








Life Insurance Planning Opportunities in Early 2020

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Life Insurance Planning Opportunities in Early 2020

By: Steven S. Zeiger, Lee Slavutin and Martin M. Shenkman







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New York Best Interest Regulation 187 for Life Insurance.
 CFP® Practice Standards for Life Insurance
 New Requirements for Producers.
 New Business Opportunity and Ethical Considerations for Attorneys, CPAs and RIAs
 Steven S. Zeiger, CEBS, TEP
 January, 2020

Situation

Life Insurance is often integral to planning...


- ☒ Income Tax-Free Death Benefit
- ☒ Tax-Deferred Growth of Cash Values
- ☒ Non-Taxable Withdrawals
- ☒ Non-Taxable Loans

Loans from inforce insurance policies that are not modified endowments, are received income tax free.
 IRC Sec. 72(e)(5)(A)(i).



Situation

- Life Insurance is often integral to planning, but is often the last, largest, most-neglected asset.
- Charges can be challenging to understand, and costs can vary as much as 80%.
- Actual performance can be difficult to ascertain.
- Relative to client expectations, it can be a poor-performing asset-type.



Should ILITs be Domiciled in NY?

- Asset Protection Trusts domiciled in NV, SD, OH, MO, NH, TN, etc.¹ for statutory protection, income tax, voidable transactions, etc.
(Source: Steve Oshins 10th Annual Domestic Asset Protection Trust State Rankings)
- Dynasty Trusts domiciled in SD, NV, TN, AK, WY, etc.² for perpetuities statute, rule against perpetuities, income tax, spendthrift, etc.
(Source: Steve Oshins 7th Annual Dynasty Trust State Rankings)
- ILITs domiciled in NY for the best consumer protection laws in the USA
- Ethics discussion for Attorneys who disclaim life insurance in their engagement letters
- Ethical Duty to Disclose Reg 187?



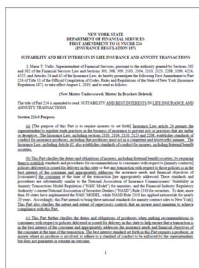
NY DFS Best Interest Rule (Reg 187)

- Redefines “Clients’ Best Interest” for product recommendations for ...
 - ☒ Residents of New York (even if advisors are in another State)
 - ☒ Former residents of New York but with ILIT(s) domiciled in New York
 - ☒ ILIT Trustees in New York (even if ILIT is domiciled elsewhere)
 - ☒ Financial Advisors in New York or with clients in New York



Best Interest Rules- Beneficial In Every State

- Redefine “Clients’ Best Interest” for product recommendations similar to other fiduciary rules
 - ☒ Considering only the interests of the consumer in making recommendations
 - ☒ Reflecting the care, skill, prudence, and diligence [of] a prudent person
 - ☒ Prominently disclos[ing] in writing limit[at]ions in the range of policies recommended.



Best Interest Rules- Beneficial In Every State

- Redefines “Clients’ Best Interest” for product recommendations based on evaluation of ...
 - ☒ All Products, Services & Transactions Available
 - ☒ Relevant Suitability Information
 - ☒ Justifiable Costs, Reasonable Performance & Appropriate Risk

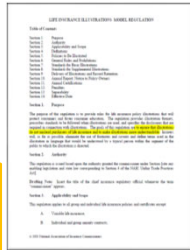


NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT ...
 - ☐ Lack uniform practice (NAIC)
 - ☐ NO disclosure of costs, performance or risk

1995 - “The goals ... are to ensure that illustrations do not mislead purchasers of insurance and to make illustrations more understandable.”

2015 - Adopted and updated to address “...lack of uniform practice [resulting in] ... illustrations that use an [apparently] identical crediting approach yet illustrate differing rates.”



NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT
 - ☐ Lack uniform practice (NAIC)
 - ☐ NO disclosure of costs, performance or risk
 - ☐ Misleading (FINRA)

FINRA Rule 2210(d): “Any comparison... must disclose all material differences...including investment objectives, costs and expenses, [etc]...[because] omission... would cause the communications to be misleading.”

FINRA Rule IM-2210-2(c): “It is inappropriate to compare a ... life insurance policy with another product based on hypothetical performance...”



