



Via [Electronic Mail]

December 17, 2007

Representative Jay Hottinger
Subcommittee on Viatical Settlements
Ohio House of Representatives
77 South High Street
Columbus, OH 43215-0603

Re: H.B. 404, Viatical Settlements Legislation

Dear Representative Hottinger:

I am writing on behalf of the Institutional Life Markets Association, Inc. ("ILMA"), as an interested party to comment on your legislation, House Bill No. 404 ("H.B.404"), a bill to amend and enact certain provisions of the Ohio Revised Code relating to viatical settlements.

ILMA's membership consists of the world's leading institutional investors and intermediaries in the mortality and longevity marketplace. As such ILMA is an active proponent of full disclosure and transactional transparency.

Your legislation is a significant step in pursuing consumer protection in the life settlement market and curbing improper transactions. While we support many of the proposals contained in this legislation, we have reservations with certain provisions and we believe that the comments contained in this letter will strengthen H.B. 404 in a way that will benefit both consumers and the marketplace. To this end, we would welcome the opportunity to appear before your committee when you schedule a hearing for interested parties to testify.

ILMA's most significant concern with H.B. 404 is the language requiring a five year prohibition on life settlements. This provision will impose a significant restriction on a consumer's ability to transfer his or her life insurance policy. This restriction will decrease the value of a consumer's policy. We propose a two-year prohibition on settling a life insurance policy commencing from the date of policy issuance.

This two year prohibition is logically tied to the two year contestability period of a life insurance policy, and has been endorsed by the National Conference of Insurance Legislators and by a number of states that presently regulate life settlements. Furthermore, we note that other states that have

considered revised viatical settlement statutes in the past several months also have determined that the extension of the prohibition period may not serve the purpose of addressing stranger-originated programs. Stranger originated and other ill-conceived transactions are best deterred by regulating conduct at the time a life insurance policy is issued.

Additionally, ILMA is concerned with the definition contained in Section 3916.01(Q) (2) (b) as it relates to “Viatical settlements contracts.” In connection with making a premium finance loan, a lender may incur certain costs and expenses, such as closing costs, documentation fees, legal fees, collateral support fees and hedging costs that are properly charged to the borrower.

Accordingly, we propose that Section 3916.01(Q) (2) (b) be amended as follows:

“(b) Loan proceeds that are used solely to pay premiums for the policy and the costs of the loan including principal, interest, service charges, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers, together with any other costs or expenses incurred by the person or premium finance agency advancing funds pursuant to such premium finance agreement.”

With respect to the rescission period, it is overly restrictive and does not take into consideration the actual amount of time a consumer has participated in the process prior to consummating a transaction. We note that a 15 rescission period is standard in the industry. A typical life settlement transaction takes several months from start to finish, and the insured has many opportunities during that period of time to reconsider whether he or she wishes to enter into a transaction. Accordingly, there is no need to extend the rescission period beyond 15 days. An extension of the rescission period beyond 15 days could create unforeseen risks and uncertainties that may drive certain participants from the market resulting in fewer options and lower settlement prices for Ohio residents. To address this concern we propose maintaining the present 30 calendar day after the signing of the contract or 15 calendar days after the viator receives the viatical settlement proceeds

Finally, ILMA proposes the elimination of Section 3916.161(A), Broker/Provider Relationship. The goal of a viatical settlement broker is to procure the highest possible purchase price for a consumer’s life insurance policy. As long as a viatical settlement broker has established policies and procedures that require the full disclosure of its affiliation to any viatical settlement provider, and as long as these parties are required to disclose this relationship to the consumer in order to prevent any conflict of interest, a

viatical settlement broker should be able to procure a sale of a policy to the highest bidder, regardless of the relationship among parties. Prohibiting a broker from selling a policy to an entity under common control (even where the entities are separately managed) is inconsistent with a broker's fiduciary duty to his or her client where the sale is in the consumer's best interest, e.g. where the affiliate is the highest bidder.

We wish to thank you in advance for the opportunity to comment on this important matter and we look forward to working with you in the development of the longevity and mortality marketplace in the State of Ohio. Should you have any questions or comments, please feel free to contact me directly at (202) 289-1011 or by email at jkelly@mcpersongroup.us.

Sincerely,

John A Kelly
Director, Government Affairs

cc: Albert Pinzón, Stroock & Stroock & Lavan