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Trust Owned Life Insurance … Facts and Revelations

By Alan Kennebeck and Leon Wessels

This is not the first nor will it be the last discussion regarding the challenges of owning or being the trustee for an Irrevocable Life Insurance Trust (ILIT). We do believe this is the first published information that quantifies the experience of over 50 trustees with a reputable universe of statistically sound data.

While the article focuses on the estate planning tool, Irrevocable Life Insurance Trust, many of the risk management strategies recommended and experience detailed in this article are applicable to insurance policies in general.

Why Irrevocable Life Insurance (or Crummey) Trust?

Using an Irrevocable Life Insurance Trust removes the life insurance policy from the Grantor's estate for estate tax purposes. The ILIT provides the heirs a liquid asset to pay estate taxes and/or other final expenses, while maintaining other more non-liquid assets.

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The decision to place a life insurance policy into a trust is typically made during the estate and financial planning process. The due diligence and risk mitigation process for the policy also begins at this time.

In creating an Irrevocable Life Insurance Trust, the Grantor must choose a trustee, who assumes fiduciary duty and is responsible to protect and manage the trust assets for the benefit of the named beneficiaries. With respect to the life insurance policy, the trustee serves as its owner and possesses all ownership rights as granted by the insurance contract. The trustee is charged with requesting and documenting the monetary gifts from the Grantor, sending out Crummey Notices to the trust's beneficiaries and ensuring timely premium payment to the insurance carrier.

A trustee should be someone that understands life insurance or has access to a qualified, independent, objective, non-insurance agent, third party who is willing to assist with the management and review process. This is true whether the trustee is an institution or an individual. It is also imperative for the trustee to have processes and procedures in place for requesting the monetary gifts to be used to pay premiums and to send the trust's beneficiaries their Crummey Notices, if required.

NOTE: Failure to adequately document each step of the gift request, Crummey Notice and premium payment can subject the trust to a possible IRS challenge[1]. The authors highly recommend a failsafe manual system of documentation or a more efficient technology solution.

In addition, it is the trustee's responsibility to monitor and manage the life insurance policy, taking remedial action when warranted. These duties and responsibilities are in addition to the traditional responsibilities accepted with other asset classes. Such a task is not easy, especially if the trustee does not possess the requisite skills and knowledge to manage complex and often misunderstood life insurance policies.

While choosing the trustee before making a policy selection is ideal, we do recognize that when an Irrevocable Life Insurance Trust is established, the policy may have been purchased long before the trustee selection. This precludes the trustee from advance input on policy suitability for the trust. At minimum, the trustee should be judicious on the risk they are willing to assume in accepting the policy.

Trust Owned Life Insurance Policies are Going Unmanaged

To set the stage for this discussion, let's review a hypothetical example of Trust Company XYZ to highlight some of the risk and challenges faced by trustees. Based on the **ILIT Analysis 2005** research referenced throughout this document, the following stats apply using the assumption the trustee holds **100** policies:

On average you have:

• Total Death Benefit	$127,099,600
• Premium	$ 1,466,800
• Cash value	$ 11,118,300

Here are some additional statistics to keep in mind. On average you will have:

• 27 Policies that will lapse worth	$ 34,316,892
• Death Benefits lost due to lapse of guarantee provisions	$ 4,448,486
• Death benefits without any or full extended maturity protection	$ 103,840,373
• Death Benefits not projected to last to life expectancy	$ 12,328,661
• Outstanding loan balances totaling	$ 8,515,673
• Suspended annual premiums	$ 187,750
• And policies rated C, D, F or U	$ 52,823,940

The Unique Risk of Being a Trustee

It's not just the trust owned policies that are not being properly managed - many of the estimated 12,581,000 individual policies in force in the United States providing some $9.7 trillion in coverage as of the end of 2004[2] are also unmanaged, whether they are trust, bank, corporate or individually owned. The significant difference for trust owned insurance policies is that someone else – the trustee, by virtue of their role – is being charged with an increased level of responsibility to manage the policy on behalf of the trust's beneficiaries. This fiduciary duty is required in large part to regulations such as the Uniform Prudent Investors Act and case law. Institutional trustees have added levels of responsibility due to regulatory bodies such as the Office of the Comptroller of the Currency and the Office of Thrift Supervision and State Departments of Banking. Failure to properly perform this duty may expose the trustee to litigation and liability for the unrealized benefits from

the policy by the trust's beneficiaries, and in the case of those trustees under the watchful eye of a regulatory agency through fines and penalties.

