

# MAINE STATE LEGISLATURE

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JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
BUREAU OF INSURANCE  
34 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0034

ALESSANDRO A. IUPPA  
SUPERINTENDENT

December 30, 2003

Senator Lloyd LaFountain  
Representative Christopher P. O'Neil  
Joint Standing Committee on Insurance and Financial Services  
State House Room 427  
Augusta, ME 04333

Re: An Act to Govern and Regulate Life Settlements

Dear Senator LaFountain, Representative O'Neil, and Members of the Committee:

Pursuant to Public Law 2003, Chapter 320, I am submitting the attached bill, An Act to Govern and Regulate Life Settlements, to the Second Regular Session of the 121<sup>st</sup> Legislature. As you may recall, P.L. 2003, c. 320 directed the Superintendent to convene a working group to review current law and develop recommended legislation to govern and regulate life settlements under Maine's Viatical Settlements Act, 24-A M.R.S.A. Chapter 85. In addition, Chapter 320 required me to submit legislation based on the recommendations of the working group to expressly authorize the use of life settlement contracts and to make any other necessary changes to the laws regulating viatical settlement contracts by January 1, 2004.

Historically, 24-A M.R.S.A. Chapter 85 has permitted the use of viatical settlements in Maine but has not permitted the use of life settlements. While both settlements involve the sale of a life insurance policy to another for consideration, viatical settlements may only be entered into when the insured is either "chronically" or "terminally" ill, whereas under a life settlement contract, these criteria need not be present. In accordance with P.L. 2003, c. 320, the attached bill will expressly permit the use of life settlement contracts in Maine subject to the requirements contained therein.

In accordance with Section 2 of Chapter 320, I sent invitations to persons who represent various groups asking them to join the life settlements working group. All invitees accepted, and the working group consisted of the following:

<u>Name</u>	<u>Organization</u>
Mr. Michael Freedman	(Coventry First, a life settlement provider)
Mr. Bruce Gerrity	(Representing Coventry First)
Mr. Michael Bartholomew	(The American Council of Life Insurers (ACLI))



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Mr. John Delahanty	(Representing ACLI)
Mr. David Brenerman	(UnumProvident Corporation)
Mr. Daniel Bernier	(Maine Insurance Agents Association)
Ms. Colleen McCarthy Reid	(Office of Policy and Legal Analysis)
Mr. Arthur Hosford	(Bureau of Insurance)
Mr. Daniel Swift	(Bureau of Insurance)

The first meeting of the group was held on July 23, 2003, and subsequent meetings were held on September 10<sup>th</sup>, October 2<sup>nd</sup> and October 30<sup>th</sup>. In addition to the meetings, the group shared draft proposals and corresponded through e-mail. Ms. McCarthy Reid was the principal drafter for the group and organized the proposed amendments into the attached bill.

The group generally agreed that Maine's Viatical Settlement Act (24-A M.R.S.A. Chapter 85) should be amended to incorporate provisions from the most recently adopted NAIC Viatical Settlements Model Act which authorizes life settlement contracts. Current Chapter 85 is based on an earlier version of the NAIC Model. While the group agreed on this general goal, in certain instances the group concluded it was desirable to deviate from the Model language. In addition, there were a few areas where consensus could not be reached. Proposals that were offered but lacked consensus of the group and are not included in the attached bill include the following:

1. The creation of a separate license for persons who act as a settlement producer -- Under current Maine law and the NAIC Model, a person who is licensed as a life and health producer may act as a settlement producer. Some members of the group expressed concern about the perceived conflict of interest of an authorized life insurance producer also acting as a settlement producer and recommended creating a separate license for persons wishing to solicit or negotiate settlement contracts.
2. A provision on license applications whereby a settlement provider license would be deemed approved 60 days after receipt of a completed application unless the superintendent approves or denies the application prior to that time -- Current Maine law and the NAIC Model do not contain a deemer provision for license applications.
3. A requirement that life insurance companies provide written notices to owners of life insurance policies stating that settlement contracts are an available alternative at various times including when an insurer receives a request to surrender or borrow under the policy -- Current Maine law and the NAIC Model do not require such notices by life insurance companies.
4. A requirement that settlement producers disclose to prospective viators (sellers of a policy) the amount and method of calculation of the producer's compensation for the sale of the settlement contract -- The NAIC Model includes a provision that requires settlement producers to disclose the amount and method of the producer's compensation, but current Maine law does not include such a requirement. In lieu of the fee disclosure

requirement, the bill contains a provision which states, "Irrespective of the manner in which the settlement producer is compensated, a settlement producer is deemed to represent only the interests of the viator and owes a fiduciary duty to the viator." This language is similar to NAIC Model language.

