

Favorable Secondary Life Market Report by Florida Regulator

March 31, 2014

The Florida Office of Insurance Regulation recently issued an opinion favorable to the insurance industry in its Secondary Life Insurance Market Report. Responding to a Florida Legislature directive, the OIR conducted a hearing, considered evidence, and sent a survey to nearly 400 life insurance companies. It ultimately found that redress to the courts – where insurers have recently been successful – provided adequate protection for purchasers of life insurance policies in the secondary market and no legislative action was needed. The OIR rejected numerous suggestions from secondary market investors regarding possible changes to the law. In response to a proposal that subjective intent be made irrelevant to the question of insurable interest, the OIR surveyed Florida case law, which generally holds that insurance policies procured with the intention of being assigned or transferred are void ab initio. The OIR similarly did not recommend that insurable interest challenges be prohibited after a policy's contestable period, despite noting that Florida authority is split on that issue. The Office also declined to require a return of premiums if a policy is voided, noting that litigation in Florida has resulted in different outcomes depending on the facts of the case. Two other rejected proposals included a requirement that a notice of validity of a policy from insurers be sent within 90 days of inquiry, and a mandate that the OIR monitor cost of insurance rate increases to prevent insurers from targeting investor-owners. **The OIR concluded that proposing the sought-after legislation would have the unintended consequence of encouraging stranger-oriented life insurance (STOLI) and fraud.** Moreover, the current legal structure provided the correct avenue of relief, since courts have more flexibility to address the issues based on particular case facts. Given insurers' recent successes in Florida courts, and Florida's critical importance regarding STOLI issues, the opinion represents a significant industry victory.

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