

Life Settlements: The Legal Rights of Insurance Policy Owners

By

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The right of a policy owner to engage in a Life Settlement was guaranteed when U.S. Supreme Court Justice Oliver Wendell Holmes ruled in 1911 that life insurance is personal property and the owner is protected by all the same inalienable rights that any owner of real estate, stocks or any other assets enjoy. By the end of the 20th Century, Viaticals emerged as an opportunity for AIDS patients to cash out of a life insurance policy while still alive to cover the high costs of care not covered by health insurance. The Life Settlement market became an offshoot of Viaticals and has been growing rapidly ever since, with \$13 billion in transactions completed in 2008.

In a 2003 study conducted by Conning & Co, they estimated that 90 million senior citizens owned approximately \$500 billion worth of life insurance in 2003, of which over \$100 billion was owned by seniors eligible for Life Settlements. The Wharton Business School issued a study where they observed, *“Life insurance policies are typically assignable, which means that a policyholder is free to transfer their ownership of the policy to another person. A policyholder’s right to assign their policy to someone other than the insurance carrier has existed for some time.”* The study also went on to observe that a life settlement, *“gives the policyholder the economic freedom to choose between a number of buyers and, in so doing, to receive the fair market price for their policy.”*

The right of a policy owner to engage in a life settlement is guaranteed by the landmark Supreme Court decision, *Grigsby v. Russell*. In Justice Holmes’ final opinion it was codified that life insurance possessed all the ordinary characteristics of property, and therefore represented an asset that a policy owner could transfer without limitation. This decision established a life insurance policy as transferable property that contains specific legal rights, including the right to:

- Name the policy beneficiary
- Change the beneficiary designation
- Assign the policy as collateral for a loan
- Borrow against the policy
- Sell the policy to another party

A number of insurance industry organizations such as the National Association of Insurance Commissioners (NAIC), National Council of Insurance Legislators (NCOIL), American Council of Life Insurers (ACLI), National Association of Insurance and Financial Advisors (NAIFA), American Association of Life Underwriters (AALU) and the Life Insurance Settlement Association (LISA) have also recognized the legal rights of a policy owner to liquidate a life insurance policy through a life settlement.

During a panel session at *ReFocus 2008*, jointly presented by the ACLI and the Society of Actuaries, industry CEO’s agreed on the need for Life Settlements. Stuart Reese, chairman, president and CEO of MassMutual Life Insurance Company said that if a policy is first purchased with protection in mind and is no longer needed after a period of time, then a contract holder does have property rights and *“there is a legitimate Life Settlement business which is consistent with the purpose of insurance.”*

“The Life Settlement industry provides an important and efficient function to the insurance marketplace-- and it is a practice established by the Supreme Court”, said Chris Orestis, President of Life Care Funding Group (www.lifecarefunding.com), *“In light of the long standing Supreme Court ruling on the transferability of insurance as property; those holding a policy that they no longer need will always be able to maximize the value of that property through a life settlement transaction.”*

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