In summary, the attached bill seeks to amend and update 24-A M.R.S.A. Chapter 85 consistent with the most recently adopted NAIC Viatical Settlements Model Act. If the bill is enacted, the Bureau anticipates the need to amend Bureau of Insurance Rule Chapter 930: Viatical Settlements in accordance with the provisions in the bill.

My staff and I will be available at any public hearing or work session on the bill and will try to answer any questions the Committee might have at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Alessandro A. Iuppa", with a long horizontal flourish extending to the right.

Alessandro A. Iuppa  
Superintendent



Submitted pursuant to law, Public Law 2003, chapter 320

1 ~~include a viatical settlement provider operating in this State or a viatical producer, a credit union~~  
2 ~~or an employer or association that makes its employees or members aware of viatical settlement~~  
3 ~~contracts. Irrespective of the manner in which the independent viatical producer is compensated,~~  
4 ~~an independent viatical producer is deemed to represent only the interests of the viator and owes~~  
5 ~~a fiduciary duty to the viator.~~

6  
7 ~~4. Institutional investor. "Institutional investor" means a bank, trust company,~~  
8 ~~insurance company, mutual fund or pension fund that owns in the aggregate at least \$1,000,000~~  
9 ~~in assets.~~

10  
11 ~~5. Participant. "Participant" means, with respect to a financing transaction, any~~  
12 ~~underwriter, placement agent, lender, purchaser of securities, credit enhancer or other person,~~  
13 ~~other than the viatical settlement provider, in any financing transaction.~~

14  
15 ~~6. Viatical producer. "Viatical producer" means any person who has producer authority,~~  
16 ~~who acts or aids in any manner in the soliciting of a viatical settlement on behalf of a viatical~~  
17 ~~settlement provider. "Viatical producer" does not include an attorney, accountant, financing~~  
18 ~~entity, independent viatical producer or person exercising a power of attorney granted by the~~  
19 ~~viator, retained to represent the viator and whose compensation is paid solely by the viator~~  
20 ~~without regard to whether the viatical settlement is effected. The term also does not include a~~  
21 ~~credit union or an employer or association that makes its employees or members aware of~~  
22 ~~viatical settlement contracts. A viatical producer is deemed to represent the viatical settlement~~  
23 ~~provider for which that producer is appointed.~~

24  
25 ~~7. Viatical settlement. "Viatical settlement" means a transaction in which a person pays~~  
26 ~~compensation or anything of value, when that compensation or value is less than the expected~~  
27 ~~death benefit of the life insurance policy or certificate, in return for the assignment, transfer, sale~~  
28 ~~or bequest of a death benefit or ownership of the life insurance policy or certificate to the person~~  
29 ~~or the person's designee by the policyowner or certificate holder.~~

30  
31 ~~8. Viatical settlement provider. "Viatical settlement provider" means a person who~~  
32 ~~pays compensation or anything of value to a viator under a viatical settlement. The term does~~  
33 ~~not include:~~

34  
35 ~~A. A bank, savings bank, savings and loan association, credit union or other licensed~~  
36 ~~lending institution that takes an assignment of a life insurance policy as collateral for a~~  
37 ~~loan;~~

38  
39 ~~B. The issuer of a life insurance policy providing accelerated benefits under section~~  
40 ~~2555;~~

41  
42 ~~C. A viator's friend or family member who enters into no more than one agreement in a~~  
43 ~~calendar year for the assignment, transfer, sale, devise or bequest of life insurance~~  
44 ~~policies for any value less than the expected death benefit; or~~

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~~D. A financing entity.~~

~~9. Viaticated policy. "Viaticated policy" means any interest in a life insurance policy or a certificate of group life insurance held by a viatical settlement provider directly or indirectly through a viatical settlement contract.~~

~~10. Viator. "Viator" means a person who assigns, transfers, sells or bequeaths a death benefit or ownership of a life insurance policy or certificate under a viatical settlement. "Viator" does not include a viatical settlement provider or a financing entity.~~

**§ 6802-A. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Advertising.** "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical or life settlement contract.

