SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588



Drafting, Funding and Properly Maintaining an ILIT and SNT

FACULTY

Joseph T. LaFerlita, Esq., Farrell Fritz
Henry Montag, CLTC, TOLI Center East

Program Coordinator: Eileen Coen Cacioppo, Esq.

October 4, 2018
Suffolk County Bar Association, New York

Suffolk Academy of Law

DRAFTING, FUNDING AND PROPERLY MAINTAINING IRREVOCABLE LIFE INSURANCE TRUSTS (ILITs) AND SPECIAL NEEDS TRUSTS (SNTs)

TIMED AGENDA

October 4, 2018

INTRODUCTIONS AND PRESENTATION OF SPEAKERS
Eileen Coen Cacioppo, Esq., Coordinator 12:30 - 12:40

PLACING AND MAINTAINING TRUST OWNED LIFE INSURANCE
Henry Montag
TOLI Center East 12:40-1:20

DRAFTING, FUNDING & PROPERLY MAINTAINING AN ILIT AND SNT
Joseph T. La Ferlita, Esq.
Farrell Fritz, P.C. 1:20 - 2:05

QUESTIONS AND ANSWERS BY PANEL 2:05 - 2:10

Please fill out the program evaluation form and add suggestions for future programs.

Thank you for attending this program!



Henry Montag CFP, CLTC
www.thetolicentereast.com

henry@thetolicentereast.com
516 695-4662

Henry Montag CFP, CLTC

Henry Montag CFP, in practice since 1976 in L.I N.Y has authored articles and acted as a source for *NYSBA Senior Lawyer,* NYSSCPA *Tax Stringer, Tax Facts, Bloomberg's Estates Gift & Trust Journal, Trusts & Estate Magazine*, & The WSJ. He has appeared as a guest on Wall Street Week, Fox Business News & News 12.

He's provided CPE & CLE credits to NYSBA, ABA, AICPA, NYSSCPA, & EPC. He co-authored an American Bar Association Flagship publication; Jan 2017, *"The Advisors & Trustees Guide to Managing Risk & Avoiding a Client Crisis"*



Suffolk Academy of Law

Oct 4, 2018

Placing and Maintaining Trust Owned Life Insurance

What You Need to Know About:

Current Life Insurance

Trends & Strategies!

Henry Montag CFP

The TOLI Center East

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Henry Montag, CFP, CLTC

Helping Protect Assets Since 1976

Contributing Writer Lecturer & Source to…

American Bar Association
NY State Bar Association

- NY State Society of CPA's
- National Conference of CPA Practitioners
- American Institute of CPA's
- Wall Street Journal
- Financial Planning Magazine
- Investment News Newsday
- Long Island Business News
- Investors Business Daily
- WALL STREET WEEK TV
- Fox News, News 12, FIOS TV

AGENDA

- Types of Life Ins
- Different uses for different Objectives
- Effect of Interest Rates & In-Attention
- Advisors' Role & Duration of Coverage
- Trustees/Owners Role to Maintain Coverage
- Current Insurer Trends & Unknown Problems.
- Strategies To Avoid and Solve Problems

Matching Policy with 1 of 2 Objectives

POLICIES FOR MAXIMUM DEATH BENEFIT

- TERM
- UNIVERSAL

POLICIES FOR ACCUMULATION/LIVING BENEFITS

- WHOLE LIFE
- INDEXED UNIVERSAL LIFE
- VARIABLE UNIVERSAL LIFE

3Types of Policy Design

Whole Life Guaranteed for Life
Dividends
Blended Policies Pay for Term

* Flexible Premium Not Guaranteed
Universal Life
Variable
Indexed

Term Guaranteed to age 84
Less than 2% payout

Whole Life Insurance
25%

- If Full Premium Paid 3% is Guaranteed
- But Dividends Not Guaranteed

Not Good for Maximum Death Benefit

Good for Tax Deferred Accumulation

Variable Life Insurance
12%

- Death Benefit Not Guaranteed
- Duration of Contract Not Guaranteed
- Premium Not Guaranteed
- Cash Values Not Guaranteed
- All Values Based on Stock Market Performance
- Variable Life Must be Reviewed for Status Annually