NAIC Illustrations Model Regulation

- Define(d) "Clients' Best Interest" for product recommendations since 1995, BUT ...
 - ☐ Lack uniform practice (NAIC)
 - ☐ NO disclosure of costs, performance or risk
 - ☐ Misleading (FINRA)
 - ☐ Fundamentally Inappropriate (SOA)

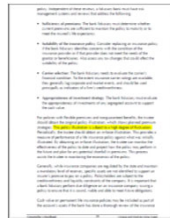


FINAL REPORT OF THE TASK FORCE FOR RESEARCH ON LIFE INSURANCE SALES ILLUSTRATIONS: "Illustrations should not be used for comparative policy performance purposes" because doing so "is fundamentally inappropriate."



NAIC Illustrations Model Regulation

- Define(d) "Clients' Best Interest" for product recommendations since 1995, BUT ...
 - ☐ Lack uniform practice (NAIC)
 - ☐ NO disclosure of costs, performance or risk
 - ☐ Misleading (FINRA)
 - ☐ Fundamentally Inappropriate (SOA)
 - ☐ Unreliable (OCC)



OCC Handbook: "This policy illustration is subject to a high degree of fluctuation."



Uniform Prudent Investor Act

- Prudent Process includes...
 - ☒ Investigate policy costs
 - ☒ Duty to diversify

SECTION 7. INVESTMENT COSTS: "a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee."



Are Internal Costs/Expenses Important?

- UPIA Section 7 requires cost examination, investigation
- FINRA Rule IM 2210(d) requires cost, expense disclosure
- NYS DFS Reg 187 requires justification of costs

What Does Morningstar have to say about expenses?

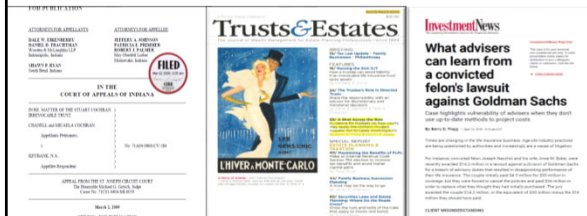
- "How often did it pay to heed expense ratios? Every time."
- "The expense ratio is the most proven predictor of future fund returns."
- "If there's anything in the whole world that you can take to the bank, it's that expense ratios help you make a better decision. In every single time period and data point tested, low-cost funds beat high-cost funds."
- "Morningstar Overhauls Influential Ratings System-- Investment research firm will put bigger focus on investors' costs"

Do you think costs/expenses are equally important in life insurance?

- Source:
- Morningstar 8/9/2010, 5/5/16
- WSJ 6/28/2019

Litigation Involving Illustrations

- ☒ Cochran v. Keybank
- ☒ French v. Wachovia
- ☒ Larry King v. Agent
- ☒ Micale v. ILIT Trustee
- ☒ Schneider v. Attorney
- ☒ Vagelos v. Stockbroker
- ☒ Nacchio v. Goldman Sachs



Ethical Alternatives to Illustration Comparisons

- NO illustration comparisons in trust/client file.
- Insist on Detailed Expense Pages- see slide 18
- At a MINIMUM, compare costs & performance SEPARATELY-see slide 18
- Benchmarking is well-established & common in the financial services industry.

Ethical Alternatives to Illustration Comparisons

• R.A.T.E. of Return Reasonable to Expect

- ☒ R - Risk Tolerances of Client
- ☒ A - Assets & Asset Class Preferences
- ☒ T - Time Horizons
- ☒ E - Expected Outcomes

Risk Profile	Asset Allocation (Equities/Fixed-Income)	Product Type	Rates of Return Reasonable to Expect
Conservative	20% / 80%	UL/Guaranteed UL/WL	5% - 6%
Moderate-Conservative	40% / 60%	Indexed UL	6% - 7%
Moderate	60% / 40%	VUL	7% - 8%
Moderate-Aggressive	80% / 20%	VUL	8% - 9%
Aggressive	100% / 0%	VUL	9% - 10%

VUL results are not guaranteed, will fluctuate and can be negative

Life Insurance Company (U.S.A.)