**2. Business of settlements.** "Business of settlements" means any activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, of settlement contracts

**3. Chronically ill.** "Chronically ill" means:

A. Being unable to perform at least 2 activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing or continence;

B. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

C. Having a level of disability similar to that described in paragraph A as determined by the Secretary of Health and Human Services.

**4. Financing entity.** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a settlement contract:

A. Whose principal activity related to the transaction is providing funds to effect the settlement or purchase of one or more purchased policies or to provide credit enhancement; and

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1  
2 B. Who has an agreement in writing with one or more licensed settlement providers to  
3 finance the acquisition of settlement contracts or to provide stop loss insurance.  
4

5 Financing entity does not include a non-accredited investor.  
6

7 **5. Financing transaction.** "Financing transaction" means any transaction in which a  
8 licensed settlement provider obtains financing for the purchase, acquisition, transfer or other  
9 assignment of one or more settlement contracts, policies acquired pursuant to a settlement  
10 contract or interests therein, including, without limitation, any secured or unsecured financing,  
11 securitization transaction or securities offering, either registered or exempt from registration  
12 under federal and state securities law, or otherwise sells, assigns, transfers, pledges, hypothecates  
13 or otherwise disposes of a settlement contract, policy acquired pursuant to a settlement contract  
14 or interest therein.  
15

16 **6. Fraudulent viatical or life settlement act.** "Fraudulent viatical or life settlement  
17 act" includes:  
18

19 A. Acts or omissions committed by any person who, knowingly or with intent to defraud,  
20 for the purpose of depriving another of property or for pecuniary gain, commits, or  
21 permits its employees or its agents to engage in acts including:  
22

23 (1) Presenting, causing to be presented or preparing with knowledge or belief that  
24 it will be presented to or by a settlement provider, settlement producer, financing  
25 entity, insurer, insurance producer or any other person, false material information,  
26 or concealing material information, as part of, in support of or concerning a fact  
27 material to one or more of the following:  
28

29 (a) An application for the issuance of a settlement contract or insurance  
30 policy;  
31

32 (b) The underwriting of a settlement contract or insurance policy;  
33

34 (c) A claim for payment or benefit pursuant to a settlement contract or  
35 insurance policy;  
36

37 (d) Premiums paid on an insurance policy;  
38

39 (e) Payments and changes in ownership or beneficiary made in  
40 accordance with the terms of a settlement contract, or insurance policy;  
41

42 (f) The reinstatement or conversion of an insurance policy;  
43

44 (g) In the solicitation, offer, effectuation or sale of a settlement contract or  
45 insurance policy;



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(h) The issuance of written evidence of a settlement contract or insurance policy; or

(i) A financing transaction; or

(2) Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a settlement contract;

B. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(1) Remove, conceal, alter, destroy or sequester from the superintendent the assets or records of a licensee or other person engaged in the business of settlements;

(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(3) Transact the business of settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of settlements; or

(4) File with the superintendent or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the superintendent;

C. Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of settlements or insurance;

D. Recklessly entering into, brokering, otherwise dealing in a settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or

E. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

7. Policy. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a

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1 reasonable relation to this state, regardless of whether delivered or issued for delivery in this  
2 state.

3  
4 **8. Related provider trust.** "Related provider trust" means a titling trust or other trust  
5 established by a licensed settlement provider or a financing entity for the sole purpose of holding  
6 the ownership or beneficial interest in purchased policies in connection with a financing  
7 transaction. The trust shall have a written agreement with the licensed settlement provider under  
8 which the licensed settlement provider is responsible for ensuring compliance with all statutory  
9 and regulatory requirements and under which the trust agrees to make all records and files  
10 related to settlement transactions available to the superintendent as if those records and files were  
11 maintained directly by the licensed settlement provider.

