

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.”



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

Annual Account Summary

Initial Death Benefit: \$8,000,000
 Face Amount: \$8,000,000
 Initial Premium: \$181,247.00 / Billing Mode: Annual
 Death Benefit Option: 1 Cash Value Accumulation Plan State: South Dakota

Policy Year	Mort	Prem	Cash Value		Death Benefit		Policy Loan	Surrender	Net Cost	Net Gain
			Planned	Actual	Planned	Actual				
1	0	181,247	10,000	10,000	8,000,000	8,000,000	0	181,247	0	0
2	0	181,247	20,000	20,000	8,000,000	8,000,000	0	362,494	0	0
3	0	181,247	30,000	30,000	8,000,000	8,000,000	0	543,741	0	0
4	0	181,247	40,000	40,000	8,000,000	8,000,000	0	724,988	0	0
5	0	181,247	50,000	50,000	8,000,000	8,000,000	0	906,235	0	0
6	0	181,247	60,000	60,000	8,000,000	8,000,000	0	1,087,482	0	0
7	0	181,247	70,000	70,000	8,000,000	8,000,000	0	1,268,729	0	0
8	0	181,247	80,000	80,000	8,000,000	8,000,000	0	1,449,976	0	0
9	0	181,247	90,000	90,000	8,000,000	8,000,000	0	1,631,223	0	0
10	0	181,247	100,000	100,000	8,000,000	8,000,000	0	1,812,470	0	0
11	0	181,247	110,000	110,000	8,000,000	8,000,000	0	1,993,717	0	0
12	0	181,247	120,000	120,000	8,000,000	8,000,000	0	2,174,964	0	0
13	0	181,247	130,000	130,000	8,000,000	8,000,000	0	2,356,211	0	0
14	0	181,247	140,000	140,000	8,000,000	8,000,000	0	2,537,458	0	0
15	0	181,247	150,000	150,000	8,000,000	8,000,000	0	2,718,705	0	0
16	0	181,247	160,000	160,000	8,000,000	8,000,000	0	2,900,000	0	0
17	0	181,247	170,000	170,000	8,000,000	8,000,000	0	3,081,247	0	0
18	0	181,247	180,000	180,000	8,000,000	8,000,000	0	3,262,494	0	0
19	0	181,247	190,000	190,000	8,000,000	8,000,000	0	3,443,741	0	0
20	0	181,247	200,000	200,000	8,000,000	8,000,000	0	3,625,000	0	0
21	0	181,247	210,000	210,000	8,000,000	8,000,000	0	3,806,247	0	0
22	0	181,247	220,000	220,000	8,000,000	8,000,000	0	3,987,494	0	0
23	0	181,247	230,000	230,000	8,000,000	8,000,000	0	4,168,741	0	0
24	0	181,247	240,000	240,000	8,000,000	8,000,000	0	4,350,000	0	0
25	0	181,247	250,000	250,000	8,000,000	8,000,000	0	4,531,247	0	0
26	0	181,247	260,000	260,000	8,000,000	8,000,000	0	4,712,494	0	0
27	0	181,247	270,000	270,000	8,000,000	8,000,000	0	4,893,741	0	0
28	0	181,247	280,000	280,000	8,000,000	8,000,000	0	5,075,000	0	0
29	0	181,247	290,000	290,000	8,000,000	8,000,000	0	5,256,247	0	0
30	0	181,247	300,000	300,000	8,000,000	8,000,000	0	5,437,494	0	0
31	0	181,247	310,000	310,000	8,000,000	8,000,000	0	5,618,741	0	0
32	0	181,247	320,000	320,000	8,000,000	8,000,000	0	5,800,000	0	0
33	0	181,247	330,000	330,000	8,000,000	8,000,000	0	5,981,247	0	0
34	0	181,247	340,000	340,000	8,000,000	8,000,000	0	6,162,494	0	0
35	0	181,247	350,000	350,000	8,000,000	8,000,000	0	6,343,741	0	0
36	0	181,247	360,000	360,000	8,000,000	8,000,000	0	6,525,000	0	0
37	0	181,247	370,000	370,000	8,000,000	8,000,000	0	6,706,247	0	0
38	0	181,247	380,000	380,000	8,000,000	8,000,000	0	6,887,494	0	0
39	0	181,247	390,000	390,000	8,000,000	8,000,000	0	7,068,741	0	0
40	0	181,247	400,000	400,000	8,000,000	8,000,000	0	7,250,000	0	0
41	0	181,247	410,000	410,000	8,000,000	8,000,000	0	7,431,247	0	0
42	0	181,247	420,000	420,000	8,000,000	8,000,000	0	7,612,494	0	0
