



Henry Montag CFP, CLTC
www.thetolicentereast.com

henry@thetolicentereast.com
516 695-4662

Dear NYCLA Attendee,

Oct. 28, 2025.

I hope you found our session this afternoon informative, useful and of interest. Please let me know if I can be of assistance acting as a resource or in clarifying any matters, we covered regarding OBBBA 2025 & the re-arrangements, re-purposing, or alternate disposition strategies required as a result of OBBBA having reduced the estate tax burden for 99% of the population, resulting in their no longer needing life Ins coverage, or for any prematurely expiring life insurance coverage as a result of declining interest rates & a lack of management by the owner over the last 20+ years.

Although there are many options & strategies to consider before a decision is made as to what to do with a client's unneeded or failing life insurance coverage, many clients will just take the easiest way out by simply surrendering their policy back to the Insurance company for its cash surrender value. But that's not the best option, as the insured will be giving up valuable benefits & assets that should & could be avoided.

The attached Bloomberg articles will provide you with some additional background info on this topic as it points out that a HNW client could significantly enhance the value of their life Ins portfolio by focusing on a policy's Living Benefits rather than the traditional Death Benefits, as well as taking advantage of a Life Settlement in the secondary market to an institutional Investor, also known as an alternate exit strategy.

I'm happy to share my 37 years' experience as an independent CFP & ABA author focusing on the subject of Life Insurance and acting as a resource for your clients. They will thank you for sharing this information with them.

Best Regards

Henry Montag CFP, CLTC

Reproduced with permission from Tax Management Memorandum. Copyright © 2025 by Bloomberg Industry Group, Inc. (800-372-1033)
<http://www.bloombergindustry.com>

September 10, 2025

OBBBA Changes How High-Net-Worth Clients Use Life Insurance

Henry Montag*
The TOLI Center East

The One Big, Beautiful Bill Act permanently sets the federal estate tax exemption at \$15 million per individual and \$30 million for married couples as of January 1, 2026. High-net-worth individuals may no longer need to be concerned with liquidating as much as between 40% and 45% of their assets or buying life insurance to pay their share of federal estate taxes. This article provides an overview of the various options, strategies, and other information an advisor should be aware of to be able to respond to client questions and create a comprehensive plan for their clients' needs.

Before the Act, using a life insurance policy was often the most tax efficient and economical vehicle available to pay estate taxes. HNW individuals now have to make some important choices as to what to do with their previously accumulated life insurance policies that would have been used to pay their estate tax obligations. Keep in mind that depending on the state your client primarily resided in, there may still be a state inheritance tax the estate is responsible for.

The question for HNW clients is twofold. First, they must consider what to do with the millions of dollars of their current death benefit that is no longer needed as a result of the increased estate tax exemptions. Secondly, since more than 45% of policies, both large and small, sold over the last 20 to 30 years were non-guaranteed Universal policies, it's important to note that 30% to 35% of the coverage in those policies are prematurely expiring, and they must seek a remedy.

Advisors to these clients should give their advice as to how to best rearrange their client's current life insurance portfolio in the most beneficial manner. Great care needs to be taken in advising a client as to which coverage in which policy should be kept, rearranged with additional benefits, premiums reduced, or discontinued. Care also must be taken to not allow a policy to lapse prior to the insured's death as that would trigger a phantom tax on any gains and any outstanding loans would have to be repaid.

An understanding of all the available options and strategies for each client's individual needs, including those that simply can't afford to continue a policy that hasn't been managed properly and is now in the process of expiring prematurely, is important for the client and their advisor to get right. Several of the most popular options are listed below. It should be noted that the options listed below (are as effective or, work as well) for a \$250,000 policy as well as a \$2,500,000 policy or a \$25,000,000 policy. These same options are available for a trust owned life insurance policy as well as for an individually owned policy.

* Henry Montag, CFP, Managing Partner of The TOLI Center East, in practice since 1984 with offices in Long Island, NY, has authored articles and acted as a source for NYSBA, NYSSCPA, Bloomberg's *EG&T Journal*, *Trusts & Estate*, *Accounting Today*, and *The Wall Street Journal*. He has appeared on Wall Street Week and Fox Business, and co-authored an ABA flagship book, *The Advisors' & Trustees' Guide to Managing Risk*.

Do Nothing

Simply maintain the client's existing coverage for the purpose of a charitable donation, either for tax purposes or for the benefit of endowing a chair, a building, or a wing at a university or hospital. Keep the death benefit as additional funds allocated to the next generation in a generation skipping trust for grandkids who may have significant estate tax problems of their own one day.