12  
13 **9. Settlement contract.** "Settlement contract" means:

14  
15 A. A written agreement establishing the terms under which compensation or anything of  
16 value will be paid, which compensation or value is less than the expected death benefit of  
17 the insurance policy or certificate, in return for the viator's assignment, transfer, sale,  
18 devise or bequest of the death benefit or ownership of any portion of the insurance policy  
19 or certificate of insurance;

20  
21 B. A contract for a loan or other financing transaction with a viator secured primarily by  
22 an individual or group life insurance policy, other than a loan by a life insurance  
23 company pursuant to the terms of the life insurance contract, or a loan secured by the  
24 cash value of a policy;

25  
26 C. An agreement with a viator to transfer ownership or change the beneficiary  
27 designation at a later date regardless of the date that compensation is paid to the viator.

28  
29 For purposes of this chapter, the individual insured who is the subject of the insurance policy or  
30 certificate of insurance does not have to be diagnosed as terminally ill or chronically ill at the  
31 time a settlement contract is executed.

32  
33 **10. Settlement producer.** "Settlement producer" means any person who has life  
34 insurance producer authority, who acts or aids in any manner in the soliciting of a settlement on  
35 behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to  
36 negotiate settlement contracts between a viator and one or more settlement providers.  
37 "Settlement producer" does not include an attorney, accountant, financing entity, or person  
38 exercising a power of attorney granted by the viator, retained to represent the viator and whose  
39 compensation is paid solely by the viator without regard to whether the settlement is effected.  
40 The term also does not include a credit union or an employer or association that makes its  
41 employees or members aware of settlement contracts. Irrespective of the manner in which the  
42 settlement producer is compensated, a settlement producer is deemed to represent only the  
43 interests of the viator and owes a fiduciary duty to the viator.

44  
45 **11. Settlement provider.** "Settlement provider" means a person, other than the viator,

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1 that enters into or effectuates a settlement contract. The term does not include:

2  
3 A. A bank, savings bank, savings and loan association, credit union or other licensed  
4 lending institution that takes an assignment of a life insurance policy as collateral for a  
5 loan;

6  
7 B. The issuer of a life insurance policy providing accelerated benefits under section 2555  
8 and pursuant to the contract;

9  
10 C. An authorized or eligible insurer that provides stop loss coverage to a settlement  
11 provider, purchaser, financing entity, special purpose entity or related provider trust;

12  
13 D. A viator's friend or family member, or other natural person, who enters into no more  
14 than one agreement in a calendar year for the assignment, transfer, sale, devise or bequest  
15 of life insurance policies for any value less than the expected death benefit;

16  
17 E. A financing entity.

18  
19 F. A special purpose entity;

20  
21 G. A related provider trust;

22  
23 H. A settlement purchaser; or

24  
25 I. An accredited investor or qualified institutional buyer as defined respectively in  
26 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended,  
27 and who acquires a policy from a settlement provider.

28  
29 **12. Special purpose entity.** "Special purpose entity" means a corporation, partnership,  
30 trust, limited liability company or other similar entity formed solely to provide either directly or  
31 indirectly access to institutional capital markets for a financing entity or licensed settlement  
32 provider.

33  
34 **13. Terminally ill.** "Terminally ill" means having an illness or sickness that can  
35 reasonably be expected to result in death twenty-four months or less.

36  
37 **14. Viator.** "Viator" means a person who assigns, transfers, sells, devises or bequeaths  
38 or seeks to assign, transfer, sell, devise or bequeath a death benefit or ownership of a life  
39 insurance policy or certificate under a settlement contract. "Viator" does not include:

40  
41 A. A settlement provider licensed under this chapter;

42  
43 B. An accredited investor or qualified institutional buyer as defined respectively in  
44 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;

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1        C. A financing entity;

2  
3        D. A special purpose entity; or

4  
5        E. A related provider trust.

6  
7    § 6803. Settlement provider and producer license; license requirements

8  
9        1. **License required.** Licenses are required in accordance with this subsection.

10  
11        A. A person may not act as a ~~viatical~~-settlement provider without a license from the  
12        superintendent issued pursuant to this section and subject to the provisions of this  
13        chapter.

14  
15        B. A person may not perform the functions of, or otherwise act as, a viatical producer  
16        settlement producer without a license from the superintendent as a life and health  
17        insurance producer.

18  
19        C. ~~A person may not act as an independent viatical producer without a license from the~~  
20        ~~superintendent as a life and health insurance producer with independent authority. If~~  
21        there is more than one viator on a single policy and the viators are residents of different  
22        states, the settlement contract is governed by the law of the state in which the viator  
23        having the largest percentage ownership resides or, if the viators hold equal ownership,  
24        the state of residence of one viator agreed upon in writing by all viators.