Is there a way for a trustee to mitigate these risks? We believe there is, and it starts during the "planning, doing and reviewing" processes that are familiar to many estate and financial planning professionals.

Pre-Purchase Planning

By now, the financial planner has a clear understanding of the estate's needs and the amount of life insurance required. However, the questions become:

- What type of insurance would best meet this need?
- What level of risk is acceptable based on the objectives and goals of the trust?
- What are the Grantor's and trustee's risk tolerance levels?
- Which of the 1200 plus life insurance carriers should issue the policy?
- Should more than one policy be purchased and with different insurance carriers?

Let's take a moment to discuss these various factors, starting with the type of insurance policy to be purchased.

Choosing the Type of Policy

There are two basic types of life insurance policies – temporary and permanent.

A temporary insurance policy is also known as term life insurance. It is a policy needed for a specified, limited duration, tends to be inexpensive and develops no cash value.

Permanent insurance policies include whole, whole/term blend, and universal with variable derivatives of each. These types of policies are designed to be in force for the life of the insured and develop a cash value. Within each of these types of insurance are individual (insuring one individual) and survivorship (insuring two or more individuals) versions.

In reviewing and choosing the type of insurance to purchase, it should be understood that each one presents the trustee with its own challenges and opportunities. For example, while term insurance is often considered the most basic insurance plan, it can also be one of the most difficult to manage as it includes level term periods with increasing premiums at sometimes prohibitive levels after the expiration of the level term period. In addition, term plans may include conversion and re-entry provisions that must be tracked and acted upon as part of the policy's management. Permanent types also require active monitoring and management as many include non-guaranteed current interest crediting rates, insurance charges and dividend scales, or in the case of a variable life plan, require the policy owner to actively manage the sub-accounts to ensure policy performance. It should be noted that variable life plans may present the greatest level of risk to trustees as they shift the investment performance risk from the insurance carrier to the policy owner. Thus, the trustee as the owner must be prepared to review and evaluate the sub-account allocations and change the investments as needed.

Figure 1

Policy Type	Percentage
Whole	21.77%
Universal	19.00%
Survivorship Whole	8.15%
Survivorship Universal	10.69%
Whole/Term Blend	5.27%
Survivorship Whole/Term Blend	8.27%
Variable Whole	1.10%
Variable Universal	4.44%
Survivorship Variable Whole	0.34%
Survivorship Variable Universal	3.64%
Term	16.15%
Group Term Life	0.83%
Group Universal	0.11%
Group Variable Universal	0.15%
Other	0.08%
Total:	100.00%

Is there a preference of one policy type over another for trust held life insurance? Overwhelmingly, the answer is no. To answer this question, from 2003–2005, the authors conducted a study completing over 6,000 annual reviews of policies held in irrevocable life insurance trusts by 50 different institutional trustees. A cross-

section of law firms, CPA firms, trust companies and bank trust departments represents the universe. Non-professional trustees (i.e., the Grantor's friends, acquaintances and relatives filling this role) were not included. The purpose of the study was to identify the trustees' risks, opportunities and challenges presented by the policies under their care and management.

As shown in Figure 1, there is great diversity in the types of policies reviewed. As would be expected, whole life (44.9%) is the leading type of insurance plan held with universal life (38.03%) close behind. Term represents the balance of the policies held, at more than 16%. Each insurance category presents a unique risk management challenge.

Additional Considerations - Secondary Benefits

In choosing a policy, it is critical to evaluate the value and risks posed by special features or additional benefits available.

No Lapse Guarantees Many carriers now offer secondary guarantees in the form of no lapse guarantees on their universal and variable life products. The purpose of this benefit is to protect the policy owner from a policy prematurely lapsing due to changes in the interest crediting rates and insurance charges, or in the case of a variable product, due to adverse market performance of the sub-accounts. No lapse guarantees can present a significant challenge to the trustee as they are time sensitive and require premiums to be paid when due. Failure to do so could result in the duration of the no lapse guarantee being decreased, the immediate termination of the guarantee or termination of the policy itself.

