Estate Planning Attorney to the Rescue
Includes the* TOLI Test - *The 5 Life Insurance Questions to be asking

Even though you have not necessarily received a letter like this, you know this is what your clients are thinking:

Dear Estate Planning Attorney,

Right now is a difficult time for me. My liquid assets and investment portfolio aren't where I thought they would be at this point in my life. The financial markets are volatile, and I want to make sure every dollar I spend is well is spent wisely. To be honest, I am worried I could run out of money and am not sure who to trust. I am turning to you because of the consistent and objective advice you have given me over the years.

Do you remember those life insurance policies I purchased some years ago in the Irrevocable Life Insurance Trust? The premium payments are becoming burdensome. I am uncertain whether my family and estate plan still need that much death benefit. How am I supposed to know if the life insurance policy is doing what it is supposed to and be certain the premium dollars we are gifting to the Trust are being used in the most efficient manner? I have not been in touch with my insurance agent and in fact, it would be great if you could handle this for me.

Your long-time client,

Mr. or Mrs. I. Am Concerned

Evolving developments in insurance products, pricing and features combined with changes in your client's needs all add up to the possibility that your client's life insurance plan, once thought as secure, could now be inadequately funded and in jeopardy of lapse before a death benefit is paid. Insurance decisions made years ago based on now, out-of-date illustrations that projected significantly higher return assumptions than are actually being received need to be reviewed before it is too late. A pre-mature policy lapse or considerable increased premium funding may be avoided with a carefully engineered and comprehensive life insurance portfolio review. We find life insurance reviews involving multiple policies are most effective and best received by the client when they are facilitated by the estate planning attorney.

"Could you show us just one more time that part about the vanishing premium?"

© 1998 Partners Financial and Life Marketing Systems

Bringing Order to Complexity

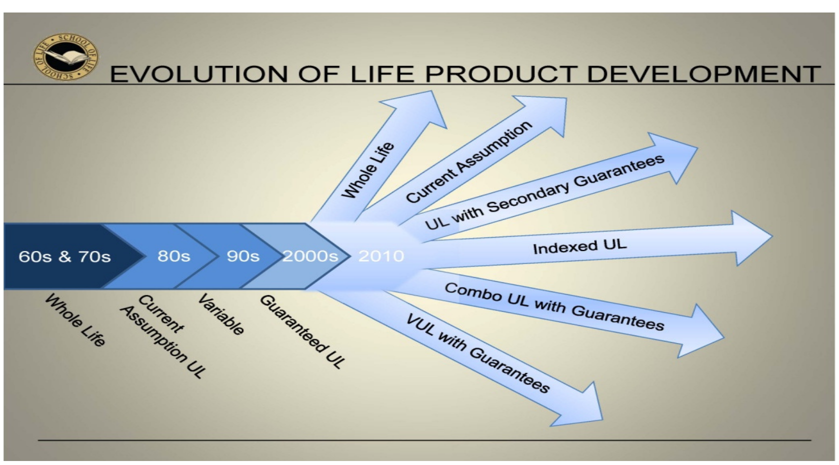
As a Trust Life Insurance Advisor and Principal of a third generation, independent, family owned insurance consulting firm; Colton Groome & Company has provided trusted life insurance solutions to our clients since 1950. Through thirteen recessions, we have met with our policy holders to validate, adjust or re-engineer the life insurance promise we made when they purchased their policies from us. We cannot control life insurance carrier's dividend crediting rates, interest crediting rates nor do we have a crystal ball that forecasts rates of return for the investment sub-accounts. Our independence and commitment to an on-going policy management process bring order to a complex topic – life insurance.

Increased complexity in the life insurance industry has resulted in the pendulum swinging from clients that want to be intimately involved in the policy selection and management process to now wanting their estate planning attorney to be an impartial and objective third party in the review or purchase of life insurance. Clients are frustrated by policies on which they are paying premiums longer than anticipated, are overwhelmed with choices if they are in the market for a new policy and have most likely been approached by more than one insurance agent claiming to have the magic insurance formula.

Here's where estate planning attorneys can come to the rescue. The attorney can protect their clients from a bombardment of confusing life insurance illustrations, sales pitches and claims one agent's solution is the best. Attorneys can demand a process that brings sense and order to a dynamic and sometimes overlooked, asset – life insurance. In doing so, great value can be achieved for the attorney's clients.

