



THE
BAR ASSOCIATION OF MONTGOMERY COUNTY, MD
NEWSLETTER

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COMMITTEES & SECTIONS

06-02 [Silver Spring cases]. If a civil case is specially set, put something on the pleading to reflect its specially set status. Putting a trial date in the caption of a pleading is also preferred and will assist the clerks in setting priorities.

Civil motions will not be heard or ruled on before the time for a response from the other side has expired. Please do not file a motion one day and call back to check for a ruling two days later. It is not going to happen unless you have consent from the other side.

Lawyers should refrain from making oral requests in the courtroom for action or modifications on existing cases that are not scheduled that day or in that courtroom. Judges are being instructed to require written motions so that all files will reflect the reason for actions taken. The judges also prefer that all written motions be accompanied by a proposed or consent order so that the specific relief

being requested can be noted on a document kept in the file.

Members with questions or suggestions are encouraged to e-mail them to Reg Bours at bourslaw@verizon.net.

Reginald W. Bours, III, Chair

ESTATE & TRUST LAW SECTION

Life Settlements: Providing Attorneys New Solutions and New Responsibilities
By Joe Young & Patrick Duke

In the Fall of 2003, The American Bar Association's *Real Property, Probate and Trust Journal* published "The Benefits of a Secondary Market for Life Insurance Policies." This report concluded that holders of life insurance policies who sold their policies to life settlement providers in 2002 received \$242 million more than what would have been returned to insurers.¹ In 2004, that number jumped to \$686 million.²

What is a life settlement? A life settlement is the sale of a life insurance policy—an assignable asset—where the insured is 65 years of age or older and does not have a terminal or chronic illness. In a life settlement transaction, the owner of the policy always receives more for the policy than the insurance company would be willing to pay for surrender of the policy.

Prior to the emergence of the life settlement market, owners of unneeded, unaffordable or underperforming policies on senior insureds had very limited options for an exit strategy. They could (1) continue to pay premiums; (2) surrender the policy for the surrender value; or (3) allow the policy to lapse. Rarely are any of these options an attractive alternative. Now holders of these owners have a new option - the Life Settlement.

The Life Settlement option provides

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the advisor with a powerful new tool to address common challenges encountered by their high-net worth clients. However, with these new planning opportunities come new responsibilities, especially for attorneys who are assisting these individuals with their estate and business planning, or, most notably, when serving as a trustee on trust-owned policies.

When to Consider a Life Settlement

Estate tax needs have changed. Due to erosion of the estate, an increase in liquidity, or increases in the estate tax exclusion level, the need for a policy held in an irrevocable life insurance trust (ILIT) may no longer be applicable. Where traditionally this policy may have been allowed to lapse or surrendered for a fraction of the premiums paid, a life settlement could enable the trustee to liquidate this asset for its fair market value and redistribute the proceeds into more advantageous investments.

Under-performing insurance policies. Typically, when clients purchase life insurance policies for estate planning purposes, most often universal life policies, maintaining the death benefit is the sole concern. Prior to the introduction of new products that offer death benefit guarantees, these policies were commonly funded with the minimum amount of premium to maintain the policy. Many of these policies that are 5 years or older were original illustrated with crediting

rates that greatly exceed the policies' current rate of interest. When it is determined that the policy is in danger of lapsing, the advisor or trustee has traditionally been limited to two unattractive solutions - increase premium payments (and hopefully have sufficient Crummey beneficiaries to avoid gift tax consequences) or, if the policy holder is still insurable, apply for a new policy and transfer the remaining cash surrender value as a tax free 1035 exchange. Life settlement providers provide a third (and often more advantageous) exit strategy - sell the policy for its fair market value (in many cases a multiple of cash surrender value), and use those proceeds to fund a new policy.

Retiring Business Owners/Executives. Business owner clients will likely have policies that were purchased for key-man protection or buy-sell purposes. Commonly, when these individuals retire or transition the business to a family member or purchaser, these policies are no longer needed. For this reason, these policies are usually allowed to lapse. These policies may have a value in excess of cash surrender value.

Conclusion

Anytime a client over age 65 is planning to surrender a policy, or allow it to lapse, there is possible life settlement option. The emergence of this market has provided attorneys and financial professionals with another "arrow in the quiver"

to help solve their clients' problems. Understanding why and when this transaction may benefit their client is the responsibility of all advisors that serve the senior market. As was concluded in an article in the *Pennsylvania Law Weekly*, "The attorney has an obligation to analyze the circumstances to determine if a life settlement is possible to gain the most for the client."³

¹*Real Property, Probate and Trust Journal*, Vol. 38, Number 3, Fall 2003. "The Benefits of the Secondary Market for Life Insurance Policies"

²*Hal Singer, President, Criterion Economics, LLC and Eric Stallard, Research Professor and Associate Director of the Center for Demographic Studies at Duke University.* "Reply to "The Life Settlement Market: An Actuarial Perspective of Consumer Economic Value"", November 2005

³*Pennsylvania Law Weekly*, "An Often Overlooked Asset", January 2004

Joe Young and Patrick Duke are Principals of Chesapeake Financial Settlements, LLC, a life settlement broker based in Rockville, MD. They may be reached at 240-403-1509 or at jyoung@chesapeakefs.com and pduke@chesapeakefs.com. Please visit their website, www.chesapeakefs.com, for more information on the life settlement marketplace.

Jay M. Eisenberg, Chair

FAMILY LAW SECTION

A short report for this month. A fond farewell from us and a warm welcome to your new Co-Chairs, **Stephanie Fink and Lisa Segel!** The 2006/2007 year will be a great one with their leadership and we encourage you all to be involved. Our Section is strong due to the consistent involvement, hard work and support of our members.

Thank you to **Bev Mondin** and the Bar Association for all the assistance provided to our Section throughout the year. Thank you also to our wonderful speakers from Law Day! **Carol A. Crawford, Dolores Ridgell** and **Devang M. Shah** all gave us plenty of food for thought on wiretapping, spyware, computer crimes, the ethical aspects of our electronic world and the immigration concerns to watch out for when your divorce client is a non-citizen spouse.

If you have any questions, comments, or suggestions, please feel free to contact either Stephanie at (301) 762-

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