Extended Maturity Provisions Available on many universal and variable life plans, an extended maturity provision is another benefit which can greatly affect how a policy is managed. The purpose of this benefit is to eliminate the risk of the insured outliving the policy. As with no lapse guarantees, there are a variety of extended maturity provisions. Some are contractual and some are provided administratively by the insurance carrier. With respect to the latter, the old adage "what the carrier giveth, the carrier can also taketh away" should be understood. Some allow for the continuation of the policy's full death benefit, including benefits provided under riders. Others allow for a death benefit equal only to the base policy face value, the policy's net cash value or a modified benefit equal to a percentage of either the face value or cash value to continue. Sound complicated? It can be without suitable proficiency and all the more reason for the trustee to devote the proper resources to manage these policies.

Is there a benefit to having an extended maturity provision? We believe there is, especially when you consider people in general are living longer and the number of people projected to live past age 100 is anticipated to continue to increase. In 1990, there were an estimated 37,306 individuals age 100 and older. Based on conservative estimates, by 2010, the number of people over age 100 is estimated to be 106,000 and by 2020, 135,000.[3]

While analyzing study results, 12.7% of the policies reviewed included a no lapse guarantee initially. However, of these policies, only 9.2% still had the no lapse guarantee in effect. 18.3% of the policies included extended maturity provisions with the types shown below:

Figure 2

Types of Extended Maturity Provisions

Full Face	56.32%
Modified	13.19%
Net Cash	30.48%
	100.00%

Selecting a Carrier

Once the policy type and special features have been selected, it is time to evaluate and choose the insurance carrier. By identifying the type of plan to purchase, the list of potential carriers will be reduced, since not all carriers issue all types of insurance. The insured's health is another factor to potentially reduce the available carriers, since carries may elect to deny coverage if certain health issues exist.

Due to a life insurance policy's long term nature, it is imperative to consider the quality and financial stability of the carrier, not only before the policy is issued but for the duration the policy is held in trust. An institutional trustee should have pre-established "Carrier Criteria" to quantify the insurance carrier's minimum quality and

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financial stability their institution is willing to accept. Such Carrier Criteria may come in the form of minimum ratings from AM Best, Standard and Poor's, Fitch, and Moody's or a Comdex Ranking. There could also be some minimum size requirement, such as "within the top 150 carriers in terms of admitted assets." However, size and ratings are not the only criteria to be reviewed. The trustee should also factor in service standards, such as carrier response times to information requests and complaint histories against the carrier, which are available through the various state Departments of Insurance.

Figure 3

Carrier	Percent of Total Policies	Average Response Time (Days)
1	15.01%	11
2	12.69%	26
3	6.28%	31
4	5.13%	35
5	4.71%	27
6	4.68%	25
7	4.58%	27
8	3.63%	14
9	3.50%	33
10	3.11%	29
11	2.94%	22
12	2.81%	21
13	2.81%	50
14	2.62%	31
15	2.45%	35
16	1.99%	29
17	1.86%	41
18	1.83%	39
19	1.70%	30
20	1.70%	22
Top 10	63.31%	26
Top 20	86.04%	29

As shown in Figure 3, our recent study found 205 different carriers that issued at least one of the policies reviewed with over 25% of the policies issued by two carriers.

Of the 205 carriers represented, 172 meet the trustees' Carrier Criteria in terms of financial strength ratings (i.e., the carrier holds at least an A rating with AM Best and at least two secure ratings from the other rating agencies). This represents 95% of the policies issued. The remaining 5% (issued by 33 carriers) did not meet the trustees' criteria. In the case of the latter, these policies may have been issued by carriers that at one time met the trustees' criteria but then experienced a decline in their ratings.

172 Meet Criteria	95%
33 Do not meet Criteria	5%

Carrier size (as measured by admitted assets), reflects 100 carriers (representing 85% of the policies) meet the established criteria (i.e., top 150 in terms of admitted assets).

100 Passing Carriers	85%
105 Do not pass	15%

Customer service response times vary greatly among insurance carriers. While it may be difficult to obtain information in advance about carrier customer service, our experience demonstrates it can dramatically impact the trustee risk management expense.