Increase Benefits in the Policy

As a result of the Pension Protection Act. PPA, an individual can now transfer the cash value of a life insurance policy on a tax-free basis to a Linked Benefit Policy that also offers tax-free long-term care benefits. This strategy provides maximum leveraged dollars (where \$1 becomes \$4 to \$5) that can be used to pay for qualified long-term care costs in any setting for any level of care in any state or many countries.

Upgrade the Policy

Since people are now living longer as a result of modern pharmacology and living healthier lifestyles, the majority of today's life insurance policies contain provisions or offer options that were not available 20 to 30 years ago, such as Private Placement Life Insurance (PPLI). PPLIs reward purchasers of such multimillion-dollar death benefit policies with institutional products that cost less, have additional tax benefits, and fewer restrictions on withdrawals. This combination often results in significantly better returns than traditional retail life insurance policies typically offered to the general public.

Repurpose the Policy

One can also decide to reduce the death benefit by 15% to 20% using any of the means described below. They can then increase the premiums they pay up to the Modified Endowment Contract (MEC) and use the policy for its ability to accumulate cash value on a tax deferred basis with the intent to later withdraw the cash value on a tax-free basis through a series of surrenders and loans against the death benefit that will never have to be paid back as long as the policy survives the insured.

These opportunities were made even more attractive as a result of the passage of the Consolidated Appropriations Act of 2021, which reduced the actuarial interest rate assumptions used by the life Insurance companies to define a life insurance contract. Doing so made it possible for the owner of a life insurance policy to place an even larger premium into the policies' cash value without negatively affecting the policies' ability to continue to shelter the growth and distribution of the cash value on a tax preferred basis.

Surrender the Policy

Policies are often surrendered to the insurance company for two reasons: Either the client no longer needs or cannot afford the increased cost of the coverage, or they want to use the existing cash surrender value to supplement their own lifestyle (such as supplementing their retirement income or making a gift to their heirs while they are alive to enjoy it). The great majority of individuals that decide to cancel their policies in exchange for the remaining cash surrender value merely contact their broker or the company directly and request a form to surrender their policy. The process is convenient, but not the only (nor often the best) choice for the client.

Sell the Policy

Ever since the US Supreme Court in *Grigsby v. Russell* established that a life insurance policy is considered personal property that may be sold or assigned, the ownership rights in a life insurance policy have been placed on the same legal footing as a typical investment property, such as stocks and bonds, or a person's home or auto policy. As such, a life insurance policy could be transferred in whole or part to another person at the discretion of the policy owner.

Life Settlement Market. The "life settlement" market, primarily funded by hedge funds and often referred to as the institutional or secondary market, has greatly enhanced the consumer value of a life insurance policy. According to the London Business School [study](#), the life settlement market often offers two to three times the cash value offered by the

insurance company that issued the policy. The most important decision in considering a settlement is selecting an independent, experienced settlement broker who has access to and understands the marketplace and is adept with the negotiating process necessary to represent the client's best interests. A referral from a trusted adviser is always the best source.

The settlement market evolved in the late 1980s with the AIDS outbreak, when terminally ill individuals were liquidating assets to generate cash. Given the sellers' shortened life expectancy, investors were purchasing policies for an amount in excess of the policy cash value and expecting an attractive return from payment of the death benefit. Subsequently, the market expanded to include older and impaired risk-insured people. During the 2008–2009 financial markets crisis, settlement practices were questionable, and at times deceptive, causing a number of states to regulate this market for consumer protection purposes.

A life settlement can be entered into by anyone who owns a life insurance policy with a face value of at least \$100,000, and an insured who is at least age 65. Contrary to popular belief, even a healthy individual can receive an offer on a term policy if the policy is still within the convertible period. The more severe the health conditions, the more likely they are to receive a higher offer. In an attempt to prevent fraud and elder abuse, a life settlement broker is required to complete additional background checks by the FBI. The license process has defined the responsibility of the life settlement broker representing the seller and how this role should be overseen to safeguard the interests of all parties.

The majority of clients, and many of their advisers, are not familiar with the concept of a life settlement, nor do they feel this is a legitimate or legal solution. A recent study by the Life Insurance Studies Institute indicated that 90% of individuals older than age 65 that surrendered a life insurance policy for its cash value would have chosen a 'life settlement' had they been aware of that possibility. Of the approximate \$26 trillion of life insurance coverage in force, approximately \$125 billion is lapsed by seniors each year.