A LIFE INSURANCE POLICY ILLUSTRATION

A Flexible Premium Universal Life Insurance Policy

Illustration Assumptions

James Farrier, Male - Super Preferred Non smoker
Age 60

Initial Death Benefit \$8,000,000
Initial Premium: \$181,047.00 / Billing Mode: Annual
Death Benefit Option: 1. Cash Value Accumulation Test
State: South Carolina

Table 1: Illustration of Policy Performance

Policy Year	Planned Premium	Net Premium	Net Death Benefit	Net Cash Value	Net Surrender Value	Net Withdrawal	Net Total Payout	Net Total Cost	Net Total Gain
1	181,047	124,900	8,000,000	0	0	0	8,000,000	181,047	7,818,953
2	181,047	124,900	8,000,000	10,000	0	0	8,000,000	362,094	7,637,906
3	181,047	124,900	8,000,000	20,000	0	0	8,000,000	543,094	7,456,906
4	181,047	124,900	8,000,000	30,000	0	0	8,000,000	724,094	7,275,906
5	181,047	124,900	8,000,000	40,000	0	0	8,000,000	905,094	7,094,906
6	181,047	124,900	8,000,000	50,000	0	0	8,000,000	1,086,094	6,913,906
7	181,047	124,900	8,000,000	60,000	0	0	8,000,000	1,267,094	6,732,906
8	181,047	124,900	8,000,000	70,000	0	0	8,000,000	1,448,094	6,551,906
9	181,047	124,900	8,000,000	80,000	0	0	8,000,000	1,629,094	6,370,906
10	181,047	124,900	8,000,000	90,000	0	0	8,000,000	1,810,094	6,189,906
11	181,047	124,900	8,000,000	100,000	0	0	8,000,000	1,991,094	6,008,906
12	181,047	124,900	8,000,000	110,000	0	0	8,000,000	2,172,094	5,827,906
13	181,047	124,900	8,000,000	120,000	0	0	8,000,000	2,353,094	5,646,906
14	181,047	124,900	8,000,000	130,000	0	0	8,000,000	2,534,094	5,465,906
15	181,047	124,900	8,000,000	140,000	0	0	8,000,000	2,715,094	5,284,906
16	181,047	124,900	8,000,000	150,000	0	0	8,000,000	2,896,094	5,103,906
17	181,047	124,900	8,000,000	160,000	0	0	8,000,000	3,077,094	4,922,906
18	181,047	124,900	8,000,000	170,000	0	0	8,000,000	3,258,094	4,741,906
19	181,047	124,900	8,000,000	180,000	0	0	8,000,000	3,439,094	4,560,906
20	181,047	124,900	8,000,000	190,000	0	0	8,000,000	3,620,094	4,379,906
21	181,047	124,900	8,000,000	200,000	0	0	8,000,000	3,801,094	4,198,906
22	181,047	124,900	8,000,000	210,000	0	0	8,000,000	3,982,094	4,017,906
23	181,047	124,900	8,000,000	220,000	0	0	8,000,000	4,163,094	3,836,906
24	181,047	124,900	8,000,000	230,000	0	0	8,000,000	4,344,094	3,655,906
25	181,047	124,900	8,000,000	240,000	0	0	8,000,000	4,525,094	3,474,906
26	181,047	124,900	8,000,000	250,000	0	0	8,000,000	4,706,094	3,293,906
27	181,047	124,900	8,000,000	260,000	0	0	8,000,000	4,887,094	3,112,906
28	181,047	124,900	8,000,000	270,000	0	0	8,000,000	5,068,094	2,931,906
29	181,047	124,900	8,000,000	280,000	0	0	8,000,000	5,249,094	2,750,906
30	181,047	124,900	8,000,000	290,000	0	0	8,000,000	5,430,094	2,569,906
31	181,047	124,900	8,000,000	300,000	0	0	8,000,000	5,611,094	2,388,906
32	181,047	124,900	8,000,000	310,000	0	0	8,000,000	5,792,094	2,207,906
33	181,047	124,900	8,000,000	320,000	0	0	8,000,000	5,973,094	2,026,906
34	181,047	124,900	8,000,000	330,000	0	0	8,000,000	6,154,094	1,845,906
35	181,047	124,900	8,000,000	340,000	0	0	8,000,000	6,335,094	1,664,906
36	181,047	124,900	8,000,000	350,000	0	0	8,000,000	6,516,094	1,483,906
37	181,047	124,900	8,000,000	360,000	0	0	8,000,000	6,697,094	1,302,906
38	181,047	124,900	8,000,000	370,000	0	0	8,000,000	6,878,094	1,121,906
39	181,047	124,900	8,000,000	380,000	0	0	8,000,000	7,059,094	940,906
40	181,047	124,900	8,000,000	390,000	0	0	8,000,000	7,240,094	759,906
41	181,047	124,900	8,000,000	400,000	0	0	8,000,000	7,421,094	578,906
42	181,047	124,900	8,000,000	410,000	0	0	8,000,000	7,602,094	397,906
43	181,047	124,900	8,000,000	420,000	0	0	8,000,000	7,783,094	216,906
44	181,047	124,900	8,000,000	430,000	0	0	8,000,000	7,964,094	35,906
45	181,047	124,900	8,000,000	440,000	0	0	8,000,000	8,145,094	-145,906
46	181,047	124,900	8,000,000	450,000	0	0	8,000,000	8,326,094	-326,906
47	181,047	124,900	8,000,000	460,000	0	0	8,000,000	8,507,094	-507,906
