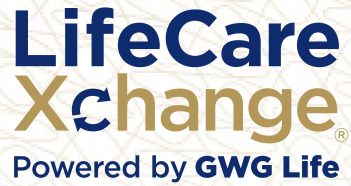

Life Settlements:

UNDERSTANDING THE LIFE INSURANCE SECONDARY MARKET AND ITS VALUE TO CONSUMERS

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The case Grigsby v. Russell,[1] established that a life insurance policy is an asset of the policy owner.

LIFE SETTLEMENTS: A BRIEF HISTORY

For over 100 years, the owner of any type of life insurance policy has had the legal right to sell or exchange their policy to a third party as an alternative to lapsing, surrendering or taking loans.

A key moment in the development of the life insurance industry was the Supreme Court ruling in 1911 by Justice Oliver Wendell Holmes. The case Grigsby v. Russell 1, established that a life insurance policy is as an asset of the policy owner. Holmes noted in his opinion that life insurance possessed all the ordinary characteristics of property, and therefore represented an asset that a policy owner could sell without limitation. This opinion placed the ownership rights in a life insurance policy on the same legal footing as more traditional investment property such as real estate, stocks and bonds, and, as with these other types of property and investments, the policyholder has the legal right to sell a life insurance policy.

In his legal brief he declared:

> *"...life insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property. To deny the right to sell except to persons having such an interest is to diminish appreciably the value of the contract in the owner's hands. ...the policy having been taken out for the purpose of allowing a stranger association to pay the premiums and receive the greater part of the benefit, and having been assigned to it at once. ...it has been decided that a valid policy is not avoided by the cessation of the insurable interest, even as against the insurer, unless so provided by the policy itself."*

This landmark decision established that life insurance not only has a value as a death benefit to financially protect beneficiaries, but that the policy has an inherent value as an asset to the owner while still alive.

Based on the legal property ownership rights for life insurance established in this case, the practice of policy owners selling their life insurance to a third party entered the public consciousness when it became a financial option to help patients struggling with the high costs of AIDS treatments in the 1980's and 1990's. From there, viaticals evolved into life settlements as models projecting mortality over a longer timeframe became more reliable, which created interest from institutional investors.

Today's secondary market provides policy owners with access to a variety of solutions tailor-made to address their unique financial needs.

The life settlement market took off in the 2000s as more investor's saw the viability of this assets class, and consumer awareness grew as marketing and advisor participation increased. As policy owners realized they had a secondary market for their policies, billions of dollars of death benefits were sold for policies that might have otherwise lapsed or surrendered. This was also a period notorious for having little regulation in place and unsavory market practices became well known. Policyholders were being encouraged to premium finance large policies with the intent to settle them after the contestability period, and some investment structures to buy policies failed.

These practices ended around 2012, as the National Association of Insurance Commissioners (NAIC) worked with the industry to develop and implement regulations in the states to create a level market with ample consumer protections that are now in place across the country. Today's life settlement secondary market has become mainstream with numerous options for policy owners and agents to access the secondary market value of their life insurance, and turn an unneeded death benefit into cash or a "living benefit".

Today's secondary market provides policy owners with access to a variety of solutions tailor-made to address their unique financial needs. Instead of abandoning a policy after years of premium payments, the policy owner can use this illiquid asset to create a lifetime income stream by using the proceeds to finance an annuity. These proceeds can be used for many post-retirement needs including reducing the skyrocketing cost of long-term care. A lump-sum cash payment for a policy is on average seven-to-ten-times greater than any remaining cash surrender value. [2]

DEFINITIONS AND EXAMPLES

A life settlement is the sale or exchange of a life insurance policy by the policy holder while still alive for a percentage of the in-force death benefit in the form of valuable consideration (cash or other financial instrument), but in excess of the cash "surrender" value. In addition to a cash settlement, a life insurance policy owner also has the option to exchange their policy for other financial vehicles that provide a variety of benefits that can be tax-free, can fund lifetime income from annuities, or provide a reduced death benefit with no more premium payments required for the policy owner. Regardless of the form of consideration that the policy owner selects; the buyer of the policy takes over the premium payments and will then carry the policy as an investment for the remaining life span of the insured. When the insured dies, the buyer will collect the death benefit to recover their purchase price

and costs (premiums, cost of capital, administrative fee, commissions paid if any) and will realize a return on their investment. The primary factors that are analyzed to calculate the secondary market value of a policy is the cost of carry for a policy (premiums) and the timeframe that policy will remain in-force (life expectancy).

