

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert J. Nyman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to viatical settlements .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert J. Nyman	5th Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1052 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO VIATICAL SETTLEMENTS .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Sections 212 to 223, inclusive, of chapter 175, as appearing in the 2004 Official Edition, are hereby
2 repealed.

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5 SECTION 2. The General Laws are hereby amended by inserting after Chapter 175K the following chapter:-

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Chapter 175L

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Viatical Settlements Act

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11 **Section 1. Short Title**

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13 This Chapter may be cited as the Viatical Settlements Act.

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15 **Section 2. Definitions**

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17 A. “Advertising” means any written, electronic or printed communication or any communication by
18 means of recorded telephone messages or transmitted on radio, television, the Internet or similar
19 communications media, including film strips, motion pictures and videos, published, disseminated,
20 circulated or placed directly before the public, in this state, for the purpose of creating an interest
21 in or inducing a person to sell, assign, devise, bequest or transfer the death benefit or ownership of
22 a life insurance policy pursuant to a viatical settlement contract.

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24 B. “Business of viatical settlements” means an activity involved in, but not limited to, the offering,
25 soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring,
26 tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other
27 manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.

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29 C. “Chronically ill” means:

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31 (1) Being unable to perform at least two (2) activities of daily living (i.e., eating, toileting,
32 transferring, bathing, dressing or continence);

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34 (2) Requiring substantial supervision to protect the individual from threats to health and
35 safety due to severe cognitive impairment; or

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37 (3) Having a level of disability similar to that described in Paragraph (1) as determined by
38 the Secretary of Health and Human Services.

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40 D. “Commissioner” means the commissioner of insurance.

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43 E. (1) “Financing entity” means an underwriter, placement agent, lender, purchaser of
44 securities, purchaser of a policy or certificate from a viatical settlement provider, credit
45 enhancer, or any entity that has a direct ownership in a policy or certificate that is the
46 subject of a viatical settlement contract, but:

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48 (a) Whose principal activity related to the transaction is providing funds to effect
49 the viatical settlement or purchase of one or more viaticated policies; and

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51 (b) Who has an agreement in writing with one or more licensed viatical settlement
52 providers to finance the acquisition of viatical settlement contracts.

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54 (2) "Financing entity" does not include a non-accredited investor or a viatical settlement
55 purchaser.
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57 F. "Fraudulent viatical settlement act" includes:

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59 (1) Acts or omissions committed by any person who, knowingly or with intent to defraud,
60 for the purpose of depriving another of property or for pecuniary gain, commits, or
61 permits its employees or its agents to engage in acts including:

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63 (a) Presenting, causing to be presented or preparing with knowledge or belief that
64 it will be presented to or by a viatical settlement provider or viatical
65 settlement broker, financing entity, insurer, insurance producer or any other
66 person, false material information, or concealing material information, as part
67 of, in support of or concerning a fact material to one or more of the following:

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69 (i) An application for the issuance of a viatical settlement contract or
70 insurance policy;
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72 (ii) The underwriting of a viatical settlement contract or insurance policy;

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74 (iii) A claim for payment or benefit pursuant to a viatical settlement
75 contract or insurance policy;

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77 (iv) Premiums paid on an insurance policy,;

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79 (v) Payments and changes in ownership or beneficiary made in
80 accordance with the terms of a viatical settlement contract, or
81 insurance policy;

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83 (vi) The reinstatement or conversion of an insurance policy;

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85 (vii) In the solicitation, offer, effectuation or sale of a viatical settlement
86 contract, or insurance policy;

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88 (viii) The issuance of written evidence of viatical settlement contractor
89 insurance; or

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91 (ix) A financing transaction; and
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93 (b) Employing any plan, financial structure, device, scheme, or artifice to defraud
94 related to viaticated policies (c) ENTERING INTO ANY PRACTICE OR
95 PLAN WHICH INVOLVES STRANGER-ORIGINATED LIFE INSURANCE;
96 AND
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98 (d) FAILING TO DISCLOSE TO THE INSURER WHEN REQUESTED BY THE INSURER THAT
99 THE PROSPECTIVE INSURED HAS UNDERGONE A LIFE EXPECTANCY EVALUATION
100 BY ANY PERSON OR ENTITY OTHER THAN THE INSURER OR ITS AUTHORIZED
101 REPRESENTATIVES IN CONNECTION WITH THE ISSUANCE OF THE POLICY.

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103 (2) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or
104 permits its employees or its agents to:
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106 (a) Remove, conceal, alter, destroy or sequester from the commissioner the assets
107 or records of a licensee or other person engaged in the business of viatical
108 settlements;
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110 (b) Misrepresent or conceal the financial condition of a licensee, financing entity,
111 insurer or other person;
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113 (c) Transact the business of viatical settlements in violation of laws requiring a
114 license, certificate of authority or other legal authority for the transaction of
115 the business of viatical settlements; or
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117 (d) File with the commissioner or the equivalent chief insurance regulatory official
118 of another jurisdiction a document containing false information or otherwise
119 conceals information about a material fact from the commissioner;
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121 (3) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums,
122 credits or other property of a viatical settlement provider, insurer, insured, viator,
123 insurance policyowner or any other person engaged in the business of viatical
124 settlements or insurance;

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126 (4) Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical
127 settlement contract, the subject of which is a life insurance policy that was obtained by
128 presenting false information concerning any fact material to the policy or by concealing,
129 for the purpose of misleading another, information concerning any fact material to the
130 policy, where the person or the persons intended to defraud the policy's issuer, the
131 viatical settlement provider or the viator. "Recklessly" means engaging in the conduct in
132 conscious and clearly unjustifiable disregard of a substantial likelihood of the existence
133 of the relevant facts or risks, such disregard involving a gross deviation from acceptable
134 standards of conduct;

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136 (5) Facilitating the change of state of ownership of a policy or certificate or the state of
137 residency of a viator to a state or jurisdiction that does not have a law similar to this
138 Chapter for the express purposes of evading or avoiding the provisions of this Chapter;
139 or

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141 (6) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to
142 commit the acts or omissions specified in this subsection.
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144 G. "Life insurance producer" means any person licensed in this state as a resident or nonresident
145 insurance producer who has received qualification or authority for life insurance coverage or a life
146 line of coverage pursuant to this chapter.
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148 H. "Person" means a natural person or a legal entity, including, without limitation, an individual,
149 partnership, limited liability company, association, trust, or corporation.
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151 I. "Policy" means an individual or group policy, group certificate, contract or arrangement of life
152 insurance owned by a resident of this state, regardless of whether delivered or issued for
153 delivery in this state.

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155 J. "Related provider trust" means a titling trust or other trust established by a licensed viatical
156 settlement provider or a financing entity for the sole purpose of holding the ownership or
157 beneficial interest in purchased policies in connection with a financing transaction. The trust shall
158 have a written agreement with the licensed viatical settlement provider under which the licensed
159 viatical settlement provider is responsible for ensuring compliance with all statutory and
160 regulatory requirements and under which the trust agrees to make all records and files related to
161 viatical settlement transactions available to the commissioner as if those records and files were
162 maintained directly by the licensed viatical settlement provider.
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164 K. "Special purpose entity" means a corporation, partnership, trust, limited liability company or other
165 similar entity formed solely to provide either directly or indirectly access to institutional capital
166 markets:
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168 (1) For a financing entity or licensed viatical settlement provider; or
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170 (2) (i) In connection with a transaction in which the securities in the special purposes
171 entity are acquired by the viator or by "qualified institutional buyers" as defined
172 in Rule 144 promulgated under the Securities Act of 1933, as amended; or
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174 (ii) The securities pay a fixed rate of return commensurate with established asset-
175 backed institutional capital markets.
176

