



California Corporate & Securities Law

“Time Cools, Time Clarifies” – The CSL’s Cooling Off Statute

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The Corporate Securities Law of 1968 does not provide for a general “cooling off” period in which a purchaser of securities may cancel the transaction for any reason. However, the Department of Corporations in 2000 sponsored legislation, SB 1837 (Figueroa), that added Corporations Code Section 25508.5 establishing a seven calendar day cooling off period with respect to a viatical or life settlement contract (*See Corp. Code § 25023*).

Under Section 25508.5, a person who purchases a viatical or life settlement contract or a fractionalized or pooled interest therein may “rescind or cancel” the purchase for “any reason”. No specific form is required for the rescission or cancellation. In these details, the statute is relatively clear.

The statute becomes more opaque when it provides that rescission or cancellation may be made at any time before seven calendar days after the date the person remits the required consideration “to the issuer or the issuer’s agent” and requires the “issuer” to refund the person’s money within seven calendar days after receiving the notice of rescission or cancellation.

Is the statute talking about the issuer of the contract, the creator of the pooled interest, or the person who sold an existing contract? The answer becomes clear when Corporations Code Section 25010(c) is consulted. In the context of viatical and life settlement contracts, the statute defines “issuer” in two different ways:

- If a fractional or pooled interest is involved, the “issuer” is the person who creates, for the purposes of sale, the fractional or pooled interest.
- If a viatical or life settlement contract is not fractionalized or pooled, the “issuer” is the person effecting the transactions with the investor in the contract.

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