The primary factors analyzed to calculate the secondary market value of a policy:

- the cost of carry for a policy (premiums)
- and the timeframe that policy will remain in-force (life expectancy)

LIFECARE XCHANGE EXAMPLE*	
Policy Owner	80-year-old female with impaired health
Policy Type	Universal Life
Face Amount	$1,000,000
Annual Premium	$30,000
Surrender Value	$20,000

LIFECARE XCHANGE OFFERS

Protection **$300,000**
Partial retained death benefit paid to beneficiaries upon passing of insured

Income **$225,000**
Immediate annuity pays $2,100/month to client for life

Long-Term Care Benefit **$225,000**
A benefit that offers a $3,750/month tax-free payment to assisted living community for 5 years

Lump Sum **$225,000**
Cash paid to policy owner without any restrictions

*For illustrative purposes only.

Think of this underwriting process as the reverse of when you apply for insurance.

QUALIFYING CRITERIA

To qualify for a life settlement, the policy must be in-force beyond contestability (which varies by state), the seller must be above the age of 65, and the insured should have some prevailing health impairments that are verifiable through the review of medical records. The policy owner would authorize the potential policy buyer to review their current health status and to review their policy.

Basic Criteria:

- Minimum age 65 (health condition exceptions possible)
- Minimum death benefit $100,000
- Policy in-force beyond contestability
- Prevailing health impairments with life expectancy typically 12 years or less
- Net-settlement amount must be greater than CSV

Underwriting considerations:

To qualify, a review of medical records is necessary to determine the current state of health of the insured. Think of this underwriting process as the reverse of when you apply for insurance. Unlike qualifying for life, health or long-term care insurance; in a settlement, the sicker you are the more you will receive as a higher-level percentage settlement of the death benefit.

Policy considerations:

All types of life insurance can qualify for a settlement. Term and Universal life are the most likely to be eligible. The smallest death benefit that will qualify is $100,000. Polices must be in-force beyond contestability. Outstanding policy loans are allowable, but the loan amount will be deducted from the total face amount of the policy. A current in-force policy illustration will be ordered to analyze and verify these policy factors.

Life Settlement Brokers are specifically licensed

BROKERS – PROVIDERS – FINANCIERS

1) Life Settlement Brokers

Life Settlement Brokers are specifically licensed by state insurance departments to act as an intermediary between the buyer and seller of a policy. Brokers will shop cases to buyers looking for bids. A case submission will typically include application, signed HIPAA and insurance releases, in-force policy illustration, medical records, and two-to-three life expectancy reports. Brokers are compensated by taking a commission from the offer before presenting it to the policy owner. Commissions can be as much as 30 percent of the offer and then the broker will negotiate a share of the commission to go to the originating agent. Agents that engage in settlement brokerage must have the appropriate licenses based on the state where any given policy is domiciled, file reports with state insurance departments where they hold a license, and may have to report settlement brokerage activity with their carriers. Agents engaging in settlement brokerage must also maintain specific Errors and Omissions (E&O) coverage that is typically separate from E&O for their agency business.

2) Life Settlement Providers

Life Settlement Providers are specifically licensed by state insurance departments to negotiate and transact a life settlement on behalf of a Finance Entity or any buyer of a life insurance policy. As a licensed entity, the provider can work with brokers and buyers as the administrative and closing agent for the transaction. The Provider can also buy policies directly from the policy owner bypassing the need for a broker or a finance entity to be involved in the transaction.

3) Finance Entities

Finance Entities are investment groups and hedge funds that finance the purchase of life insurance policies in the secondary market. Some will finance for other buyers and some will finance to purchase policies for themselves. Typically, a Finance Entity will acquire policies for a short term and either re-sell them after purchase or will build a portfolio to sell in the "tertiary market". Finance Entities often work in numerous asset classes and will outsource the purchasing and management of policy acquisition to licensed Life Settlement Providers.

Forty-three states covering 90 percent of the U.S. population have life settlement regulations in place.