The 60's, 70's, 80's and early into the 90's represented a time when your clients probably purchased insurance from an insurance agent who represented a single insurance carrier selling the "one-size fits all" policy. There were fewer plan designs and policy types which made the purchasing process simpler. It is noteworthy that a policy purchased prior 2001 may not reflect the lower mortality charges and costs of insurance available in today's policies due to increased life expectancies. Additionally, underperformance is inevitable in almost every non-guaranteed policy and policies thought to be guaranteed that may not be guaranteed.

Today, the purchase of life insurance offers more choice and plan designs. With the advice of an independent insurance professional, the consumer can now purchase a policy specifically tailored to the purchaser's individual goals. This decade is characterized by increased compensation disclosure, fee transparency and product choice as a result of the marketplace's demand for a consumer-centric purchasing environment.



(1)

Why Orchestrate a Prudent ILIT Review Process?
With the evolution of life insurance product development, it is clear there is an increasing need to implement a policy selection and monitoring process that documents the due diligence undertaken on the client's behalf. A carefully constructed insurance plan typically involves multiple advisors from the client's team. The estate planning attorney is ideally suited to be the client's advocate in the insurance review and purchase process. By quarterbacking the insurance review process, the attorney:

- Retains client control and Maintains role as trusted advisor
- Enhances client relationship (and increased revenue) through new/additional legal services
- Increases value proposition to client leading to increased client satisfaction
- Saves his or her clients time, headaches and indecision when multiple insurance agents are involved.
- Documents his or her file with a written, quantifiable life insurance review and on-going policy service agreement geared to support those acting in a fiduciary manner to the client's life insurance portfolio.

The Uniform Prudent Investor Act requires that a trustee acting in his or her fiduciary capacity demonstrate a process for selecting, managing and monitoring all assets held in the trust. Fortunately the UPIA is focused on process; not necessarily outcome. Specific to North Carolina trustees, section 36C-9-903.1 titled, "Duties as to life insurance" states the trustee is not liable to the beneficiaries of the trust or to any part for any loss arising from the absence of those duties up the trustee [(2).] Although North Carolina Trustees offers additional protection for Trustees, many agree UPIA standards provide us all with a best practices approach to managing trust-owned life insurance.

2009 Cochran v. Key Bank
Case Summary: Stuart Cochran established an Irrevocable Trust for the benefit of his family. In 1987, the Trustee purchased $4.75 million combination of whole life and universal life insurance death benefit. With the booming stock market in the late 1990's, the agent recommended replacing the whole life and universal life insurance portfolio with an $8 million dollar variable life policy. After the market down turn in the early 2000's, the agent recommended another replacement to $2.5 million guaranteed universal life policy in 2003. After incurring significant surrender charges in the exchange from variable life to guaranteed universal life resulting significantly lower death benefit, Mr. Cochran died just a few months later.

Result: Although many argue modifying the variable life policy could have resulted in a more favorable outcome for the trust beneficiaries, the ruling was in favor of the trustee, Key Bank stating they showed elements of a "prudent process." Key Bank used an independent entity for the insurance review which the courts looked upon favorably. [(3)]

2010 Paradee v. Paradee
Case Summary: The trustee of the W. Charles Paradee, Sr. Irrevocable Trust was found to have breached his fiduciary duty when he authorized a policy loan from an Irrevocable Trust established to provide for W. Charles Paradee Sr.'s and his late wife's grandson Trey, to Mr. Paradee Sr.'s new wife Eleanor who was 17 years younger. The policy later lapsed prior to Mr. Paradee Sr.'s death because the loan interest stopped being paid. If the trustee had considered what was best for the trust beneficiary, Trey, he would have refused the Paradees' request for the policy loan that directly benefited Mr. Paradee, Sr. and his new wife.

Result: In September 2009, Trey received a settlement of $340,389 citing a violation by the trustee of a duty the trustee owes to a beneficiary is a breach of trust. [4]

Increased attention by ILIT beneficiaries is exemplified by the Cochran v. Key Bank and Paradee v. Paradee court cases. Regardless of the outcomes, neither party truly won. Cochran and Paradee remind us that a prudent ILIT review process and clear communication with the trust beneficiaries is essential for our clients.

