



Estate Planning

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Is Your E&O at Risk?



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As any intelligent businessperson knows, risk is something we should all manage on a daily basis. Risk threatens our abilities, our incomes, and our reputations. Often, it lurks in obvious places, such as a slippery sidewalk or an illegal act. However, risk also gathers strength in places we do not intuitively consider. Are all your client discussions documented accurately and thoroughly?

Of course, we are willing to assume some risks; we constantly weigh the risk versus the reward on decisions. This becomes more complicated when the risks and

rewards are difficult to quantify, but complexity is no excuse for a failure to perform our fiduciary responsibilities, and it is certainly no defense for a legal liability claim.

These threats are precisely why we purchase professional liability insurance, also known as errors and omissions (E&O) insurance. This type of insurance provides basic protection against legal obligations and tort claims placed on us resulting from mistakes in our professional duties.

Professional liability insurance can help secure us when we make mistakes. Unfortunately, we all face hazards every day that are difficult to forecast. This is precisely why we need to be prudent in managing the risks we can anticipate. Regrettably, if you look carefully, these risks are everywhere.

"In all my professional relationships, I pledge myself to the following rule of ethical conduct: I shall, in light of all conditions surrounding those I serve, which I shall make every conscientious effort to ascertain and understand, render that service which in the same circumstances, I would apply to myself." This professional pledge, signed by all Chartered Life Underwriters (CLUs), is an example of how broad our responsibility is. A CLU pledges to place his or her clients' interests above all else when helping them establish financial goals and accomplish financial strategies. A CLU also pledges to follow the latest industry develop-

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In today's environment, where litigious clients are seeking new remedies for the economic reduction of an estate or portfolio, is it far-fetched to see them blaming their financial professionals?

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ments and legislative challenges to assist clients in charting a steady course toward their financial goals.

One relatively new area currently demanding attention is life settlements. A life settlement is the exchange of a senior's life insurance policy for a lump sum cash settlement. This transaction is often used in lieu of lapsing or surrendering an unwanted policy and produces an average of triple the surrender value. Unfortunately, some financial professionals are failing to utilize life settlements as a financial and estate planning tool, therefore creating a potential liability.

In today's environment, where litigious clients are seeking new remedies for the economic reduction of an estate or portfolio, is it far-fetched to see them blaming their financial professionals? In order to protect ourselves, we must plan accordingly and explore every option for our clients.

Lessons Learned about Reducing Risk

Situation One

A life insurance agent wrote a joint life policy on his client and spouse. After the client died, the spouse failed to notify

the carrier of her intent to continue the coverage even after the agent advised her to do so. Because of her own health condition, she was unable to secure replacement coverage.

Outcome: The surviving spouse then requested and received a letter from the carrier explaining how she could have continued the coverage. Unfortunately, the agent had no documentation of the discussions about the eligibility to continue coverage. The dispute went to arbitration and the decision went in favor of the spouse.

Lesson: Documentation is critical to preserving and presenting defenses to any claim. Without such documentation, the agent will often lose.

Situation Two

Nine years ago, a client with a sizeable estate purchased a \$10 million life insurance policy to cover estate taxes. Due to changes in the estate, the coverage is no longer needed and the premiums are too costly to maintain.

Outcome: The estate planner was not aware of the life settlement option and advised the client to lapse the policy. Two months later, the client read about life settlements in a magazine. He approached the estate planner demanding to know why this option was not made available to him. This omission caused the client to file a lawsuit and take his business to another planner.

Lesson: Whenever a life insurance policy is no longer needed, a life settlement broker should be contacted to explore the options.

Situation Three

An agent presented a variable life

The Dynamics of Trusts in Response to Legislation

...a new VTC for Society members

Wednesday, November 17 (1:00-4:00 p.m. ET)

Thursday, November 18 (9:00 a.m.-12:00 p.m. ET)

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product to his client, advising that the policy would be “paid up” at a certain year. The client purchased the product. However, due to falling interest rates, the policy required additional premiums after the expected date his premiums would disappear. He sued the agent for the misrepresentation.

Outcome: During discovery, it became apparent that the agent had failed to disclose to the client that the premiums might not vanish if interest rates changed. Ultimately the case was settled, as the agent’s projections were overly optimistic.

Lesson: When researching, presenting, and selling any products, make sure to use information provided by the carrier about the anticipated performance. Fur-

thermore, fully understand the product yourself. Remember, as a financial professional it is your duty to warn clients of the product’s risks. ■

Noam S. Weiss is co-CEO of the Settlement Benefits Association, a full-service life settlement brokerage in Tampa, Fla. Through a network of licensed funding groups, the company helps policyholders and their trusted agents to understand and maximize the value of life insurance products. Settlement Benefits Association has received the approval of the National Ethics Bureau, an organization of approved financial advisers who have maintained an exemplary record of business ethics. You can contact Noam at 888-287-1437 or visit www.settlementbenefits.com.

Professional Interest Sections Enhance Your Expertise

In today’s world, clients are demanding more expertise of their financial planners than ever before. Why not benefit from the skills and knowledge of your peers and other industry experts as a supplement to your own solid base? You can do this by joining Professional Interest Sections.

Membership in one section is free as part of your Society membership benefits. Additional Sections can be joined for a fee of \$30 each. The benefits of each section include a quarterly 8-page newsletter, e-mail discussion groups, national online directory, research capability, and more.

New this year: Society members now have the option of subscribing to our Electronic Sections Package for \$75 per year. This option provides access to the benefits of all nine sections electronically.

Have a question? Contact our Customer Service area at 800-392-6900 or e-mail custserv@financialpro.org. You can also log onto the Society’s Web site at www.financialpro.org.



ARIZONA INSTITUTE

Multiply Your Potential and Make 2005 a Boom Year

If you’re interested in exploring the latest planning challenges and opportunities, the Arizona Institute is a perfect destination. The 2005 program takes place on January 16-21 at the Westward Look Resort in Tucson.

This intimate, annual conference (limited to 115 attendees) encourages one-to-one contact with speakers and practitioners via frequent Q & A sessions, scheduled receptions, and informal group debates.

Sessions of interest to estate planners include:

- *Retrospective Relevancy, Prospective Problems, and Solutions: An Advanced Estate Planning Update*
- *What’s New and What to Watch Out for in Planning Charitable Transfers*
- *Transferring Your Business without Losing Your Shirt and Your Family*

You’ll also gain the latest insights on:

- Executive compensation plans
- Qualified and nonqualified retirement plans
- Benchmarking your practice
- Selling fiduciary services
- Long-term care insurance

You won’t find a program with more value for your money than the Institute. Go to www.financialpro.org/program/azinstitute/azi_info.cfm for more details on speakers, topics, and the resort or call Customer Service at 800-392-6900.

Member cost

Early bird (prior to 12/1/04)	\$1,299
Regular	\$1,479
Mentor	\$979

Prices include comprehensive workbook, daily breakfast and lunch, four receptions, and two dinners. ■