- GOOD FOR MAXIMIZING TAX DEFERRED GROWTH & DISTRIBUTIONS IN DEFERRED COMPENSATION PLANS

TERM INSURANCE
22%

- TIME PERIODS
- 1 -30 YEAR UP TO AGE 84 MAXIMUM
- ENTIRE TIME DB & PREMIUM GUARANTEED
- 2% OF TERM EVER GETS COLLECTED

- USES FOR TERM
- Maximize Death Benefit

- FAMILY INCOME /COLLEGE FUND
- MTGE OR LOANS
- BUSINESS BUY SELL

Universal & Indexed Life – 41%

- Policy performance is 100% based on Trustee's Action & Inaction
- Premium based on current interest rates Not Guaranteed
- Duration of Coverage Not Guaranteed **NOT UNTIL 2004**
- Policies must be reviewed and managed
- Significantly reduced interest rates over 25+ years affects coverage

Death Benefit remains the same Premium remains same

- **BUT DURATION OF COVERAGE WILL VARY**

INTEREST RATES CHANGE RESULTS

INTEREST RATES INCREASE

DEATH BENEFIT SAME

PREMIUM STAYS SAME

LENGTH OF COVERAGE CAN INCREASE

PREMIUMS CAN BE REDUCED

****

INTEREST RATES DECREASE

DEATH BENEFIT STAYS SAME

PREMIUMS STAY SAME

LENGTH OF COVERAGE DECREASES

PREMIUMS SHOULD BE INCREASED

BUY & HOLD vs BUY & MANAGE

FACTS ABOUT UNIVERSAL LIFE LIFE INSURANCE

? % of Life Ins purchased 1983- 2003 Non Guarantee

70% of Accommodation Trustees haven't reviewed Life Pol's in 12 Years

June 2014 Harris Poll 60% of Private Owners believe their Life Ins premium is " Set in Stone"

10% Trust Owned Life Ins owned by Institutional Trust
90% owned by Amateur Trustee Eldest /Closest Child

Approximately 23% Expiring Prematurely

WHY OWNERS HAVE TO REVIEW

DUE TO REDUCED INTEREST RATES & NEGLECT

- UNIVERSAL POLICIES HAVE NOT PERFORMED AS HAD BEEN EXPECTED

- CASE STUDY

M55 Purchases $1Mil Life Ins Oct 1988

- Agent: How much Insurance?
- Mr. Smith: **$1,000,000**
- Agent: How long last?
- Mr. Smith: Age **95** Automatically Assumed by Many Agents
- Agent: What Interest Rate?
- Mr. Smith: **10-12%** settled on **9%**
- Agent: Premium needed for **$1Mil** to **age 95** is **$14,000**
- Agent: To avoid Estate Taxes have it owned by a Trust
- Agent: Who should be trustee?
- Mr. Smith: My oldest son/daughter

- No Mention of;
  - Guarantee nor Duration of Coverage period
  - Changing Interest rate Strategy Active Management
  - Trustee Qualifications, Specialized Knowledge & Skills

Mr. Smith Age 85 Oct 2018 – 30 Years Later

- **8-9%** interest rate not achieved
- **4.1%** actual interest rate achieved
- At current **$14,000** premium, Ins will expire in 2020 **age 87**

- **Premium needed today to cover to age 95 $26,000**

- **Current premium provides $450,000 to age 95**

RESULTS OF BUY & HOLD RATHER THAN BUY & MANAGE

UNIVERSAL LIFE INS IS GOOD FLEXIBLE PRODUCT
BUT DOES NOT COME WITH AUTO SELF MANAGEMENT

TRUST OWNED LIFE INS,T.O.L.I
OR
PRIVATELY OWNED LIFE INS

- HOW LONG THE CONTRACT WILL SURVIVE???

DEPENDS ON

- The Action In-action of Advisor
- The Insurance Agent/Broker
- The CPA, ATTNY
- The Private Trustee
- The Institutional Trustee
- The Insurance Company

The Attny Role in TOLI

- Gathers all relevant data
- Reviews client intentions
- Discusses those named Trustee, Beneficiary
- Discusses administrative Crummey provisions
- Discusses trustees role and duties

Does Not Discuss

- The Need for Owner/Trustee to:

Monitor, Review & Actively Manage
Grantor's Life Insurance policy on an ongoing ba

The CPA's Role in TOLI

- May confirm Life Insurance required
- May confirm adequate cash flow available
- Prepares Trust or Gift Tax Returns

But Usually Not Involved in:
Pointing out Problem
Performance Evaluations
Annual Monitoring
Attesting to Adequacy of Premium Payments,

Institutional Trustee Duties

- Fulfill their fiduciary duties in managing TOLI
- Have Fiduciary Liability for maintaining trust assets
- Attempt to minimize their liability exposure
- Avoid any damage to organizations reputation
- Familiar with all available options, and benefits
- In compliance with all OCC annual regulations
- Outsource expert services needed for life Insurance