During the study, the average response time was 29 days for the top 20 carriers (top being defined by number of policies reviewed). Individually, the average response times ranged from 11 days to 50 days. Even more alarming were the number of follow-up calls placed to resolve a specific policy issue, ranging from several to well over 50. The carrier response delays and the number of times a trustee needs to contact a carrier can increase the risk of managing a policy and reduce the overall profitability through missed deadlines, potential policy lapses and value loss.

With respect to trust held policies and Carrier Criteria, it should always be understood there may be business circumstances to warrant the acceptance of a policy from a carrier not meeting the established criteria. In these instances, the trustee must document the exception and include the reason for their action.

Once the policy has been issued and accepted, the trustee should establish a documented baseline to monitor and measure actual performance.

Now what do you do? The Review Process

Many institutional trustees tend to practice passive management of the ILIT insurance policy. Typically, the policy is placed in a vault or file until needed, with only cursory reviews upon receipt of the annual statement. Policy management is in reaction to the discovery of a problem, typically through the receipt of a lapse notice indicating the policy had clearly not performed as was originally projected, and causing the need for significant additional funds to be paid to sustain the policy.

Can such situations be avoided? Yes, by establishing a pro-active approach to policy management through an active review process and taking corrective actions as needed throughout the life of the policy.

After being selected the trustee, the work begins by completing an investment policy statement for the trust. The investment policy statement serves as the trustee's road map for managing the life insurance policy. This process establishes goals and objectives of the insurance policy and the minimum acceptable criteria for the issuing carrier. It also provides a general action plan for the trustee should the policy(s) not perform as expected.

Such a review process is required of all trustees by the Uniform Prudent Investor Act (UPIA), where passed. It is further reinforced for many institutional trustees by various regulatory bodies, such as the Office of the Comptroller of the Currency.

Uniform Prudent Investor Act Revisited

Adopted in 43 states, the UPIA updates trust investment law to reflect alterations that have occurred in investment practices. The UPIA makes **five** fundamental changes to the former criteria for prudent investing. While all of these criteria do not specifically apply to insurance policies, the authors believe it is in the fiduciary's best interest to attempt to meet these new criteria and document their compliance.

UPIA Changes[4]	Observations
1) The standard of prudence is applied to any investment as part of the total portfolio, rather than to individual investments.	This has been interpreted to include insurance of all types, not just those with an investment option as found in variable life plans. Each policy should be reviewed in the context of the overall estate plan objectives. Thus, not paying premiums, monitoring supplementary benefits, such as waivers of premium, or ignoring potential endowment or lapse issues could be construed as a violation of fiduciary responsibilities.
2) The tradeoff in all investing between risk and return is identified as a fiduciary's central consideration.	Maintaining a policy in good standing is not the only responsibility of the trustee. The decision to remediate, replace or life settle a policy can be equally important.
3) All categorical restrictions on types of investments have been abrogated, and the trustee can invest in any asset that achieves the risk/return objectives of the trust and meets the other requirements of prudent investing.	The definition of investments is not restricted to traditional stocks and bonds but includes all types of assets, including insurance.
4) Diversification of trust assets has been integrated into the definition of prudent investing.	In meeting the diversification requirement for life insurance, the trustee should consider the risk/return objectives and whether those can and should be met through one policy or several.
5) Trustees are no longer forbidden to delegate investment and management functions.	This may be the most important change that has occurred and assists the trustee in meeting these higher standards. Trustees are encouraged to engage experts to assist in fiduciary fulfillment if the trustee does not possess the skills and knowledge needed to properly manage the asset. Thus, trustees who do not have the insurance expertise or technology should look to specialized firms to assist them in meeting this requirement.

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Considering the purpose of the trust and the needs of the beneficiaries as required by the UPIA has increased the liability exposure for trustees. A trustee can no longer just maintain an insurance policy in trust as if they were a custodian. The UPIA requires it to be actively managed, and it is incumbent to develop a documented process for policy review. A good process is prudent and legally defensible, making it less likely for a lawsuit to be initiated.

In light of this, what should a trustee's review process include?

Since life insurance products have become complex, highly regulated financial instruments, the list of items to review each year is quite lengthy and requires significant knowledge. Life insurance is unique and issued to an individual based on certain actuarial information. The underwriting criteria can vary widely from one carrier to the next. If this is the case can we create a comparative index that would easily help a trustee to meet his or her fiduciary duties? The answer is unequivocally "no."