Many individuals, including their advisers, confuse a life settlement with Stranger Trust Owned Life Insurance (STOLI) which is where an individual agent or broker induces an insured to purchase a life insurance policy for the sole purpose of selling it for a profit within a few years of purchasing it. Such an arrangement is illegal, but a life settlement is not.

Partial Sale. It's also possible to settle part of the policy and maintain a partial/retained interest in a portion of the death benefit, in addition to a cash settlement. The value of a life insurance policy's worth is determined by obtaining at least two independent Life Expectancy Reports (LERs). Once the reviews of the insured's medical records and history are completed, an average of the two LERs is taken to determine the number of months the insured is likely to live. The fewer the months, the higher the offer.

Steven M. Schanker, Esq., partner in Schanker and Schanker P.C., a Long Island NY estate planning firm, said: "When I first entered this field of estate planning in 1979, almost every client had an estate tax problem. The client's choices were gifting and giving up control or life insurance. Now, with a vastly increased exemption, most clients have no estate tax due. The permanent insurance they purchased is no longer needed and they rush to surrender. I am contacted frequently by clients asking what happens if their policy is surrendered and the proceeds go into the ILIT. When I recommend, they explore a life settlement, the uniform response is they never heard of it, and they are surprised their life insurance agent never told them about it."

Taxation of Life Settlement

A life settlement on a Universal Life insurance policy is a taxable event, and the proceeds are taxed in three tiers.

- Tier 1: Tax-Free Return of Cost Basis: portion of sale proceeds up to the amount of the cost basis or amount paid in premiums are tax free.
- Tier 2: Ordinary Income: portion of sale proceeds above the cost basis and up to the policy's surrender value are taxed as ordinary income.
- Tier 3: Long-Term Capital Gain: any remaining sale proceeds above the surrender value are only taxed as long-term capital gains.

Life Settlement Case Example:

- Policy Type: \$1 million Universal Life
- Premiums: \$70,000 (cost basis)
- Cash Value: \$80,000 (surrender value)
- Policy Sale Price: \$300,000 (settlement amount paid to policy owner)
- Tax-Free Return of Cost Basis: \$70,000 (cost basis or amount paid in premiums)
- Ordinary Income: \$10,000 (portion of sale proceeds above cost basis (\$70,000) and up to surrender value (\$80,000))
- Long-Term Capital Gains: \$220,000 (remaining sale proceeds (\$300,000 less \$70,000 less \$10,000))
-

Example of Recent Transactions:

- \$1.5 million convertible term insurance for healthy male, 74 years old
- Sold for \$310,000 just before expiration of the convertible period.

A recent case involved a male aged 74 with a \$750,000 policy with a loan against it for \$275,000 that he had accrued over the years as a result of the insured realizing that after the fifth year, he could maintain the policy without making a premium payment starting in the sixth year. He decided to forgo paying premiums while still maintaining the majority of the policy's death benefit for years six through 22.

In the 23rd year, he was referred to us to see if anything could be done to provide him with relief from the several hundred-thousand-dollar loan he had accumulated. Without the means to pay back the principal or the interest, or to pay the premium, he faced the possibility of having the policy lapse while he was still alive. He not only would have lost the death benefit but also would have been liable to pay the phantom tax on the gain over and above the premiums he paid.

Fortunately, a buyer was willing to take over the obligation to pay off the loan and continue to pay the premium, thereby absolving the seller from a significant tax bill that he would have been responsible for. While the seller received no cash in exchange for the policy, he was relieved of the potential tax liability and received a retained death benefit for \$100,000 for a number of years, which made him and his family happy.

Key Takeaways for Life Settlement Market

The secondary or life settlement market provides a better exit strategy for a client that finds their life insurance policy no longer needed for estate tax purposes or is no longer wanted or affordable. This process can turn a bill into an immediate liquid asset. Rather than having your client surrender their life insurance policy back to the insurance company because it's more convenient, or because they're not aware of any other alternative, consider educating your client about the benefits of retaining an independent experienced licensed life settlement broker—a professional who must contractually affirm their fiduciary duty to the seller and assist your client and their trustee in obtaining the best possible offer for the insured, or their trustee. In either case, they and their family will thank you.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

Reproduced with permission from Tax Management Memorandum. Copyright © 2025 by Bloomberg Industry Group, Inc. (800-372-1033) <http://www.bloombergindustry.com>

May 8, 2025

Trustees Should Monitor Insurance Policies to Prevent Lapses

Henry Montag*
The TOLI Center East

A non-guaranteed Universal Life Insurance policy's individual owner or trustee should evaluate their policy every few years to take corrective actions to avoid their coverage from expiring prematurely, says Henry Montag of The TOLI Center East.