- PREMIUMS RAISED OVER THE YEARS TO COVER TO AGE 95

Private Trustee Role

Often Eldest or Geographically Closest Child

Asked to Sign Life Insurance Application as Owner

Good News – Bad News
An Amateuer Trustee is:

GOOD NEWS

An Honor and Statement of Trust

An opportunity to manage all of the Trust's assets

BAD NEWS

Fiduciary liability & personally responsible for loss of assets

But No Instruction is provided by parents nor adviser's

Unaware of problem nor possess skills to manage ILIT

RESPONSIBLE FOR 23% EXPIRING PREMATURELY

Attributes of Trust Owned Life Insurance

- A Tax Free, Leveraged, Risk Transfer Mechanism
- A Sophisticated Financial Asset
- Provides Creditor Protection & Management
- Insurance Ideally Suited For Trust Ownership
- BUT
- Life Insurance Policies Are Not Self-Managing
- Inadequately Funded Life Policies Can & Do Lapse

Issues for Trustees

Policies did Not perform as illustrated Inadequate fundin

Company's financial position may have Deteriorated

Cost of Insurance has changed [new mortality tables 2010
[increased COI's 2016]

Company's Investment, Interest rate experience changed

Companies are constantly developing new features

The Traditional Agent's Broker's Role

- Many Agents/Brokers Don't properly Service their Clients

Why?

  - No $$ Incentive to service existing policy/client
  - Lion's share of commission earned up front 50-75% at initial sale & 5% for ongoing service
  - Embarrassed, Not providing sufficient services
  - High percent leave/retire resulting in many Orphan
  - New agents try **Sell** rather than **Service** Orphans
  - Clients don't understand policy nor trust Agents
  - UBS Financial Services, Inc. vs Thompson

Insurance Industry's Posturing

Life Agent Prime Responsibility is to Market

Insurer Duty to Provide Policy & Annual Statement

Encourages Reliance On Original "As-Sold" Illustrations

Encourages "Buy & Hold" Mentality

Notice to policy holders of Problem is Not Sufficient

Currently Increasing COI's first time

Insurance Company Content with Current Situation

In Best Interest of Insurer
When Contract Expires or are Reduced

Annual Notice Important Statement

Account Summary

For an explanation of the terms used in this section, please refer to the page titled 'Definition of Terms'.

		Activity Since Last Statement
Beginning Accumulation Value	$	8,813.17
Premium Payments	$	0.00
Policy and Administrative Charges	$	-90.00
Interest Credited	$	248.43
Cost of Insurance Charges	$	-3,134.05
Rider Charges	$	-0.00
Partial Surrenders/Withdrawals	$	-0.00
Partial Surrender/Withdrawal Fees	$	-0.00
Other Adjustments/Charges	$	0.00
Ending Accumulation Value	$	5,837.55

Policy Values as of 04/09/17:

For an explanation of the terms used in this section, please refer to the page titled 'Definition of Terms'.

Accumulation Value	$	5,837.55
Policy Loan Balance	$	-0.00
Adjustment if Surrendered	$	-2,083.59
Net Cash Surrender Value	$	3,753.96

Interest Rates Credited

The effective declared annual interest rates credited to the unborrowed portion of the Accumulation Value were:

Apr	3.500%	May	3.500%	Jun	3.500%	Jul	3.500%	Aug	3.500%	Sep	3.500%
Oct	3.500%	Nov	3.500%	Dec	3.500%	Jan	3.500%	Feb	3.500%	Mar	3.500%

The declared annual interest rate is not guaranteed and is subject to change but will never be less than the guaranteed minimum annual interest rate of 3.000%.

Important Notice

Changes in interest rates may impact the insurance coverage and cash value objectives of your policy. You may need to adjust your payment amount and/or death benefit to maintain your original objectives.

WHY IS LIFE INSURANCE EXPIRING EARLY??

- Few Owners/Trustees know there is a problem
- Few Advisors provide Guidance to Owner/Trustee
- Private Trustees do not have Insurance knowledge
- No one monitored performance evaluation
- Interest rates steadily declined over last 25 years
- Insurer hasn't advised owner to increase premiums

'BUY & HOLD' VS **'BUY & MANAGE'**

Policy lacks active Self Management!!