Comparative indices are unreliable and create new inherent risk.

Among the various providers of trust owned life insurance review services, there are a number of schools of thought on evaluating trust held life insurance policies. Some providers recommend the only review required under UPIA is an evaluation of whether or not the existing policy remains competitive to other plans available in the market today, and they attempt to compare the policy against an index or a universe of similar policies available. Such indexing, however, is unnecessary and in some instances could serve to increase the trustee's risk and liability, especially since many of the plans included in the universe may not be available to the trustee.

Many times such indices can be proven to be unreliable as it is virtually impossible to create an accurate index that considers all of the various pricing models and variables utilized by insurance carriers. These indices may require certain assumptions to be made, such as the assumption of term life insurance rates or a specific rate of return to be achieved. Both of these assumptions are subjective and easily changed, thus making the index a moving target.

In addition, such methodologies could actually increase the trustee's exposure to risk by erroneously indicating other plans exist in the market that could provide increased benefits or enhanced policy performance, when such a plan might not be available in the market due to adverse changes in the insured's health or because such a plan is not available in the insured's state of residence. Many of these so called indices are designed to assist an agent in promoting the replacement of an existing policy or the index is utilized prematurely and relies upon data that may be many years old as the vendor providing the index will oftentimes utilize the insured's underwriting risk class in effect when the existing policy was issued. Insurance carriers have greatly refined their underwriting standards and risk classes, and it is inappropriate to compare the preferred risk class of yester-year with that of today. The trustee should be acutely aware of the source of a purported index or the affiliation of the manufacturer.

A Prudent Review Process Defined

There are various schools of thought on how often a trust held life insurance policy should be reviewed. Regulations obligate the Trustee to review each trust annually. While some asset classes are reviewed less frequently, namely art and real estate due to appraisal expense, today's life insurance policies do include a number of moving parts that are sensitive to changes in interest crediting rates, insurance charges and dividend scales. The scope and breadth of the annual reviews may vary from year to year; however, with technology and the availability of data, trustees should migrate to annual reviews on all insurance policies.

The first step to reviewing a life insurance policy includes tools for the ongoing monitoring of the insurance carrier. Insurance carrier ratings and rankings are subject to change several times during the year. A multitude of events can occur that would result in the carrier presenting a higher than acceptable risk to the trustee. For example, during one month (November 2005), there were over 70 insurance carriers that had published rating changes.[5]

The next step is an administrative review of the trust and the policy. This should provide verification that all premiums paid have been properly credited to the policy within a reasonable timeframe and that no changes,

including policy loans, have been processed in error on the policy. In addition, the policy's ownership and beneficiary designations should be reviewed and corrections filed with the carrier. It has been estimated that 90% of all delays and issues encountered during the claim process are due to the improper policy titling. Finally, document, document, document. We previously commented on IRS Crummey notice challenge. The trustees must have a system in place to support the fiduciary obligation and protect themselves from litigation.

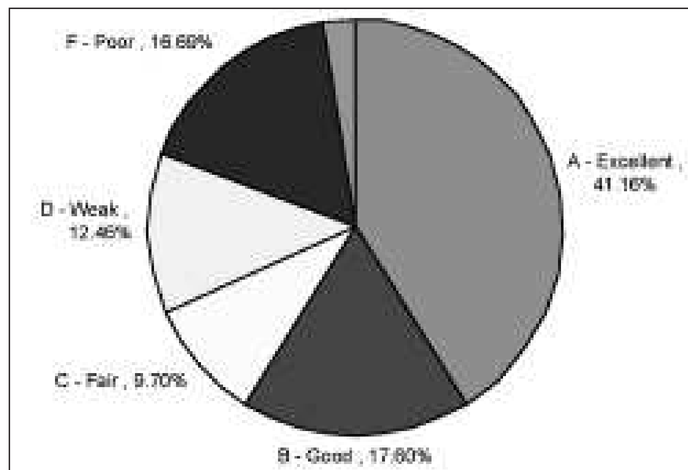
Finally, the policy's actual performance to date should be compared to its projected performance. To fully evaluate the policy, it is important to know how the policy was originally sold. Are premiums to be paid out of pocket for the life of the policy or for a limited time? Are there any contractual premium amount changes?