The TOLI Test: The 5 Life Insurance Questions to be asking …

5 Simple Questions	Purpose of Question	Request a 3rd Party Review IF	Helpful Hints and Comments
1. Is the most recent in-force illustration in your file dated May 2008 or after?	To determine the performance and projected lapse date of the policy based on guaranteed and non-guaranteed assumptions.	The last illustration on file is 3 years or older.	As of the date of this article, if the most recent illustration is dated May 2008 or earlier a current one should be requested.
2. Has the Cash Value Deviation % been from calculated in the last 3 years?	This calculation is a leading indicator that a policy may need to be re-calibrated. It is simply calculated by taking the originally projected cash value for the current year and comparing it to the actual cash value provided on the Annual Policy Statement assuming the policy has been funded as originally intended. Hint: the original illustration is needed for this calculation.	The % Cash Value Deviation is greater than 10% than originally projected at the end of the policy year being evaluated.	Generally, a policy can be recalibrated by (1) Increasing premium, (2) Decreasing death benefit, (3) Exploring other alternatives (4) Consciously taking a "wait and see" approach.
3. Have policies been diversified among insurance carrier and policy type?	Would you allocate your entire investment portfolio to 100% large cap growth with one fund manager? Then why would you place all of your insurance dollars with one company and within one policy type?	Policy Death Benefit is concentrated with one insurance carrier and/or one policy type.	General Planning Standard for $5,000,000 Insurance Portfolio: Consider utilizing at least two insurance carriers and diversifying policy types
4. Has the client's need for insurance and ability to fund premiums been evaluated since the policy was purchased?	A policy purchased 10 or more years ago may not serve the same purpose as it once did.	1. Client's ability to fund ILIT has changed 2. Family or business dynamics have changed 3. Changing estate tax laws impact the family's estate plan	The most rewarding outcomes are when we can save your clients premium dollars, increase death benefits or re-calibrate the insurance program to meet the family's current needs.
5. Is the insured(s) in the same health today as he/she was when the policy was purchased?	General health information may help determine if current policy funding should be increased or decreased and/or if options in the open marketplace are worth exploring. Has the insured quit smoking, lost weight or has his/her cancer been in remission for more than 5 years?	**A)** Health has **declined** **B)** Health is **favorable**	**A)** Understand term conversion options; potentially reduce funding or increase funding to policy, explore Life Settlement marketplace **B)** Potentially increase policy funding to provide for greater policy longevity or explore if a more efficiently priced policy can help client decrease premium outlay or increase death benefit.

If these questions are answered "no," request an immediate review

Fortunately there is professional expertise, processes and tools available to help measure and manage policy performance or evaluate new insurance opportunities on behalf of your clients. The most valuable client reviews are conducted when the attorney takes the lead role to initiate the review and previews the analysis prior to delivery to the client. The client is often comforted by having the attorney manage the life insurance review process. No, the attorney does not have to be the Insurance Expert but when the attorney facilitates and delegates the review to a trusted insurance professional as encouraged by the UPIA, the end result is best practices work product on behalf of the client.

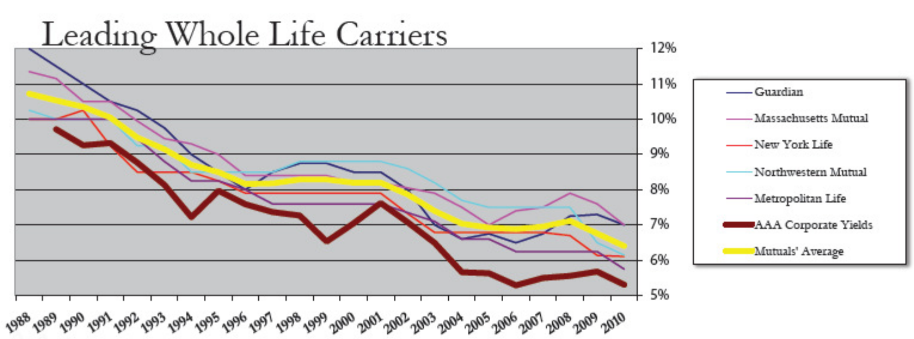
Case Study

Overview: Some of our best success stories occur when the attorney serves as the quarterback for the insurance review, buffers his or her clients from clashing and competing insurance agents, gathers the facts and helps his clients make a prudent decision. We were the chosen insurance consulting firm when a proactive attorney acting in a fiduciary role to his clients requested an independent and objective policy review of his client's two policies (sold by 2 different agents with 2 different top-rated insurance carriers).

The Challenge: Premium re-appeared totaling $60,000 per year to maintain the current $5,000,000 Second-to-Die Life Insurance death benefit. This was a surprise to the Grantors and Trustee who had not received a policy review in over 10 years. The policies were split between two top rated insurance carriers and sold by two different insurance professionals that were now retired. Policies were purchased in late 1980's and the couple is now in their mid 70's. Original policy design was $2,500,000 Whole Life and $2,500,000 Term blend a.k.a. "Additional Protection Term, "One year Term Insurance" or "Supplemental Insurance Amount."

