

Estate Planning Council of Naples

April 18, 2024

12 noon

**LAWRENCE BRODY**  
Harrison LLP  
St. Louis, Missouri

**THE TOP 20 (OR SO) INSURANCE  
PLANNING MISTAKES  
AND HOW TO AVOID OR  
FIX THEM**

1. Failing to avoid the three-corner life insured, policy owner, insured, and beneficiary – the Goodman problem.

2. Creating phantom income by surrendering a policy (or letting a policy lapse) which was subject to an outstanding loan.

3. Exchanging a policy under Section 1035, which is subject to a loan, for a new policy, not subject to a loan in the same amount.

4. Borrowing against or withdrawing from a modified endowment contract (a “MEC”), or using such a policy as collateral for a third party loan.

5. Borrowing against a policy in excess of the owner's income tax basis and then transferring the policy subject to the loan as a gift to a new owner.

6. Surrendering a participating policy without checking the effect of dividends received or other non-taxable distributions on the owner's investment in the contract.

7. Surrendering a policy for its cash value without checking the life settlement market.



8. Calculating the amount and character of the gain on a policy sale in the settlement market.

9. Transferring a new life insurance policy to an irrevocable insurance trust or other third party owner after its acquisition by the insured – the Section 2035 three year transfer rule.

10. Determining adequate and full consideration for the sale of a policy to an ILIT to avoid the three year rule of Section 2035.

11. Avoiding the transfer for value rule where the policy is sold to an ILIT to avoid the three year rule of Section 2035.

12. Transferring a policy from the insured to a third-party owner (such as an ILIT) without obtaining the policy's gift tax value from the carrier, in advance.

13. Transferring a policy during the insured's lifetime without considering the transfer for value rule and its exceptions.

14. Planning around Section 677(a)(3) if an ILIT is intended to be a non-grantor trust or is planned to be a grantor trust in a way that can be “turned off” if needed.

15. Making sure premium gifts to an ILIT with Crummey powers qualify for the gift tax annual exclusion, where the policy won't support the withdrawal power.



16. Naming the insured as trustee of an ILIT.

17. Failing to restrict the insured's power to remove and replace the LLIT trustee by requiring any appointed successor trustee not be the insured nor a related or subordinate party to the insured.

18. For ILITs with Crummey withdrawal powers, not drafting the ILIT so that the Crummey power is triggered by both direct and indirect premium gifts to the ILIT.

19. Failing to recognize that most policies are “buy and manage”, not “buy and hold” financial assets.