QWarterly Chronicles

Spring 2009

What's Inside:

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Life Settlements - What Are They And How Can They Be Used?

The Wall Street Journal recently reported on the growing settlement of life insurance policies by aging Americans as a way for the policy holder and investors to weather these difficult economic times. It seems as though no one has been spared in the recent market downturn. The issue for older Americans is how do they recover their losses while also trying to slow down and enjoy the fruits of their life-long labors? There are no easy answers, though for the portion of the population that has life insurance as part of their portfolio there is a potential way that they may be able to monetize that investment for present use as opposed to their family members receiving a death pay out.

The "Life Settlement" industry may be willing to purchase the existing policies of older Americans who can no longer afford the premium payments, depending on the type of policy and the health of the insured. This transaction allows the insured to receive an immediate cash payment, usually well in excess of the "surrender value" of the policy. There are potential tax issues related to the "settlement" of a life insurance policy that you must keep in mind when considering this option. The company that purchases the policy is usually using this "investment" as a way to diversify their portfolios, though there are some companies that are arranging these "settlements" and allowing small accredited investors to take part in this diversification tool.

If you, or someone you know, own a life insurance policy that is either too expensive, the need for the death benefit is gone, or you just want to learn more about this option, please feel free to contact us so that we may assist you in exploring this option to see if and how it might fit your needs.

Danniel J. Wexler

Forgive, But Don't Forget

We all know the two inevitable facts of life...death and taxes. In California, like death and taxes, a judgment lien can also be forever. A judgment lien is a court ordered lien that is placed against property when the owner fails to pay a debt. The judgment lien on the property must be paid before the property can be sold.

While forgiveness of unpaid debts is a normal function of any downward business cycle, creditors need to determine whether there is value in reducing the debt to a judgment. That decision must be weighed in terms of what the economic future will bring for the debtor. Just because someone has nothing now, does not mean they never will own anything of value.

Currently, individuals and businesses are all struggling with this present economic down turn. Thankfully, as history has taught us, this trend that will not last forever. During the early 1990s recession, many clients I worked with reduced their unpaid debts to judgments, secured those judgments in the counties where the debtors owned property and then patiently waited for the go go, refi 2000's. Going to work in 2000 to 2005 was a blast. I would receive calls and faxes from title companies on debts almost 10 years old, asking for a pay off demand. That pay off demand included interest on the unpaid sum at a rate of 10%, plus collection costs and the checks were sent directly from escrow.

Chasing unpaid monies is an exercise in patience, a little bit of cost, and vigilance on the part of your counsel. At this blip in the business cycle, people are not fighting nor resisting suits to reduce unpaid debts to a judgment. In some cases, after suit is filed, the debtor agrees to stipulate or agree to the judgment, usually under the belief that they will likely never have any meaningful assets to collect.

See "Forgive" pg.3

Office Hours:
Our normal office hours are 8:30 a.m. to 5:30 p.m. Monday through Friday, Saturday by appointment only.

Closures:
Monday, May 25
Memorial Day

Friday, July 3
Independence Day Weekend

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Wrinkled Was Not One of the Things I Wanted to Be When I Grew up.

"Forgive" cont.

A judgment when entered in California, earns 10 % per annum, lasts for 10 years, and is renewable prior to expiration, in perpetuity every 10 years. This results in the doubling of the amount owed on the debt every 10 years. With a little patience, one can eventually recover the sums owed in the future. So reducing the sums owed to a judgment and either recording a lien, or monitoring the debtor's assets for future real estate purchases is productive. Of course apart from judgment liens, there are other more active means to pursue collection of a judgment, but for the money and right debtor, a judgment lien is the most economical means to obtain eventual payment.

Julia A. Mouser

We recently updated our database to make sure that we were current on your address information. It was a huge job and not entirely pleasant, tedious to say the least. After awhile, those of us making the calls became brain dead and tongue tied and some very incoherent things came out of our mouths when we were speaking with you or leaving messages on your answering machines. Most everyone was cheerful and pleasant and very forthcoming with information. And we had a lot of funny conversations.

We learned that lots of folks don't have their hearing aids turned on. It took awhile for us to explain to one gentleman that we were *not* the Attorney General calling. One person wanted to know whose kitty we were looking for and another wanted to know whose mother we were seeking and if it was his mother, she would be hard to find because she passed some 50 years ago. All enjoyed a good laugh when they finally got the purpose for our call.

One delightful lady said (with a smile in her voice) that I must be calling to make sure that she was still alive! I was taken aback and after stumbling over my words, was able to verify the information I needed. After I thanked her, I said good-bye and told her I was very glad that she was still alive and we both hung up the phone laughing.

The stories go on an on. A big Thanks to all of you for cooperating with the information update and a bigger THANKS to all of you who made it fun!

SPOTLIGHT ON

YOU!!!!

**Everyone has a photographic memory.
Some just don't have film.**

Keep Your Hands on the Wheel!

Since July 1, 2008, California drivers have been required to use a hands-free device while talking on a cell phone and driving. Yet, recent surveys by the American Automobile Association demonstrate this law did not keep 20% of drivers from sending and receiving text messages while they were driving.