Additional questions to be answered during this step include:

- Has the interest crediting rate or dividend scales changed since the last review?
- Are the premiums currently being paid by the trust adequate to maintain the policy to the insured's projected life expectancy and to the contractual maturity age?
- What will the projected cash value be at maturity?
- Will the policy endow with a cash value equal to its face value, or will the trust be under funded should the insured(s) live to maturity?
- If the policy includes an extended maturity provision, is coverage projected to continue under that provision? If yes, what amount is projected to continue?
- Is the policy's no lapse guarantee still in effect?
- Do out of pocket premiums need to be resumed or increased, and if so for how long or in what amount?
- What is the relationship of the policy's current cash value to its death benefit?
- What is the ratio of the cumulative premiums paid to the death benefit? Has more been paid in than will ever be realized?
- Does the policy include any supplemental benefits, such as a waiver of premium rider that requires following up with the insured to verify whether a claim needs to be filed?
- How long has the policy been in force?
- Has the policy become obsolete?
- How old is the insured?
- What is the insured's current health?
- Have there been any changes in the Grantor's and insured's circumstances that require changes to be made to the policy and/or to the trust?
- And the list goes on.

During the study, a quantitative and qualitative review process was created to present an A – F rating distribution with "A" representing a low level of risk to the trustee and "F" representing the highest level of risk. The suitability of the existing policy for its intended purpose within the trust was not considered in the assignment of their risk rating. The risk rating does not evaluate the comparability of the existing policy to others available in the market today.

Figure 4



With respect to policy performance and premium funding adequacy, 29.15% of the policies reviewed were deemed to represent a high level of risk to the trustee in terms that they would not perform and would not provide the desired level of funding should the insured(s) live to the policy's maturity age. Such policies require a resumption of paying or significant increases in the amount of out of pocket premiums by the trust. 27.7% of the policies reviewed were projected to lapse prior to maturity, and 33.6% were projected to continue to provide coverage to maturity but not endow with a cash value equal to the amount of coverage at that time. 9.7% of the policies were not projected to provide coverage to projected life expectancy as determined by the 2001 Commissioner's Standard Ordinary Mortality Table.

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The study documents that the annual review process identifies a 2.81 variance between the information provided by the trustee and that provided by the carrier. The most common variances cited were differences in policy owner and beneficiary designations.

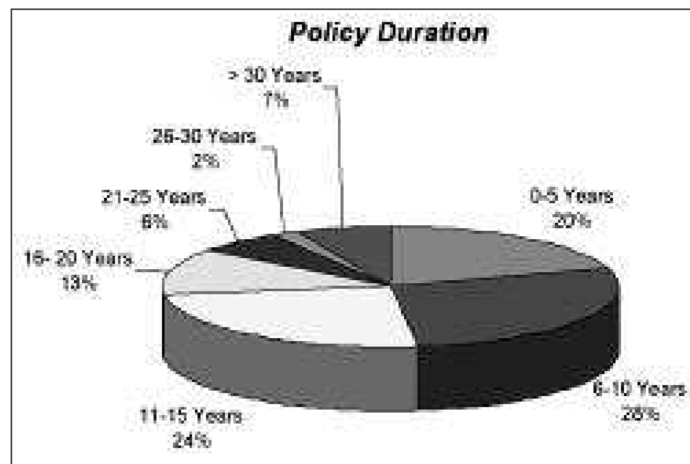
In addition, 4.91% of the insured were issued with a sub-standard or special risk rating, meaning the insurance rates charged were higher than the standard rates charged by the carrier for the respective risk class assigned to these insured. 4.77% of the insured were listed as using some form of tobacco. While these two statistics may not adequately represent the true tobacco usage and/or special risk ratings reflected in the universe of trust owned life insurance policies, they are shared here to illustrate the need for the trustee to remain in contact with the insured on these policies as it may be possible to improve these policies with new underwriting if the insured's health has improved or if they have discontinued using tobacco products.