45+% of individual/TOLI Policies Not Guaranteed

23 % at Risk of Expiring Prematurely

INCEASING COST OF INSURANCE (COI'S) CREATES THE PERFECT STORM

- IN ADDITION TO REDUCED INTEREST RATES
- IN ADDITION TO YEARS OF NEGLECT
- INSURERS HAVE BEGUN TO INCREASE COI'S

WSJ REFERS TO PROCESS AS TABOO GONE ASTRAY

Commerce Clearing House Article May 2017

FURTHER EXACERBATING AN ALREADY .....

Wall Street Journal

LIFE INSURANCE NOT BEING MANAGED

"I've written multiple stories over the past five years for the Wall Street Journal about the impact of low interest rates on universal life policies. The problem is exacerbated because many people underfunded their policies, often unaware of how important it was to keep them well-funded.

Of the many consumers I've interviewed, most don't understand how the policies actually work. Many have long since lost contact with the sales agents. I see many consur responses to the stories, as the problem is so recurring"

–Leslie Scism Senior News Editor,
Money & Investment Section, *The Wall Street Journal*
Endorsement for "The Advisors Guide to Managing Risk"
ABA 2017

INSURANCE MARKETPLACE STANDARDS ASSOC

- **"While insurers have not publicized the Issue, there is a growing concern in the industry about lapsing universal life policies."**

Donald Walters
General Counsel IMSA 2014.

QUESTIONS?

WHAT NEEDS TO BE DONE ?

- PROVIDE GUIDANCE TO AMATEUR TRUSTEE
  ADVOCATE FOR ASSETS OF NEXT GENERATION
  EXERCISE 1 of 5 POLICY REMEDIATION OPTIONS

IF NOT YOU THEN WHO??

IN ADDITION REQUEST AND SET UP

UPIA Uniform Prudent Investor Act
IPS Investment Policy Statement
IPE Insurance Performance Evaluation
AFS Adequate Funding Statement

Uniform Prudent Investor Act
UPIA

Restatement of the Law of Trusts adopted by most states, establishes standards for trustees.

MUST HAVE PROCESS IN PLACE

TREAT A LIFE POLICY LIKE ANY OTHER ASSET

SUBJECT TO REVIEW AND MONITORING

OFFICE OF CONTROLLER OF CURRENCY 2012 STATES

DUTY TO DELEGATE

IF TRUSTEE LACKS EXPERTISE HIRE EXPERT

ABANDON 'BUY & HOLD' FOR "BUY & MANAGE"

Investment Policy Statement

Clarifies Role of Each ILIT Participant
Every Owner/Trustee Should Obtain Grantor's;

- Guidance regarding Grantor's purpose for policy
- Intent to provide for specific beneficiary needs
- Evaluate today's risk tolerance guidance
- Preference for restorative action if necessary

WHAT YOU CAN DO

- ASK AGENT TO OBTAIN SUITABILITY LETTER
  TAKE RESPONSIBILITY FOR THE
  LIFE INSURANCE FUNDING YOUR TRUST

INSURANCE PERFORMANCE EVALUATION

- HOW IS INSURERS FISCAL HEALTH
- CURRENT RATINGS

  HAS INSURER INCREASED COI'S

  HAS POLICY PERFORMED AS ILLUSTRATED
- OBTAIN HISTORIC PROJECTION

Adequate Funding Statement

D

"Adequate Funding Statement"

Defines the required premium needed to guarantee policy is adequately funded to remain in force to specific desired age.

Provides documentation demonstrating trustees prudent exercise of fiduciary power in event of a future lawsuit.

Remediation Options

- Reduce face amount D
- Pay a higher premium
- Obtain guaranteed new contract if qualified
- Life Settlement
- Convert to Income stream or Pay for LTCI
- Policy Rescue if policy loans are **Not** Manageable

Objectives

- Lengthen Guaranteed Duration of Coverage

- Re-align Current Holdings with Corrected Objectives

Case Study

New York's Top Court Says Estates Can Bring Malpractice Suits

Investment News July 2010.

June 29, 2010 Overturning state law, New York's highest court this month ruled that estates and beneficiaries can sue estate-planning attorneys for malpractice. "The decision is going to change the whole dynamic between estate-planning attorneys and the executor after death," said Henry J. Leibowitz, senior counsel in the personal-planning department at Proskauer Rose LLP. "Courts decide cases based on precedence, &there are years& years of cases that say attorneys are protected this way.".

Explore Other Insurer Contracts

- Possibilities
  - Better underwriting
  - Lower costs
  - More coverage
  - More benefits

Obtain "Request for Proposals" & Analyze

Poor Health — May prevent this option

If Life Insurance No Longer Required??

