



**COMMONWEALTH OF KENTUCKY
OFFICE OF INSURANCE
FRANKFORT, KENTUCKY**

**ADVISORY OPINION
2013-02**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL LIFE INSURANCE COMPANIES AUTHORIZED TO TRANSACT
BUSINESS IN THE COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: INTERPRETATION OF KRS 304.15-717(1)(p)(3) REGARDING LIFE
SETTLEMENTS

DATE: MARCH 1, 2013

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A question has arisen regarding the interpretation of KRS 304.15-717, which, among other things, enumerates the circumstances under which life settlement transactions are unlawful. The question stems from an apparent conflict between KRS 304.15-717(1)(p)(3) and KRS 304.14-250(1), which addresses the assignability of insurance contracts.

KRS 304.14-250(1) states the general rule that “a policy may be assignable or not assignable, as provided by its terms.” KRS 304.15-717(1)(p)(3) states that it is unlawful for an

insurer to “engage in any transaction, act, practice, or course of business, or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.” KRS 304.14-250(1) allows the issue of assignability to be negotiated in the contract, while KRS 304.15-717(1)(p)(3) prohibits a policy from being non-assignable; thus the apparent conflict.

In Ledford v. Faulkner, 661 S.W.2d 475 (Ky. 1983), the Kentucky Supreme Court stated that, “where there is an apparent conflict between statutes or sections thereof, it is the duty of the court to try to harmonize the interpretation of the law so as to give effect to both sections or statutes if possible.” The Supreme Court elaborated in Brooks v. Commonwealth of Kentucky, 217 S.W.3d 219 (Ky. 2007), stating that, “when presented with a statutory conflict whereby one interpretation would render a portion of a statute meaningless and the other would harmonize and give effect to both provisions, rules of statutory construction require the interpretation that harmonizes the statutes and prevents a part of a statute from becoming meaningless or ineffectual.” Therefore, if possible, the Department must interpret these statutes in such a way as to give legal significance and meaning to both.

In Withers v. University of Kentucky, 939 S.W.2d 340 (Ky. 1997), the Supreme Court stated that when two statutes which concern the same or similar subject matter conflict, Kentucky adheres to the rule of statutory construction that the more specific statute controls over the more general statute. Further, KRS 304.1-130 states that “provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.”

KRS 304.14-250(1) is contained in Subtitle 14 of the Kentucky Insurance Code, which is titled “The Insurance Contract.” Subtitle 14 applies to virtually all insurance contracts with a few exceptions noted in KRS 304.14-010. KRS 304.15-717(1)(p)(3) is located in Subtitle 15, which is titled “Life Insurance and Annuity Contracts” and further falls under the subheading “Life Settlements.” This subheading contains the provisions governing the business of life settlements. Pursuant to the rule articulated in Withers and KRS 304.1-130, in the event of a conflict, the specific statute – KRS 304.15-717(1)(p)(3) – controls over the general statute – KRS 304.14-250(1).

It is the Department’s position that, pursuant to KRS 304.14-250(1), an insurer may prevent the assignment of a policy by stating in the policy that such policy is not assignable. However, if the policy is a life insurance policy and the owner wants to life settle such policy (which requires an assignment), the clause in the policy which prevents assignments will not be enforceable. If an insurer attempts to “restrict, limit, or impair in any way” the lawful assignment of a policy regarding life settlements, it would be violating KRS 304.15-717(1)(p)(3).

Based on the above, the Department interprets KRS 304.14-250(1) to allow the insurer to place language in any policy that states such policy may be assignable or not assignable. In addition, the Department interprets KRS 304.15-717(1)(p)(3) to indicate that an insurer cannot

impede an assignment for life settlement purposes, even if the policy specifically states that it is not assignable.

Please contact the Department's Health and Life Division at (502) 564-6088 with questions about the Advisory Opinion.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 1st day of March, 2013