THE REGULATORY LANDSCAPE

Forty-three states covering 90 percent of the U.S. population have life settlement regulations in place governing areas such as producer licensing to "broker" a life settlement, brokerage compensation disclosure and other consumer protections, according to the Life Insurance Settlement Association. Michigan and New Mexico regulate viatical settlements only, while Alabama, Missouri, South Carolina, South Dakota, Wyoming, and Washington, D.C. do not regulate the secondary market at all. [3]

A watershed event for the life insurance industry, and people in need of long-term care occurred on July 19, 2017 when the National Association of Insurance Commissioners released the policy paper Private Market Options for Financing Long-Term Care endorsing the life insurance secondary market as a viable option to help people pay for long-term care 4. In it, the NAIC specifically cites GWG Life and highlights the use of a private bank account, or Long-Term Care Benefit Account, as tax-advantaged vehicle to ensure the funds from a settlement are used towards senior care supports and services. In the paper, they also point out the disparity between the cash surrender value of a life insurance policy and its much higher secondary market value. This policy paper by the regulatory body that governs the insurance industry is an important step forward towards increasing the awareness of the secondary market with a life insurance policy for people looking for ways to pay for the expensive costs of long-term care. The paper was another important step in the mainstreaming of the secondary life insurance market a time when the senior population and demand for long-term care services is growing at explosive levels.

1) **Selling a policy is a highly transparent transaction.**

   Prior to the sale of a policy, the seller receives numerous consumer disclosures. In most states, this includes all offers, the gross vs. net amount of the offer, sales commissions, comparisons of sale price versus the policy surrender value and accelerated death benefit amount, names of purchasers, and more.

2) **When considering selling a policy, sellers are advised of alternatives to selling it.**

   Life settlement companies are required to provide sellers with information about keeping their policies in force, including disclosing that an

Most states require

that the seller's personal physician provide a certificate of mental competence prior to a sale.

accelerated death benefit or policy loan might be a better option. In addition, some states require that settlement offers disclose the settlement amount as compared to any accelerated death benefit that might be available under the policy.

3) Sellers also receive disclosures of certain risks when selling a policy.

While in many cases the financial benefits of selling a policy far outweigh surrendering it back to the insurance company, there are certain risks that must be disclosed, including tax consequences, a reduction in government benefits due to increased assets, or creditor debt reducing the net value of the transaction.

4) Consumers receive a state-approved informational brochure about selling their policy.

To ensure sellers understand exactly what they are agreeing to and the benefits they will receive, most state laws require that brokers and buyers provide sellers with a state-approved brochure that defines the transaction, explains how it works, and provides them with the contact information of the state insurance regulator.

5) Sellers must be deemed competent to enter into a settlement con

No amount of clarity can protect a senior who lacks the cognitive ability to make an important financial decision. As a result, most states require that the seller's personal physician provide a certificate of mental competence prior to a sale—a protection that is unprecedented and underscores the emphasis on consumer safeguards.

6) Policy beneficiaries provide consent prior to the sale.

Prior to the sale of the policy, most purchasers in the life insurance secondary market require the beneficiaries named in the policy to consent to the sale. This protects buyers and sellers alike against the risk of future litigation. (NOTE: This is not statutorily required – and cannot be – but it is a widely adopted industry practice.)

As a result of these consumer protections, there have been no consumer complaints or litigation against licensed life settlement companies since 2012.

7) Buyers of life insurance policies must be licensed by the state.

Because of the important focus on senior protections, only companies licensed by the state insurance department where the seller lives can enter into a life settlement contract with that seller. Licensees are subject to background checks, are required to provide detailed business plans, and to submit and comply with stringent anti-fraud measures.

As a result of these consumer protections, there have been no consumer complaints or litigation against licensed life settlement companies since 2012. In fact, the only complaints reported involving life settlements over this same time period have been against life insurance companies that may have attempted to thwart the client's sale of their policy.

FIDUCIARY RISKS

Advisors should be aware of areas of exposure to legal and financial liabilities stemming from disclosure issues about the legal rights for life insurance policy owners and their ability to access the secondary market for life settlements. The issue stems from two important underlying factors:

1) The Supreme Court case of Grigbsy v. Russell (1911): As with any other forms of personal property, a life insurance policy is an asset and can be converted to another use or sold at the discretion of the policy owner.

