STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES

In the Matter of James Walter Malanowski, Respondent.	Case No. S-13-0025 ORDER TO CEASE AND DESIST, DENYING USE OF EXEMPTIONS TO THE SECURITIES REGISTRATION REQUIREMENTS, AND ASSESSING CIVIL PENALTIES AND CONSENT TO ENTRY OF ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon (the "Director") has conducted an investigation of certain business activities of Respondent James Walter Malanowski ("Malanowski") and the Director has determined that Malanowski offered and sold securities in the State of Oregon in violation of the Oregon Securities Law, ORS 59.005 *et seq*.

Malanowski wishes to resolve and settle this matter with the Director;

Now therefore, as evidenced by the authorized signature subscribed on this Order, and without admitting or denying the facts and allegations contained herein, Malanowski hereby CONSENTS to entry of this Order to Cease and Desist and other sanctions as provided in this Order upon the Director's Findings of Fact and Conclusions of Law as stated below.

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FINDINGS OF FACT

The Director FINDS that:

1. Malanowski is a natural person residing in Oregon.

2. On December 6, 2010, Malanowski became an agent for Life Partners, Inc. ("LPI"), a Texas corporation, through a licensing agreement entered between the parties.

3. While associated with LPI, Malanowski marketed and sold Life Settlements on behalf of LPI pursuant to a license agreement with LPI.

4. At all relevant times herein, LPI was in business to sell interests in life insurance policies otherwise known as viatical and/or life settlements (each a "Life Settlement").

Licensing Information

5. Malanowski has been continuously licensed by the Oregon Insurance Division ("Insurance Division") as an Oregon resident insurance producer from February 17, 1983 to the date of this Order. His license expires on November 30, 2014.

6. At all times relevant to this matter, Malanowski was not licensed by the Division of Finance and Corporate Securities ("DFCS") to offer or sell securities.

Description of Life Settlements

7. Life insurance policies typically entitle the holder of the policy (the "Insured") to a benefit (a "Death Benefit") upon the death of the Insured. Typically, the Death Benefit in a Life Settlement is more than $1 million. The Insured must pay annual premiums for the duration of the policy or the policy will lapse.

8. Life Settlements are transactions in which an Insured sells their beneficial interest in their life insurance policy to a third-party in exchange for an immediate cash payment. Typically, the cash payment is less than the Death Benefit.

9. LPI purchases Life Settlements either directly from an Insured or indirectly through an insurance broker. Once purchased, either LPI resells the Life Settlement at a premium over the purchase price to an institutional purchaser, or LPI fractionalizes interests in the Life Settlement (a "Fractionalized Interest") and sells the Fractionalized Interest to retail purchasers. LPI typically marketed Fractionalized Interests to retail purchasers as long-term investments.

10. The purchase price for a Fractionalized Interest is typically based on: 1) the

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percentage share of the policy they purchase; and 2) the estimated annual premium, which is based on the expected life of the Insured (the "Life Expectancy Estimate"). If the Insured outlives the Life Expectancy Estimate, the purchaser of a Fractionalized Interest is required to pay an additional premium based on their percentage share of the policy.

11. Fractionalized Interests are illiquid investments. There is no ready secondary market for the Fractionalized Interests and retail purchasers cannot easily sell their Fractionalized Interests, if necessary.

General Advertising or Solicitation of the Fractionalized Interests

12. At various times material to this Order, while associated with LPI, Malanowski solicited the sale of the Fractionalized Interests by means of general advertising or solicitation. On one occasion, Malanowski hired a company located in Irvine, Texas to advertise a free meal and "Senior Financial Workshop" at a Portland-area restaurant by means of a flyer sent by regular first class mail ("Mailer"). The purpose of the workshop was to generate leads that could lead to sales of insurance and other products. If a lead seemed promising, Malanowski would arrange additional meetings.

13. The Mailer was sent to approximately 4,500 Portland-area residents by means of a flyer sent by regular first class mail. The Mailer targeted seniors and claimed that Malanowski would present information that would raise the recipient's "level of awareness" and introduce them "to some options and useful financial strategies which [the recipient] may not have been aware existed." The Mailer also stated: "It is my hope that after this workshop we will meet for a confidential and personal consultation where we can discuss specific products or services and how you can benefit from them."