177 L. “STRANGER-ORIGINATED LIFE INSURANCE”, OR “STOLI”, MEANS A PRACTICE OR A
178 PLAN TO INITIATE A LIFE INSURANCE POLICY FOR THE BENEFIT OF A THIRD PARTY
179 INVESTOR WHO, AT THE TIME OF POLICY ORIGINATION, HAS NO INSURABLE
180 INTEREST IN THE INSURED. STOLI PRACTICES INCLUDE BUT ARE NOT LIMITED TO
181 CASES IN WHICH LIFE INSURANCE IS PURCHASED WITH RESOURCES OR
182 GUARANTEES FROM OR THROUGH A PERSON OR ENTITY WHO, AT THE TIME OF
183 POLICY INCEPTION, COULD NOT LAWFULLY INITIATE THE POLICY HIMSELF OR
184 ITSELF, AND WHERE, AT THE TIME OF POLICY INCEPTION, THERE IS AN
185 ARRANGEMENT OR AGREEMENT, WHETHER VERBAL OR WRITTEN, TO DIRECTLY OR
186 INDIRECTLY TRANSFER THE OWNERSHIP OF THE POLICY AND/OR THE POLICY
187 BENEFITS TO A THIRD PARTY. TRUSTS THAT ARE CREATED TO GIVE THE
188 APPEARANCE OF INSURABLE INTEREST, AND ARE USED TO INITIATE POLICIES FOR
189 INVESTORS, VIOLATE INSURABLE INTEREST LAWS AND THE PROHIBITION AGAINST
190 WAGERING ON LIFE. STOLI ARRANGEMENTS DO NOT INCLUDE THOSE PRACTICES
191 SET FORTH IN SECTION 2 O(3) OF THIS ACT
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194 M. “Terminally ill” means having an illness or sickness that can reasonably be expected to result in death
195 in twenty-four (24) months or less.
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197 N. “Viatical settlement broker” means a person, including a life insurance producer as provided for in
198 Section 3 of this Chapter, who working exclusively on behalf of a viator and for a fee, commission
199 or other valuable consideration, offers or attempts to negotiate viatical settlement contracts
200 between a viator and one or more viatical settlement providers or one or more viatical settlement
201 brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a
202 viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical
203 settlement provider, and owes a fiduciary duty to the viator to act according to the viator’s
204 instructions and in the best interest of the viator. The term does not include an attorney, certified
205 public accountant or a financial planner accredited by a nationally recognized accreditation
206 agency, who is retained to represent the viator and whose compensation is not paid directly or
207 indirectly by the viatical settlement provider.
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209 O. (1) “Viatical settlement contract” means a written agreement between a viator and a
210 viatical settlement provider or any affiliate of the viatical settlement provider
211 establishing the terms under which compensation or anything of value is or will be paid,
212 which compensation or value is less than the expected death benefits of the policy, in
213 return for the viator’s present or future assignment, transfer, sale, devise or bequest of
214 the death benefit or ownership of any portion of the insurance policy or certificate of
215 insurance. “VIATICAL SETTLEMENT CONTRACT” ALSO INCLUDES THE
216 TRANSFER FOR COMPENSATION OR VALUE OF OWNERSHIP OR
217 BENEFICIAL INTEREST IN A TRUST OR OTHER ENTITY THAT OWNS SUCH
218 POLICY IF THE TRUST OR OTHER ENTITY WAS FORMED OR AVAILED OF
219 FOR THE PRINCIPAL PURPOSE OF ACQUIRING ONE OR MORE LIFE
220 INSURANCE CONTRACTS, WHICH LIFE INSURANCE CONTRACT INSURES
221 THE LIFE OF A PERSON RESIDING IN THIS STATE.

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(2) “Viatical settlement contract” includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where:

(a) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(b) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(3) “Viatical settlement contract” does not include:

(a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy’s terms;

(b) Loan proceeds that are used solely to pay:

(i) Premiums for the policy;

(ii) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(c) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that NEITHER the default itself NOR THE TRANSFER OF THE POLICY IN CONNECTION WITH SUCH DEFAULT is

255 pursuant to an agreement or understanding with any other person for the
256 purpose of evading regulation under this Act;
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258 (d) A loan made by a lender that does not violate Chapter 255C, provided that the
259 premium finance loan is not described in Paragraph (2) of this subsection;
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261 (e) An agreement where all the parties (x) are closely related to the insured by
262 blood or law or (y) have a lawful substantial economic interest in the continued
263 life, health and bodily safety of the person insured, or are trusts established
264 primarily for the benefit of such parties;

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266 (f) Any designation, consent or agreement by an insured who is an employee of an
267 employer in connection with the purchase by the employer, or trust
268 established by the employer, of life insurance on the life of the employee;

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270 (g) A bona fide business succession planning arrangement:

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272 (i) Between one or more shareholders in a corporation or between a
273 corporation and one or more of its shareholders or one or more trust
274 established by its shareholders;

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276 (ii) Between one or more partners in a partnership or between a
277 partnership and one or more of its partners or one or more trust
278 established by its partners; or

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280 (iii) Between one or more members in a limited liability company or
281 between a limited liability company and one or more of its members
282 or one or more trust established by its members;

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284 (h) An agreement entered into by a service recipient, or a trust established by the
285 service recipient, and a service provider, or a trust established by the service
286 provider, who performs significant services for the service recipient's trade or
287 business; or

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289 (i) Any other contract, transaction or arrangement exempted from the definition
290 of viatical settlement contract by the commissioner based on a determination
291 that the contract, transaction or arrangement is not of the type intended to be
292 regulated by this Chapter.

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296 P. (1) "Viatical settlement provider" means a person, other than a viator, that enters into or
297 effectuates a viatical settlement contract with a viator resident in this state.

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299 (2) "Viatical settlement provider" does not include:

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301 (a) A bank, savings bank, savings and loan association, credit union, other licensed
302 lending institution that takes an assignment of a life insurance policy solely as
303 collateral for a loan;

304 (b) A premium finance company making premium finance loans and exempted by the
305 commissioner from the licensing requirement under the premium finance laws
306 that takes an assignment of a life insurance policy solely as collateral for a loan;

307 (c) The issuer of the life insurance policy ;
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310 (d) An authorized or eligible insurer that provides stop loss coverage or financial
311 guaranty insurance to a viatical settlement provider, purchaser, financing
312 entity, special purpose entity or related provider trust;

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314 (e) A natural person who enters into or effectuates no more than one agreement
315 in a calendar year for the transfer of life insurance policies for any value less
316 than the expected death benefit;

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318 (f) A financing entity;

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320 (g) A special purpose entity;

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322 (h) A related provider trust;

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- (i) A viatical settlement purchaser; or

- (j) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

R. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

S. (1) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of this Chapter, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(2) "Viator" does not include:

- (a) A licensee under this Chapter, including a life insurance producer acting as a viatical settlement broker pursuant to this Chapter;

- (b) Qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

- (c) A financing entity;

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(d) A special purpose entity; or

(e) A related provider trust.

Section 3. License and Bond Requirements

A. (1) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.

(2) (a) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(b) Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that he or she is acting as a viatical settlement broker on a form prescribed by the commissioner, and the commissioner shall collect from the applicant and pay to the commonwealth charges and fees to be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with this Chapter.

(c) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

392 (3) A person licensed as an attorney, certified public accountant or financial planner
393 accredited by a nationally recognized accreditation agency, who is retained to represent
394 the viator, whose compensation is not paid directly or indirectly by the viatical
395 settlement provider, may negotiate viatical settlement contracts on behalf of the viator
396 without having to obtain a license as a viatical settlement broker.

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398 B. Application for a viatical settlement provider or viatical settlement broker license shall be made
399 to the commissioner by the applicant on a form prescribed by the commissioner, and the
400 commissioner shall collect from the applicant and pay to the commonwealth charges and fees to
401 be determined annually by the commissioner of administration under the provision of section
402 three B of chapter seven.

403
404 C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual
405 renewal fees specified in Section Chapter 175, §14. Failure to pay the fees by the renewal date
406 results in expiration of the license.

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408 D. The applicant shall provide information on forms required by the commissioner. The
409 commissioner shall have authority, at any time, to require the applicant to fully disclose the
410 identity of all stockholders, partners, officers, members and employees, and the commissioner
411 may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a
412 legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof
413 who may materially influence the applicant's conduct meets the standards of this Chapter.

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415 E. A license issued to a legal entity authorizes all partners, officers, members and designated
416 employees to act as viatical settlement providers or viatical settlement, as applicable, under the
417 license, and all those persons shall be named in the application and any supplements to the
418 application.

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420 F. Upon the filing of an application and the payment of the license fee, the commissioner shall
421 make an investigation of each applicant and issue a license if the commissioner finds that the
422 applicant:

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424 (1) If a viatical settlement provider, has provided a detailed plan of operation;

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426 (2) Is competent and trustworthy and intends to act in good faith in the capacity involved
427 by the license applied for;

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- (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;

- (4) (a) If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

- (b) If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

- (c)

- (c) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond issued pursuant to Paragraph 4 shall be in the favor of this state and shall specifically authorize recovery by the commission on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or viatical settlement broker.

- (e) Notwithstanding any of the provisions of this section to the contrary, the commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with one state where the applicant is licensed as a viatical settlement provider or viatical settlement broker.

- (5) If a legal entity, provides a certificate of good standing from the state of its domicile; and

- (6) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of Section 14G of this Chapter.

464 G. The commissioner shall not issue a license to a nonresident applicant, unless a written
465 designation of an agent for service of process is filed and maintained with the commissioner or
466 the applicant has filed with the commissioner, the applicant's written irrevocable consent that
467 any action against the applicant may be commenced against the applicant by service of process
468 on the commissioner.

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470 H. A viatical settlement provider or viatical settlement broker shall provide to the commissioner
471 new or revised information about officers, ten percent (10%) or more stockholders, partners,
472 directors, members or designated employees within thirty (30) days of the change.

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474 I. An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen
475 (15) hours of training related to viatical settlements and viatical settlement transactions, as
476 required by the commissioner; provided, however, that a life insurance producer who is
477 operating as a viatical settlement broker pursuant to Subsection A(3) shall not be subject to the
478 requirements of this subsection. Any person failing to meet the requirements of this subsection
479 shall be subject to the penalties imposed by the commissioner.