25  
26        ~~D. A viatical settlement provider license issued to a person authorizes all partners,~~  
27        ~~officers and key management personnel of that person to act on that person's behalf as if~~  
28        ~~these individuals are also licensed, unless such activity requires a license under another~~  
29        ~~provision of this Title. These persons must be named in the application and any~~  
30        ~~supplements to the application and the authorization terminates upon the expiration,~~  
31        ~~suspension or revocation of the license.~~

32  
33        ~~E. Notwithstanding the provisions of this section, if a person acts as a viatical settlement~~  
34        ~~provider, a viatical producer or an independent viatical producer without being licensed,~~  
35        ~~the person is subject to all other provisions of this Chapter as if this person were licensed~~  
36        ~~as a viatical settlement provider or viatical settlement independent producer.~~

37  
38        2. **Application; fee.** Application for a ~~viatical or life~~ settlement provider license must be  
39        made to the superintendent by the applicant on a form prescribed by the superintendent. The  
40        application must be accompanied by a fee not to exceed of \$400 in accordance with section 601.

41  
42        3. **Renewal.** A license for a ~~viatical~~ settlement provider is continuous so long as the  
43        licensee remains qualified. The viatical settlement provider must pay an annual fee ~~of not to~~  
44        exceed \$400 in accordance with section 601. Failure to pay the fee within the terms prescribed  
45        may result in the revocation of the license unless cured within 5 days of written notice of failure

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1 to pay to the principal office of the licensee.  
2

3 **4. Information required.** The applicant for a settlement provider license shall provide  
4 such information as the superintendent requires and the information must be submitted on forms  
5 prepared required by the superintendent. The superintendent may at any time require the  
6 applicant to disclose fully the identity of all stockholders, except stockholders owning fewer than  
7 5 percent of the shares of an applicant whose shares are publicly traded, partners, officers,  
8 directors, members and employees and the superintendent may, in the exercise of the  
9 superintendent's discretion, refuse to issue a license to an applicant if not satisfied that any  
10 stockholder, partner, director, member or employee of the applicant who may materially  
11 influence the applicant's conduct meets the criteria set forth in subsection 6. A settlement  
12 provider shall provide to the superintendent new or revised information about officers,  
13 stockholders controlling 10% or more of stock, partners, directors, members or designated  
14 employees within 30 days of the change.  
15

16 **5. Authority under license.** A settlement provider license issued to any person  
17 authorizes all officers, partners, directors, members and key management personnel of that  
18 person to act on behalf of the ~~viatical~~-settlement provider, unless such activity requires a license  
19 under another provision of this Title. All officers, partners, directors, members and key  
20 management personnel of the person must be named in the application and any supplements to  
21 the application. ~~The licensed producer of a viatical settlement provider must be regarded as in~~  
22 ~~the place of the viatical settlement provider in all respects regarding the solicitation of viatical~~  
23 ~~settlements on behalf of the viatical settlement provider. A producer authorized by a viatical~~  
24 ~~settlement provider is the provider's agent in all matters of viatical settlements.~~  
25

26 **6. Investigation.** Upon the filing of an application and the payment of the settlement  
27 provider license fee, the superintendent shall make an investigation of the applicant and shall  
28 issue a license if the superintendent finds that the applicant:  
29

30 A. Has provided a detailed plan of operation;  
31

32 B. Is competent and trustworthy and intends to act in good faith in the capacity ~~required~~  
33 ~~by the license~~ of a settlement provider;  
34

35 C. Has a good business reputation and has had experience, training or education so as to  
36 be qualified ~~in the business to which the license relates~~ as a settlement provider;  
37

38 D. If organized under the laws of this State, has provided a certificate of good standing  
39 from this State. If the applicant is a foreign entity, it must provide a certificate of good  
40 standing from its state of organization and a certificate of good standing from this State;  
41 and  
42

43 E. ~~Or any~~ Has no officer, partner, director, member or key management personnel of the  
44 applicant ~~that has not been convicted of a felony of which fraud was an element has been~~  
45 found guilty of, or has pleaded guilty or nolo contendere to any crime involving fraud or

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moral turpitude, regardless of whether a judgment of conviction has been entered by the court; and

F. Has provided an anti-fraud plan that meets the requirements of section 6818.

**7. Financial responsibility.** The following evidence of financial responsibility must be provided to the superintendent in accordance with this subsection ~~before a license may be issued.~~

A. A ~~viatical~~-settlement provider shall provide evidence of financial accountability. Such evidence may include, but may not be limited to a binding and committed lending facility of at least \$1,000,000 with a term of at least one year or a net worth in excess of \$100,000.