2) The definition of fiduciary responsibility that an advisor owes to their client: A legal obligation of one party to act in the best interest of another. According to Cornell Law School, the violation of fiduciary responsibility hold significant liability for the fiduciary: If an individual breaches the fiduciary duties, he or she would need to account for the ill-gotten profit. His or her beneficiaries are entitled to damages, even if they suffered no harm.

In 2011, the owners of a life insurance policy filed a lawsuit against John Hancock for violating Washington State's Consumer Protection Act. The court denied John Hancock's appeal for summary judgement that the policy owner should have already known about the secondary market on their own, and Hancock was forced to settle prior to trial [6].

In 2014, the owners of a life insurance policy filed a putative class action lawsuit against their insurance company and advisor. The policy owner's

A life insurance policy is legally recognized as **personal property of the owner.**

suit cited the "common and systemic practice" of "failing to inform and/or concealing from its insureds the option of a life settlement in connection with their life insurance policies." In addition, the plaintiff sought damages because the defendant "purposely omits this information because it knows that other options, such as surrendering the policy (in whole or in part) or letting it lapse, will generate greater profits to Defendant than a life settlement would." This suit was settled out of court in the summer of 2016 [7].

A similar suit was filed in 2016 by the owners of a life insurance policy. In this suit, the plaintiff claims against the defendant that they are engaged in a "pervasive practice in the life insurance industry," and that the defendant "instructs its own agents as well as independent agents that transact insurance to omit or conceal the option of a life settlement from its insureds." The claim seeks compensatory, punitive, and treble damages and cites violations of California Consumer Legal Remedies Act, financial abuse of elder, and unlawful, unfair, and fraudulent business practices 8.

The fact pattern of these three suits is very clear. When policy owners are denied information about and access to a life settlement, there is a risk that those owners perceive and allege that their advisor withheld the information and opportunity from them because it was in the financial best interest of the insurance company and the advisor to do so, and at the expense of the policy owner. This is a textbook example of violating the definition of what is fiduciary responsibility.

Because a life insurance policy is legally recognized as personal property of the owner, withholding information about secondary market options from a policy owner opens up the risk of possible legal liability for any advisor. As precedent setting legal actions mount across the county in the matter of disclosure versus concealment of information about the secondary market value of life insurance policies, more and more advisors are adding this information to their practice as both a smart business practice and as a hedge against potential legal and financial liability.

TAX ADVANTAGES OF LIFE SETTLEMENTS

A life settlement offers a variety of tax advantages and financial solutions a policy owner can, and should consider, including providing: a deficit in retirement income; an exit strategy out of a policy that is no longer needed or affordable; or funding needed now to address the expensive costs of healthcare, senior living and long-term care.

Settling their policy exempt from federal taxation is a **significant financial benefit** during a time of need.

- **HIPAA:** The Health Insurance Portability and Accountability Act (HIPAA) 9 provides for a full exemption of federal taxes from a life settlement for a policy owner that is terminally or chronically ill. Codified by the IRS (IRC 101 (g) (2) (A)) and (IRC 101 (g) (3)), for the care and benefit of policy owner with a physician's diagnosis that their health condition is terminal or chronic (two ADL's or greater) that would indicate a need for ongoing health care or long-term care supports and services. For a policy owner facing potentially high costs associated with severe healthcare or long-term care needs, settling their policy exempt from federal taxation is a significant financial benefit during a time of need.

- **Tax Treatment of a Life Settlement:** Tax treatment for a life settlement was revised in the Tax Cuts and Job Act of 2017 (TCJA) for the "Tax Reform Bill" 10, which overturned IRS Revenue Ruling 2009-13. This tax provision from 2009 created a difference between the tax-treatment for a policy owner when surrendering a life insurance policy versus settling a policy. The new ruling, retroactive back to 2009, establishes that tax treatment for surrender value and a life settlement are again on equal footing when calculating basis. Now a policy owner only pays capital gains tax for both outcomes based on the amount of funds realized beyond the owner's basis in the policy.

- **Estate Tax:** Many large life insurance policies were purchased over the years as a wealth and legacy preservation strategy to offset the impact of estate taxes. Prior to the Tax Cuts and Job Act of 2017 (TCJA) or the "Tax Reform Bill" 11, the estate tax threshold was $5,490,000, but starting in 2018, that number has doubled to $11.2 million. With this increase, policies currently inforce to protect estates valued below this level are no longer necessary. This means that settlements are an ideal exit strategy for a no longer needed policy.