Of the policies reviewed, the premiums on 1.8% are being paid by automatic premium loans and 6.7% have outstanding loan balances. Loans can present a special challenge for the trustee as:

- A loan can cripple a policy.
- Dividends and interest credited to policies with loans are in many instances lower than those credited to policies without loans.
- If the loan interest is allowed to compound (i.e., the interest is not paid each year but is added to the balance), the loan amount may eventually exceed the policy's cash value resulting in the policy lapsing, also known as a "surrender squeeze," and the loss of coverage.
- Loans decrease the policy benefit at the time of death or upon maturity as the outstanding loan balance plus accrued interest are deducted from the gross death benefit or cash value.

Policy duration or how long the policy has been in force, revealed 14.81% of the policies in the study have been in force for more than 20 years. Of these, 6.57% have been in force for over 30 years, and 1.15% have been in force for over 50 years. The oldest policy has been in force since 1932 and provides all of $1,030 in death benefits. While this policy and some of the 1.15% that have been in force for 50 plus years may be contractually paid up, it begs the question as to whether the policies should have been surrendered long ago and their cash values invested elsewhere to provide a greater return than the 1 - 3% dividends being credited to the policies.

Figure 5



The example of policies in force for a long duration further illustrates the fact that life insurance policies can and do become obsolete. Insurance carriers change their products and pricing while they continue to refine their product offerings and underwriting standards to reflect changes in the overall health of people, improvements in medical care and lifestyle, as well as changes in mortality rates.

Thus, if an insured remains in good health, even though they are older, it may be possible to secure another policy that provides an increased death benefit or enhanced cash values. One study of a large number of trust owned life insurance policies that is frequently cited in articles shows a 75% chance that with no increase in premium outlay, the death proceeds could be increased by 40% or more through the acquisition of a new policy. Likewise, the premiums could be reduced to provide the same amount of coverage.[6] *(Note: The decision to replace an existing policy should be made carefully, especially if the existing policy is a contractually paid up plan. A careful comparison of the existing policy to a new policy should be conducted, and the performance of the proposed policy under various scenarios should be examined.)*

In addition, policies that have been in force for a longer duration may have developed significant cash values. Such situations can provide the trustee with opportunities to determine if the value of the trust can be further enhanced by seeking out newer policies that are

more efficient in their use of premiums, include secondary guarantees and can perhaps provide more life insurance for the same premium or the same amount of coverage for a lower premium. Consideration should always be given to whether a policy with significant cash value should be leveraged to provide additional coverage through a new plan or if there are opportunities for achieving greater returns by surrendering the existing policy and investing the cash surrender value elsewhere.

Policy Remediation

A trustee's work does not end after the policy review but begins a process to address multiple issues. In the previous section, we made reference to a number of these issues and some of the opportunities and challenges they can present to the trustee.

Two facts need to be understood:

- **Remediation of a policy cannot be limited to only those policies that are not performing well, and**
- **Remediation does not always mean replacement of the existing policy.**

Various alternatives available to the trustee in remediating a policy are:

- Do nothing – leave the policy as is and let the chips fall where they may. This is a passive approach and will result in increasing the trustee's liability, especially if they went through the initial policy review.
- Explore restructuring the existing policy with the current carrier. Replacement should never be the first course of action to restore policy performance, as it is an expensive proposition when factoring surrender charges and the underwriting process. In addition, replacement subjects the new policy to a new suicide exclusion and incontestability provisions. Working with the existing carrier may allow for performance correction through an internal replacement program and be willing to waive the suicide exclusion and incontestability provisions.
- Explore replacement by obtaining illustrations for alternative plans of insurance.
- Determine whether the existing policy can be sold through a life settlement.

It is during the remediation process that a comparative profile becomes invaluable. However, such a profile should be based on the insured's current health and lifestyle and should be representative of plans and rates that are readily available for the insured and the trust.

Using the A – F rating scale previously referenced, policies receiving an "A" rating were often performing equal to or better than projected and typically have significant cash values. This can present an opportunity for the trustee to be a "hero" since it may be possible to leverage these policies to provide increased coverage or the same coverage at a lower cost.

CONCLUSION

The aforementioned insights and trends concerning the use of Irrevocable Life Insurance Trust in the estate planning process are provided to demonstrate the complexity of the review process and the requisite specialized skills and knowledge needed to perform the reviews. It is not intended to deter the use of Irrevocable Life Insurance Trusts. We believe using Irrevocable Life Insurance Trusts remains an excellent planning tool and can provide significant tax savings and liquidity needs to Grantors and their estates.