48	181,047	124,900	8,000,000	470,000	0	0	8,000,000	8,688,094	-688,906
49	181,047	124,900	8,000,000	480,000	0	0	8,000,000	8,869,094	-869,906
50	181,047	124,900	8,000,000	490,000	0	0	8,000,000	9,050,094	-1,050,906
51	181,047	124,900	8,000,000	500,000	0	0	8,000,000	9,231,094	-1,231,906
52	181,047	124,900	8,000,000	510,000	0	0	8,000,000	9,412,094	-1,412,906
53	181,047	124,900	8,000,000	520,000	0	0	8,000,000	9,593,094	-1,593,906
54	181,047	124,900	8,000,000	530,000	0	0	8,000,000	9,774,094	-1,774,906
55	181,047	124,900	8,000,000	540,000	0	0	8,000,000	9,955,094	-1,955,906
56	181,047	124,900	8,000,000	550,000	0	0	8,000,000	10,136,094	-2,136,906
57	181,047	124,900	8,000,000	560,000	0	0	8,000,000	10,317,094	-2,317,906
58	181,047	124,900	8,000,000	570,000	0	0	8,000,000	10,498,094	-2,498,906
59	181,047	124,900	8,000,000	580,000	0	0	8,000,000	10,679,094	-2,679,906
60	181,047	124,900	8,000,000	590,000	0	0	8,000,000	10,860,094	-2,860,906
61	181,047	124,900	8,000,000	600,000	0	0	8,000,000	11,041,094	-3,041,906
62	181,047	124,900	8,000,000	610,000	0	0	8,000,000	11,222,094	-3,222,906
63	181,047	124,900	8,000,000	620,000	0	0	8,000,000	11,403,094	-3,403,906
64	181,047	124,900	8,000,000	630,000	0	0	8,000,000	11,584,094	-3,584,906
65	181,047	124,900	8,000,000	640,000	0	0	8,000,000	11,765,094	-3,765,906
66	181,047	124,900	8,000,000	650,000	0	0	8,000,000	11,946,094	-3,946,906
67	181,047	124,900	8,000,000	660,000	0	0	8,000,000	12,127,094	-4,127,906
68	181,047	124,900	8,000,000	670,000	0	0	8,000,000	12,308,094	-4,308,906
69	181,047	124,900	8,000,000	680,000	0	0	8,000,000	12,489,094	-4,489,906
70	181,047	124,900	8,000,000	690,000	0	0	8,000,000	12,670,094	-4,670,906
71	181,047	124,900	8,000,000	700,000	0	0	8,000,000	12,851,094	-4,851,906
72	181,047	124,900	8,000,000	710,000	0	0	8,000,000	13,032,094	-5,032,906
73	181,047	124,900	8,000,000	720,000	0	0	8,000,000	13,213,094	-5,213,906
74	181,047	124,900	8,000,000	730,000	0	0	8,000,000	13,394,094	-5,394,906
75	181,047	124,900	8,000,000	740,000	0	0	8,000,000	13,575,094	-5,575,906
76	181,047	124,900	8,000,000	750,000	0	0	8,000,000	13,756,094	-5,756,906
77	181,047	124,900	8,000,000	760,000	0	0	8,000,000	13,937,094	-5,937,906
78	181,047	124,900	8,000,000	770,000	0	0	8,000,000	14,118,094	-6,118,906
79	181,047	124,900	8,000,000	780,000	0	0	8,000,000	14,299,094	-6,299,906
80	181,047	124,900	8,000,000	790,000	0	0	8,000,000	14,480,094	-6,480,906
81	181,047	124,900	8,000,000	800,000	0	0	8,000,000	14,661,094	-6,661,906
82	181,047	124,900	8,000,000	810,000	0	0	8,000,000	14,842,094	-6,842,906
83	181,047	124,900	8,000,000	820,000	0	0	8,000,000	15,023,094	-7,023,906
84	181,047	124,900	8,000,000	830,000	0	0	8,000,000	15,204,094	-7,204,906
85	181,047	124,900	8,000,000	840,000	0	0	8,000,000	15,385,094	-7,385,906
86	181,047	124,900	8,000,000	850,000	0	0	8,000,000	15,566,094	-7,566,906
87	181,047	124,900	8,000,000	860,000	0	0	8,000,000	15,747,094	-7,747,906
88	181,047	124,900	8,000,000	870,000	0	0	8,000,000	15,928,094	-7,928,906
89	181,047	124,900	8,000,000	880,000	0	0	8,000,000	16,109,094	-8,109,906
90	181,047	124,900	8,000,000	890,000	0	0	8,000,000	16,290,094	-8,290,906
91	181,047	124,900	8,000,000	900,000	0	0	8,000,000	16,471,094	-8,471,906
92	181,047	124,900	8,000,000	910,000	0	0	8,000,000	16,652,094	-8,652,906
93	181,047	124,900	8,000,000	920,000	0	0	8,000,000	16,833,094	-8,833,906
94	181,047	124,900	8,000,000	930,000	0	0	8,000,000	17,014,094	-9,014,906
95	181,047	124,900	8,000,000	940,000	0	0	8,000,000	17,195,094	-9,195,906
96	181,047	124,900	8,000,000	950,000	0	0	8,000,000	17,376,094	-9,376,906
97	181,047	124,900	8,000,000	960,000	0	0	8,000,000	17,557,094	-9,557,906
98	181,047	124,900	8,000,000	970,000	0	0	8,000,000	17,738,094	-9,738,906
99	181,047	124,900	8,000,000	980,000	0	0	8,000,000	17,919,094	-