- Current Reduced Estate Tax Requires Less Ins
- Many Insd's/Trustees Reducing Life Ins Portfolio
- Should Life Insurance Portfolio be Reduced???

Options to Reduce Life Ins

- Surrender Cash Value
- Discontinue Premium
- Life Settlement

Life Settlement Option

OPTIONS

Surrender & Obtain Cash Value.
Stop Paying & In Time Policy will Lapse

OR

Obtain a Higher Offer on Secondary Market
& Instead of paying $26,000 Insd can receive a
Lump sum or Partial Buyout of his Life Ins Policy

Insurance Company Prohibits Agent Discussion

Grille vs Lincoln National Life

WHY?

CLOSING REMARKS

History Repeats Itself

Major problem between1983–2002 Guaranteed in 2003

11% of **Guaranteed Universal life** already lapsing early

Indexed Universal life (**IUL)** becomes new Future Problem

Advise & Guide clients before there's a problem

Better for them and better for your practice.

Collaborate with other advisors with specific expertise

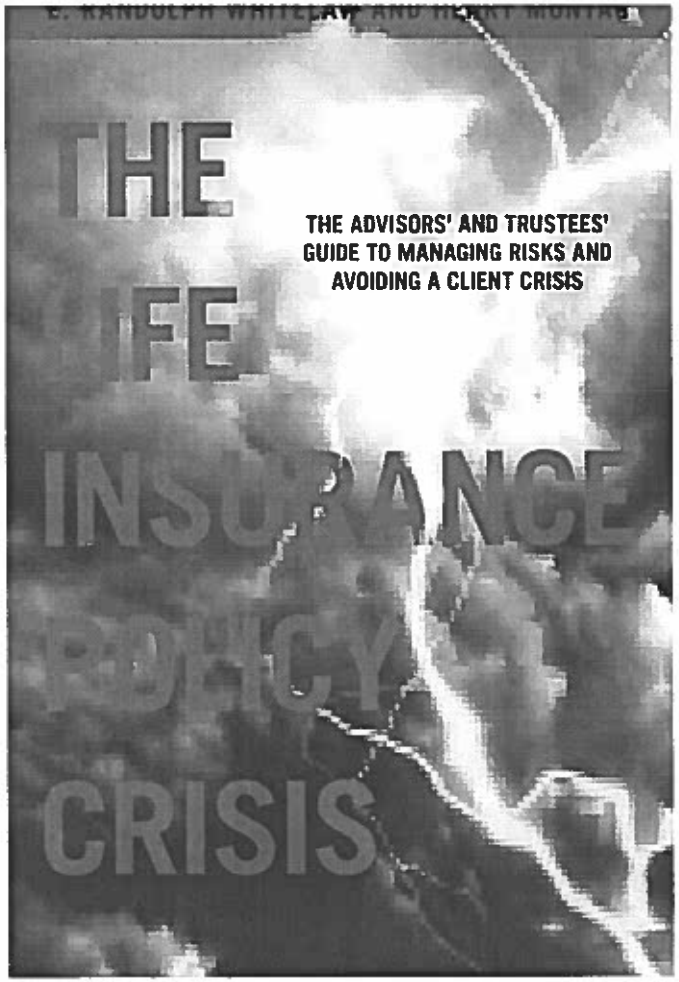
NEW YORK STATE DEPT OF FINANCIAL SERVICES ADOPTS INSURED 'BEST INTEREST RULE' July 2018

AGENT TO BE REQUIRED TO ACT IN BEST INTEREST OF INSD

BUT NOT EFFECTIVE UNTIL FEB 2020

YOUR CLIENT NEEDS HELP TODAY

DISCOUNT FLYER For ABA Book



BASED ON TODAY'S FACTS

- A $1mil UL policy held within Irrevocable Life Insurance Trust
- Health –Policy Issued with Standard Smoker rates in 2002,
- Current premium requirements were **$24,300**
  Policy death benefit guaranteed **to age 84**

- **Outcome of Review**
- New Standard Plus rates negotiated in 2016
- **Reduce premiums to $19,400 &**
  Extended Guarantee of $1mm to age 93.

