# The Financial and Estate Planning Council of Metropolitan Detroit, Inc.

October 2009

30600 Northwestern Hwy., Suite 208, Farmington Hills, MI 48334 • (248) 538-7654 • FAX: (248) 538-7656

## President's Message

Greetings!

Fall is off to a very busy start! In addition to back-to-school activities, watching our favorite sports teams and the fall lawn clean up ritual, we are reviewing pending legislation – health care, estate tax, IRA charitable rollover and otherwise – that will potentially affect both our clients and us. On the Michigan front, we have the new Michigan Trust Code, the Uniform Prudent Management of Institutional Funds Act and the Michigan Uniform Securities Act that have all recently been enacted. Your FEPCMD Board is committed to keeping our members informed and up-to-date on issues like these. A special thanks goes to Eric Carver for an excellent and informative Tax Update and to Julius Giarmarco for his insightful presentation on "Intergenerational (Discount) Split – Dollar" at our September meeting. Thanks also to our sponsors, Stout Risius Ross and Fifth Third Private Bank.

In addition to great programs at appealing venues, networking with highly knowledgeable and capable professionals is clearly one of the biggest benefits of membership in the Financial and Estate Planning Council of Metropolitan Detroit. In fact, I overheard Past President, Terry Altman, remark that he was "out of business cards" after finding so many new colleagues at our last meeting. Now that's a great problem to have! I really enjoyed introducing and welcoming several new members that evening. Our November 17th meeting at the Grosse Pointe Yacht Club features Tara C. Thompson of Bernstein Global Wealth Management presenting "Transferring Liquid Assets in Any Rate or Market Environment: The Long and the Short of GRATs." I hope you will invite a friend or colleague who is not an FEPCMD member to join you for this highly informative program. Visit our website at http://www.MetroDetroitFEPC.org to register or for more information.

Thanks to those of you who expressed interest in committees, newsletter contributions and meeting sponsorship. There are still opportunities for this year, and we are beginning to plan for the 2010 -2011 schedule; so please let me know if you are interested. It's the support and involvement of you, our membership, that makes this such an outstanding organization!

Best regards,

*Steve Moore*

### WELCOME TO OUR NEW MEMBERS

**Margaret P. Amsden**
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**William C. Lentine**
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Sponsors: Curtis J. DeRoo and Patrick J. McNamara

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**Jesse Ultz**
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# Life Settlements: The Marketplace

*Frank A. Spezzano, CLU, ChFC, MSFS*

Life settlements are a regularly employed technique and transaction in the business and estate planning process. Life settlements originally developed from viatical transactions during the 1980's, and became popular as a means to provide financial assistance to terminally ill individuals.

During that time, those who had contracted the HIV virus in particular were expected to live no longer than two years. They were approached by and also sought out individuals and groups representing blocks of money who could purchase their life policies. Settlements in which the life expectancy of the insured was two years or less became known as viatical settlements. Legislation was passed that gives the proceeds of a viatical settlement the same tax treatment as proceeds from non-business related insured death benefits. Specifically, these proceeds are treated as any other income tax free death benefit from an insurance policy.

The states also took notice. Varying by state of residence, transactions are deemed to be viatical settlements depending on the life expectancy of the individual. Some states use less than a two year life expectancy as a benchmark, some three years. States typically require an insured to be terminally ill or suffering from a catastrophic illness. If these characteristics are not present – abbreviated life expectancy and extreme illness – then the transaction is considered a life settlement.

Like viaticals, life settlements are essentially a very simple transaction. They are a sale of an existing life insurance policy to a third party for a negotiated sum of money – greater than the policy's cash value and less than the policy's death benefit. The simplicity stops there, however. Life settlements are sophisticated transactions that require expertise to be completed in an advantageous manner. The key components of these transactions are the following:

- Seller
- Insured
- Insurance carrier
- Policy type
- Medical files
- Life expectancy
- Broker intermediary
- Buyer
- Pricing

**The Seller:**

Unlike viaticals, policies owned by entities or persons other than the individual insured are suitable for settlement. Policy owners such as trusts, corporate and other business entities and other individuals who own policies on another's life may enter into a settlement transaction.

**The Insured:**

At the current time, individual lives most likely to receive an attractive monetary offer are those older than age 70 to 75. Buyers seek individuals with short life expectancies, preferably seven years or less, and individuals whose life expectancies are anticipated to be short due to their past medical history. Old and sick is more attractive than young and spry.

**The Insurance Carrier:**

Buyers typically look to fund purchases only when a top quality carrier is involved, "A" rated or better with high Comdex ratings. Frequently, buyers will borrow the cash used to purchase policies. The credit worthiness of the insurance carrier in subsequent years impacts how the buyer can carry the transaction on its books as an asset. Quality carriers help generate higher offers.