The major responsibility of an Irrevocable Life Insurance Trust's (ILIT) trustee, is to make certain that the trust's assets or individually owned policy proceeds are available to achieve their primary objective, which is to reach their intended beneficiaries at death. Stated simply, to make certain that the policy's coverage does not expire before the insured. The trustee is not a guarantor of the trust's investment performance, but their fiduciary responsibility is to do what needs to be done to make certain that the death benefit reaches their beneficiaries. If they, as in many cases, don't have the experience or knowledge to do what needs to be done, their legal responsibility is to obtain consultative services from a professional that does.

The life insurance industry itself estimates that approximately 40-45% of current in-force flexible premium non-guaranteed death benefit Trust-Owned Life Insurance (TOLI) and individually owned policies are expected to lapse prior to five years of the insured's life expectancy. There are primarily three reasons responsible for this ever-increasing problem.

1. Prior to 1982, only guaranteed life insurance policies existed in the marketplace. Then in 1981 when interest rates hit a high of 18%, a new type of life insurance policy known as Universal Life Insurance was created by E.F. Hutton, a major investment brokerage firm. Unfortunately, the great majority of the life insurance buying public was not aware that these new policies were not guaranteed to last for the rest of their lives.
2. The life insurance industry did a poor job of informing the insurance buying public that these new policies were not guaranteed, and that they needed to be actively managed based on the annual fluctuations of the stated interest rates declared by the board of directors of the individual insurance company. In 1982, the stated interest rates of universal policies were in the vicinity of 18-20% and have since steadily decreased to the current 3-4%. When interest rates decreased, the owners of individually owned policies, or the trustees of trust owned policies (which in 90% of the cases was usually the insured/grantors eldest sibling acting as an amateur trustee), should have increased the premiums paid to the insurance company.

* Henry Montag, CFP, Managing Partner of The TOLI Center East, in practice since 1984 with offices in Long Island, NY, has authored articles and acted as a source for NYSBA, NYSSCPA, Bloomberg's *EG&T Journal*, *Trusts & Estate*, *Accounting Today*, and *The Wall Street Journal*. He has appeared on Wall Street Week and Fox Business, and co-authored an ABA flagship book, *The Advisors' & Trustees' Guide to Managing Risk*.

3. Contrary to popular belief, it was not the insurance companies, nor the agent/brokers' responsibility, nor was it the duty of the insureds' attorney or CPA to inform the owner of the policy that they should be increasing their premium in order to maintain their coverage. So, after years of neglect and inaction on the part of uninformed owners, the duration of the coverage period unexpectedly decreased and only when the coverage period was within a year of expiring would the owner receive a written notice from the insurance company notifying them that unless a significantly higher premium was paid the policy's coverage would expire, often while the insured may have only been in their 80's. As a result, these non-guaranteed policies would expire before the person they were insuring. It wasn't until 1983 that insurers began offering more expensive Guaranteed Universal Life insurance policies.

Imagine that you, or your client is the trustee of an Irrevocable Life Insurance Trust (ILIT), or you are the advisor to an unskilled trustee or the CPA or attorney in charge of a Family Office and responsible for the life insurance policies. The amateur trustee is uncertain of their ILIT administration responsibilities and life insurance policy performance duties. You, or they, lack life insurance product and policy evaluation expertise. The grantor or policy owner isn't aware of the duration of the coverage nor how the policy is performing as no evaluation services have ever been done. The sales agent does not offer annual policy service or is no longer active in the life insurance business. That said, a carrier notice is received that a \$2,750,000 death benefit TOLL policy is estimated to lapse in the next 12 months. The insured is 78 and premiums paid to date exceed \$500,000. Corrective action is needed. How would you manage that situation in your office?

Because proactive corrective action is needed to prevent the policy from lapsing prior to the insured's life expectancy, the first thing that needs to be done is to consult with and engage an independent experienced life insurance professional who will order a historic projection which will provide the trustee with information as to how much additional premium would be required to maintain the insured's policy's coverage to a more appropriate predetermined age. Depending on the insured/grantor's age and health, it may make a great deal of sense to order an L.E. (life expectancy) report in order to make a more accurate determination as to what age to have the coverage guaranteed to last. Decisions would then be made based on the grantors available cash flow to determine whether additional premiums can be paid, or whether the death benefit should be reduced. As a last resort, they would explore the possibility as to whether the policy could be sold as a life settlement to an institutional investor. If neither of those options are possible due to the insured's good health (investors have no interest in purchasing a policy of an insured under age 70 and in good health), or the insured/grantors' inability to pay a higher premium, then the policy should be surrendered back to the insurer to prevent any further erosion of any accumulated cash value that may still be available.

