Life Settlement Regulation Approved in New York

By Steve Shorrock, ChFC, CLTC, FLMI

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On November 19, 2009, Governor Patterson signed historic legislation to regulate life settlement activity for the first time in the State of New York. Chapter 499 of the Laws of 2009 provides a comprehensive framework for the licensing of life settlement brokers and life settlement providers and extensive array of required disclosures and other consumer protections. After extensive negotiations, the Bill was endorsed and actively supported by all the major stakeholders, including the Department of Insurance, the Life Insurance Settlement Association (LISA), Life insurance Council of New York (LICONY), The Life Settlement Institute (LIS), and the Institutional Life Markets Association (ILMA), and was overwhelmingly passed by both the Assembly and the Senate.

Russel Dorsett, my partner in Veris Settlement Partners, is President of the Life Insurance Settlement Association (LISA). He worked closely with the New York Department of Insurance and other organizations in playing a large role in helping draft this regulation.

Although the legislation is not specifically based on either the NAIC Model Act nor the NCOIL Model, it more closely resembles the latter. The legislation includes a definition of Stranger Originated Life Insurance (STOLI) and makes engaging in STOLI and related activities a prohibited practice. It also contains a prohibition against the sale of a policy into the secondary market for a period of two years after the policy's inception.

More importantly from a practical standpoint, the Legislation provides a clear framework for secondary market activities. It requires that any individual or entity directly involved in the negotiation of a life settlement to be licensed, and sets forth clear definitions and requirements for licensure of life settlement brokers and life settlement providers. It also includes a provision for the registration of a "Life Settlement Intermediary," a concept which is not present in any of the legislation governing settlement activities in other states.

Life insurance agents who have been licensed in the State of New York for more than one year are generally exempted from pre-licensing training and the requirement of passing an examination, so most producers will find obtaining a license to act as a life settlement broker in New York fairly straightforward.

Life Settlement brokers have fiduciary responsibility to the policy owner and must act solely in the interest of the seller. Both Brokers and Providers are required to provide a number of disclosures to the seller, including all offers and counter offers and a reconciliation of the gross and net offers and the compensation paid to the broker. Importantly, it does not require specific disclosure of compensation paid to "down-line" agents, although anyone sharing in a commission on a specific transaction must be licensed as a life settlement broker.

The legislation includes a number of provisions designed to protect consumers from unfair or deceptive practices, and contains strong provisions related to privacy and the protection of confidential information. The bill defines both "the business of life settlements" and amends the insurance laws to include "fraudulent life settlement acts" as a violation, and provides for both criminal and civil penalties.

As is typical in New York Insurance Law, the legislation provides wide discretion to the Superintendent of Insurance to promulgate rules and regulations, so the "rule making" process will merit close attention. Fortunately, the extensive discussions among industry participants and The Department in the process negotiating the final language should provide a solid framework for that process.

The legislation will be effective 180 days after enactment, although the provisions related to privacy, disclosure, and stranger originated life insurance are effective immediately.

Although the legislation is not perfect, it represents a major step forward for life settlements. Once this and similar legislation in states such a Illinois and California become effective next spring, roughly 90% of the US population will reside in regulated jurisdictions.

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