Case Example #2

- Male 52 – 2 Contracts with B+ rated carrier
- Total Death benefit $1,160,000 with
- Cash Value of $90,000
- Current Premium $10,600 Guaranteed to age 84

By Arranging a $90,000 1035 Tax Free Exchange & A Medical Exam we were able to:

Increased Death Benefit to $1,875,000

Step Up Quality to an A+ rated carrier,

Guaranteed new policy to age 100

WHILE Maintaining the Same $10,600 Premium

CASE EXAMPLE # 3

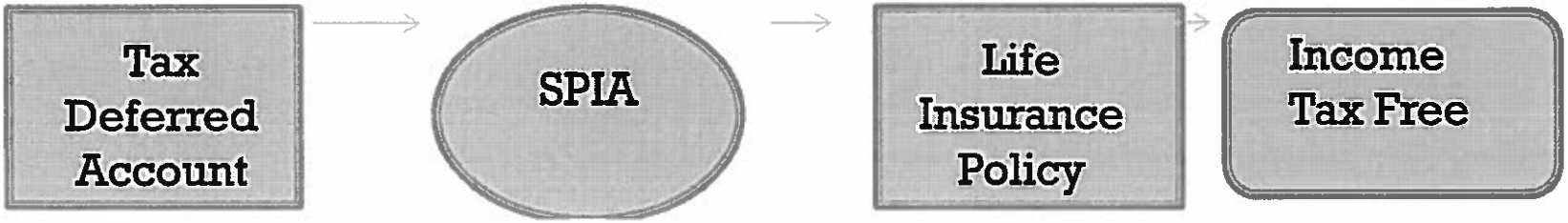
CURRENT SITUATION
Whole Life
M 65 F 61
$1MIL Second to Die
Premium $16,000

PROPOSED SITUATION
Guaranteed Universal
M 65 F 61
$2 MIL Second to Die
Premium $16,000

DUE TO
GOOD HEALTH &
TAX FREE EXCHANGE

Leave Your Heirs With More Money
Insurance Arbitrage #4

- **Situation** **What bet life ? What bet Annuity?**
  - Male 76 has $600,000 in Taxable CD earning 3.0% gross RESULTING IN 2.0% = $12,000 Net Annual Income
- **Solution**
  - Purchase $285,000 SPIA paying $26,300 Net Annual Incom
  - Purchase $315,000 SPIA paying $29,000 Net & use to purchase $600,000 life insurance.
- **Result**
  - Net Lifetime Income(2 times) Guaranteed against risk
  - $600,000 Asset Removed from taxable estate



Joseph La Ferlita JD.

- Drafting Suggestions to Avoid Problems.

Long Term Care Ins Basics

- Duration
- Waiting period
- Inflation options
- How qualify to purchase/ Underwriting
- How Collect Benefits
- Industry overview & Future outlook
- Traditional /Stand Alone Plans
- Linked/Hybrid/Combo Plans
- Deductibility and Credits as Incentive ?

Pension Protection Act

Long Term Care Ins & Life Ins

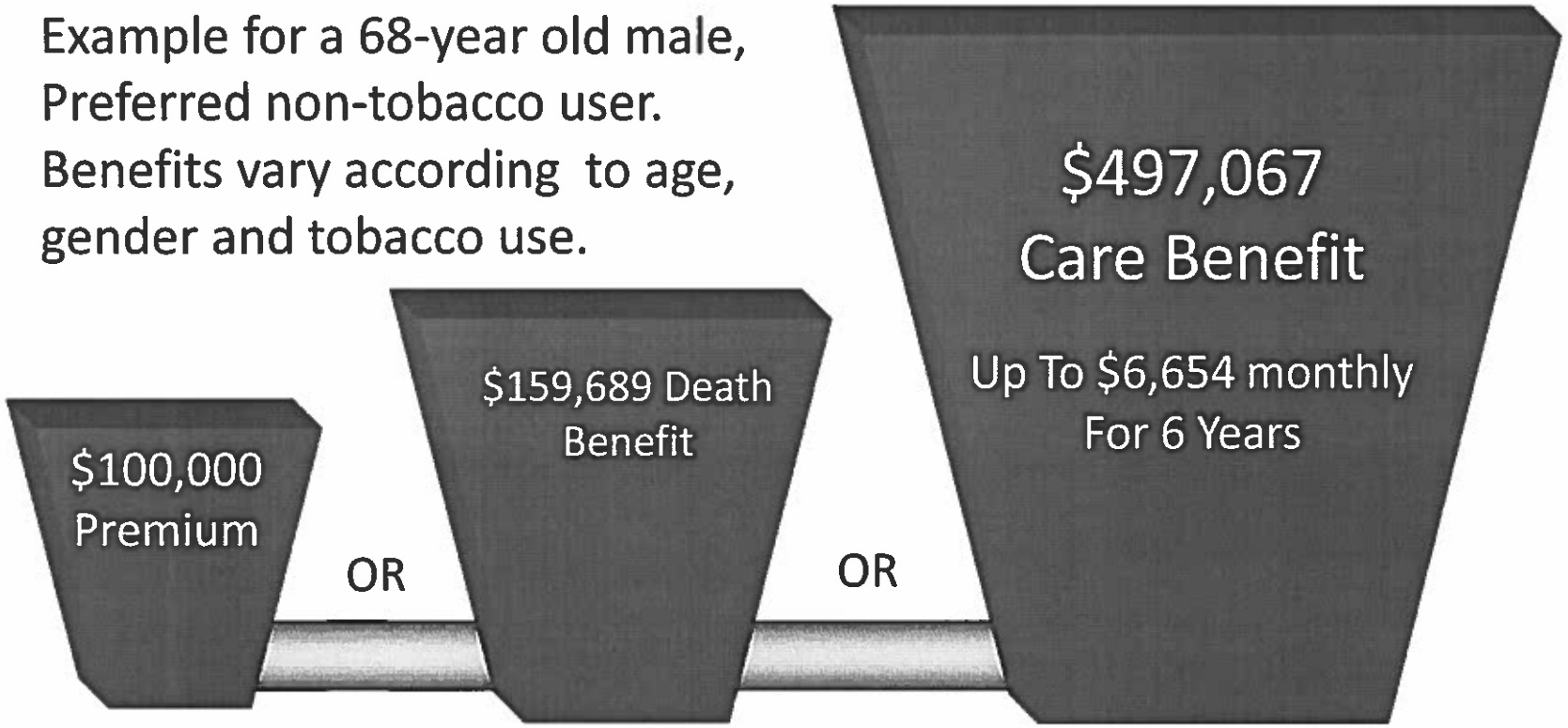
Long Term Care Premiums Rise 40-60%
Long Term Care Benefits
Long term care Issues
MAY NOT USE / WASTE MONEY/ SELF INSURE