Slide 23

SSZ1

Steven S. Zeiger, 1/13/2020

1. Financial Strength & Claims-Paying Ability: (1 star)



The insurer's financial strength and claims-paying ability ranks in the top decile (i.e., among the top 10%) of all rated insurers. While high ratings for financial strength and claims-paying ability do not necessarily, in and of themselves, render a policy appropriate, high ratings and low cost is considered more appropriate than otherwise. (Carrier Strength is reported in "Carrier Due Care" located in the lower left corner of page 2 of the CPE Report. This section reports the insurer's ratings and rankings by the four leading ratings services and the insurer's percentile ranking using a composite index. Ratings methods and the significance of these rankings are discussed in detail on pages 2 and 3 of Section 4, *CPE User Guide*, of this report.)

2. Cost Competitiveness: (1 star)



The policy under evaluation illustrates an overall cost structure and premium that is more competitive than the relevant benchmark representative of an average, but competitively priced product. While a low overall cost structure and low illustrated premiums do not necessarily, in and of themselves, render the policy appropriate, low premiums that are the result of a low cost structure attributable to some demonstrable operating, underwriting and/or marketing advantage are considered more appropriate than otherwise. To evaluate Cost Competitiveness, the CPE system considers Funding Strategy and Pricing Style (reported in "Product Profile" located at the top left corner of page 1 of the CPE Report), as well as Premium Cost Competitiveness (reported in "Premium Comparison" located at the upper right corner of page 1 of the CPE Report). (The significance of Cost Competitiveness is discussed in detail on pages 3-5 of Section 4, *CPE User Guide*, of this report.)