"A life worth living is a life worth insuring"

-- 1835, Judge Willard Phillips, founder of the New England Mutual Life Insurance Company.

CONCLUSION

The first life insurance "company" in the United States was established in 1759 to benefit Presbyterian ministers and their wives in Philadelphia 12. It did not take long from there for life insurance to spread across the country as one of the most important and fundamental financial vehicles in history.

Two-and-a-half centuries later, there are over 150 million life insurance policies in-force in the United States today 13. Seniors allowed $57 billion worth of universal and variable life insurance policies to lapse or be surrendered in 2008 14. In fact, 88 percent of universal life insurance policies sold will never actually pay out a death benefit because the owner will abandon it at some point before they pass away 15.

Policy owners do this without realizing it is their legal right to settle the policy while they are still alive for the present day value and receive a percentage of the death benefit as a cash-out payment or other financial vehicle. After years of making premium payments, the owner of the policy can use their policy while still alive to help cover their retirement and long-term care costs.

The life settlement market has evolved since it first began with the noble purpose of helping AIDS patient's cash-out of their policies to pay for health care costs that were not covered by their health insurance policies. As is the case with the emergence of any new market, life settlements went through its own growing pains as it developed into the well-regulated industry it is today. Billions of dollars have been paid to consumers in exchange for policies they had carried for years, but no longer needed. Policy owners pay premiums to the insurance company for years—they should not abandon a policy by lapsing or surrendering it before determining what its present day re-sale or exchange value. It is the fiduciary responsibility of advisors to inform clients of their legal right to sell or exchange their unneeded policies that could be used to pay for retirement and the costs of long-term care.

"A life worth living is a life worth insuring" 1835, Judge Willard Phillips, founder of the New England Mutual Life Insurance Company.

A life worth insuring is also one worth living to the fullest. Life insurance policies provide an essential value to protect beneficiaries from the financial impact of the death of the insured. However, the policy is also an asset that provides value to the policy owner while they are alive. That value can come in a variety of forms. Agents and advisors should not overlook extracting that value in the secondary market through a life settlement. The market is well established, regulated, and readily accessible. Multiple options now exist

to ensure the funds from a life settlement can be maximized as cash, or as tax-advantaged vehicles specifically designed to address the best and most suitable needs of the client.

The secondary market continues to grow in its mainstream stature and consumer awareness. Driven by TV commercials, media attention, and more understanding and acceptance by insurance and financial advisors, the number of settlements transacted is growing. In addition, more advisors understand that a life insurance policy is legally recognized as personal property of the owner, and that withholding information about secondary market options from a policy owner opens up the risk of possible legal liability. As precedent setting legal actions mount across the county in the matter of disclosure vs concealment of information about the secondary market value of life insurance policies, more and more advisors are adding this information to their practice as both a smart business practice, and as a hedge against potential legal and financial liability.

The combination of growing consumer awareness, advisor adoption, a favorable tax and regulatory environment, and the financial challenges confronting an aging Baby Boom population will continue to propel growth in this market, and help seniors tap into billions of dollars of available liquidity coming out of an asset they already own.

ABOUT THE AUTHOR

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Chris Orestis, Executive Vice President of GWG Life (www.gwgh.com), has more than 20 years of experience in the insurance and long-term care industries and is a senior care advocate, and nationally recognized as a long-term care and aging expert. Known as the founder of Life Care Funding, where he pioneered the use of life settlements as a tool to pay for long-term care before merging his company with GWG, he is a former Washington, D.C. lobbyist who has provided legislative testimony across the country on aging, senior care and finance issues. He is the author of two books: Help on the Way and A Survival Guide to Aging, is a frequent media columnist and named an Industry Insider by NewsMax Finance, has been a featured guest on over 50 radio programs, and is often an expert source in The New York Times, The Wall Street Journal, USA Today, Kiplinger's, Investor's Business Daily, PBS, MSNBC, NBC News, and numerous other media outlets.

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1911

Grigsby v. Russell: The U.S. Supreme Court ruled that life insurance policies are an asset. Like all assets, life insurance policies are now freely assignable for value.

ADDENDUM

Life Settlement Secondary Market Timeline

1911

Grigsby v. Russell: The U.S. Supreme Court ruled that life insurance policies are an asset. Like all assets, life insurance policies are now freely assignable for value.