NEW BENEFITS PREVIOUSLY UNAVAILABLE
Insurance Industry Solution Combine Life & LTCI

CHRONIC CARE vs Long Term Care Rider
Good News Leverage /Tax Benefits / Wont Waste $

Tax Free transfer from Annuity if used to pay LTC
Ability to use SPIA to pay LTCI premiums

Example for a 68-year old male,
Preferred non-tobacco user.
Benefits vary according to age,
gender and tobacco use.



THANK YOU

- HENRY MONTAG CFP, CLTC

HENRY@THETOLICENTEREAST.COM

516 695-4662

www.THETOLICENTEREAST.COM

Joseph La Ferlita JD.

- Drafting Suggestions to Avoid Problems.

FARRELLFRITZ P.C.
BECAUSE SUCCESS MATTERS.

Joseph T. La Ferlita

Trusts & Estates

Partner | 516-227-0714 | jlaferlita@farrellfritz.com

LOCATION: Uniondale



Joseph T. La Ferlita is partner to the firm concentrating his practice in trusts and estates law, with an emphasis on estate planning, estate and trust administration, and tax controversy. He counsels individual planning clients, beneficiaries, individual and corporate fiduciaries, and not-for-profit entities, including public charities and private foundations, in connection with a multitude of estate and trust-related matters. These include, among others, the drafting of wills and trusts, estate tax and generation skipping tax planning, audits of estate tax returns and income tax returns, the formation of not-for-profit entities, obtaining Private Letter Rulings from the Internal Revenue Service, probate proceedings, administration proceedings, judicial accounting proceedings, judicial proceedings for advice and direction on behalf of executors and trustees, spousal elective share proceedings, and proceedings for the construction and reformation of wills and trusts. He represents clients in the Surrogates Court and the United States Tax Court.

Mr. La Ferlita is admitted to practice in the State of New York, the Commonwealth of Massachusetts and the United States Tax Court. He is a member of the American and New York State Bar Associations.

Mr. La Ferlita is especially active in the Trusts and Estates Law Section of the New York State Bar Association, where he serves as District Representative for Nassau and Suffolk Counties, Chairman of the Surrogates Court Committee and Member of the Estate and Trust Administration Committee. He plays a key role in drafting proposals for new and amended estate-related New York statutes, some of which ultimately have been signed into law by the Governor of New York State.

In 2002, Mr. La Ferlita was a Judicial Intern to the Honorable Thomas C. Platt of the United States District Court, EDNY.

Mr. La Ferlita has had two LexisNexis Expert Commentaries published on Lexis.com. The first is entitled, "Whether the Distinction Between Construction and Reformation Proceeding in New York Surrogate Courts Still Exists." The second is entitled, " The Fundamentals of the Separate Share Rule." He has also published articles regarding Trust Decanting in New York and New York Trust Law in the NYSBA ***Trusts and Estates Law Section Newsletter,*** the The American Bar Association's ***Property & Probate***, and The Suffolk Lawyer.