3. Pricing Stability: (1 star)



Pricing of all life insurance policies are a function of three (3) variables: 1) cost of insurance (COI) charges, 2) policy expenses, and 3) the illustrated/actual earnings rate on policy cash values. Pricing for the policy under evaluation is adequate and reasonable to the extent that cost of insurance (COI) charges and policy expenses appear to be based on actual claims and operating experience according to disclosures included in the illustration of the policy under evaluation. The insurer's retention capacity allows the insurer to exercise substantial control over pricing for the policy under evaluation, and, therefore, pricing for this policy is least vulnerable to changes in the reinsurance market. In addition, the pricing of the policy under evaluation is based on interest assumptions which are in line with historical returns for the asset classes corresponding to the asset types in which policy cash values are invested. While the CPE has no way of predicting whether a policy will perform as illustrated, the CPE does consider whether the values illustrated are consistent with the insurer's historical experience, whether this experience has been fully disclosed, and how potential changes in experience might impact future policy performance. (The significance of Pricing Stability is discussed in detail on pages 5 and 6 of Section 4, *CPE User Guide*, of this report.)

4. Relative Policy Value: (1 star)

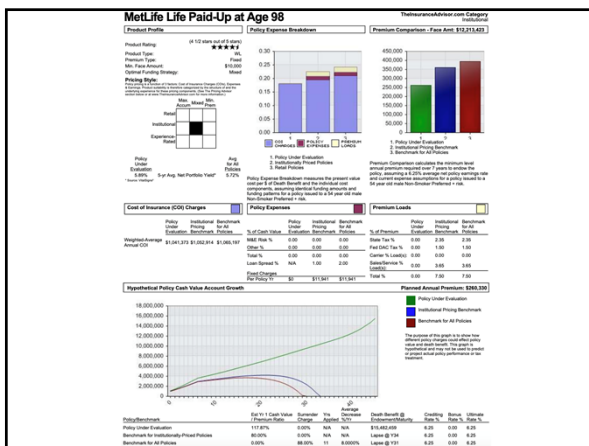


Cash value liquidity for this policy is greater than the representative benchmarks. While liquidity can be less relevant in certain plan designs, policies with higher cash values and greater liquidity than relevant benchmarks are generally considered more appropriate than policies with lower cash values and more limited access to policy cash values. (Relative Cash Value comparisons are summarized in "Hypothetical Policy Cash Value Account Growth" located near the bottom of page 1 of the CPE Report. The significance of Relative Cash Value is discussed on pages 6 and 7 of Section 4, *CPE User Guide*, of this report.)

5. Historical Performance: (1/2 star)








The cash value allocation options for the product under evaluation are considered acceptable in that the historical net yield on the insurer's General Account Portfolio supporting illustrated policy cash values is roughly the same as the average historical net yield for all insurers (to the extent that allocating all policy cash values to non-equity, fixed-income-type assets is consistent with the risk/return profile of the policy owner). Insurers are required by law to invest cash values for permanent products (other than variable) predominantly in declared-rate investments such as bonds and mortgages. While the illustrated policy crediting rate may be higher or lower than the insurer's net portfolio yield at a given point in time, over time the actual policy crediting rate must correlate with the yield on the insurer's General Account Portfolio. Thus, permanent products (other than variable) whose cash values are invested in a General Account with higher historical net yields are generally considered more appropriate than policies whose cash values are invested in a General Account with lower historical net yields. (The CPE compares the illustrated net portfolio yield with average net portfolio yields for all insurers and summarizes comparisons in "Product Profile" located in the upper left corner of page 1 of the CPE Report. The significance of Cash Value Allocation Options is discussed on pages 7 and 8 of Section 4, *CPE User Guide*, of this report.)



Q&A

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FINANCIAL

Life Insurance Planning Opportunities in 2020

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CAVEAT:

This material is approved for use only with Attorneys, CPAs and other Life Insurance Professionals.

Lee Slavutin is not authorized to give tax or legal advice. Consult your own personal attorney, legal or tax counsel for advice on specific legal and tax matters.

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FOUR IMPORTANT DEVELOPMENTS

- Changes brought about by the Tax Cuts and Jobs Act
- New regulations on reportable policy sales
- Generational split dollar
- The SECURE Act

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IMPACT OF TCJA ON LIFE INSURANCE

- **3 provisions** in TCJA with the greatest effect on life insurance planning:
 - Increased lifetime gift tax exclusion
 - Lower 21% maximum corporate tax rate
 - New rules for life settlements


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1 – USING THE INCREASED LIFETIME GIFT TAX EXCLUSION

- The TCJA increased the basic exclusion amount from \$5 million to \$10 million, adjusted for inflation.
 - A new Chained CPI mechanism will compute the inflation-adjusted amounts.
 - An individual will be able to exclude \$11.58 million in 2020; a married couple using portability will be able to exclude \$23.16 million.