**8. Nonresidents.** The superintendent may not issue a settlement provider license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the superintendent or the applicant has filed with the superintendent the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the superintendent.

**9. List.** The superintendent shall maintain a complete list of all ~~viatical~~-settlement providers licensed or with license pending in this State. The list must be available upon request to the general public.

**§ 6804. License revocation and administrative assessments**

~~1. Superintendent's authority. The superintendent may deny, suspend, revoke or refuse to renew the license of a viatical settlement provider if the superintendent finds just cause to do so, which may include, but is not limited to, a finding that:~~

~~A. There was any material misrepresentation in the application for the license or other information submitted to the superintendent;~~

~~B. The licensee or any officer, partner or key management personnel of the licensee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action to suspend or revoke a viatical license or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider or viatical settlement broker;~~

~~C. The licensee as a viatical settlement provider demonstrates unreasonable payments to viators;~~

~~D. The licensee or any officer, partner or key management personnel of the licensee has been convicted of any felony of which criminal fraud is an element, or~~

~~E. The licensee has violated any of the provisions of this chapter or any rules adopted pursuant to this chapter.~~

1  
2 **1-A. Superintendent's authority.** The superintendent may deny, suspend, revoke or  
3 refuse to renew the license of a settlement provider if the superintendent finds just cause to do so,  
4 which may include, but is not limited to, a finding that:

5  
6 A. There was any material misrepresentation in the application for the license or other  
7 information submitted to the superintendent;

8  
9 B. The licensee or any officer, partner, director, member or key management personnel  
10 of the licensee has been convicted of fraudulent or dishonest practices, is subject to a  
11 final administrative action to suspend or revoke a settlement provider license or is  
12 otherwise shown to be untrustworthy or incompetent to act as a settlement provider;

13  
14 C. The licensee as a settlement provider demonstrates an unreasonable pattern of  
15 payments to viators;

16  
17 D. The licensee or any officer, partner, director, member or key management personnel  
18 of the licensee has been found guilty of, or has pleaded guilty or *nolo contendere* to any  
19 crime involving fraud or moral turpitude, regardless of whether a judgment of conviction  
20 has been entered by the court;

21  
22 E. The settlement provider has entered into any settlement contract that has not been  
23 approved pursuant to this chapter;

24  
25 F. The settlement provider has failed to honor contractual obligations set out in a  
26 settlement contract;

27  
28 G. The settlement provider no longer meets the requirements for initial licensure;

29  
30 H. The settlement provider has assigned, transferred or pledged a policy acquired  
31 pursuant to a settlement contract to a person other than a settlement provider licensed in  
32 this State, an accredited investor or qualified institutional buyer as defined respectively in  
33 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended,  
34 financing entity, special purpose entity, or related provider trust; or

35  
36 I. The licensee has violated any of the provisions of this chapter or any rules adopted  
37 pursuant to this chapter.

38  
39 **2. Hearing.** Before the superintendent may deny a license application or suspend,  
40 revoke or refuse to renew the license of a ~~viatical~~-settlement provider, the licensee or applicant  
41 has an opportunity for a hearing in accordance with Title 5, Chapter 375, subchapter IV.

42  
43 **3. Administrative penalty.** The superintendent may, in addition to denying a license  
44 application or suspending or revoking a license, assess an administrative civil forfeiture of \$500  
45 for each willful violation of this chapter. This section may not be construed to diminish the

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penalties available for any violation of chapter 23, in addition to any penalties authorized under section 12-A.

**§ 6805. Approval of viatical settlements contracts; disclosure statements and applications**

A ~~viatical settlement provider or independent viatical producer~~ person may not use any contract, disclosure statement or application form with a viator who is a resident of in this State when dealing with a viator unless it has been filed with and approved by the superintendent, pursuant to sections 2412 and 2413. The superintendent shall disapprove a settlement contract form or disclosure statement form if, in the superintendent's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. All such forms shall be approved or denied by the superintendent within 60 calendar days following receipt of submission by the superintendent.