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481 **Section 4. License Revocation and Denial**
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483 A. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a
484 viatical settlement provider or viatical settlement broker if the commissioner finds that:

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486 (1) There was any material misrepresentation in the application for the license;

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488 (2) The licensee or any officer, partner, member or key management personnel has been
489 convicted of fraudulent or dishonest practices, is subject to a final administrative action
490 or is otherwise shown to be untrustworthy or incompetent;

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492 (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to
493 viators;

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495 (4) The licensee or any officer, partner, member or key management personnel has been
496 found guilty of, or has pleaded guilty or *nolo contendere* to, any felony, or to a
497 misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of
498 conviction has been entered by the court;

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- (5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this Chapter;
- (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
- (7) The licensee no longer meets the requirements for initial licensure;
- (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or
- (9) The licensee or any officer, partner, member or key management personnel has violated any provision of this Chapter.

B. The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this Chapter if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this Chapter or has otherwise engaged in of bad faith conduct with one or more viators.

C. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to this Chapter the commissioner shall conduct a hearing in accordance with the provisions of Chapter 30A.

Section 5. Approval of Viatical Settlement Contracts and Disclosure Statements

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical

533 settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions
534 contained therein fail to meet the requirements of Sections 8, 10, 13 and 14B of this Chapter or are unreasonable,
535 contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's
536 discretion, the commissioner may require the submission of advertising material.
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538 **Section 6. Reporting Requirements and Privacy**

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540 A. FOR ANY POLICY SETTLED WITHIN FIVE (5) YEARS OF POLICY ISSUANCE, each
541 viatical settlement provider shall file with the commissioner on or before March 1 of each year
542 an annual statement containing such information as the commissioner may prescribe by
543 regulation. IN ADDITION TO ANY OTHER REQUIREMENTS, THE ANNUAL
544 STATEMENT SHALL SPECIFY THE TOTAL NUMBER, AGGREGATE FACE AMOUNT
545 AND LIFE SETTLEMENT PROCEEDS OF POLICIES SETTLED DURING THE
546 IMMEDIATELY PRECEDING CALENDAR YEAR, TOGETHER WITH A BREAKDOWN OF
547 THE INFORMATION BY POLICY ISSUE YEAR. THE ANNUAL STATEMENT SHALL
548 ALSO INCLUDE THE NAMES OF THE INSURANCE COMPANIES WHOSE POLICIES
549 HAVE BEEN SETTLED AND THE VIATICAL SETTLEMENT BROKERS THAT HAVE
550 SETTLED SAID POLICIES. Such information shall be limited to only those transactions where
551 the viator is a resident of this state. Individual transaction data regarding the business of viatical
552 settlements or data that could compromise the privacy of personal, financial and health
553 information of the viator or insured shall be filed with the commissioner on a confidential basis.

554

555 B. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement
556 broker, insurance company, insurance producer, information bureau, rating agency or company,
557 or any other person with actual knowledge of an insured's identity, shall not disclose that
558 identity as an insured, or the insured's financial or medical information to any other person
559 unless the disclosure:

560

561 (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement
562 provider and the viator and insured have provided prior written consent to the
563 disclosure;

564

565

566 (2) Is provided in response to an investigation or examination by the commissioner or any
567 other governmental officer or agency or pursuant to the requirements of Section 14C;
568

569

- 570 (3) Is a term of or condition to the transfer of a policy by one viatical settlement provider to
571 another viatical settlement provider;
- 572
- 573 (4) Is necessary to permit a financing entity, related provider trust or special purpose entity
574 to finance the purchase of policies by a viatical settlement provider and the viator and
575 insured have provided prior written consent to the disclosure;
- 576
- 577 (5) Is necessary to allow the viatical settlement provider or viatical settlement broker or their
578 authorized representatives to make contacts for the purpose of determining health status;
579 or
580
- 581 (6) Is required to purchase stop loss coverage or financial guaranty insurance.
582

583
584

585 **Section 7. Examination or Investigations**

586

587 A. Authority, Scope and Scheduling of Examinations
588

- 589 (1) (a) The commissioner may conduct an examination under this Chapter of a licensee
590 as often as the commissioner in his or her discretion deems appropriate after
591 considering the factors set forth in this paragraph.
592
- 593 (b) In scheduling and determining the nature, scope, and frequency of the
594 examinations, the commissioner shall consider such matters as the consumer
595 complaints, results of financial statement analyses and ratios, changes in
596 management or ownership, actuarial opinions, report of independent certified
597 public accountants, and other relevant criteria as determined by the
598 commissioner.
599
- 600 (2) For purposes of completing an examination of a licensee under this Chapter, the
601 commissioner may examine or investigate any person, or the business of any person, in
602 so far as the examination or investigation is, in the sole discretion of the commissioner,
603 necessary or material to the examination of the licensee.
604
- 605 (3) In lieu of an examination under this Chapter of any foreign or alien licensee licensed in
606 this state, the commissioner may, at the commissioner's discretion, accept an examination
607 report on the licensee as prepared by the commissioner for the licensee's state of domicile
608 or port-of-entry state.
609

610 (4) As far as practical, the examination of a foreign or alien insurer shall be made in
611 cooperation with the insurance supervisory officials of other states in which the insurer
612 transacts business.

613

614 B. Record Retention Requirements

615

616 (1) A person required to be licensed by this Chapter shall for five (5) years retain copies of
617 all:
618

619 (a) Proposed, offered or executed contracts, underwriting documents, policy forms,
620 and applications from the date of the proposal, offer or execution of the contract
621 or purchase agreement, whichever is later;
622

623 (b) All checks, drafts or other evidence and documentation related to the payment,
624 transfer, deposit or release of funds from the date the transaction; and
625

626 (c) All other records and documents related to the requirements of this Chapter.
627

628 (2) This section does not relieve a person of the obligation to produce these documents to
629 the commissioner after the retention period has expired if the person has retained the
630 documents.
631

632 (3) Records required to be retained by this section must be legible and complete and may
633 be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic
634 media, or by any process that accurately reproduces or forms a durable medium for the
635 reproduction of a record.
636

637 C. Conduct of Examinations

638

639 (1) Upon determining that an examination should be conducted, the commissioner shall
640 issue an examination warrant appointing one or more examiners to perform the
641 examination and instructing them as to the scope of the examination. In conducting the
642 examination, the examiner shall observe those guidelines and procedures set forth in
643 the *Examiners Handbook* adopted by the National Association of Insurance
644 Commissioners (NAIC). The commissioner may also employ such other guidelines or
645 procedures as the commissioner may deem appropriate.

646

647 (2) Every licensee or person from whom information is sought, its officers, directors and
648 agents shall provide to the examiners timely, convenient and free access at all reasonable

649 hours at its offices to all books, records, accounts, papers, documents, assets and
650 computer or other recordings relating to the property, assets, business and affairs of the
651 licensee being examined. The officers, directors, employees and agents of the licensee or
652 person shall facilitate the examination and aid in the examination so far as it is in their
653 power to do so. The refusal of a licensee, by its officers, directors, employees or agents,
654 to submit to examination or to comply with any reasonable written request of the
655 commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license
656 or authority held by the licensee to engage in the viatical settlement business or other
657 business subject to the commissioner's jurisdiction. Any proceedings for suspension,
658 revocation or refusal of any license or authority shall be conducted pursuant to Chapter
659 30A.
660

661 (3) The commissioner shall have the power to issue subpoenas, to administer oaths and to
662 examine under oath any person as to any matter pertinent to the examination. Upon
663 the failure or refusal of a person to obey a subpoena, the commissioner may petition a
664 court of competent jurisdiction, and upon proper showing, the Court may enter an
665 order compelling the witness to appear and testify or produce documentary evidence.
666 Failure to obey the court order shall be punishable as contempt of court.

667
668 (4) When making an examination under this Chapter, the commissioner may retain
669 attorneys, appraisers, independent actuaries, independent certified public accountants
670 or other professionals and specialists as examiners, the reasonable cost of which shall
671 be borne by the licensee that is the subject of the examination.

672
673 (5) Nothing contained in this Chapter shall be construed to limit the commissioner's
674 authority to terminate or suspend an examination in order to pursue other legal or
675 regulatory action pursuant to the insurance laws of this state. Findings of fact and
676 conclusions made pursuant to any examination shall be *prima facie* evidence in any legal
677 or regulatory action.

678
679 (6) Nothing contained in this Chapter shall be construed to limit the commissioner's
680 authority to use and, if appropriate, to make public any final or preliminary examination
681 report, any examiner or licensee workpapers or other documents, or any other
682 information discovered or developed during the course of any examination in the
683 furtherance of any legal or regulatory action which the commissioner may, in his or her
684 sole discretion, deem appropriate.

