



VIA ELECTRONIC DELIVERY

October 12, 2007

National Conference of Insurance Legislators
Subcommittee on Life Settlements
385 Jordan Road
Troy, New York 12180
Attention: Representative George Keiser

Re: Life Settlements Model Act

Dear Representative Keiser:

We welcome this opportunity to comment on the National Conference of Insurance Legislators ("NCOIL") draft life settlement model act, as revised by your subcommittee (the "Proposed Model").

We commend NCOIL, and your subcommittee in particular, for its work in advancing consumer protection in the life settlement market. We believe our comments, which among other things, address broker compensation disclosure, will strengthen the Proposed Model in a way that will deliver benefits to both the consumer and to the marketplace.

As stated in the Guiding Principles of the Institutional Life Markets Association ("ILMA"), which are attached for your review, full disclosure and transaction transparency are of critical importance to our organization. To that end, please be advised that ILMA fully supports Florida's pending Rule 69O-204.101 "Disclosure to Viator of Disbursements".

We encourage your subcommittee to endorse our comments to the Proposed Model at the November 14, 2007, annual meeting.

COMMENTS:

1. Disclosures to Owners. Section 9(C) of the Proposed Model, relating to disclosure to the Owner, should be expanded to incorporate the provisions of Florida's pending Rule 69O-204.101 "Disclosure to Viator of Disbursement". The Florida pending rule, a copy of which is attached hereto, requires the life settlement broker to disclose, among other matters, the name of each broker that receives compensation, and a reconciliation of the gross offer and the net amount of proceeds received by the viator. This clear and direct Disclosure of broker compensation is critically important to ensuring that the consumer receives fair market compensation in exchange for the settlement of his or her life insurance policy. We believe that disclosure obligations may not be addressed adequately under current life settlement laws and the disclosure requirements in securities laws may not be applicable in all instances.

2. “Life Settlement Contract”. The Proposed Model includes within the definition of Life Settlement Contract the transfer for compensation or value ownership of or a beneficial interest in a trust or other entity that owns a life insurance policy. In order to ensure that people do not evade the application of the Proposed Model by forming trusts or entities in other states, we propose the following additional language at the end of the last sentence of the first paragraph of Section 2(L):“, which life insurance contract insures the life of a person resident in this State.”

In addition, it should be made clear that the trust or other entity referred to in first paragraph of Section 2(L) does not include Special Purpose Entities.

3. “Life Settlement Contract”. The Proposed Model contains a useful definition of the term “Premium Finance Loan”. With the addition of this defined term, Section 2L(1)(a) of the Proposed Model becomes redundant and should be deleted.

4. “Life Settlement Contract”. Section 2L(2)(a) should be revised as follows: “A policy loan, in an amount not to exceed the cash surrender value of the policy, by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;”

This change reflects the fact that, under current law, life insurance companies may not make loans in an amount greater than a life insurance policy’s cash surrender value.

5. “Settled Policy”. To avoid confusion regarding the location of defined terms, which are otherwise referenced in alphabetical order, the term “Settled Policy” should be inserted as Section 2X, immediately following the term “Related Provider Trust”.

6. Contract Requirements. Section 5 should be revised to be entitled, “Contract Requirements; Disclosure Statements”, and the following provision should be incorporated as a newly added Section 5C: “A Person shall not use a Life Settlement Contract form or provide to an Owner a disclosure statement form in this state unless first filed with and approved by the Commissioner. The Commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the Commissioner’s opinion, the contract or provisions contained therein fail to meet the requirements of Sections 8, 9, 11 and 15B of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the Owner. At the Commissioner’s discretion, the Commissioner may require the submission of advertising material.”

The first step to a well regulated disclosure scheme is the review and approval of disclosure documents by the proper regulatory authority.

7. General Rules. The following additional exceptions to the two year prohibition on participating in life settlement transactions should be added as Sections 11N(2)(c) through (h) and re-letter the existing subsections “c” and “d” as “i” and “j”:

“(c) The Owner’s spouse dies;

(d) The Owner divorces his or her spouse;

(e) The Owner retires from full-time employment;

(f) The Owner becomes physically or mentally disabled and a physician determines that the disability prevents the Owner from maintaining full-time employment;

(g) The Owner was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

(h) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the Owner, adjudicating the Owner bankrupt or insolvent, or approving a petition seeking reorganization of the Owner or appointing a receiver, trustee or liquidator to all or a substantial part of the Owner's assets;”

The above exceptions are all situations where a consumer may need to realize the economic value of his or her life insurance policy due to an unforeseen and adverse change in circumstances.

Conclusion:

Our director of government relations, Jack Kelly, will be contacting your office to discuss the contents of this letter in greater detail. In the meantime, should you have any questions or comments, please feel free to contact Mr. Kelly directly at (202) 289-1011 or by email at jkelly@mcphersongroup.us.

We thank you for the opportunity to comment on this matter and we look forward to working with NCOIL toward the development of the longevity and mortality marketplace.

Very truly yours,

INSTITUTIONAL LIFE MARKETS ASSOCIATION, INC.

By: 
Kurt Gearhart
President

Attachment

cc: Institutional Life Markets Association, Inc., Board of Directors
Jack A. Kelly, The McPherson Group LLP
Albert Pinzón, Stroock & Stroock & Lavan