General Solicitation in Oregon

14. Sometime before February 2011, WMH, a 77 year-old natural person residing in Troutdale, Oregon, received the Mailer. In February 2011, WMH attended Malanowski's Senior Financial Workshop. At the workshop, Malanowski generally

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described the Life Settlements in broad terms as a type of "non-correlated asset class". Also at the workshop, WMH scheduled a private meeting with Malanowski for March 2, 2011.[1]

15. At the March 2, 2011 meeting, Malanowski further described Life Settlements and Fractionalized Interests and provided WMH additional information about Life Settlements in the form of a link to a website video presentation on the Life Settlements. Malanowski recommended that WMH surrender his existing Roth IRA annuity and use the proceeds to purchase Fractionalized Interests.

16. As part of the solicitation of the Fractionalized Interests, Malanowski told WMH that he had to be an "accredited investor" in order to purchase a Fractionalized Interest. Malanowski then provided WMH an LPI Suitability Questionnaire, which required WMH to attest to his accredited investor status. WMH initialed the space providing: "I hereby affirmatively represent that I am an accredited investor as defined in SEC Rule 501 under Regulation D for one or more of the foregoing reasons which I decline to specify due to issues of financial privacy."

17. Aside from the statement initialed by WMH on the Suitability Questionnaire, Malanowski did not take further steps to verify that WMH was an "accredited investor," but relied on the attestation by WMH.

18. After reviewing a copy of the Oregon definition of "accredited investor" provided to him by representatives of the State of Oregon, WMH acknowledged that he met neither the total assets qualification nor the annual income standard of the accredit investor definition. WMH reported to DFCS that he was counseled by Malanowski to initial the suitability questionnaire as though he did meet the accredited investor standard.

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[1] A non-correlated investment is one in which the return on investment is not related to fluctuations in the stock market.

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Sale of Fractionalized Interests in Oregon

19. On March 30, 2011, WMH completed documents to open a self-directed Roth IRA fund with IRA Plus Southwest, LLC ("IPS"), a custodian located in Dallas, Texas. IPS was recommended by LPI. WMH did not independently select IPS. To fund the IPS IRA account, WMH transferred approximately $34,953.17 from his existing Roth IRA to the IPS IRA.

20. Shortly thereafter, Malanowski sold to WMH three Fractionalized Interests in the insurance policies of three insureds: Newmark, Zayonts, and Lesser.

21. None of the LPI Fractionalized Interests were registered with the Director as a security under the Oregon Securities Law. In connection with the sale of the Fractionalized Interests, Malanowski did not inform WMH that the Fractionalized Interests were not registered securities in Oregon and did not inform WMH that he was not licensed to sell Fractionalized Interests in Oregon.

Newmark Transaction

22. On February 28, 2011, WMH signed a document entitled "Policy Funding Agreement for Purchases Through a Retirement Plan" for an insurance policy issued to an Insured identified as Newmark ("Newmark Policy Funding Agreement"). The Newmark Policy Funding Agreement, among other things, set out the details of the Newmark life insurance policy, which had a total Death Benefit of $8 million. The Newmark Policy Funding Agreement specifically stipulated that "both parties understand and agree that their relationship is one of principal and agent and ***does*** constitute the sale of a security[.]" (Emphasis added.) Other documents provided to WMH contained statements that the LPI interests were not securities.

23. The Newmark Policy Funding Agreement listed WMH as the "Retirement Account Holder" and IPS as the "Retirement Plan Custodian." The Newmark Policy Funding Agreement set out the relationship between the three parties: WMH, IPS and LPI.

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24. The Newmark Policy Funding Agreement also purported to establish that WMH was "lending" $11,650 to LPI:

> "for the purpose of acquiring a 0.25% interest in the following policy and/or related death benefit as collateral for said note. The [promissory] note evidencing this loan shall be non-recourse and secured and payable only from the proceeds of the policy noted below[.]"

25. On or about July 11, 2011, LPI notified WMH that he had purchased a 0.251078 percent share of the Death Benefit of Newmark' life insurance policy. In exchange for the "loan," WMH received a promissory note from the Newmark Viatical Trust and its trustee, Pardo. Under the terms of the policy funding agreement, on the death of Newmark, WMH was to receive $20,086.24 as payment of the note, unless Newmark lived longer than the Life Expectancy Estimate of 84 months.