Dividend rates on both policies have decreased significantly since the policies were purchased due to our sustained low interest rate environment. Therefore the term insurance was not reduced at the projected rates. Clients assumed cash premiums no longer needed to be funded and the policies would continue to fund themselves using the annual dividend and accumulated cash value paid up additions.

(5)



> The average Delta between Corporate Bond Yields and the 5 Mutual Companies illustrated here over the past 20 years has been 127 basis points.
> Currently , the Delta between Corporate Yields and the average of the 5 Mutuals is at 110 basis points.

*SAMPLE One-Year Term Rates	
Attained Age	Annual Rates Per $1,000
55	1.08
60	1.77
65	2.75
70	4.52
75	7.65
80	11.95
85	18.38
90	35.58
95	57.84

*Source: John Hancock Life Insurnace Company (U.S.A.) one - year term rates as of September 2008

The Discovery: The review first uncovered both policies were in danger of having the term portion of the coverage (now reduced to $1,500,000 of the total $5,000,000) ***lapse*** 8 years before his client's joint life expectancy if the client's didn't re-initiate premium funding of over $60,000 annually. The first step in the review process is always determining if the current life insurance portfolio can be re-engineered to produce an optimal result by increasing premium funding or decreasing the death benefit. In this case, neither option was satisfactory.

The Rescue: The grantors completed a **P**rivate **U**nderwriting **R**ating **E**valuation (The PURE Process™). The medical records and doctor's exams were ordered by a private vendor and results would not be released to insurance carriers without pre-approval. Fortunately the results of the **PURE Process™** were favorable and were then forwarded to seven (7), top-rated insurance carriers that met the agreed upon policy design criteria. After pre-viewing the results, the attorney encouraged his client's to move forward with the proposed insurance exchange placing the policies with new insurance carrier in a policy design that better matched the goals of his clients. The end result was $5,000,000 second-to-die insurance with the death benefit and $0 premium guaranteed to the grantor's ages 115. This process increased the likelihood the beneficiaries would receive the full, originally planned $5,000,000 death benefit and relieved the grantors from funding $60,000 per year in premium. *Note: Case Study is a hypothetical example for illustrative purposes only.*

Without the trusted, non-biased estate planning attorney coming to the rescue and facilitating an objective insurance review process; the complexity and confusion inherent in a dynamic financial vehicle such as life insurance may result in clients taking no action; precisely at a time when corrective action is needed. The estate planning attorney's role (regardless of whether he/she serves as Trustee of the ILIT) in the life insurance design and monitoring process has never been more critical.

Call to Action: Attorneys and CPAs that serve as Trustee or have clients that have non-professional trustees (ie brother, cousin, aunt, etc) should think through their client base with Irrevocable Life Insurance Trusts, take the ***5 Question TOLI Test*** and consider if an independent, third party review could be beneficial in delivering the greatest possible result for the trust beneficiaries.

Colton Groome & Company was founded in 1950 on the principals of precision, perseverance and thoroughness. More than 60 years later, we continue to practice these principles by providing trusted insurance solutions to families, advisors and trustees. Our team of expert insurance advisors works closely with you to deliver a life insurance program that is comprehensive, yet easy to understand, so your clients feel more confident about their financial futures. Tate joined Colton Groome & Company in 2003. A Certified Financial Planner ™ and Chartered Life Underwriter™, Tate has more than eight years of experience providing trusted life-insurance solutions to individuals, trustees, and advisors. He is a graduate from the University of North Carolina at Chapel Hill. Prior to joining Colton Groome & Company, Tate taught elementary education for at-risk youth. He is a member of the Top of the Table and Million Dollar Roundtable® and a longtime volunteer with Big Brothers Big Sisters and YMCA.

Sources

(1) CH 36 C. North Carolina Uniform Trust code section 36C-9-903.1 titled, "Duties as to Life Insurance"

(2) "Evolving Standards for Advisors: What Does It Mean To Be A Fiduciary In The Life Insurance Business?" Larry J. Rybka, CFP®, JD Presentation 10/18/2010

(3) Barry D. Flagg and Patti S. Spencer, " Cochran v KeyBank – TOLI Case Law Guidance (apart 2 of 2)" published in LISI Estate Planning Newsletter #1486 (Aug 5, 2009) at www. Leimberservices.com.

(4) State of Delaware C.A. No 4988-VCL Memorandum Opinion dated 10/5/2010

(5) Historical Dividend Study - Valmark Securities, Inc. and One-Year Term Rates; John Hancock September 2008.