685
686

687 D. Examination Reports

688

689 (1) Examination reports shall be comprised of only facts appearing upon the books, records
690 or other documents of the licensee, its agents or other persons examined, or as ascertained
691 from the testimony of its officers or agents or other persons examined concerning its
692 affairs, and such conclusions and recommendations as the examiners find reasonably
693 warranted from the facts.

694
695 (2) No later than sixty (60) days following completion of the examination, the examiner in
696 charge shall file with the commissioner a verified written report of examination under
697 oath. Upon receipt of the verified report, the commissioner shall transmit the report to the
698 licensee examined, together with a notice that shall afford the licensee examined a
699 reasonable opportunity of not more than thirty (30) days to make a written submission or
700 rebuttal with respect to any matters contained in the examination report.

701
702 (3) In the event the commissioner determines that regulatory action is appropriate as a
703 result of an examination, the commissioner may initiate any proceedings or actions
704 provided by law.

705

706 E. Confidentiality of Examination Information

707

708 (1) Names and individual identification data for all viators shall be considered private and
709 confidential information and shall not be disclosed by the commissioner, unless required
710 by law.

711
712 (2) Except as otherwise provided in this Chapter, all examination reports, working papers,
713 recorded information, documents and copies thereof produced by, obtained by or
714 disclosed to the commissioner or any other person in the course of an examination made
715 under this Chapter, or in the course of analysis or investigation by the commissioner of
716 the financial condition or market conduct of a licensee shall be confidential by law and
717 privileged, shall not be subject to clause Twenty-sixth of section seven of chapter four
718 and chapter sixty-six, shall not be subject to subpoena, and shall not be subject to
719 discovery or admissible in evidence in any private civil action. The commissioner is
720 authorized to use the documents, materials or other information in the furtherance of any
721 regulatory or legal action brought as part of the commissioner's official duties.

722
723 (3) Documents, materials or other information, including, but not limited to, all working
724 papers, and copies thereof, in the possession or control of the NAIC and its affiliates and
725 subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena,
726 and shall not be subject to discovery or admissible in evidence in any private civil action
727 if they are:

728

729 (a) Created, produced or obtained by or disclosed to the NAIC and its affiliates and
730 subsidiaries in the course of assisting an examination made under this Chapter,

731 or assisting a commissioner in the analysis or investigation of the financial
732 condition or market conduct of a licensee; or
733

734 (b) Disclosed to the NAIC and its affiliates and subsidiaries under Subsection E(4)
735 by a commissioner.

736

737 (c) For the purposes of Subsection E(2), "Chapter" includes the law of another
738 state or jurisdiction that is substantially similar to this Chapter.

739

740 (4) Neither the commissioner nor any person that received the documents, material or other
741 information while acting under the authority of the commissioner, including the NAIC
742 and its affiliates and subsidiaries, shall be permitted to testify in any private civil action
743 concerning any confidential documents, materials or information subject to Subsection
744 E(1).
745

746 (5) In order to assist in the performance of the commissioner's duties, the commissioner:
747

748 (a) May share documents, materials or other information, including the confidential
749 and privileged documents, materials or information subject to Subsection E(1),
750 with other state, federal and international regulatory agencies, with the NAIC
751 and its affiliates and subsidiaries, and with state, federal and international law
752 enforcement authorities, provided that the recipient agrees to maintain the
753 confidentiality and privileged status of the document, material, communication
754 or other information;
755

756 (b) May receive documents, materials, communications or information, including
757 otherwise confidential and privileged documents, materials or information, from
758 the NAIC and its affiliates and subsidiaries, and from regulatory and law
759 enforcement officials of other foreign or domestic jurisdictions, and shall
760 maintain as confidential or privileged any document, material or information
761 received with notice or the understanding that it is confidential or privileged
762 under the laws of the jurisdiction that is the source of the document, material or
763 information; and
764

765 (c) May enter into agreements governing sharing and use of information consistent
766 with this subsection.
767

768 (6) No waiver of any applicable privilege or claim of confidentiality in the documents,
769 materials or information shall occur as a result of disclosure to the commissioner under
770 this section or as a result of sharing as authorized in Subsection E(4).
771

772 (7) A privilege established under the law of any state or jurisdiction that is substantially
773 similar to the privilege established under this subsection shall be available and enforced
774 in any proceeding in, and in any court of, this state.

775
776 (8) Nothing contained in this Chapter shall prevent or be construed as prohibiting the
777 commissioner from disclosing the content of an examination report, preliminary
778 examination report or results, or any matter relating thereto, to the commissioner of any
779 other state or country, or to law enforcement officials of this or any other state or agency
780 of the federal government at any time or to the NAIC, so long as such agency or office
781 receiving the report or matters relating thereto agrees in writing to hold it confidential and
782 in a manner consistent with this Chapter.
783

784 F. Conflict of Interest

785
786 (1) An examiner may not be appointed by the commissioner if the examiner, either directly
787 or indirectly, has a conflict of interest or is affiliated with the management of or owns a
788 pecuniary interest in any person subject to examination under this Chapter. This section
789 shall not be construed to automatically preclude an examiner from being:

790 (a) A viator;

791
792 (b) An insured in a viaticated insurance policy; or

793 (c) A beneficiary in an insurance policy that is proposed to be viaticated.
794

795
796 (2) Notwithstanding the requirements of this clause, the commissioner may retain from time
797 to time, on an individual basis, qualified actuaries, certified public accountants, or other
798 similar individuals who are independently practicing their professions, even though these
799 persons may from time to time be similarly employed or retained by persons subject to
800 examination under this Chapter.
801
802

803 G. Cost of Examinations

804
805 The charge for each such examination shall be determined annually by the commissioner of
806 administration under the provision of section three B of chapter seven, and shall be paid by each
807 company within thirty days after notice from the commissioner of such charge. Such charge shall
808 include an amount equal to the cost of fringe benefits as established by the commissioner of
809 administration pursuant to section six B of chapter twenty-nine. If in the course of an
810 examination of a domestic company or foreign company which maintains a branch office outside

811 the commonwealth, it becomes necessary or expedient for the commissioner or any deputies or
812 examiners to travel outside the commonwealth, such company shall pay the proper expenses of
813 the commissioner, or any deputies or examiners incurred by reason thereof. Whenever the
814 commissioner deems it advisable the commissioner shall cause a complete audit of the books of
815 the company to be made by a disinterested expert accountant, and such company shall pay the
816 proper expenses of such audit. When making an examination under this chapter, the
817 commissioner may retain attorneys, appraisers independent actuaries, independent certified
818 public accountants and other professionals and specialists as examiners, the proper cost of which
819 shall be borne by the company which is the subject of the examination.

820

821 H. Immunity from Liability

822

823 (1) No cause of action shall arise nor shall any liability be imposed against the
824 commissioner, the commissioner's authorized representatives or any examiner appointed
825 by the commissioner for any statements made or conduct performed in good faith while
826 carrying out the provisions of this Chapter.
827

828 (2) No cause of action shall arise, nor shall any liability be imposed against any person for
829 the act of communicating or delivering information or data to the commissioner or the
830 commissioner's authorized representative or examiner pursuant to an examination
831 made under this Chapter, if the act of communication or delivery was performed in
832 good faith and without fraudulent intent or the intent to deceive. This paragraph does
833 not abrogate or modify in any way any common law or statutory privilege or immunity
834 heretofore enjoyed by any person identified in Paragraph (1).

835 (3) A person identified in Paragraph (1) or (2) shall be entitled to an award of attorney's
836 fees and costs if he or she is the prevailing party in a civil cause of action for libel,
837 slander or any other relevant tort arising out of activities in carrying out the provisions
838 of this Chapter and the party bringing the action was not substantially justified in doing
839 so. For purposes of this section a proceeding is "substantially justified" if it had a
840 reasonable basis in law or fact at the time that it was initiated.
841

842

843 I. Investigative Authority of the Commissioner

844

845 The commissioner may investigate suspected fraudulent viatical settlement acts and persons
846 engaged in the business of viatical settlements.
847

848 **Section 8. Disclosure to Viator**

849

850 A. With each application for a viatical settlement, a viatical settlement provider or viatical settlement
851 broker shall provide the viator with at least the following disclosures no later than the time the
852 application for the viatical settlement contract is signed by all parties. The disclosures shall be
853 provided in a separate document that is signed by the viator and the viatical settlement provider or
854 viatical settlement broker, and shall provide the following information:
855

856 (1) There are possible alternatives to viatical settlement contracts including any accelerated
857 death benefits or policy loans offered under the viator's life insurance policy.

858
859 (2) That a viatical settlement broker represents exclusively the viator, and not the insurer or
860 the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty
861 to act according to the viator's instructions and in the best interest of the viator.

862
863 (3) Some or all of the proceeds of the viatical settlement may be taxable under federal
864 income tax and state franchise and income taxes, and assistance should be sought from
865 a professional tax advisor.

866
867 (4) Proceeds of the viatical settlement could be subject to the claims of creditors.