26. Under the terms of the Newmark Policy Funding Agreement, if Newmark outlived the Life Expectancy Estimate, WMH was required to pay additional premium. Specifically, the Newmark Policy Funding Agreement stated, *inter alia*:

> "PURCHASER [WMH] recognizes that he/she will be required to contribute additional amounts to the Premium Escrow Account in the event the amount retained for payment of premiums is exhausted. In the event PURCHASER fails or refuses to make such contributions if and when required to do so, it is specifically agreed and acknowledged by the parties that PURCHASER will be deemed to have abandoned all of PURCHASER'S interest in and to the note referred to in this agreement and the life settlement policy collateralizing said note, and all of PURCHASER'S interest in said note and life settlement policy may be offered to any other person in exchange for payment of the outstanding premium contribution amount."

27. Malanowski and LPI represented to WMH that he could receive a return of up to $20,086.24 for his investment in the Newmark policy. The note, however, provided in part the following disclosure language:

> "PURCHASER understands and agrees that he/she has not purchased the right to receive a specific amount of funds in the future, but owns a note secured and payable by the right to receive a discrete percentage of any and all proceeds paid under the terms of the above-referenced life settlement policy."

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Zayonts Transaction

28. On February 28, 2011, WMH also signed a Policy Funding Agreement for a policy issued to an Insured identified as Zayonts (the "Zayonts Policy Funding Agreement"). As with the Newmark Policy Funding Agreement, the Zayonts Policy Funding Agreement purported to establish that WMH was "lending" LPI $11,653.17 in exchange for a 0.37 percent interest in the Zayonts policy. Like in the Newmark Policy Funding Agreement, the Zayonts Policy Funding Agreement set out the details of a life insurance policy, including the provision that "both parties understand and agree that their relationship is one of principal and agent and ***does*** constitute the sale of a security[.]" (Emphasis added.) Other documents provided to WMH contained statements that the LPI interests were not securities.

29. On June 9, 2011, LPI notified WMH that he had purchased a 0.369942 percent share of the Death Benefit of the insurance policy identified with Zayonts. In exchange for his "loan," WMH received a promissory note from the Zayonts Viatical Trust and its trustee, Pardo. Under the terms of the policy funding agreement, WMH was to receive $18,497.10 upon the death of Zayonts, unless Zayonts lived longer than the Life Expectancy Estimate provided by LPI. As with the Newmark Policy Funding Agreement, the promissory note contained language that concerned possible additional payments of insurance premium and the fact that the return on investment was not fixed, but was a percentage of the proceeds paid on the referenced life settlement policy.

Lesser Transaction

30. On March 31, 2011, WMH signed a Policy Funding Agreement to an insured identified as Lesser (the "Lesser Policy Funding Agreement"). The Lesser Policy Funding Agreement purported to establish that WMH was "lending" LPI $11,650 in exchange for a 0.48 percent interest in the Lesser policy. As with the Newmark and Zayonts policy funding agreements, the Lesser Policy Funding Agreement set out the details of a life

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insurance policy, including the provision that: "both parties understand and agree that their relationship is one of principal and agent and ***does*** constitute the sale of a security[.]" (Emphasis added.) Other documents provided to WMH contained statements that the LPI interests were not securities.

31. On or about May 26, 2011, LPI notified WMH that he had purchased a 0.476678 percent share of the Death Benefit of the Lesser insurance policy. In exchange for his "loan," WMH received a promissory note from the Lesser Viatical Trust and its trustee, Pardo. Under the terms of the promissory note, on the death of the Insured, WMH was to receive $22,403.87 on payment of the note, unless the insured lived longer than the Life Expectancy Estimate provided by LPI. As with the Newmark and Zayonts policies, the note contained language that concerned possible additional payments of insurance premium and the fact that the return on investment was not fixed, but was a percentage of the proceeds paid on the referenced life settlement policy.

Settlement Agreement between Malanowski and WMH

32. In February 2013, Malanowski and WMH entered into a Settlement Agreement to resolve all the claims between them regarding the sale and purchase of the Fractionalized Interests. As part of the settlement, WMH transferred his ownership interests in the Fractionalized Interests to LPI. Malanowski has personally guaranteed that WMH will receive his purchase price or the Fractionalized Interests in the amount of $34,953.17. To secure his obligation to guarantee payment to WMH, Malanowski has signed and delivered to WMH's attorney a Confession of Judgment and General Judgment and Money Award on Confession (collectively, the "Court Documents") in the amount of $34,953.17. If WMH has not received payment in full for the Fractionalized Interests by August 20, 2013, Malanowski agrees that WMH may file the Court Documents and take lawful action to collect Malanowski's obligation to WMH.

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CONCLUSIONS OF LAW

The Director CONCLUDES that:

33. The Fractionalized Interests described herein are "securities" as that term is defined under ORS 59.015 (19)(a) because they are promissory notes and/or "investment contracts."