**Policy Type and Minimum Death Benefits:**

The policy type has to be of a permanent nature. Therefore, term coverage is typically not considered for a transaction unless it can be easily converted by the buyer. Usually term policies are converted to permanent coverage before or simultaneous with the transaction. Whole life and Universal life policies, whether portfolio or variable, are usable, although universal life policies are preferred due to their flexible premium payment capabilities. Second to die policies are typically not terribly attractive in this current environment unless the insureds have advanced in age beyond age 75. In the current market the minimum face amount for a transaction is typically $500,000.

Larger face amounts are more attractive to buyers since the cost for closing a transaction is relatively fixed. Spreading fixed costs over a large dollar volume in a single transaction is obviously more attractive.

Policies with smaller face amounts are often bundled together to create a more attractive package to the buyer. Also note that policies need to be beyond the incontestable period, that period of time, typically two years, during which the insurer is contractually able to unilaterally rescind the policy without the consent and agreement of the insured or owner.

**Medical Files:**

As with all underwriting, up-to-date complete medical files and history add to the evaluation of the risk.

*see Life Settlements: The Marketplace on page 5*

*FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT*

Presents

**"Transferring Liquid Assets in Any Rate or Market Environment: The Long and the Short of GRATs"**

# TARA C. THOMPSON, CFA, CFP®
## Wealth Management Specialist
**Bernstein Global Wealth Management**

# TUESDAY, NOVEMBER 17, 2009

## GROSSE POINTE YACHT CLUB
**788 Lake Shore Road**
**Grosse Pointe Shores, Michigan**

**Sponsored By**

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***Ms. Thompson joined Bernstein in 2003 as a private client associate, became an investment planning analyst in 2004, a senior investment planning analyst in 2006 and was named a wealth management specialist in 2008. In her current position, she works closely with high-net-worth clients and their professional advisors to provide solutions for complex trust and estates issues, low-basis stock concentration, tax planning, risk management, and asset allocation. Prior to joining the firm, she was a paralegal in the Capital Markets Group of Cadwalader, Wickersham & Taft. Ms. Thompson earned a BA in comparative literature (with honors) from Dartmouth College. She is a Chartered Financial Analyst charterholder and a CFP certificant.***

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| **AGENDA:** | **5:30 p.m.** | **Complimentary Cocktails** |
| | **6:30 p.m.** | **Presentation** |
| | **7:30 p.m.** | **Dinner** |

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*NEW FEATURE: Log onto our website by November 10 to make your reservation and pay with VISA or Master Card.*
www.metrodetroitfepc.org

**OR PLEASE MAIL YOUR RESERVATION AND CHECK BY NOVEMBER 10 TO:** **COST: $50.00 PER PERSON**
**FEPCMD ● 30600 Northwestern Hwy-#208 ● Farmington Hills, MI 48334**
**Phone: (248) 538-7654 ● Fax: (248) 538-7656**

***RESERVATIONS RECEIVED AFTER NOVEMBER 10 WILL COST $75.00 PER PERSON.***

**MEMBER NAME:** ______________________ **GUEST NAME:** ______________________

**TOTAL ENCLOSED:** ______________________
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## Book Review

## A Practical Guide to Estate Planning for a Family with a Special Needs Child

***Sebastian V. Grassi, Jr. - Author***

Sebastian V. Grassi Jr.'s new book entitled A Practical Guide to Estate Planning for a Family with a Special Needs Child is a book every estate planning adviser and financial planning adviser will find valuable to read. Instead of concentrating on solely the aspects of estate planning for special needs individuals or advising the family of a disabled individual how to apply for available governmental benefits, the book combines and synthesizes these two disciplines with brief descriptions and comprehensive checklists of items for consideration.

As is usually the case with Mr. Grassi's work, he gives thoughtful clause drafting illustrations for the various estate planning documents we, as advisers, are confronted with on a regular basis.

In addition, he has included sample forms for a Third-Party Created and Funded Special Needs Trust and a First-Party Special Needs Trust (Medicaid Payback d [4] [A] Trust).

As Mr. Grassi acknowledges in the book, he cannot possibly cover everything in detail and he gives copious references to related material on the topics that he discusses.

This is a book that I would recommend to any adviser who expects that he or she will be consulting with families that include a disabled child or other loved one (which, as the book points out, could be just about any family these days). The book gives insight into the special concerns of such families regarding the very real financial concerns that must be addressed, as well as practical issues concerning estate planning considerations for the parents, siblings and other relatives of a disabled person who might be inclined to provide for the disabled person without disrupting the disabled individual's right to receive public benefits to which he or she is entitled. The book highlights areas that we might not be completely familiar with and reminds us of things that we have learned in the past but regarding which we are not currently focused.

*"This is a book that I would recommend to any adviser who expects that he or she will be consulting with families that include a disabled child or other loved one..."*

The book is replete with checklists, drafting examples and practice pointers, all of which have the potential for being useful to the reader, whether by pointing out unfamiliar material or areas of concern, or by serving as prods to the adviser's memory.