Mr. La Ferlita was selected for the *Super Lawyers New York Metro Rising Stars* (Estate & Probate) list in 2013 and 2014.

In May 2011, Mr. La Ferlita received an LL.M. degree in taxation from New York University School of Law. He received his Juris Doctor degree, Dean's List, from St. John's University School of Law in 2004, where he served as a member of the ***American Bankruptcy Institute Law Review***. Mr. La Ferlita earned his M.A. degree in Theology from Boston College in 1998 and his B.S. degree in Biology from Fairfield University in 1996.

Prior to attending law school, Mr. La Ferlita was a high school teacher for several years in the Boston area.

Office
Uniondale
400 RXR Plaza
Uniondale, NY 11556

Practice Areas
Trusts & Estates
Tax

Education
Boston College (MA)
Fairfield University (BS)
New York University School of Law (LL.M.)
St. John's University School of Law (JD)

Suffolk Academy of Law

DRAFTING, FUNDING & PROPERLY MAINTAINING AN ILIT & SNT

Co-Presented by:
Joseph T. La Ferlita, Esq.
Partner, Farrell Fritz, P.C.

October 4, 2018

I. Trust vs. Outright Ownership of Life Insurance

- a. Making sure the client appreciates what is obvious to the lawyer
  - i. Basic distinction between outright ownership & ownership by a trust
    1. Legal title
    2. Equitable title
  - ii. Distinction between revocable trusts & irrevocable trusts
  - iii. Funding the trust:
    1. Ownership of the life policy
    2. Designating the trust as the beneficiary of the life policy
- b. Non-tax implications
  - i. Control
    1. Over the life insurance policy
    2. Over the policy proceeds
  - ii. Beneficiary's creditors
  - iii. Beneficiary's eligibility for Medicaid
  - iv. Administration expenses (e.g., trustee commissions)
- c. Tax implications
  - i. Income tax
  - ii. Gift tax
  - iii. Estate tax

II. With a Trust Come Fiduciary Duties of the Trustee

- a. Duty of loyalty: primarily what the trustee should not do (e.g., do not self-deal)
- b. Duty of care: primarily what the trustee should do (e.g., act prudently; prudence determined by process undertaken, not outcome achieved)
  - i. Duty to invest trust assets prudently
    1. Duty to diversify assets
    2. Duty of care with respect to life insurance as a trust asset
- c. Is there a duty to inform beneficiaries of trust's existence and how it is being administered?

III. Should the trust be structured as a grantor trust for income tax purposes?

a. What is a grantor trust?
b. What triggers grantor trust status?
c. How can grantor trust status be helpful for trust owned life insurance?
    i. The transfer for value rule

IV. Crummey powers of withdrawal
a. What are they?
b. Why are Crummey powers helpful for trusts that own life insurance?
c. Is there a limit as to whom can be named a Crummey power holder?

V. Trustee's authority to distribute trust assets
a. Power to distribute income vs. the power to distribute principal
b. Should trust authorize distributions during the grantor's/insured's lifetime?
    i. Affects the ability to decant the trust
c. Absolute discretion: pros and cons
    i. From the beneficiary's perspective
    ii. From the trustee's (grantor's?) perspective
d. Ascertainable standard: pros and cons
    i. From the beneficiary's perspective
    ii. From the trustee's (grantor's?) perspective

VI. Choosing the appropriate trustee & successor trustees
a. What are qualities and virtues are needed to be a good trustee?
b. Does the trust have a mechanism for appointing successor trustees?
c. Removing & replacing trustees
    i. Is this a good idea?
    ii. Who should have this power?
    iii. Are there tax implications?
d. Issues to consider even when the perfect trustee is serving
    i. Is there an IRC 2511 problem?
    ii. Is there a disinterested trustee / authorized trustee?
e. Educating the trustee about asset management, including life insurance

VII. Changing the unchangeable: modifying the terms of an irrevocable trust
a. Authorizing the trustee to make non-substantive changes
b. EPTL 7-1.9
c. Judicial reformation proceeding (and judicial construction proceeding?)
d. Trust decanting: one of the most significant developments in trust law in many years

VIII. Supplemental needs trust provisions
a. What are they and what is their purpose?
b. Difference between a 1st party SNT and a 3rd party SNT
c. Can a SNT own life insurance?