43	0	181,247	430,000	430,000	8,000,000	8,000,000	0	7,793,741	0	0
44	0	181,247	440,000	440,000	8,000,000	8,000,000	0	7,975,000	0	0
45	0	181,247	450,000	450,000	8,000,000	8,000,000	0	8,156,247	0	0
46	0	181,247	460,000	460,000	8,000,000	8,000,000	0	8,337,494	0	0
47	0	181,247	470,000	470,000	8,000,000	8,000,000	0	8,518,741	0	0
48	0	181,247	480,000	480,000	8,000,000	8,000,000	0	8,700,000	0	0
49	0	181,247	490,000	490,000	8,000,000	8,000,000	0	8,881,247	0	0
50	0	181,247	500,000	500,000	8,000,000	8,000,000	0	9,062,494	0	0
51	0	181,247	510,000	510,000	8,000,000	8,000,000	0	9,243,741	0	0
52	0	181,247	520,000	520,000	8,000,000	8,000,000	0	9,425,000	0	0
53	0	181,247	530,000	530,000	8,000,000	8,000,000	0	9,606,247	0	0
54	0	181,247	540,000	540,000	8,000,000	8,000,000	0	9,787,494	0	0
55	0	181,247	550,000	550,000	8,000,000	8,000,000	0	9,968,741	0	0
56	0	181,247	560,000	560,000	8,000,000	8,000,000	0	10,150,000	0	0
57	0	181,247	570,000	570,000	8,000,000	8,000,000	0	10,331,247	0	0
58	0	181,247	580,000	580,000	8,000,000	8,000,000	0	10,512,494	0	0
59	0	181,247	590,000	590,000	8,000,000	8,000,000	0	10,693,741	0	0
60	0	181,247	600,000	600,000	8,000,000	8,000,000	0	10,875,000	0	0
61	0	181,247	610,000	610,000	8,000,000	8,000,000	0	11,056,247	0	0
62	0	181,247	620,000	620,000	8,000,000	8,000,000	0	11,237,494	0	0
63	0	181,247	630,000	630,000	8,000,000	8,000,000	0	11,418,741	0	0
64	0	181,247	640,000	640,000	8,000,000	8,000,000	0	11,600,000	0	0
65	0	181,247	650,000	650,000	8,000,000	8,000,000	0	11,781,247	0	0
66	0	181,247	660,000	660,000	8,000,000	8,000,000	0	11,962,494	0	0
67	0	181,247	670,000	670,000	8,000,000	8,000,000	0	12,143,741	0	0
68	0	181,247	680,000	680,000	8,000,000	8,000,000	0	12,325,000	0	0
69	0	181,247	690,000	690,000	8,000,000	8,000,000	0	12,506,247	0	0
70	0	181,247	700,000	700,000	8,000,000	8,000,000	0	12,687,494	0	0
71	0	181,247	710,000	710,000	8,000,000	8,000,000	0	12,868,741	0	0
72	0	181,247	720,000	720,000	8,000,000	8,000,000	0	13,050,000	0	0
73	0	181,247	730,000	730,000	8,000,000	8,000,000	0	13,231,247	0	0
74	0	181,247	740,000	740,000	8,000,000	8,000,000	0	13,412,494	0	0
75	0	181,247	750,000	750,000	8,000,000	8,000,000	0	13,593,741	0	0
76	0	181,247	760,000	760,000	8,000,000	8,000,000	0	13,775,000	0	0
77	0	181,247	770,000	770,000	8,000,000	8,000,000	0	13,956,247	0	0
78	0	181,247	780,000	780,000	8,000,000	8,000,000	0	14,137,494	0	0
79	0	181,247	790,000	790,000	8,000,000	8,000,000	0	14,318,741	0	0
80	0	181,247	800,000	800,000	8,000,000	8,000,000	0	14,500,000	0	0
81	0	181,247	810,000	810,000	8,000,000	8,000,000	0	14,681,247	0	0
82	0	181,247	820,000	820,000	8,000,000	8,000,000	0	14,862,494	0	0
83	0	181,247	830,000	830,000	8,000,000	8,000,000	0	15,043,741	0	0
84	0	181,247	840,000	840,000	8,000,000	8,000,000	0	15,225,000	0	0
85	0	181,247	850,000	850,000	8,000,000	8,000,000	0	15,406,247	0	0
86	0	181,247	860,000	860,000	8,000,000	8,000,000	0	15,587,494	0	0
87	0	181,247	870,000	870,000	8,000,000	8,000,000	0	15,768,741	0	0
88	0	181,247	880,000	880,000	8,000,000	8,000,000	0	15,950,000	0	0
89	0	181,247	890,000	890,000	8,000,000	8,000,000	0	16,131,247	0	0
90	0	181,247	900,000							