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1 – INCREASES ARE TEMPORARY

- As significant as these increases are, they are temporary provisions.
 - Lifetime exemption amounts are scheduled to sunset to their pre-TCJA amount (adjusted for inflation) beginning in 2026.
- This gives financial planners 6 years to help clients make the most of these large exclusions.
 - The greatest planning opportunities are lifetime gifts.
 - Change of control in Congress could cause these amounts to decrease sooner than currently planned.


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1 – USING LIFETIME EXCLUSION

- One disadvantage to making large gifts now: a gift with a low-basis - basis is carried over.
 - This may present an income tax problem when the asset is sold.
 - Planners should weigh the potential growth in the value of the asset outside the estate versus potential capital gains tax at the point of sale.

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1A – EXISTING LIFE INSURANCE POLICIES

- Should individuals with estates of less than \$11.58 million drop existing life insurance policies because they no longer have estate tax exposure?
 - If the provisions do sunset as planned, the individual may need the policy if he or she survives the next eight years.
 - Individuals may develop medical problems that make them ineligible for life insurance policies later on.
 - Existing permanent insurance policies may have significant cash value and act as conservative savings vehicles.

****Most individuals have retained their life insurance policies over the last 30 years even as the exemption has risen from \$600,000 to \$11.58 million.***

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1B(i) – GIFTS: PRE-FUND LIFE INSURANCE

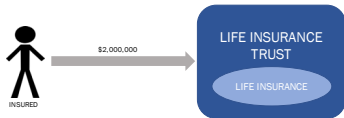
- Clients can use the increased exclusion to fund the purchase of a large amount of life insurance.
 - Example: Client could purchase a life insurance policy with annual premiums of \$100,000 (\$3 million over 30 years).
 - With discount for investment earnings, a gift of \$2.0 million to an irrevocable life insurance trust could be used to prepay all premium payments.

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1B(i) – GIFTS: PRE-FUND LIFE INSURANCE



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1B(ii) – AVOIDING MEC RULES

- When funding insurance policy premiums upfront, planners should be aware of the modified endowment contract (MEC) rules.
 - A MEC can have adverse tax consequences when taking money out of the policy's cash value.
 - Example: for a policy with \$3 million cash value funded by a gift of \$2 million, a withdrawal of \$100,000 would be considered taxable income.
- Individuals buying life insurance for estate liquidity purposes may not be concerned about the MEC issue because death benefit is key
 - If a policy will build up significant cash value, gifts can be spread over 3-4 years to avoid the MEC characterization.

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1C – EXIT FROM SPLIT DOLLAR PLAN

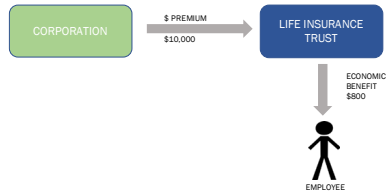
- Clients could exit from split-dollar arrangements.
 - In split-dollar, a donor funds premiums into a trust; upon termination of the arrangement, the donor is to be repaid premium amounts.
 - The value of the economic benefit must be picked up as a gift each year under split-dollar; these amounts may become burdensome over time.
 - Employment split-dollar agreements may have income tax ramifications as well.
 - Terminating a split-dollar arrangement established before the 2003 regulations may expose built-up equity to income tax.

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1C – EXIT FROM SPLIT DOLLAR PLAN



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1D – EXIT FROM PREMIUM FINANCE PLAN

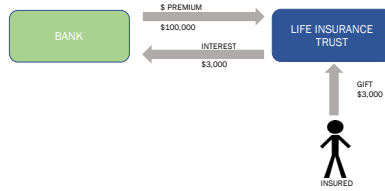
- Clients could exit from premium financing arrangements.
 - In premium financing arrangements, a trust that owns the policy has been borrowing money.
 - Each year the premiums are funded by a loan, and loan interest has to be paid and increases annually.
 - This can become burdensome, and parties may prefer to extricate themselves from the arrangement similar to the split-dollar situation.