To address this safety issue, California Vehicle Code section 12810.3 was amended as of January 1, 2009 to prohibit text-based communications while driving. Specifically, a person may not drive a motor vehicle "while using an electronic wireless communications device to write, send, or read a text-based communication." A violation of this law is punishable by a fine of $20 for the first offense and $50 for each subsequent offense.

The prohibition against text messaging while driving does not apply to a person driving a motor truck or truck tractor, an agricultural vehicle, tow truck, or a commercial vehicle, when using a 2-way digital radio device that utilizes a wireless telephone that operates by depressing a push-to-talk feature. This new law also includes an exception when a person uses a cell phone to contact a law enforcement agency, or other public safety entity, for emergency purposes.

This change in the law is significant since more employees than ever drive as part of their job responsibilities. Therefore, employers could be potentially liable to pay for a texting or e-mailing ticket, especially if the employee was responding to a message from the boss or co-workers. In addition, there has been a significant increase in lawsuits being filed against employers because of property damage or bodily injuries being caused by employees while driving and using a cell phone.

In order to minimize liability issues arising from employees using cell phones on the road while in the course and scope of their employment, or while taking work-related calls or messages, employers should consider implementing certain written policies. First, employers should update their existing policies to make certain their employees are aware of this change in the law. Second, employers should implement a policy that requires all employees to use "hands-free" devices while driving on company business. Alternatively, employers could implement a policy prohibiting employees from using cell phones while driving on company business, or directing that employees must pull off the road before using cell phones. Employers should put these policies in place to limit potential liability against the company in the event an employee gets into an accident while driving in violation of this new law.

James F. Henshall

Junk is something you keep for years and throw away three weeks before you need it.

Non-Qualfied Benefits for Key Employees

Owners of private companies with thriving businesses generally owe a significant portion of their success to employees who help manage or supervise the business, generate or maintain client relationships, or develop new viable business relationships or ideas. Retention of these key employees is vital for the continued success of the business but sometimes is difficult when competitors offer more in the way of compensation and fringe benefits. Even so, the importance of key employees' contributions to the business, if openly acknowledged and appreciated by the business owner, provides key employees with a sense of worth, accomplishment and job security, that most good employees hate to give up, even if more compensation is involved with a new employer. As a result, businesses can often retain key employees by providing simple benefits that reward the employees for their loyalty, continued employment and ongoing contributions to the future growth and success of the company. With careful planning, such benefits can also benefit the employer by providing a reserve fund for assistance in replacing the key employees in the event of employees' deaths, retirements or other departures.

Nonqualified benefit plans allow businesses to design flexible, affordable employee plans to satisfy the unique needs or retirement savings goals of their key employees. Combined with term and whole life insurance policies, these plans can provide life insurance, disability insurance, health insurance, additional compensation bonuses or retirement benefits to key employees. In *bonus plans*, the employees receive additional compensation from the company for the express purpose of acquiring personal benefits such as personal life insurance, disability insurance, health insurance, or annuity contracts. With *death benefit only plans,* the company agrees to provide benefits to employees' designated beneficiaries only in the event of the employees' deaths. *Disability wage continuation plans* entail the employees' purchases and ownerships of individual disability insurance policies with the company and employees agreeing on who will make premium payments. *Split dollar plans* involve the company's purchase of or a company's loan to employees for the purchase of cash value whole life insurance policies on the employees' lives, with the case value and death benefits of the policies usually split between the company and the employees.

In all the above arrangements or combinations thereof, the employees must pay tax on the value of the economic benefits the employees receive from the company's payment of the insurance premiums or the additional compensation the company pays the employees to purchase the policies or make payments on the premiums. To ensure the employees' continued employment relationship, the company can structure the plan so that the employees' right to receive the

see "Benefits" pg. 6

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About Quinlivan Wexler LLP

Patrick "Rick" C. Quinlivan and **Danniel "Danny" J. Wexler** bring almost 55 years of combined legal experience to Quinlivan Wexler LLP. With careful selection and addition of talented professionals to the firm, QW has grown over the years to the point where we now boast of many specialty areas to suit the needs of our clients.

Located near South Coast Plaza, QW engages in a general civil practice that includes civil litigation, business and corporate law, estate planning, probate, conservatorships and elder law.

The breadth of our litigation experience assures our clients' representation by lawyers who fully understand the techniques, not only of trial advocacy, but of negotiations and persuasion as well. So, while being very meticulous about doing our homework, planning ahead, and writing precise contracts to prevent litigation, we are also fully prepared to litigate when it is in the best interests of our clients.

"Benefits"

benefit or additional compensation vests or matures at some future time (i.e., after five years of continuous employment, upon retirement, etc.) and in that manner defer the employees' tax payments on such benefit or compensation. However, the employer's tax deduction for providing the benefit or additional compensation to the employees would also be correspondingly deferred.

Due to the legal ramifications involved in structuring an appropriate plan and the serious tax consequences that would result in failing to do so, a company or business owner should consult with an attorney and a certified public accountant before implementing any employee benefit package, offering such benefits to key employees or requiring the purchase of any insurance policies for such purpose. If you would like to learn more about the types of benefits you can provide your key employees and how they can benefit and impact your business, please call us to schedule a private consultation.

Norma Iris Garcia