1980s

Viatical Settlements are derived from the early AIDS epidemic of the 1980's to allow those dying from the disease to sell a policy to pay for medical care or personal needs. As medical advances improved the lives of AIDS patients, the industry change to target people without a chronic or terminal illnesses and a life expectancy of more than 2 years (viatical). This then became known as a Life Settlement. The AIDS epidemic left many terminally ill patients in need of money for treatment. The secondary market for life insurance policy, known as viatical settlement, helped thousands of patients by purchasing their life insurance policies and providing them with much needed cash.

1990s

Seniors in America discovered a new option to sell unneeded or unwanted life insurance policies. In need of better alternatives, they found the answer in the secondary market for life insurance policies. Consumers over the age of 65 are now able to sell their unneeded life insurance policy as an alternative to lapse or cash surrender. The National Association of Insurance Commissioners' (NAIC) Living Benefits Model Act is adopted establishing the precursor of today's life settlement regulatory model acts

2000

The National Conference of Insurance Legislators (NCOIL) adopted the Life Settlements Model Act. The first five states began regulating life settlements.

2001

The purchase of life insurance policies from senior citizens became widely known as “life settlements”. New sections were added to the NAIC Model Act addressing fraud, advertising and civil remedies. Revisions included the addition of “life settlement” in the definition of viatical settlement and the strengthening of disclosures. Optional provisions were added to address the investor side of the viatical transaction.

2005

The life settlement option had quickly grown to an estimated $5 Billion (face value of policy settled) industry. Life settlements were regulated in 25 states and provided seniors significantly more value than the cash surrender option. Many policy owners were still unfamiliar with the option to sell their policies.

2007

Thirty-five states had adopted the original NAIC model act. In June 2007, the NAIC passed a revision to the Viatical Settlements Model Act that addressed the burgeoning life settlement market. The revised Act strengthened consumer protections and addressed concerns about “stranger-originated life insurance” (STOLI) by imposing a five-year ban on settling life insurance policies. STOLI transactions involve the purchase of life insurance policies for the sole purpose of selling them immediately.

In November 2007, NCOIL adopted a revision of its Life Settlements Model Act that defined STOLI and banned its practice, then outlined recommended provider and broker licensing and disclosures to policyholders.

In December 2007, the U.S. Supreme Court declined to hear a case that challenged a state’s right to regulate life settlements. The decision in SEC v. Life Partners effectively meant that the regulation of the insurance industry and the life settlement industry would remain in each state and not shift to federal oversight.

2008

At an estimated $12 billion (face value), the industry continued to grow at a rapid pace, while sophisticated companies and institutional investors entered the marketplace. More and more states regulated life settlements, while consumer awareness remained limited. In November 2008, NCOIL reported that lawmakers in the following states introduced legislation regulating and restricting life settlements and STOLI: Arizona, Connecticut, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maine, Nebraska, Ohio, Oklahoma and West Virginia passed legislation.

2009

Policyholders settled approximately $8 billion worth of U.S life insurance. A study conducted by Golden Gateway Financial, Inc. and the Insurances Studies Institute found that "80% of seniors owned some form of life insurance policy, but nearly half are unaware it can be sold for cash now." The financial crisis brought into focus the need for seniors to find liquidity to augment retirement funding. The IRS released Revenue Ruling 2009-13 to clarify the tax treatment of life settlements.

2010

In November 2010, the National Conference of Insurance Legislators (NCOIL) adopted its Life Insurance Consumers Disclosure Model Act. This Act mandated that insurers provide written notice to policy owners, if an insured is 60 or older or is known by the insurer to be terminally or chronically ill, and if a policy owner requests to surrender the policy, request an accelerated death benefit under the policy, or when an insurer sends notice to the owner that the policy may lapse, that there are options to lapse or surrender available to them. The NCOIL notice contains eight alternatives, one being "the sale of the policy pursuant to a life settlement contract", and another being "conversion of the policy in order to obtain a long-term care benefit plan".

2011

As the industry matured, capital markets interest in life settlements grew. Market investors recognized the market as a transparent and highly regulated industry. The need for policies was fueled by efforts at NCOIL to

alert consumers of their options and alternatives to the lapse or surrender of their life insurance policies.

