April 30, 2007

Re: Comments on Certain Proposed Life Insurance Policy Standards

To the Management Committee:

On behalf of the Life Insurance Settlement Association (LISA), thank you for the opportunity to comment on the proposed Individual Single Premium Term Life Insurance Policy Standards, Individual Joint Last to Die Survivorship Term Life Insurance Policy Standards and Individual Single Premium Joint Last to Die Survivorship Term Life Insurance Policy Standards (collectively, the "Standards"). These comments also cover the proposed conforming amendments to the various Individual Adjustable Life Insurance Policy Standards.

These Standards were recommended to the Management Committee by the Product Standards Committee after careful consideration and debate, and they contain important and necessary pro-consumer provisions that are aimed at protecting the property rights of policyowners. **We strongly urge you resist efforts to remove or dilute these consumer protections.**

The consumer protections, found primarily in the Assignment, Beneficiary and Ownership provisions of the Standards, do two extremely important things:

- First, *the Standards mandate that all policies contain provisions that allow the policyowner to assign the policy, change the policyowner and/or change the policy beneficiary*, except where restrictions are required to comply with applicable federal laws and/or for tax qualification purposes.

The ability to assign or sell a life insurance policy is a fundamental property right that has been recognized by the courts for over a century. The revised Standards will preserve this property right and ensure that consumers can realize the full value created in their policies through their premium payments without unnecessary interference from insurers.

- Second, *the Standards prohibit insurers from conditioning the owner's right to assign the policy or change the owner of the policy upon the owner's prior receipt of an offer from the company to purchase the policy*. This change was implemented because, in response to the growing popularity of the secondary market for life insurance among consumers, some insurers have begun requiring a right of first refusal or a similar contractual handcuff in connection with a sale or transfer of the policy by the consumer.

Rights of first refusal in life insurance contracts are impediments to consumer choice which reduce the value of policyowners' policies. The Product Standards Committee explained that it revised the Standards to prohibit rights of first refusal in a policy "*because such a provision could have the effect of preventing or unreasonably delaying the transfer of ownership*."[1] The positive response of policyowners to

[1] *See* Memo from the Product Standards Committee to the Management Committee, dated January 19, 2007 (emphasis added).

the secondary market for life insurance demonstrates that policyowners want more choice and more control, but by placing unnecessary restrictions on the transfer of ownership, rights of first refusal would limit consumer choice and decrease the transparency and efficiency of the marketplace. As a member of the IIPRC Legislative Committee, Rep. Damron commented regarding this topic: “The policy owner will ultimately be the loser if this [the prohibition on rights of first refusal] is not maintained.... In order for the value of life insurance to be preserved for consumers, restrictions on the transferability of an insurance policy should be kept to a bare minimum.”

We note that the IIPRC Industry Advisory Committee, in its March 23 comments regarding the right of first refusal issue, wrote that “our companies are also still evaluating what options they have to compete with the life settlement companies.”
But a right of first refusal is, by definition, an attempt to *avoid competing with* life settlement companies by preventing settlement providers from bidding on the policy. This is about competition which benefits consumers; protectionist measures should be rejected.

Rights of first refusal also tend to artificially suppress policy value in the open market. True competition, which is necessary to ensure that sellers of life insurance policies receive the highest price, requires that all willing buyers be on equal footing with regard to bidding on any valuable property that is subject to auction. Rights of first refusal lower purchase prices by preventing all but one bidder from fully competing.[2]

The first identified purpose of the IIPRC is to promote and protect the interests of consumers. The pro-consumer Standards recommended by the Product Standards Committee accomplish this by ensuring that policyowners can realize the full value of their policies without resistance from interested parties who oppose the growth of the secondary market.

We urge the IIPRC to continue to take the lead on this important consumer issue and prohibit insurance companies from imposing rights of first refusal on individual life insurance consumers who lack the knowledge or bargaining power to fight such restrictions. These Standards preserve existing rights of policyowners to exercise basic property rights in their policies. Anything less would represent a step backwards for consumers following the thoughtful choices made by the Product Standards Committee in its drafting to date.

Sincerely,

Doug Head, LISA Executive Director

[2] *See, e.g., Rethinking Rights of Refusal*, David I. Walker, 5 Stan. J.L. Bus. & Fin. 1, 5 (1999) (“Rights of first refusal discourage potentially high-valuing third-party bidders from entering a contest to purchase, and thus the instrument reduces a seller's expected realization.”).

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