868
869 (5) Receipt of the proceeds of a viatical settlement may adversely affect the viator's
870 eligibility for Medicaid or other government benefits or entitlements, and advice should
871 be obtained from the appropriate government agencies.
872

873 (6) The viator has the right to rescind a viatical settlement contract before the earlier of
874 sixty (60) calendar days after the date upon which the viatical settlement contract is
875 executed by all parties or thirty (30) calendar days after the viatical settlement proceeds
876 have been paid to the viator, as provided in Section 10F. Rescission, if exercised by the
877 viator, is effective only if both notice of the rescission is given, and the viator repays all
878 proceeds and any premiums, loans and loan interest paid on account of the viatical
879 settlement within the rescission period. If the insured dies during the rescission period,
880 the viatical settlement contract shall be deemed to have been rescinded, subject to
881 repayment by the viator or the viator's estate of all viatical settlement proceeds and any
882 premiums, loans and loan interest the viatical settlement within sixty (60) days of the
883 insured's death.

884
885 (7) Funds will be sent to the viator within three (3) business days after the viatical
886 settlement provider has received the insurer or group administrator's written
887 acknowledgment that ownership of the policy or interest in the certificate has been
888 transferred and the beneficiary has been designated.

889
890 (8) Entering into a viatical settlement contract may cause other rights or benefits, including
891 conversion rights and waiver of premium benefits that may exist under the policy or
892 certificate, to be forfeited by the viator. Assistance should be sought from a financial
893 adviser.
894

895 (9) Disclosure to a viator shall include distribution of a brochure describing the process of
896 viatical settlements. The NAIC's form for the brochure shall be used unless another form
897 is developed or approved by the commissioner.
898

899 (10) The disclosure document shall contain the following language: "All medical, financial or
900 personal information solicited or obtained by a viatical settlement provider or viatical
901 settlement broker about an insured, including the insured's identity or the identity of
902 family members, a spouse or a significant other may be disclosed as necessary to effect
903 the viatical settlement between the viator and the viatical settlement provider. If you
904 are asked to provide this information, you will be asked to consent to the disclosure.
905 The information may be provided to someone who buys the policy or provides funds for
906 the purchase. You may be asked to renew your permission to share information every
907 two years."
908

909 (11) Following execution of a viatical contract, the insured may be contacted for the purpose
910 of determining the insured's health status and to confirm the insured's residential or
911 business street address and telephone number, or as otherwise provided in this Chapter.
912 This contact shall be limited to once every three (3) months if the insured has a life
913 expectancy of more than one year, and no more than once per month if the insured has a
914 life expectancy of one year or less. All such contracts shall be made only by a viatical
915 settlement provider licensed in the state in which the viator resided at the time of the
916 viatical settlement, or by the authorized representative of a duly licensed viatical
917 settlement provider.
918

919 B. A viatical settlement provider shall provide the viator with at least the following disclosures no
920 later than the date the viatical settlement contract is signed by all parties. The disclosures shall be
921 conspicuously displayed in the viatical settlement contract or in a separate document signed by the
922 viator and provide the following information:
923

924 (1) The affiliation, if any, between the viatical settlement provider and the issuer of the
925 insurance policy to be viaticated;

926
927 (2) The document shall include the name, business address and telephone number of the
928 viatical settlement provider;
929
930

931

932 (3) If an insurance policy to be viaticated has been issued as a joint policy or involves family
933 riders or any coverage of a life other than the insured under the policy to be viaticated,
934 the viator shall be informed of the possible loss of coverage on the other lives under the
935 policy and shall be advised to consult with his or her insurance producer or the insurer
936 issuing the policy for advice on the proposed viatical settlement;

937
938 (5) State the dollar amount of the current death benefit payable to the viatical settlement
939 provider under the policy or certificate. If known, the viatical settlement provider shall
940 also disclose the availability of any additional guaranteed insurance benefits, the dollar
941 amount of any accidental death and dismemberment benefits under the policy or
942 certificate and the extent to which the viator's interest in those benefits will be
943 transferred as a result of the viatical settlement contract; and

944
945 (6) State whether the funds will be escrowed with an independent third party during the
946 transfer process, and if so, provide the name, business address, and telephone number
947 of the independent third party escrow agent, and the fact that the viator or owner may
948 inspect or receive copies of the relevant escrow or trust agreements or documents.

949
950 C. A viatical settlement broker shall provide the viator with at least the following disclosures no later
951 than the date the viatical settlement contract is signed by all parties. The disclosures shall be
952 conspicuously displayed in the viatical settlement contract or in a separate document signed by the
953 viator and provide the following information:

- 954 (1) The name, business address and telephone number of the viatical settlement broker;
- 955 (2) A full, complete and accurate description of all offers, counter-offers, acceptances and
956 rejections relating to the proposed viatical settlement contract;
- 957 (3) A written disclosure of any affiliations or contractual arrangements between the viatical
958 settlement broker and any person making an offer in connection with the proposed
959 viatical settlement contracts;
- 960 (4) The amount and method of calculating the broker's compensation, which term
961 "compensation" includes anything of value paid or given to a viatical settlement broker
962 for the placement of a policy; and
963
964
965
966

967
968 (5) Where any portion of the viatical settlement broker's compensation, as defined in
969 Paragraph (3) of this subsection, is taken from a proposed viatical settlement offer, the
970 broker shall disclose the total amount of the viatical settlement offer and the percentage
971 of the viatical settlement offer comprised by the viatical settlement broker's
972 compensation.
973

974 D. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance
975 policy, the provider shall communicate in writing the change in ownership or beneficiary to the
976 insured within twenty (20) days after the change.
977
978

979 **Section 9. Disclosure to Insurer**
980

981 Prior to the initiation of a plan, transaction or series of transactions, a viatical settlement broker or viatical
982 settlement provider shall fully disclose to an insurer a plan, transaction or series of transactions, to which the
983 viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue or finance a life
984 insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime
985 prior to, or during the first five (5) years after, issuance of the policy.

986 **Section 10. General Rules**
987
988

989 A. (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:
990

991 (a) If the viator is the insured, a written statement from a licensed attending
992 physician that the viator is of sound mind and under no constraint or undue
993 influence to enter into a viatical settlement contract; and
994

995 (b) A document in which the insured consents to the release of his or her medical
996 records to a licensed viatical settlement provider, viatical settlement broker
997 and the insurance company that issued the life insurance policy covering the
998 life of the insured.

999
1000 (2) Within twenty (20) days after a viator executes documents necessary to transfer any
1001 rights under an insurance policy or within twenty (20) days of entering any agreement,
1002 option, promise or any other form of understanding, expressed or implied, to viaticate
1003 the policy, the viatical settlement provider shall give written notice to the insurer that
1004 issued that insurance policy that the policy has or will become a viaticated policy. The
1005 notice shall be accompanied by the documents required by Paragraph (3).

1006
1007 (3) The viatical provider shall deliver a copy of the medical release required under
1008 Paragraph (1)(b), a copy of the viator's application for the viatical settlement contract,
1009 the notice required under Paragraph (2) and a request for verification of coverage to the
1010 insurer that issued the life policy that is the subject of the viatical transaction. The
1011 NAIC's form for verification of coverage shall be used unless another form is developed
1012 or approved by the commissioner.

1013

1014 (4) The insurer shall respond to a request for verification of coverage submitted on an
1015 approved form by a viatical settlement provider or viatical settlement broker within thirty
1016 (30) calendar days of the date the request is received and shall indicate whether, based on
1017 the medical evidence and documents provided, the insurer intends to pursue an
1018 investigation at this time regarding the validity of the insurance contract or possible
1019 fraud. The insurer shall accept a request for verification of coverage made on an NAIC
1020 form or any other form approved by the commissioner. The insurer shall accept an
1021 original or facsimile or electronic copy of such request and any accompanying
1022 authorization signed by the viator. Failure by the insurer to meet its obligations under this
1023 subsection shall be a violation of Section 11C and Section 16 of this Chapter.
1024

1025 (5) Prior to or at the time of execution of the viatical settlement contract, the viatical
1026 settlement provider shall obtain a witnessed document in which the viator consents to
1027 the viatical settlement contract, represents that the viator has a full and complete
1028 understanding of the viatical settlement contract, that he or she has a full and complete
1029 understanding of the benefits of the life insurance policy, acknowledges that he or she is
1030 entering into the viatical settlement contract freely and voluntarily and, for persons with
1031 a terminal or chronic illness or condition, acknowledges that the insured has a terminal
1032 or chronic illness and that the terminal or chronic illness or condition was diagnosed
1033 after the life insurance policy was issued.

1034
1035 (6) If a viatical settlement broker performs any of these activities required of the viatical
1036 settlement provider, the provider is deemed to have fulfilled the requirements of this
1037 section.
1038

1039 B. All medical information solicited or obtained by any licensee shall be subject to the applicable
1040 provisions of state law relating to confidentiality of medical information.