Addressing the incumbent risk and perils of managing a portfolio of Irrevocable Life Insurance Trusts can provide a competitive service advantage as the trustee will experience the opportunity to develop a dialogue and communicate with the Grantor and the trust's beneficiaries. Annual reviews and a management process not only mitigate trustee risks, but they can also assure their Grantors and clients that the policies entrusted to them are being actively and professionally reviewed. This process can lead to increased business for the trustee and access to managing the Grantor's other assets that are perhaps with another institution or under the care of a non-professional trustee. Articulating this risk and delivering a professional analysis of the insurance product can provide a profit center for institutional trustees and justify significantly higher trustee fees.

And lastly, the review process can provide the trustee with a tool to demonstrate to the trust's beneficiaries, the trustee's commitment to actively managing accounts. This in turn can lead to the opportunity for the trustee to maintain the trust's assets under management upon the death of the Insured or to gain access to managing the assets held by the beneficiaries.

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This article discusses results from a study conducted over a three-year period (2003-2005) on a universe of 50 institutional trustees with over 6,000 policy reviews. The study is titled ILIT Analysis 2005 (or the study). Information included is proprietary. Investment Scorecard, Inc. is a private company delivering performance and wealth analytics reporting and risk management to over 675 financial institutions, attorney firms and accounting firms.

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Footnotes:
1 AALU Bulletin 05-88 IRS Challenges "Crummey Annual Exclusion Respecting Irrevocable Life Insurance Trust. September 2, 2005.
2. 2005 Life Insurer's Fact Book, ACLI, pp. 81-82.
3 Centenarians in the United States, Issued July 1999, p 2.
4 National Conference of Commissioners on Uniform State Law. Prefactory Note dated 2/14/1995.
5 November 2005 VitalSigns
6 Don Gleichman, "Exposing the Trust-Owned Life Insurance (TOLI) Time Bomb," www.fpswealth.com

2007 Board of Directors Nominations

The FIRMA Board recently authorized the addition of two new Director positions. One of those positions will be added to the ballot for the 2007 FIRMA Annual Board Election. The FIRMA Board will determine by late 2007 when to add the other position.

The Nominating Committee is currently seeking nominations for the FIRMA Board of Directors election to be held prior to the 21st Annual Training Conference in Phoenix, AZ in April 2007. As a result of the additional position, five (5) Board positions will be open in 2007: four full-term, three-year positions will be open, and one, two-year term will be open. The three-year terms will expire at the time of the annual membership meeting at the National Training Conference in 2010. The two-year term will expire at the annual membership meeting at the National Training Conference in 2009.

The special two-year term is the balance of the vacant term created when a Director withdrew from the election in 2006 before the annual meeting, but after ballots had been distributed. The Board filled that vacancy by appointment for one year, and that incumbent Director is eligible to run in 2007.

All of these positions will be filled by vote of the members in good standing. A rule change in 2006 eliminates floor votes at the annual membership meetings except in the event of a tie. Those elected will be announced at the conference in Phoenix. The determination of "good standing" is being measured as dues fully paid at 12/31/2006. New members joining FIRMA in 2007 whose dues for the current year are paid by March 31, 2007, will also be eligible to vote in this election. Ballot forms are targeted to go out by February 2007.

Candidates must meet the following requirements to serve on the Board of Directors:

- Candidate must be a certified or sustaining member of FIRMA in good standing;
- Candidate must be actively engaged in fiduciary and investment risk management at the time of their election;
- Candidate must have his/her employer's written support for the three year term;
- Candidate must be willing and able to devote the time needed to accomplish the commitments as outlined in the "Board of Directors' Duties and Responsibilities" on the FIRMA website.

Nominations should include the following information:

- Brief history (please limit to 1 page) of the candidate's professional background, including current position and certifications;
- Attestation by the candidate that time and financial commitments exist to allow full functioning on the board;
- Brief statement from the candidate, not to exceed 100 words, stating why he/she should be elected to the Board. This information will be published verbatim, if possible. The Nominating Committee reserves the right to abridge or edit the statement for dissemination to the membership.

Please mail or e-mail all nominations to Amy Caple at the FIRMA office no later than **January 31, 2007**.

Any questions may be directed to:
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