CLEARPOINT ADVISORS, LLC

Providing Clarity and Confidence in Insurance, Investment and Benefit Solutions

Volume 10, Issue 4

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News in Brief: Market Update

Special points of interest:

- **Factors impacting performance**
- **Impact on trust results trigger material exposure**

Insurance Performance Assets (Trustee Liability—Insurance Asset Audits)

Clients rely on many individuals and organizations to help execute long-term plans for themselves and their heirs. Nowhere is the reliance as critical as the relationship between a client and a trustee.

Because a client's trust may extend for decades beyond his/her life and is frequently used to provide for heirs and descendants, a trustee bears what is commonly referred to as a fiduciary liability. The trustee is required to act, at all times, as the client's alter ego and the protector of the beneficiary's interests. Every state has laws intended to assure that trustees live up to this fiduciary liability.

Where life insurance is owned by a trust, special skills are required.

Trustees need to be able to navigate the many complexities and areas of exposure inherent in trust-owned policies. They also require a certain expertise when reviewing policies.

Life Insurance Complexities Faced by Trustee

Although life insurance is sold on the basis of an illustration, few trustees understand that the visual is little more than a "snapshot" in time.

Many policies sold in the 1990s and earlier were sold based on high crediting rates. It was not unusual to see variable life policies that assumed gross returns of 10% to 12%. Few policies have seen these levels of return sustained over time. Fixed and whole life policies were based on crediting rates and dividends that, as interest rates dropped in recent years, could not be sustained.

A trust-owned policy may also be at risk if it is inadequately funded. This is often done to keep the costs of gifts to a trust within a client's annual gifting capacity or to keep the policy's purchase price palatable to the client.

Another concern is the step-type of policy design common in the 1990s. These policies allowed for the purchase of a life insurance policy at a lower than normal rate with the understanding that at some point, often the 10th or 20th anniversary, the premium cost would jump to a higher than normal level.

Many of these policies are now approaching critical anniversaries and because of underperformance, owners will see higher than expected costs. This frequently occurs when a client's gifting capacity is halved due to a spouse's death.

Risks Trustees Face

Failure to review a policy will put a trustee at risk. Virtually every state has adopted the Uniform Prudent Investors Act (UPIA). The UPIA was written broadly, but the law affects all asset classes, including life insurance. Of the 50 states, only Pennsylvania has carved out an exception for life insurance.

Result: A trustee can no longer simply buy and hold a life insurance policy as a long-term asset. Failure to monitor trust assets including life insurance, can put a trustee at risk of a lawsuit by the beneficiaries.

- **Recalibrate insurance investments to meet stated trust goal**

Insurance Performance Assets (Trustee Liability—Insurance Asset Audits) (Cont.)

Steps a Trustee Can Take

The first approach should be for a trustee to order periodic in-force ledgers from the insurance carrier. Depending on the results a trustee may need to weigh some options. Trustees may find that the evolving nature of the life insurance marketplace affords them opportunities that did not exist even a few years ago.

How often is a policy review needed? There is no definitive answer, but every few years might be about right. Such reviews can help protect a trustee from liability, assure that a trust's intent is carried and, not least, solidify the advisor-client relationship.

How Does the Audit Process Work

1. A performance review of the existing policy is conducted.
2. A medical risk assessment of the policy and the client are reviewed and a determination is made as to whether or not there is a potential for improvement.
3. A review of the current product and planning tactics are used to determine if they are in alignment with the goals and objectives. Is there a new product and/or planning strategy available that enables us to achieve the client's goals more efficiently?
4. An evaluation of the current insurance company's financial stability and an objective review of the carrier's financials are provided.
5. The combination of audit elements is then used to develop a recommendation to either assure a purchase and maintain the current policy, or move to a more optimal solution.

FACTS

Of 297 bankers, attorneys, and accountants surveyed:

83.5% have no guidelines and procedures for handling trust-owned life insurance.*

95.3% have no policy statements on how to handle life insurance investments.

Let us be the insurance audit resource for you.

Contact Us:

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Source: The Hows & Whys of Reviewing Trust Owned Life Insurance, Mark Teitelbaum; The Life Insurance Audit, American Insurance Network, Inc.