1041
1042 C. All viatical settlement contracts entered into in this state shall provide the viator with an
1043 absolute right to rescind the contract before the earlier of sixty (60) calendar days after the date
1044 upon which the viatical settlement contract is executed by all parties or thirty (30) calendar days
1045 after the viatical settlement proceeds have been send to the viator as provided in Section 10F.
1046 Rescission by the viator may be conditioned upon the viator both giving notice and repaying to
1047 the viatical settlement provider within the rescission period all proceeds of the settlement and
1048 any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in
1049 connection with or as a consequence of the viatical settlement. If the insured dies during the
1050 rescission period, the viatical settlement contract shall be deemed to have been rescinded,
1051 subject to repayment to the viatical settlement provider of all viatical settlement proceeds, and
1052 any premiums, loans and loan interest that have been paid by the viatical settlement provider,
1053 which shall be paid within sixty (60) calendar days of the death of the insured. In the event of any
1054 rescission, if the viatical settlement provider has paid commissions or other compensation to a
1055 viatical settlement broker in connection with the rescinded transaction, the viatical settlement
1056 broker shall refund all such commissions and compensation to the viatical settlement provider
1057 within five business days following receipt of written demand from the viatical settlement
1058 provider, which demand shall be accompanied by either the viator's notice of rescission if

1059 rescinded at the election of the viator, or notice of the death of the insured if rescinded by
1060 reason of the death of the insured within the applicable rescission period.

1061

1062 E. The viatical settlement provider shall instruct the viator to send the executed documents
1063 required to effect the change in ownership, assignment or change in beneficiary directly to the
1064 independent escrow agent. Within three (3) business days after the date the escrow agent
1065 receives the document (or from the date the viatical settlement provider receives the
1066 documents, if the viator erroneously provides the documents directly to the provider), the
1067 provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust
1068 account maintained in a state or federally-chartered financial institution whose deposits are
1069 insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement
1070 proceeds into the escrow account, the escrow agent shall deliver the original change in
1071 ownership, assignment or change in beneficiary forms to the viatical settlement provider or
1072 related provider trust or other designated representative of the viatical settlement provider.
1073 Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of
1074 ownership, assignment or designation of beneficiary from the insurance company, the escrow
1075 agent shall pay the settlement proceeds to the viator.

1076 F. Failure to tender consideration to the viator for the viatical settlement contract within the time
1077 set forth in the disclosure pursuant to Section 8A(7) renders the viatical settlement contract
1078 voidable by the viator for lack of consideration until the time consideration is tendered to and
1079 accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator
1080 as of the date that the escrow agent either releases funds for wire transfer to the viator or places
1081 a check for delivery to the viator via United States Postal Service or other nationally recognized
1082 delivery service.
1083

1084

1085 G. Contacts with the insured for the purpose of determining the health status of the insured by the
1086 viatical settlement provider or viatical settlement broker after the viatical settlement has
1087 occurred shall only be made by the viatical settlement provider or broker licensed in this state or
1088 its authorized representatives and shall be limited to once every three (3) months for insureds
1089 with a life expectancy of more than one year, and to no more than once per month for insureds
1090 with a life expectancy of one year or less. The provider or broker shall explain the procedure for
1091 these contacts at the time the viatical settlement contract is entered into. The limitations set
1092 forth in this subsection shall not apply to any contacts with an insured for reasons other than
1093 determining the insured's health status. Viatical settlement providers and viatical settlement
1094 brokers shall be responsible for the actions of their authorized representatives.

1095

1096 **Section 11. Prohibited Practices**

1097

1098 A. It is a violation of this Chapter for any person to enter into a viatical settlement contract at any
1099 time prior to the application or issuance of a policy which is the subject of viatical settlement
1100 contract or within a five-year period commencing with the date of issuance of the insurance
1101 policy or certificate unless the viator certifies to the viatical settlement provider that one or more
1102 of the following conditions have been met within the five-year period:

1103

1104 (1) The policy was issued upon the viator's exercise of conversion rights arising out of a
1105 group or individual policy, provided the total of the time covered under the conversion
1106 policy plus the time covered under the prior policy is at least sixty (60) months. The time
1107 covered under a group policy shall be calculated without regard to any change in
1108 insurance carriers, provided the coverage has been continuous and under the same group
1109 sponsorship;
1110

1111

1112 (2) The viator submits independent evidence to the viatical settlement provider that one or
1113 more of the following conditions have been met within the five-year period:
1114

1115

1116 (a) The viator or insured is terminally or chronically ill;

1117

1118 (b) The viator's spouse dies;

1119

1120 (c) The viator divorces his or her spouse;

1121

1122 (d) The viator retires from full-time employment;

1123

1124 (e) The viator becomes physically or mentally disabled and a physician determines
1125 that the disability prevents the viator from maintaining full-time employment; or

1126

1127 (f) A final order, judgment or decree is entered by a court of competent jurisdiction,
1128 on the application of a creditor of the viator, adjudicating the viator bankrupt or
1129 insolvent, or approving a petition seeking reorganization of the viator or
1130 appointing a receiver, trustee or liquidator to all or a substantial part of the
1131 viator's assets; or

1132

1133 (3) The viator enters into a viatical settlement contract more than two (2) years after the date
1134 of issuance of a policy and, with respect to the policy, at all times prior to the date that is
1135 two (2) years after policy issuance, the following conditions are met:
1136

- 1137 (a) Policy premiums have been funded exclusively with unencumbered assets,
1138 including an interest in the life insurance policy being financed only to the
1139 extent of its net cash surrender value, provided by, or fully recourse liability
1140 incurred by, the insured or a person described in Section 2-O (3)(e);
1141
1142 (b) There is no agreement or understanding with any other person to guarantee any
1143 such liability or to purchase, or stand ready to purchase, the policy, including
1144 through an assumption or forgiveness of the loan; and
1145
1146 (c) Neither the insured nor the policy has been evaluated for settlement.
1147
1148 B. Copies of the independent evidence described in Subsection A(2) and documents required by
1149 Section 10A shall be submitted to the insurer when the viatical settlement provider or other party
1150 entering into a viatical settlement contract with a viator submits a request to the insurer for
1151 verification of coverage. The copies shall be accompanied by a letter of attestation from the
1152 viatical settlement provider that the copies are true and correct copies of the documents received
1153 by the viatical settlement provider.
1154
1155 C. If the viatical settlement provider submits to the insurer a copy of the owner or insured's
1156 certification described in and the independent evidence required by Subsection A(2) when the
1157 provider submits a request to the insurer to effect the transfer of the policy or certificate to the
1158 viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical
1159 settlement contract satisfies the requirements of this section and the insurer shall timely respond to
1160 the request.
1161
1162 D. No insurer may, as a condition of responding to a request for verification of coverage or effecting
1163 the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured,
1164 viatical settlement provider or viatical settlement broker sign any forms, disclosures, consent or
1165 waiver form that has not been expressly approved by the commissioner for use in connection with
1166 viatical settlement contracts in this state.
1167
1168 E. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy,
1169 the insurer shall respond in writing within thirty (30) calendar days with written acknowledgement
1170 confirming that the change has been effected or specifying the reasons why the requested change
1171 cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or
1172 beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully
1173 entered into in this state.
1174

1175 **Section 12. Prohibited Practices and Conflicts of Interest**
1176

- 1177 A. With respect to any viatical settlement contract or insurance policy, no viatical settlement broker
1178 knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any
1179 viatical settlement provider, financing entity or related provider that is controlling, controlled by,
1180 or under common control with such viatical settlement broker.
1181
1182 B. With respect to any viatical settlement contract or insurance policy, no viatical settlement provider
1183 knowingly may enter into a viatical settlement contract with a viator, if, in connection with such
1184 viatical settlement contract, anything of value will be paid to a viatical settlement broker that is
1185 controlling, controlled by, or under common control with such viatical settlement provider,
1186 financing entity or related provider trust that is involved in such viatical settlement contract.
1187
1188 C. A violation of Subsection A or Subsection B shall be deemed a fraudulent viatical settlement act.
1189
1190 D. NO PERSON SHALL ISSUE, SOLICIT, MARKET OR OTHERWISE PROMOTE THE PURCHASE OF AN
1191 INSURANCE POLICY FOR THE PURPOSE OF OR WITH AN EMPHASIS ON SETTLING THE POLICY.

