

**Summary of Comments at June 9, 2006 Hearing  
(Appendix 2 to Final Statement of Reasons)**

**General Comments**

Karen Canoff  
Life Settlement Solutions, Inc.  
HR<sup>1</sup> pp. 5-6

Ms. Canoff requested to have the record remain open one extra week so that Doug Head would have additional time to prepare his comments.

Response: The Department of Insurance denied Canoff's request made on behalf of Mr. Head. (See e-mail of Jennifer Chambers dated June 9, 2006 to Karen Canoff attached hereto.) It is noted that Mr. Head was able to transmit lengthy comments do the Commissioner on June 9, 2006, the last day of the comment period.

**Section 2548.2(a)**

Karen Canoff  
Life Settlement Solutions, Inc.  
HR pp. 7 – 9

The scope of the business of Life Settlement Solutions, Inc., is life settlements, as opposed to viatical settlements. Life settlements are different from viatical settlements in that viatical settlements the insured suffers from a life threatening or terminal illness. It is similar to the definition of "chronic" under the NAIC's Model Viatical Settlements Act. Ms. Canoff suggests defining viatical settlement as one where the insured suffers from a life threatening or terminal illness that reduces the insured's expected life expectancy to 24 months or less, and all other illnesses or conditions are life settlements. The Department's current definition of viatical settlement is too broad, and would encompass virtually everyone over the age of 70. Many such individuals no longer need life insurance and would like to liquidate their policy, but under the Department's definition of viatical settlement, many will be denied the opportunity to do so.

Response: See Commissioner's response to comment of M. Bryan Freeman dated June 8, 2006 concerning Section 2548.2(a), at page 2 to Appendix 1 to Final Statement of Reasons.

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<sup>1</sup> All references to the hearing transcript are denominated, HT.

Michael Freedman  
Representing Coventry and  
Life Settlement Institute  
HR pp. 17-18

Mr. Freedman agrees with the comments of Karen Canoff and believes in particular that the definition of catastrophic or life threatening illness is inconsistent with the statute and with definitions used in other states. Mr. Freedman advocates the definition contained in AB 243.

Response: See Commissioner's response to comment of M. Bryan Freeman dated June 8, 2006 concerning Section 2548.2(a), at page 2 to Appendix 1 to Final Statement of Reasons.

Additional Response: There are aspects of the definition of "viatical settlement" in AB 243 that the Commissioner opposes, particularly the following potential criteria: "An inability to perform at least two activities of daily living, including eating, toileting, transferring, bathing dressing and continence." This standard appears to be one governing eligibility for admission to Medicare nursing homes, and the Commissioner rejects in favor of his revised formulation of "catastrophic or life threatening." In any event, AB 243 is no longer active legislation and the Commissioner's definition, as revised, is now supported by the life settlement industry.

John Mangan  
American Council of Life Insurers  
HR p. 14

Mr. Mangan believes that the Commissioner has achieved his stated goals in the Initial Statement of Reasons in defining "catastrophic or life threatening." The ACLI supports the definition.

Response: See Response to John Mangan's comment dated June 9, 2006, at page 6 of Appendix 1 to Final Statement of Reasons.

### **Section 2548.3**

Karen Canoff  
Life Settlement Solutions, Inc.  
HR pp. 9 – 11

Ms. Canoff objects to the fact that the regulations prohibit a licensed viatical settlement provider from assigning any portion of a policy to a large financial institution. This prohibition will remove capital investors from the California market. Ms. Canoff acknowledges that there was a lot of fraud in the past involving resale of policies to individual investors. However, the institutions that finance the operations of Life

Settlement Solutions, Inc. are large global banks and equity funds. The latter institutions will not agree to be licensed in order to purchase policies.

Response: See Commissioner's Response to comment of M. Bryan Freeman at pages 27-28 of Appendix 1 to Final Statement of Reasons.

Michael Freedman  
Representing Coventry and  
Life Settlement Institute  
HR pp. 18 – 19

Mr. Freedman is also concerned about the restriction in the proposed regulation on the assignment of a life insurance policy to an institutional investor. This would severely limit the ability for capital markets to participate effectively. This exceeds the scope of the statute and it is vague. Consistent with AB 243, securities law remains a force in settlement transactions, and the latter ought to be regulated by the securities regulators.

Response: See Commissioner's Response to comment of Mr. Bryan Freeman at pages 27-28 of Appendix 1 to Final Statement of Reasons.

Additional Response: It is appropriate for both the Insurance Commissioner and the California Department of Corporations to regulate the sale of investments in viatical settlements, a position that is shared by the Department of Corporations. (See Appendix 1 to Final Statement of Reasons, at pages 21, 23-24, 25, and 42-43.)

### **Extra-territorial Reach of Regulations**

Karen Canoff  
Life Settlement Solutions, Inc.  
HR pp. 9 – 11

Ms. Canoff also objects to the fact that the regulations could potentially apply to transactions involving individuals who are not residents in the state of California. Other states recognize that the governing law, for either a life settlement or viatical settlement, ought to be the law of the state in which the owner of the policy reside.

Response: See the Commissioner's response to comment dated June 9, 2006 of Doug Head, at page 26 of Appendix 1 to Final Statement of Reasons. See also Commissioner's response to comment dated June 9, 2006, at page 78 of Appendix 1 to Final Statement of Reasons.

### **Protections for Seniors in Disclosures/Avoidance of "Stranger-Owned" Schemes**

John Mangan  
ACLI  
HR pp. 14 – 16.

Mr. Mangan suggests that because the product is transitioning from viatical settlements to senior settlements, disclosures should be tailored to disclose what may be lost by entering into such transactions. Also, with respect to the life settlement debate, the ACLI encourages regulators and legislatures to look at these transactions and make sure that they do not run afoul of current California law that requires that a life insurance policy must be in place for at least two years before it can be settled. Mr. Mangan requests the Department to take a look at the ACLI's proposed amendments to the NAIC Model Viatical Settlements Act to see if any of it could be useful in the context of the viatical settlement regulations.

Response: The Commissioner believes that there is a comprehensive series of disclosures at Section 2548.5 of the proposed regulations. Furthermore, the proposed regulations deal with "viatical settlements" and not senior or life settlements, so that specific comments relating to the latter are not relevant to these regulations that relate to a very specific population of people. The Commissioner, however, has examined the ACLI's proposed amendments to the NAIC Model Viatical Settlements Act, and, where appropriate, has made suggestions consistent with the Model Act. (See, for example Commissioner's response to comment dated June 9, 2006 of John Mangan at page 20 of Appendix 1 to Final Statement of Reasons.)

Michael Freedman  
Representing Coventry and  
Life Settlement Institute  
HR p. 19- 20

Mr. Freedman also suggests that he also opposed "Stranger Owned" life insurance schemes, but argues that the ACLI's position is overreaching. The latter is against Stranger Owned Life insurance schemes, but the organization's opposition also has the potential of having a chilling effect on ordinary settlement transactions.

Response: The Commissioner agrees that concern over "stranger owned" life insurance schemes should not be allowed to unreasonably chill legitimate life settlement and viatical settlement transactions.