

DUE DILIGENCE

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DUE DILIGENCE

2 separate and distinct areas:

- Document risk
- Transactional risk



DUE DILIGENCE – Document Risk

- Are licenses current and in order?
- Review each state's laws and regulations
- Do documents meet state requirements?
- Are documents appropriate to the situation?
 - Whole life policy
 - Variable policy
 - Trust
 - Corporation
 - LLC or partnership
 - Divorce
 - Bankruptcy



DUE DILIGENCE – Transactional Risk

- Is policy transfer legal?
- Is seller properly authorized to sell the policy?
 - Corporate: is seller authorized to transfer ownership?
 - Trust: is trustee authorized to transfer ownership?
- Has a proper trust or Irrevocable Life Insurance Trust (“ILIT”) been established?
- If policy had previously transferred ownership, is there a clearly-documented chain of title?



DUE DILIGENCE – Transactional Risk (cont'd)

- Was insurable interest present at policy origination?
- Was policy premium-financed?
If so, was the financing recourse or non-recourse?
- Have seller and other parties been vetted to limit possibility of money laundering?

At minimum, check all names against the US Department of the Treasury's OFAC list.



DUE DILIGENCE – Managing Risk

- Documents meet state requirements
- Forms approved before use where required
- Signatures checked for consistency
- All documents properly notarized and dated
- Name; SSN; Tax ID Number; Address - all must match
- Resolve any mismatches
- Consistency in all supporting documents is paramount



DUE DILIGENCE – Managing Risk (cont'd)

For life insurance applications

- Are answers in the life insurance and life settlement applications consistent?
- Is financial information consistent?
- Does the insured's health match across applications and medical records?



DUE DILIGENCE – Managing Risk (cont'd)

For Medical Records

- Are medical records complete and current?
- Is data in medical records consistent with data in life insurance and life settlement applications?



DUE DILIGENCE – Managing Risk (cont'd)

For trust-owned policies

- Complete copy of document, not redacted
- Was trust in existence when policy was issued?
- Has trust remained in effect since creation?
- Where is trust domiciled?
- Has trust always been domiciled in this state?
- Is trust's domicile state identical to previous owner(s) or beneficiaries' state?



DUE DILIGENCE – Managing Risk (cont'd)

For trust-owned policies (cont'd)

- Is trust empowered to sell policy?
- Is trustee properly appointed?
- If trustee is a successor trustee, is he/she authorized to sell?
- Are all trust documents properly signed and notarized?
- If transferred from previous owner, is grant of policy to trust correct?



DUE DILIGENCE – Managing Risk (cont'd)

For corporate-owned policies

- Is corporation in Good Standing with state?
- Are pertinent corporate documents included?
 - Articles of Incorporation
 - Corporate By-Laws
- Is there a corporate resolution authorizing sale?
- If corporation is the original owner and beneficiary of policy, is there a statement of insurable interest?



DUE DILIGENCE – Managing Risk (cont'd)

For corporate-owned policies (cont'd)

- Is this a “janitor policy” or a true executive officer policy obtained for reasonable corporate purposes?
- Are any lawsuits pending against corporation?
- Is corporation in bankruptcy?



DUE DILIGENCE – Managing Risk (cont'd)

Bankruptcy after policy issue

- If policy transacted through bankruptcy court, is title clear and free of creditors' liens?
- Are all discharge papers in order?
- Is policy unencumbered?



DUE DILIGENCE – Managing Risk (cont'd)

Divorce

- Can policy be sold?
- Are all documents included?
- Is decree executed and properly issued by court?



DUE DILIGENCE – Managing Risk (cont'd)

The Ultimate Price

- Loss of investment



DUE DILIGENCE – Premium Financing

Premium Financing was originally created to overcome temporary cash flow shortfalls.

Now programs for:

- Stranger-Owned Life Insurance (“STOLI”)
- Corporate-Owned Life Insurance (“COLI”)

Major concern: **“Insurable Interest”**



DUE DILIGENCE – Insurable Interest

- Was there an insurable interest when policy was issued?
- If insured paid first premium and immediately sold policy, can carrier void policy claiming original intent was for sale?
- Was policy financed by recourse or non-recourse premium financing?
- What are details of financing program?



DUE DILIGENCE – Insurable Interest (cont'd)

Current case: **Life Product Clearing LLC v. Angel**

Highlights:

- Insured overstated net worth
- Trust Agreement date same as policy application date
- Trust Agreement mentioned investor by name
- Investor's counsel prepared Trust agreement
- No indication insured was involved in documents
- Insured never paid any premiums
- Insured never received copy of policy
- Important question left blank on policy application



DUE DILIGENCE – Closing thoughts

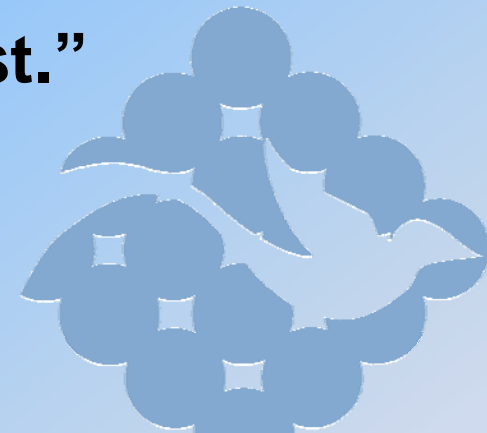
- Due diligence requires us to resolve any and all insurable interest issues prior policy purchase
- Pay particular attention to states that have implemented STOLI guidelines and warnings
 - New York
 - Illinois
 - Others
- Legislation targeting STOLI is forthcoming



DUE DILIGENCE – Final thought

**“Opportunity lost beats
the hell out of money lost.”**

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