34. Malanowski offered and sold three unregistered securities to WMH in Oregon in violation of ORS 59.055. Each sale of an unregistered security is a separate violation of ORS 59.055.

35. Malanowski sold securities in Oregon without first being licensed to do so in violation of ORS 59.165.

36. In connection with the purchase or sale of securities, Malanowski omitted to state a material fact necessary in order to make the following statements, in light of the circumstances under which they were made, not misleading in violation of ORS 59.135 (2). In particular:

A. Malanowski failed to disclose to WMH that the Fractionalized Interests were not registered under Oregon Securities Law; and

B. Malanowski failed to disclose to WMH that he was not licensed to sell securities in Oregon.

ORDER

The Director ISSUES the following ORDER:

Order to Cease and Desist

37. As authorized by ORS 59.245, the Director ORDERS Malanowski, and any affiliated and/or successor person, business or corporation, to CEASE AND DESIST from violating any provision of the Oregon Securities Law, ORS chapter 59, or the Oregon Administrative Rules adopted thereunder.

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Order Denying Use of Exemptions to the Securities Registration Requirements

38. The Director, as authorized by ORS 59.045, DENIES Malanowski, and any affiliated and/or successor person, business or corporation, the use of the exemptions to the securities registration requirements allowed under ORS 59.025 and ORS 59.035.

39. Malanowski may, in accordance with OAR 441-011-0020, request that the Director waive or modify the application of this order 24 (twenty-four) months after the entry of this order. The Director agrees that it will grant that request so long as the Director finds that granting the request would not be contrary to the Oregon Securities Law or to the public interest.

Order Assessing Civil Penalties

40. The Director, as authorized by ORS 59.995, may assess a CIVIL PENALTY in an amount of not more than $20,000 for each violation of the Oregon Securities Law.

41. As authorized by ORS 59.995, the Director hereby assesses Malanowski a CIVIL PENALTY in the amount of $40,000 (forty thousand dollars) for the following violations:

A. A CIVIL PENALTY of $15,000 (fifteen thousand dollars) for violation of ORS 59.055;

B. A CIVIL PENALTY of $15,000 (fifteen thousand dollars) for violation of ORS 59.165; and

C. A CIVIL PENALTY of $10,000 (ten thousand dollars) for violation of ORS 59.135.

42. The assessed CIVIL PENALTY is due and payable to the Department of Consumer and Business Services on or before January 15, 2014.

43. The Director agrees to reduce Malanowski's assessed CIVIL PENALTY by $1 (one dollar) for every $1 (one dollar) that is paid to WMH as restitution or as a refund of his investment in the Fractionalized Interests. Proof of such payment must be provided to

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DFCS in the form of a cancelled check, wire confirmation, or if not one of these two forms, then in a form satisfactory to DFCS. The reduction of the assessed CIVIL PENALTY will not exceed $35,000.

44. Malanowski agrees to cooperate with any investigation by the Director into the business dealings of LPI, LPI associated companies or any other investigation by the Director into interests similar to those sold by LPI. Cooperation could include, but is not limited to, providing testimony at any interview, deposition, administrative hearing or trial.

Payment to Consumer Protection Trust Fund

45. In addition to the CIVIL PENALTY assessed above, Malanowski agrees to pay $1,000 (one thousand dollars) to the Oregon Department of Consumer and Business Services' Consumer Protection Trust Fund. Payment of this amount must be made by January 15, 2014.

46. This Order is a Final Order under ORS 183.310 (6)(b). Subject to that provision, the entry of this Order does not limit other remedies that may be available to the Director under Oregon law.

IT IS SO ORDERED.

Dated this 13th day of August, 2013.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

Approved as to form:

/s/ John T. Carr Dated: August 8, 2013.
John T. Carr
CARR BUTTERFIELD, LLC
Attorney for Respondent

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CONSENT OF JAMES WALTER MALANOWSKI TO ENTRY OF ORDER

I am a resident of the state of Oregon; I have read the foregoing Order and, without admitting or denying the facts and allegations contained herein, I know and fully understand the contents hereof; I have been represented by counsel in this matter; I have been advised of my right to a hearing; I expressly waive any right to a hearing; I voluntarily consent to the entry of this Order without any force or duress; and I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

/s/ James Walter Malanowski
James Walter Malanowski

State of OREGON

County of Clackamas

Signed or attested before me on this 8th day of August, 2013 by James Walter Malanowski.

/s/ Amy M Pratt
Notary Public – State of Oregon

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