Although "only" a general overview of issues an estate planning adviser or financial planning adviser may need to address in the context of special needs planning, Mr. Grassi has included in his book a chapter entitled "This Family is Different" in which he addresses issues involving family and marital dynamics arising in families with a disabled child. This chapter discusses issues that those of us who are not directly involved with disabled individuals may not be fully cognizant.

Mr. Grassi's personal experience in special needs planning for his own daughter, Laura, who he mentions in the introduction to the book, and the expansive research that he has done regarding the topics presented in the book will benefit any adviser that is called upon to address similar issues with his or her own clients.

A Practical Guide to Estate Planning for a Family with a Special Needs Child (300 pages) is published by the ALI-ABA (Philadelphia, PA, 2009) and can be ordered by calling (800) 253-6397 (www.ali-aba.org/aliaba/BK68).

*Benson J. Barr, JD, CFP® practices law in Southfield, Michigan, with the firm of Gourwitz and Barr, PLLC. He is a member of the Board of Directors of The Financial and Estate Planning Council of Metropolitan Detroit.*

**Life Expectancy:**

Life expectancy is the key determinate in the pricing of the final offer. Life expectancy estimates increased dramatically towards the end of 2008. This increase resulted in lower offers going forward.

**The Broker – Intermediary:**

The broker is the individual or entity who submits the policy to various buyers. The broker is not necessarily the life insurance agent interacting with the client. Typically the agent (whether an insurance agent, accountant, attorney, etc.) will submit the file to a broker who will take that file to the actual buyers and acquire offers to purchase. A good broker will assist in creating the file for the sale and assist in negotiating the most favorable offer from the actual buyer.

**The Buyer:**

When viaticals first made their debut, the actual buyers of policies were individuals or groups of individuals. The policy face amounts were relatively small and the purchase price manageable for a small transaction. Currently the buyers are typically large institutions with their own or borrowed capital. Buyers are foreign and domestic banks, hedge funds and other entities with availability or access to large amounts of capital. Interestingly enough, insurance carriers are also involved in the market as buyers. Presently, the availability of capital is severely diminished. The current credit crisis has negatively impacted the availability of capital necessary to close transactions.

**Pricing:**

Pricing and the actual offer after negotiation has become less flexible and tighter. With increased life expectancy projections, tighter credit markets and less availability of capital, actual offers made to buy policies are significantly less now than as of 18 months ago. Anecdotally, brokers are reporting that clients who have postponed accepting purchase offers over 6 to 12 months are now seeing those original offers being rescinded and reissued at purchase offers of 30% to 50% less than the original.

**Regulatory Environment**

The regulatory environment for the life settlement market has been relatively loose.

However, that is now changing. Transactions in the past have been described as convoluted, complex, highly intermediated and opaque. A push is being made by all parties concerned for better, more comprehensive, regulatory oversight, primarily focused on transparency and disclosure.

In the fall of 2006, the then New York Attorney General brought a civil action against a large settlement company alleging numerous transgressions. In essence this action was about lack of disclosure on the pricing offered. The industry's reaction to this has been a move toward more disclosure. As of April 2009, New York state was working on a proposed bill which would set licensing, registration and disclosure requirements.

Also in 2006 the NAIC, National Association of Insurance Commissioners, began looking into STOLI arrangements (Stranger Owned Life Insurance). STOLI was made possible by the willingness of buyers to fund the purchase of the actual life policies themselves for several years and then also fund the ultimate settlement. As these arrangements and deals became more prolific, the life industry became increasingly vocal in disparaging them. Participants in the outrage included not only the carriers and state commissioners but also many of the leading tax and legal gurus of the industry. At this point, STOLI has almost ceased. Workouts and unwinding of past STOLI arrangements are moving forward. The life settlement industry is working with the carriers and insurance commissioners to make sure that obvious transgressions are not permitted and are avoided in the future.

Compensation has also been an issue and is now being addressed. Disclosure of commissions and fees earned by the various parties involved is now becoming a standard industry practice. This practice is being done on a voluntary basis by the involved parties and also as a result of the pressure brought about by the state insurance departments and consumer groups.

With regard to variable life product settlements, compensation is a concern for both the SEC and FINRA. FINRA is targeting fee disclosure and the amount of the fee in particular. FINRA looks at "the actual amount of money that goes into the pocket of the seller." On that basis FINRA is suggesting that the fees and commissions paid may be considered "unreasonable." FINRA's position on this differs from the SEC. The SEC is not as concerned with the amount. The SEC is focused more on "clear, complete disclosures." FINRA has no definite current position, but a definite "concern" regarding commissions.

**Moving Forward**

The life settlement market has become increasingly complex. The more restrictive regulatory environment and the tightening of the credit markets are each affecting the settlement process, uses and applications.

*Frank Spezzano, president of IRUS Corporation, an employee benefit firm, and IRUS Advisory, an independent RIA, specializes in assisting business owners and executives with their financial lives and endeavors.*

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