1192

1193 E. NO PERSON SHALL ENTER INTO A PREMIUM FINANCE AGREEMENT WITH ANY OTHER PERSON OR
1194 AGENCY, OR ANY PERSON AFFILIATED WITH SUCH PERSON OR AGENCY, PURSUANT TO WHICH SUCH
1195 PERSON SHALL RECEIVE ANY PROCEEDS, FEES OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY,
1196 FROM THE POLICY OR OWNER OF THE POLICY OR ANY OTHER PERSON WITH RESPECT TO THE PREMIUM
1197 FINANCE AGREEMENT OR ANY VIATICAL SETTLEMENT CONTRACT OR OTHER TRANSACTION RELATED TO
1198 SUCH POLICY THAT ARE IN ADDITION TO THE AMOUNTS REQUIRED TO PAY THE PRINCIPAL, INTEREST AND
1199 SERVICES CHARGES RELATED TO POLICY PREMIUMS PURSUANT TO THE PREMIUM FINANCE AGREEMENT
1200 OR SUBSEQUENT SALE OF SUCH AGREEMENT; PROVIDED, FURTHER, THAT ANY PAYMENTS, CHARGES,
1201 FEES OR OTHER AMOUNTS IN ADDITION TO THE AMOUNTS REQUIRED TO PAY THE PRINCIPAL, INTEREST
1202 AND SERVICE CHARGES RELATED TO POLICY PREMIUMS PAID UNDER THE PREMIUM FINANCE
1203 AGREEMENT SHALL BE REMITTED TO THE ORIGINAL OWNER OF THE POLICY OR TO HIS OR HER ESTATE IF
1204 HE OR SHE IS NOT LIVING AT THE TIME OF THE DETERMINATION OF OVERPAYMENT.

1205

1206 F. IN THE SOLICITATION, APPLICATION OR ISSUANCE OF A LIFE INSURANCE POLICY, NO PERSON SHALL
1207 EMPLOY ANY DEVICE, SCHEME OR ARTIFICE IN VIOLATION OF THE REQUIREMENT OF THE EXISTENCE OF
1208 AN INSURABLE INTEREST IN THE LIFE OF THE INSURED.

1209

1210

1211 G. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical
1212 settlement promotional, advertising and marketing materials, as may be prescribed by regulation,
1213 have been filed with the commissioner. In no event shall any marketing materials expressly
1214 reference that the insurance is “free” for any period of time. The inclusion of any reference in the
1215 marketing materials that would cause a viator to reasonably believe that the insurance is fee for
1216 any period of time shall be considered a violation of this Chapter.

1217

1218 H. No life insurance producer, insurance company, viatical settlement broker or viatical settlement
1219 provider shall make any statement or representation to the applicant or policyholder in connection
1220 with the sale or financing of a life insurance policy to the effect that the insurance is free or
1221 without cost to the policyholder for any period of time unless provided in the policy.

1222

1223 **Section 13. Advertising for Viatical Settlements**

1224

1225 The purpose of this section is to provide prospective viators with clear and unambiguous statements in the
1226 advertisement of viatical settlements and to assure the clear, truthful and adequate disclosure of the benefits, risks,
1227 limitations and exclusions of any viatical settlement contract bought or sold. This purpose is intended to be
1228 accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the
1229 advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair,
1230 deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements
1231 through the advertising media and material used by viatical settlement licensees.

1232

1233 A. This section shall apply to any advertising of viatical settlement contracts or related products or
1234 services intended for dissemination in this state, including Internet advertising viewed by persons
1235 located in this state. Where disclosure requirements are established pursuant to federal
1236 regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal
1237 regulation wherever possible.

1238

1239 B. Every viatical settlement licensee shall establish and at all times maintain a system of control
1240 over the content, form and method of dissemination of all advertisements of its contracts,
1241 products and services. All advertisements, regardless of by whom written, created, designed or
1242 presented, shall be the responsibility of the viatical settlement licensees, as well as the individual
1243 who created or presented the advertisement. A system of control shall include regular routine
1244 notification, at least once a year, to agents and others authorized by the viatical settlement
1245 licensee who disseminate advertisements of the requirements and procedures for approval prior
1246 to the use of any advertisements not furnished by the viatical settlement licensee.

1247

1248 C. Advertisements shall be truthful and not misleading in fact or by implication. The form and
1249 content of an advertisement of a viatical settlement contract shall be sufficiently complete and
1250 clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive.
1251 Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined
1252 by the commissioner from the overall impression that the advertisement may be reasonably
1253 expected to create upon a person of average education or intelligence within the segment of the
1254 public to which it is directed.
1255

1256

1257

1258 D. The information required to be disclosed under this section shall not be minimized, rendered
1259 obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement
1260 so as to be confusing or misleading.
1261

1262 (1) An advertisement shall not omit material information or use words, phrases, statements,
1263 references or illustrations if the omission or use has the capacity, tendency or effect of
1264 misleading or deceiving viators as to the nature or extent of any benefit, loss covered,
1265 premium payable, or state or federal tax consequence. The fact that the viatical settlement
1266 contract offered is made available for inspection prior to consummation of the sale, or an
1267 offer is made to refund the payment if the viator is not satisfied or that the viatical
1268 settlement contract includes a "free look" period that satisfies or exceeds legal
1269 requirements, does not remedy misleading statements.
1270

1271 (2) An advertisement shall not use the name or title of a life insurance company or a life
1272 insurance policy unless the advertisement has been approved by the insurer.

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- (3) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.
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- (4) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.
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- (5) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, a licensee under this Chapter makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.
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1299
- (a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
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- (b) An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- 1309
- 1310
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- (c) When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of five (5) years after its use.
- 1313
- 1314
1315
- E. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

1316

1317 F. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement
1318 brokers, insurance producers, policies, services or methods of marketing.

1319

1320 G. The name of the viatical settlement licensee shall be clearly identified in all advertisements about
1321 the licensee or its viatical settlement contract, products or services, and if any specific viatical
1322 settlement contract is advertised, the viatical settlement contract shall be identified either by form
1323 number or some other appropriate description. If an application is part of the advertisement, the
1324 name of the viatical settlement provider shall be shown on the application.
1325

1326 H. An advertisement shall not use a trade name, group designation, name of the parent company of
1327 a viatical settlement licensee, name of a particular division of the viatical settlement licensee,
1328 service mark, slogan, symbol or other device or reference without disclosing the name of the
1329 viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead
1330 or deceive as to the true identity of the viatical settlement licensee, or to create the impression
1331 that a company other than the viatical settlement licensee would have any responsibility for the
1332 financial obligation under a viatical settlement contract.

1333

1334 I. An advertisement shall not use any combination of words, symbols or physical materials that by
1335 their content, phraseology, shape, color or other characteristics are so similar to a combination of
1336 words, symbols or physical materials used by a government program or agency or otherwise
1337 appear to be of such a nature that they tend to mislead prospective viators into believing that the
1338 solicitation is in some manner connected with a government program or agency.
1339

1340 J. An advertisement may state that a viatical settlement licensee is licensed in the state where the
1341 advertisement appears, provided it does not exaggerate that fact or suggest or imply that
1342 competing viatical settlement licensee may not be so licensed. The advertisement may ask the
1343 audience to consult the licensee's web site or contact the department of insurance to find out if the
1344 state requires licensing and, if so, whether the viatical settlement provider or viatical settlement
1345 broker is licensed.
1346

1347 K. An advertisement shall not create the impression that the viatical settlement provider, its financial
1348 condition or status, the payment of its claims or the merits, desirability, or advisability of its
1349 viatical settlement contracts forms are recommended or endorsed by any government entity.
1350

1351 L. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall
1352 not use a trade name, any group designation, name of any affiliate or controlling entity of the
1353 licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or
1354 tendency to mislead or deceive as to the true identity of the actual licensee or create the false
1355 impression that an affiliate or controlling entity would have any responsibility for the financial
1356 obligation of the licensee.
1357

1358 M. An advertisement shall not directly or indirectly create the impression that any division or agency
1359 of the state or of the U. S. government endorses, approves or favors:

- 1360
1361 (1) Any viatical settlement licensee or its business practices or methods of operation;
1362
1363 (2) The merits, desirability or advisability of any viatical settlement contract;
1364
1365 (3) Any viatical settlement contract or viatical settlement purchase agreement; or
1366
1367 (4) Any life insurance policy or life insurance company.
1368
1369 N. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must
1370 disclose the average time frame from completed application to the date of offer and from
1371 acceptance of the offer to receipt of the funds by the viator.
1372
1373 O. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose
1374 the average purchase price as a percent of face value obtained by viators contracting with the
1375 licensee during the past six (6) months.
1376

1377 **Section 14. Fraud Prevention and Control**

- 1378
1379 A. Fraudulent Viatical Settlement Acts, Interference and Participation of Convicted Felons
1380 Prohibited.

- 1381
1382 (1) A person shall not commit a fraudulent viatical settlement act.

- 1383
1384 (2) A person shall not knowingly or intentionally interfere with the enforcement of the
1385 provisions of this Chapter or investigations of suspected or actual violations of this
1386 Chapter.

- 1387
1388 (3) A person in the business of viatical settlements shall not knowingly or intentionally
1389 permit any person convicted of a felony involving dishonesty or breach of trust to
1390 participate in the business of viatical settlements.
1391

- 1392 B. Fraud Warning Required.

- 1393
1394 (1) Viatical settlements contracts and applications for viatical settlements, regardless of the
1395 form of transmission, shall contain the following statement or a substantially similar
1396 statement:

1397
1398 “Any person who knowingly presents false information in an application for
1399 insurance or viatical settlement contract is guilty of a crime and may be
1400 subject to fines and confinement in prison.”