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)

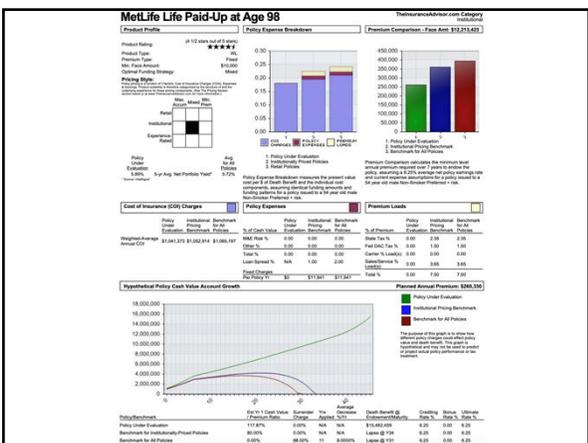
★
Pricing of all life insurance policies are a function of three (3) variables: 1) cost of insurance (COI) charges, 2) policy expenses, and 3) the illustrated/actual earnings rate on policy cash values. Pricing for the policy under evaluation is adequate and reasonable to the extent that cost of insurance (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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**Life Insurance Planning
Opportunities in 2020**

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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

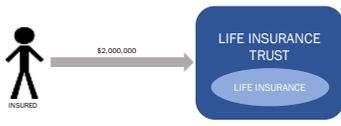
- Clients can use the increased exclusion to fund the purchase of a large amount of life insurance.
 - Example: Client could purchase a life insurance policy with annual premiums of \$100,000 (\$3 million over 30 years).
 - With discount for investment earnings, a gift of \$2.0 million to an irrevocable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

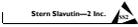
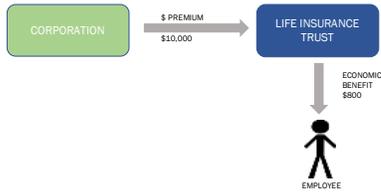
- Clients could exit from split-dollar arrangements.
 - In split-dollar, a donor funds premiums into a trust; upon termination of the arrangement, the donor is to be repaid premium amounts.
 - The value of the economic benefit must be picked up as a gift each year under split-dollar; these amounts may 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

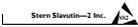


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1D – EXIT FROM PREMIUM FINANCE PLAN

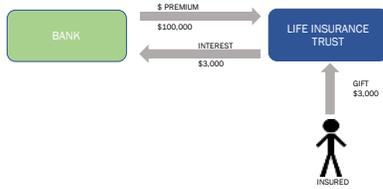
- Clients could exit from premium financing arrangements.
 - In premium financing arrangements, a trust that owns the policy has been borrowing money.
 - Each year the premiums are funded by a loan, and loan interest has to be paid and increases annually.
 - This can become burdensome, and parties may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

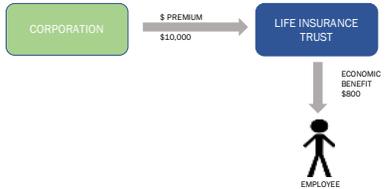
- This avoids the double taxation issue because only a relatively small amount is deemed a distribution to the shareholder.
- This is an opportunity to move dollars subject to the relatively low 21% level of taxation into an insurance trust as part of a split-dollar arrangement.

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2A – C CORP. SPLIT DOLLAR



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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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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

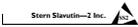
- Financial Strength
 - Comdex score
 - The impact of financial strength on insurance costs
- 2008-2020: Low interest rates
 - Monitoring policy performance is so important - treat insurance portfolio like other assets that are continuously monitored.
 - Increases in cost of insurance in universal life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