Robin & Peter on LIFE SETTLEMENTS

December 10,2009

Life Settlement Industry Hails Victory in New York

On November 19, 2009, New York Governor David Paterson signed into law new legislation regulating life settlements. Previously, New York only regulated viatical transactions, which are sales of policies on chronically or terminally ill insureds with a life expectancy of less than two years. New York has long been considered a bellwether state in the regulation of insurance activities and the life settlement industry welcomes this new consumer-friendly legislation.

The Act generally follows the approach of the NCOIL (National Conference of Insurance Legislators) Model which is supported by the life settlement industry. It represents yet another defeat for insurance industry groups who support the NAIC (National Association of Insurance Commissioners) Model.

In following the NCOIL Model, the New York Act deals with Stranger Originated Life Insurance ("STOLI") by making such transactions illegal, fraudulent activities punishable by civil and criminal penalties. It contains a ban on life settlements for two years from policy issue, rather than five years as contained in the NAIC Model. The Act also does not include other onerous provisions of the NAIC Model Act which have essentially shut down the life settlement industry in the few states which have enacted it.

In addition to STOLI, the law regulates all aspects of life settlements transactions including licensing, procedures, disclosure, privacy, and fraudulent activities from the standpoint of the investors as well as the policy owners and insureds. While most elements of the law take effect 180 days after enactment, May, 2010, three important provisions took effect immediately upon the signing of the bill by the governor. They are as follows:

1. Certain consumer disclosures must begin immediately. These are generally similar to disclosures required in other regulated states and include the disclosure of all compensation received by brokers and producers in life settlement transactions.
2. For expanded privacy protection of insureds and sellers, the act requires specific authorization to disseminate confidential information among the various players in a life settlement transaction (brokers, providers, investors, and other third party organizations such as life expectancy companies).

3. The provisions relative to STOLI also take effect on November 19, 2009. This should bring an immediate halt to these undesirable activities.

With this new law, New York joins 38 other states, including most recently California, that have passed life settlement legislation. It is estimated that approximately 80 to 90% of the U.S. population lives in states that now regulate life settlements. **As the tide continues to flow toward the adoption of NCOIL-based regulation, the life settlement industry has clearly joined the mainstream as a valuable consumer alternative to the lapse or surrender of a life insurance policy.**

Contact us:

Robin S. Weinberger, CLU, ChFC, CLTC
(617) 451-3343
rsw220@aol.com

Peter N. Katz, JD, CLU, ChFC
(860) 673-3642
pkatzlife@yahoo.com