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1D – EXIT FROM PREMIUM FINANCE PLAN



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1E – MOVE LIFE INSURANCE POLICY FROM RETIREMENT PLAN TO ILIT

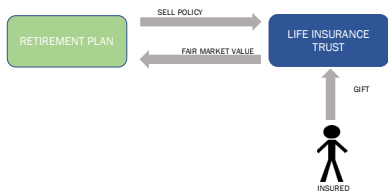
- Clients can move a life insurance policy owned by a retirement plan into a life insurance trust
 - This would prevent the policy from being included in the individual's estate at death.
 - Prohibited Transaction Exemption (PTE) 92-6 permits the sale of an insurance policy from a retirement plan to a participant or a trust for fair market value.
 - Advisory Opinion 2006-03A permits the sale of a second-to-die policy from a profit sharing plan to the insured and spouse.

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1E – MOVE LIFE INSURANCE POLICY FROM RETIREMENT PLAN TO ILIT



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2 – USING THE LOWER MAXIMUM CORPORATE TAX RATE

- TCJA lowers the maximum corporate income tax rate to 21% and eliminates the corporate alternative minimum tax.
 - These provisions are aimed at large, publicly held C corporations, which historically faced double taxation at both the corporate and individual shareholder levels.
 - Some private companies may operate as C corporations, and others may convert from S to C.

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2A – C CORP. SPLIT DOLLAR

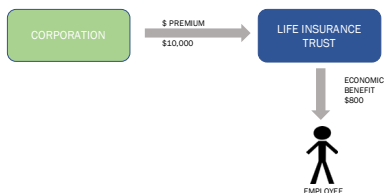
- Use the retained earnings in a C corporation to fund a split-dollar arrangement.
 - This avoids the double taxation issue because only a relatively small amount is deemed a distribution to the shareholder.
 - This is an opportunity to move dollars subject to the relatively low 21% level of taxation into an insurance trust as part of a split-dollar arrangement.

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2A – C CORP. SPLIT DOLLAR



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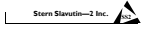
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2B – KEY PERSON AND BUY-SELL

➤ Purchase key-person or buy-sell insurance.

- Term insurance is typically used but permanent insurance may be more appropriate in some cases.
- Permanent insurance may be used when the cash value is needed to fund a deferred compensation agreement or because long-term expectations for the business are favorable.
- Permanent insurance premiums are higher, but the ability to use funds subject to lower tax rates to buy insurance makes this option more attractive than before the TCJA.



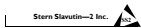
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3 – NEW RULES FOR LIFE SETTLEMENTS

➤ New rule regarding basis calculation in life settlements:

- Although life settlements occupy a narrow space in the life insurance sector, the changes could be significant for individuals who do use them.
- The new rule is found in section 13521(a) of the TCJA and reverses the IRS' previous position on these transactions.



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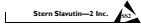
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3 – NEW RULES FOR LIFE SETTLEMENTS

➤ Life settlements allow holders of policies that would otherwise be cancelled to sell their policy to an institutional buyer willing to pay a percentage of the face amount of the policy.

- This particularly applies when the insured is expected to live 10 years or less.
- Some tax may be owed on the policy sale, but the net may be higher than it would have been without the life settlement.
- The change in the definition of basis applies retroactively to transactions entered into after August 25, 2009, meaning some taxpayers may be eligible to apply for a refund.

➤ An in-depth analysis of any life settlement should be made prior to engaging in the transaction. Trustees will want a well-documented rationale to show beneficiaries why they recommend the life settlement.

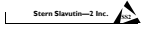


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3 – NEW RULES FOR LIFE SETTLEMENTS

- The TCJA also added new reporting requirements applicable to sales and the payment of reportable death benefits after December 31, 2018.
 - Any transaction that qualifies as a "reportable policy sale" must make a return setting forth certain information.
- The TCJA provides that for a reportable policy sale, the exceptions to the transfer for value rules do NOT apply.



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Life Insurance: the Last 30 Years

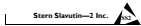
- Financial Strength
 - Comdex score
 - The impact of financial strength on insurance costs
- 2008-2020: Low interest rates
 - Monitoring policy performance is so important – treat insurance portfolio like other assets that are continuously monitored.
 - Increases in cost of insurance in universal life policies
- Long-term care insurance – Hybrid life insurance/long term care policies

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RECENT DEVELOPMENTS

- Generational split-dollar
 - Tax court decisions expected - *Levine and Morrisette*
- The SECURE Act
 - Acceleration of distributions at death from an IRA to a non-spouse beneficiary
 - Possible strategies include conversion to a ROTH IRA and the purchase of life insurance for estate liquidity



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