The owners of a life insurance policy filed a lawsuit against John Hancock for violating Washington State's Consumer Protection Act. The court denied John Hancock's appeal for summary judgement that the policy owner should have already known about the secondary market on their own, and Hancock was forced to settle prior to trial. Graham-Bingham Irrevocable Trust v. John Hancock Life Ins. Co. USA, 827 F. Supp. 2d 1275, 1287 (W.D. Wash. 2011)

2012

Thirteen states (California, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Texas, and Washington) introduce policy conversion consumer disclosure legislation to educate policy owners about the option to sell a life insurance policy to fund a Long Term Care Benefit Plan and remain private pay. It also codifies the Long Term Care Benefit Plan structure that protects the funds and ensures they will only be used to pay for long-term care services. Texas is the first to enact this consumer protection legislation into law in June 2013, and Kentucky enacts the measure in March 2014.

2013

The life settlements industry showed major signs of growth in 2013. Berkshire Hathaway, the publicly owned invest company founded by Warren Buffett, returned to the asset class for the first time since 2006 by purchasing a portfolio of $300 million (face value) in life insurance policies. Meanwhile, a report from the AAP Life Settlement Market Update indicated that internal rates of return for life settlement transactions conducted in 2013 were in the high-teens - an attractive return at a time when fixed income and other hedge positions were delivering minimal rates of return. Texas enacted Tex. Hum. Res, Code §32.02613, encouraging individuals to enter into a life settlement contract and enroll in a long-term care benefit plan for the benefit of long term care services and support as part of a Medicaid qualified spend-down. Kentucky then followed by enacting similar legislation into law.

2014

Life settlement transaction volumes were reported higher by market participants in all major segments of the industry, and Conning & Co. forecast an average annual gross market potential for life settlements of $180 billion from 2014-2023, with an average volume of approximately $3 billion per year in life settlement transactions.

The owners of a $7.2M life insurance policy filed a putative class action lawsuit against their insurance company and advisor in a state that doesn't even have the disclosure mandate. The policy owner's suit cited the "common and systemic practice" of "failing to inform and/or concealing from its insureds the option of a life settlement in connection with their life insurance policies." And, the suit sought damages based on the defendant "purposely omitting this information because it knows that other options, such as surrendering the policy (in whole or in part) or letting it lapse, will generate greater profits to the insurance company than a life settlement would." This suit was settled out of court in the summer of 2016. Grill v. Lincoln Nat. Life Ins. Co., Case No. 14-cv-00051 (C.D. Cal.) [Third Amended Complaint]

2016

A similar suit was filed by the owners of a life insurance policy with claims against the defendant that they are engaged in a "pervasive practice in the life insurance industry," and that the defendant "instructs its own agents as well as independent agents that transact insurance to omit or conceal the option of a life settlement from its insureds." The claim seeks compensatory, punitive, and treble damages and cites violations of California Consumer Legal Remedies Act, financial abuse of an elder, and unlawful, unfair, and fraudulent business practices. Joseph v. Kaye, et al., Case No. SC125276 (Cal. Super. Ct.)

2017

On July 19, 2017, the NAIC's Long-Term Care Innovations (B) Subgroup released the policy paper Private Market Options for Financing Long-Term Care endorsing the life insurance secondary market as a viable option to help people pay for long-term care. In it, the NAIC points out the disparity between the cash surrender value of a life policy and its much higher secondary market value. In the policy memo the NAIC specifically cites GWG Life, and they discuss the use of a "bank and trust account" (Long-Term Care Benefit

Account) that is recommended to families at the point of need by “elder care providers and professional advisors”. GWG Life is the only company that offers a Long-Term Care Benefit Account as one of the four LifeCare Xchange options for a life policy owner.

2018

Recognizing the failures of Revenue Ruling 2009-13, the Tax Cuts and Job Act (Tax Reform) enacted changes to the life settlement tax law of 2009. The changes make it easier and more favorable for seniors to opt for life settlements. Policyholders selling their life insurance policies are no longer required to reduce their tax basis by “cost of insurance” charges. Instead, the same tax rules and calculations now apply across-the-board. From a tax treatment perspective, it no longer make a difference if a person is surrendering their policy or opting for a life settlement.

** Portions of this timeline provided courtesy of the Life Insurance Settlement Association

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