All life settlement providers, as a condition of licensing, must have an approved anti-fraud plan that requires vetting of every policy that will be subject of a settlement to ensure that such policy was not issued or sold in violation of numerous insurance laws, including insurable interest laws. Importantly, life insurance companies must issue a verification of coverage that ensures the validity of the policy for the prospective owner, prior to the

viatical settlement contract. As such, insurers should be required to return premiums on any viaticated policy that was the subject of such rigorous vetting, even if such policy is subsequently rescinded.

This amendment will ensure uniform public policy regarding return of premiums in rescinded or terminated policies, as premiums are required to be refunded when a policy is rescinded because of fraud in the procurement of a policy. Further, this amendment would remove unjust enrichment by any party, including insurers that issue and maintain life policies that they knew or suspected violated insurable interest laws. Most importantly, this amendment would ensure the property rights and market value of life insurance for owners of life policies, including investors, who pay premiums and have not violated insurable interest laws.

Summary

The Life Insurance Settlement Association represents member participants in all aspects of the secondary market for life insurance. LISA has long advocated and supported legislation and regulation that offer maximum protection for life insurance consumers as well as for investors in life settlements. By doing so, seniors who chose to sell their life insurance policies in the secondary market are afforded the opportunity to receive the best available fair value afforded within the environment of a well-regulated market.

Thank you for this opportunity to present this information to the Office of Insurance Regulation regarding the adequacy of protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Florida seniors.

Sincerely,



Darwin M. Bayston
LISA President & CEO