However, before any policy is surrendered back to the insurance company for its cash value, two things must be taken into consideration:

1. Are there any outstanding loans taken by the insured/grantor that have not been repaid?
2. Is there a gain in the policy? This is calculated by adding the accumulated dividends and cash value, and subtracting all premiums paid.

If there is a gain in the policy and the policy expires while the insured is alive, the gain is taxable. This is a very costly mistake that cannot be fixed after the policy has expired. However, if the policy is in-force at the insured's passing, the gain is not taxable. And the loan does not have to be paid back as it is deducted from the death benefit.

To prevent this financial disaster from occurring in the first place, a preventative action plan should be in place and include a historic projection listing all of the premiums previously paid as well as the annual stated interest rates

declared by the insurance company. This would then allow an accurate evaluation of a client's individually owned as well as trust owned life insurance policy to take place every 2 to 3 years. The plan would:

1. obtain a history of previous increases in COI's (Cost of Insurance) and the insurer's financial ratings.
2. provide guidance to the amateur trustee regarding their fiduciary duties and liabilities.
3. clarify the policy owner's current trust objectives, making certain the policy is still suitable for the insured and that all beneficiary designations are up to date; and
4. make certain that the CPA or attorney has prepared and delivered the annual Crummey letters to the trust's beneficiary which ensure that the death benefit when received, is not taxable.

It's important to note that the earlier an evaluation of a life insurance portfolio is completed, the more options are available, and the less costly it will be to find the best solution to fix any potential problems from occurring.

So why isn't the CPA or attorney, the client's closest advisors, focused on this insidious growing problem? Why do accountants all too often say "I don't get involved with my client's life insurance"? How can a firm that is otherwise dedicated to working with and protecting a client's financial matters choose to absolve themselves from providing their guidance and advice regarding a client's life insurance portfolio, a tax-free portfolio that can at times make up 40-50% of the client's net estate.

Perhaps it's because many accountants are not familiar with the internal workings of a life insurance policy's coverage. Or because they are under the misimpression that the agent or broker that sold their client a life insurance policy, or surely the insurance company, was monitoring their client's policy to make certain that their coverage would continue to remain in force. However, the agent is contracted with and obligated to the insurance company, not to the insured. It's the agent's/broker's job to merely market and deliver the insurance policy to their customers. It's the insurance company's responsibility to merely provide coverage and send the owner of the policy an annual statement, not manage it. That aside, life insurers certainly don't mind when a client's life insurance policies expire prematurely as they get to keep all of the previous years' paid premiums and never have to pay out a death benefit.

Whatever the case may be, it's solely the insureds' owner / trustee's' fiduciary responsibility to manage the life insurance policy. If the owner/trustee doesn't have the expertise to determine if a 'sufficient premium' is being paid to keep the insurance coverage in force until at least the insured's life expectancy, it would be an extremely useful ad-on for a client's accountant to suggest that they obtain an independent policy performance evaluation from a fee-based planner to determine whether their current policy(ies) are adequately funded to remain in force for at least 5 years beyond the insured's current life expectancy. I say 'current' because if the insured has a significant illness, it wouldn't be necessary to continue to pay a premium to keep their policies coverage in force to their normal life expectancy.

To review, there are 3 variables to deal with:

1. death benefit;
2. premium; and
3. duration.

These are the five options available to fix a client's potential problem or shortfall.

1. the insured can pay a higher premium in order to keep the same death benefit in force to their current life expectancy.
2. the insured can reduce the death benefit in order to maintain the same premium to keep the reduced coverage in force until the client's mid 90's.
3. the insured may, depending on their health, purchase a new policy with the ability to pay for long-term care costs and extend their guarantees to their current life expectancy.
4. If over age 70, the insured may be able to sell their life insurance policy as a life settlement where they may receive more than if the policy was surrendered.
5. A strategy where all or part of an existing life policy is sold in conjunction with the purchase of a new life policy with additional benefits such as long-term care coverage.

The means to fix a prematurely expiring life insurance problem are available. The owner or trustee must be made aware that the majority of universal life insurance coverage is not guaranteed to last for the rest of an insured's life, and that steps must be taken by the trustee or owner of an individually owned policy to get help to identify problems and use the various alternatives mentioned above to prevent an unexpected financial loss from occurring.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.