

ILIT Management Roles, Responsibilities and Checklist

ILIT Parties

An ILIT trustee has the sole fiduciary responsibility for all trust and policy administration activities, including annual policy risk management determinations and communication. If a trustee lacks life insurance and policy risk management expertise, the trustee also has a duty to delegate these functions to providers that have the requisite TOLI-specific expertise. To avoid breach of trust and predatory practices allegations resulting from the selection of unqualified providers, the below matrix summarizes typical ILIT responsibilities and delegated functions.

| ILIT Responsibilities | Attorney | Accountant | Fee-Based Consultant | Fee-Based TOLI Vendor | Agent/Broker | Family Member | Professional Trustee |
|-------------------------|----------|------------|----------------------|-----------------------|--------------|---------------|----------------------|
| Trustee | | | | | | | |
| ILIT and TOLI Admin | | | | | | | |
| TOLI Policy Evaluation | | | | | | | |
| TOLI Performance Report | | | | | | | |
| Tax and Accounting | | | | | | | |
| Legal Documents | | | | | | | |
| Investment Policy Stmt | | | | | | | |
| Policy Sales | | | | | | | |
| Policy Remediation | | | | | | | |
| Life Settlement | | | | | | | |

- Trustee:** A trustee should serve as a trust and beneficiary ‘protector’ with contractual responsibility to perform ILIT duties in a prudent manner as set out in the trust agreement, UPIA, TOLI Investment Policy Statement and other known fiduciary, life insurance and regulatory oversight guidance.
- ILIT and TOLI Admin:** A trustee’s annual ILIT administration and TOLI risk management duties may be delegated to an independent third-party that has no affiliations with policy sales providers and no partner relationships with other fee-based providers to cross-sell TOLI services.
- TOLI Policy Evaluation:** Annual TOLI performance evaluations should be prepared by an independent fee-based provider that has the requisite expertise, no affiliations with policy sales providers, and no partner relationships with other fee-based providers to cross-sell TOLI services.
- TOLI Performance Report:** Annual TOLI performance reports should be prepared by an independent fee-based provider or consultant that offers ‘dispute defensible’ TOLI-specific performance evaluations or a trustee with the requisite life insurance expertise.
- Tax and Accounting:** All tax matters should be coordinated by an Accountant serving the Grantor or a Professional Trustee with accounting staff.
- Legal Documents:** An attorney representing the Grantor or a Professional Trustee with legal staff should prepare ILIT documents including annual Crummey Notices.
- Investment Policy Stmt:** The Investment Policy Statement is not a legal document and can be prepared by the trustee and/or a fee-based Consultant in consultation with the grantor and beneficiary(ies).
- Policy Sales:** Coordinated by a licensed agent selected by the Trustee.
- Policy Remediation:** Coordinated by a licensed agent selected by the Trustee.
- Life Settlement:** Coordinated by a licensed life settlement consultant selected by the Trustee

Dispute Defensible TOLI Policy Evaluation

Prudent life insurance product suitability determinations and annual performance evaluations have been a topical discussion since the Unified Prudent Investor act (UPIA) was adopted 20 years ago. Because most ILIT fiduciaries lack life insurance expertise, they either do not annually monitor policy performance or they delegate this responsibility to life insurance producers or third-party administrators, trusting their expertise. Unfortunately many producers and administrators employ proprietary policy analysis methodologies that are neither credible nor appropriate for dispute defensible product suitability determinations and annual policy performance evaluations.

Whether an ILIT fiduciary has the expertise to evaluate TOLI policy performance or outsources that duty, the ILIT fiduciary must first establish minimum policy performance benchmarks. As the fundamental purpose of every TOLI policy is to provide life insurance proceeds at the insured's death, a policy that is credibly evaluated to sustain beyond the insured's life expectancy age is "performing" this fundamental purpose while a policy that is credibly evaluated to lapse prior to the insured's life expectancy age is "underperforming" this fundamental purpose.

An ILIT's Investment Policy Statement (IPS) should first establish fundamental or age specific TOLI sustainability criteria, then identify product suitability, policy management and remediation criteria and incorporate that criteria into IPS "performing" and "underperforming" checklists. Annually thereafter, the ILIT fiduciary should (1) obtain factual and credible TOLI policy performance evaluation reports and (2) administer TOLI assets to the IPS "performing" or "underperforming" checklist.

Annual Performance Evaluation Report

- Factual report of current policy values, owner, beneficiary and carrier ratings.
- Include in-force illustration based on current policy management assumptions. If the illustration projects the policy to lapse prior to contract maturity, an alternative illustration should be included projecting the "pay all years" premium needed to sustain the policy to contract maturity with no cash value at contract maturity.
- If a nonguaranteed product, include an actuarial evaluation of the risk-appropriate premium required to successfully sustain the policy to its contract maturity and to the life expectancy of the insured.
- Identify projected cash value and death benefit at the insured's life expectancy age and contract maturity.
- Exclude any subjective performance determinations by the preparer of the report.

Performing Policy Checklist

If the Annual Performance Evaluation projects the policy to sustain 5+ years beyond the insured's life expectancy:

- Confirm that the product type risks and coverage amount remains suitable per current trust objectives,
- Review and update ILIT Investment Policy Statement and other trust file documents if necessary,
- Provide annual report of policy performance to ILIT grantor and beneficiaries.

Underperforming Policy Checklist

If the Annual Performance Evaluation projects the policy to lapse prior to the insured's life expectancy or within 5 years after the insured's life expectancy:

- Establish a remediation plan and timing, and identify the ILIT Parties to participate in this remediation plan.
- Review and update ILIT Investment Policy Statement if necessary,
- Provide annual report of policy performance to ILIT grantor and beneficiaries and confirmation of remediation plan and timing.
- Provide remediation plan recommendations to grantor and beneficiaries. Obtain consents prior to implementation.