1401

1402 (2) The lack of a statement as required in Paragraph (1) of this subsection does not
1403 constitute a defense in any prosecution for a fraudulent viatical settlement act.

1404

1405 C. Mandatory Reporting of Fraudulent Viatical Settlement Acts.
1406

1407 (1) Any person engaged in the business of viatical settlements having knowledge or a
1408 reasonable suspicion that a fraudulent viatical settlement act is being, will be or has
1409 been committed shall provide to the commissioner such information as required by, and
1410 in a manner prescribed by, the commissioner.

1411

1412 (2) Any other person having knowledge or a reasonable belief that a fraudulent viatical
1413 settlement act is being, will be or has been committed may provide to the commissioner
1414 the information required by, and in a manner prescribed by, the commissioner.

1415

1416 D. Immunity from Liability.

1417

1418 (1) No civil liability shall be imposed on and no cause of action shall arise from a person's
1419 furnishing information concerning suspected, anticipated or completed fraudulent viatical
1420 settlement acts or suspected or completed fraudulent insurance acts, if the information is
1421 provided to or received from:

1422

1423 (a) The commissioner or the commissioner's employees, agents or representatives;
1424

1425 (b) Federal, state or local law enforcement or regulatory officials or their
1426 employees, agents or representatives;

1427

1428 (c) A person involved in the prevention and detection of fraudulent viatical
1429 settlement acts or that person's agents, employees or representatives;

1430

1431 (d) The National Association of Insurance Commissioners (NAIC), National
1432 Association of Securities Dealers (NASD), the North American Securities
1433 Administrators Association (NASAA), or their employees, agents or
1434 representatives, or other regulatory body overseeing life insurance, viatical
1435 settlements, securities or investment fraud; or

1436

1437 (e) The life insurer that issued the life insurance policy covering the life of the
1438 insured.

1439

1440 (2) Paragraph (1) of this subsection shall not apply to statements made with actual malice.
1441 In an action brought against a person for filing a report or furnishing other information
1442 concerning a fraudulent viatical settlement act, the party bringing the action shall plead
1443 specifically any allegation that Paragraph (1) does not apply because the person filing
1444 the report or furnishing the information did so with actual malice.

1445

1446 (3) A person furnishing information as identified in Paragraph (1) shall be entitled to an
1447 award of attorney's fees and costs if he or she is the prevailing party in a civil cause of
1448 action for libel, slander or any other relevant tort arising out of activities in carrying out
1449 the provisions of this Chapter and the party bringing the action was not substantially
1450 justified in doing so. For purposes of this section a proceeding is "substantially justified"
1451 if it had a reasonable basis in law or fact at the time that it was initiated. However, such
1452 an award does not apply to any person furnishing information concerning his or her own
1453 fraudulent viatical settlement acts.

1454

1455 (4) This section does not abrogate or modify common law or statutory privileges or
1456 immunities enjoyed by a person described in Paragraph (1).

1457

1458 E. Confidentiality.

1459

1460 (1) The documents and evidence provided pursuant to Subsection D or obtained by the
1461 commissioner in an investigation of suspected or actual fraudulent viatical settlement
1462 acts shall be privileged and confidential and shall not be a public record and shall not be
1463 subject to discovery or subpoena in a civil or criminal action.

1464

1465 (2) Paragraph (1) does not prohibit release by the commissioner of documents and
1466 evidence obtained in an investigation of suspected or actual fraudulent viatical
1467 settlement acts:

1468

1469 (a) In administrative or judicial proceedings to enforce laws administered by the
1470 commissioner;

1471

1472 (b) To federal, state or local law enforcement or regulatory agencies, to an
1473 organization established for the purpose of detecting and preventing
1474 fraudulent viatical settlement acts or to the NAIC; or

1475

1476 (c) At the discretion of the commissioner, to a person in the business of viatical
1477 settlements that is aggrieved by a fraudulent viatical settlement act.

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- (3) Release of documents and evidence under Paragraph (2) does not abrogate or modify the privilege granted in Paragraph (1).

F. Other Law Enforcement or Regulatory Authority.

This Chapter shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or
- (3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Viatical Settlement Antifraud Initiatives.

- (1) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section .

- (2) Antifraud initiatives shall include:

- (a) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and
- (b) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

1516 (i) A description of the procedures for detecting and investigating possible
1517 fraudulent viatical settlement acts and procedures for resolving material
1518 inconsistencies between medical records and insurance applications;
1519

1520 (ii) A description of the procedures for reporting possible fraudulent
1521 viatical settlement acts to the commissioner;

1522

1523 (iii) A description of the plan for antifraud education and training of
1524 underwriters and other personnel; and

1525

1526 (iv) A description or chart outlining the organizational arrangement of the
1527 antifraud personnel who are responsible for the investigation and
1528 reporting of possible fraudulent viatical settlement acts and
1529 investigating unresolved material inconsistencies between medical
1530 records and insurance applications.
1531

1532 (3) Antifraud plans submitted to the commissioner shall be privileged and confidential and
1533 shall not be a public record and shall not be subject to discovery or subpoena in a civil or
1534 criminal action.
1535

1536 **Section 15. Injunctions; Civil Remedies; Cease and Desist**
1537

1538 A. In addition to the penalties and other enforcement provisions of this Chapter, if any person
1539 violates this Chapter or any regulation implementing this Chapter, the commissioner may seek an
1540 injunction in a court of competent jurisdiction and may apply for temporary and permanent
1541 orders that the commissioner determines are necessary to restrain the person from committing
1542 the violation.

1543

1544 B. Any person damaged by the acts of a person in violation of this Chapter may bring a civil action
1545 against the person committing the violation in a court of competent jurisdiction.

1546

1547

1548

1549 C. The commissioner may issue a cease and desist order upon a person that violates any provision of
1550 this Chapter, any regulation or order adopted by the commissioner, or any written agreement
1551 entered into with the commissioner.

1552

1553 D. When the commissioner finds that an activity in violation of this Chapter presents an immediate
1554 danger to the public that requires an immediate final order, the commissioner may issue an
1555 emergency cease and desist order reciting with particularity the facts underlying the findings.
1556 The emergency cease and desist order is effective immediately upon service of a copy of the
1557 order on the respondent and remains effective for ninety (90) days. If the commissioner begins
1558 non-emergency cease and desist proceedings, the emergency cease and desist order remains
1559 effective, absent an order by a court of competent jurisdiction.

1560

1561 E. In addition to the penalties and other enforcement provisions of this Chapter, any person who
1562 violates this Chapter is subject to civil penalties of up to \$500 per violation. Imposition of civil
1563 penalties shall be pursuant to an order of the commissioner issued under Chapter 30A]. The
1564 commissioner's order may require a person found to be in violation of this Chapter to make
1565 restitution to persons aggrieved by violations of this Chapter.

1566

1567

1568 F. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions
1569 and penalties of this section shall not apply to a viator.

1570

1571 **Section 16. Unfair Trade Practices**

1572

1573 A violation of this Chapter, including the commission of a fraudulent viatical settlement act, shall be considered an
1574 unfair trade practice under Chapter 176D subject to the penalties contained in that Chapter.

1575

1576 **Section 17. Authority to Promulgate Regulations**

1577

1578 The commissioner shall have the authority to:

1579

1580 A. Promulgate regulations implementing this Chapter;

1581

1582 B. Establish standards for evaluating reasonableness of payments under viatical settlement
1583 contracts. This authority includes, but is not limited to, regulation of discount rates used to
1584 determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a
1585 benefit under a life insurance policy insuring the life of a person that is chronically or terminally
1586 ill;

1587

1588 C. Establish appropriate licensing requirements and standards for continued licensure for viatical
1589 settlement providers and brokers;

1590

1591 D. Require a bond or other mechanism for financial accountability for viatical settlement providers
1592 and brokers; and

1593

1594 E. Adopt rules governing the relationship and responsibilities of both insurers and viatical
1595 settlement providers and viatical settlement brokers during the viatication of a life insurance
1596 policy or certificate.

1597

1598 **Section 18. Severability**
1599

1600 If any portion of this Chapter or any amendments thereto, or its applicability to any person or circumstance is held
1601 invalid by a court, the remainder of this Chapter or its applicability to other persons or circumstances shall not be
1602 affected.
1603

1604 **Section 19. Effective Date**
1605

1606 A viatical settlement provider or viatical settlement broker transacting business in this state may continue to do so
1607 pending approval or disapproval of the provider or broker's application for a license as long as the application is
1608 filed with the commissioner within 30 days of the effective date of this Chapter.

1609

1610 SECTION 3. Chapter 175, Section 14, of the General Laws as appearing in the 2006 Official Edition, is
1611 hereby amended by adding the following subsection:-

1612

1613 For each license or renewal thereof to a viatical settlement provider or viatical settlement broker under
1614 Chapter 175L, section three;

1615