**§ 6806. Reporting requirements; confidentiality of information**

**1. Annual report.** A settlement provider licensee shall file with the superintendent by March 1st of each year an annual statement containing such information as the superintendent prescribes by rule. The superintendent may not adopt any rule that requires the submission of information that permits the identification of a viator or relates to transactions where the viator policyowner is not a resident of this State. The superintendent may not request, collect or compile personal information that identifies any viator or insured except in connection with the investigation of a specific complaint and with the prior written permission of the viator or insured or the viator's or insured's estate or representative to collect that information.

**1-A. Fee for filing annual report.** The fee for filing the annual report is the same as for an insurer as provided in section 601. On or before July 1st of each year, the superintendent shall forward to each ~~viatical-settlement provider~~ an itemized bill for the amount due for the filing of the annual statement and the amount due for the certificate of authority annual fee.

**2. Privacy protection.** Except as otherwise required or permitted by law, a ~~viatical settlement provider, settlement producer, viatical producer, independent viatical producer, institutional investor, insurance company, insurance producer, independent insurance producer, information bureau, rating company or any other person with actual knowledge of the identity of a viator, or of the insured if other than the viator, may not disclose that identity, or the insured's financial or medical information to any other person unless the viator, or the insured if other than the viator, provides written consent to the disclosure and the disclosure;~~

A. Is made to a viatical settlement provider, a viatical producer, an independent viatical producer, an institutional investor or other person determined by rule and is necessary to effect the viatical settlement between the viator and the viatical settlement provider; Is necessary to effectuate a settlement contract between the viator and a settlement provider and the viator and the insured have provided prior written consent to the disclosure;



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B. Is provided in response to an investigation or examination by the superintendent or any other governmental officer or agency pursuant to section 6807; or

C. Is necessary to facilitate a financing transaction and is made either to a licensed viatical settlement provider or to an institutional investor— permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a settlement provider and the viator and insured have provided prior written consent to the disclosure;

D. Is a term or condition to the transfer of a policy by one settlement provider to another settlement provider;

E. Is necessary to allow the viatical or life settlement provider or insurance producer or their authorized representatives to make contacts for the purpose of determining health status; or

F. Is required to purchase stop loss coverage.

~~3. Sale or transfer. A viatical settlement provider may not sell or transfer a viaticated policy to a financing entity other than an institutional investor or a licensed viatical settlement provider.~~

§ 6807. Examinations and investigations

~~1. Complaint Examinations. In response to a complaint concerning a licensee or in connection with an application for a license, the superintendent may examine the business and affairs of any licensee or applicant for a license. Subject to the provisions of section 6806, the superintendent may order a licensee or applicant to produce records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of this Chapter or rules adopted under this Chapter. The expenses incurred in conducting an examination must be paid by the licensee or applicant.~~

A. The superintendent may conduct an examination under this chapter of a licensee as often as the superintendent in the superintendent's sole discretion deems appropriate.

B. For purposes of completing an examination of a licensee under this chapter, subject to the provisions of section 6806, the superintendent may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the superintendent, necessary or material to the examination of the licensee.

C. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this State, the superintendent may, at the superintendent's discretion, accept an examination report on the licensee as prepared by the superintendent for the licensee's state of domicile or port-of-entry state.

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~~2. Confidential information.~~ Names and individual identification data for all viators are confidential information and may not be disclosed by the superintendent unless required by law.

**3. Records; retention requirements .** Records of all ~~viatical settlement~~ transactions must be maintained by the settlement provider licensee in accordance with this subsection and, subject to the provisions of section 6806, must be available to the superintendent for 3 years after policy maturity for inspection during reasonable business hours.

A. A settlement provider required to be licensed by this chapter shall for 5 years retain copies of all:

(1) Proposed, offered or executed settlement contracts, settlement purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the settlement contract or settlement purchase agreement, whichever is later;

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

(3) All other records and documents related to the requirements of this chapter.

B. This subsection does not relieve a settlement provider licensee of the obligation to produce these documents to the superintendent after the retention period has expired if the person has retained the documents.

C. Subject to the provisions of section 6806, records required to be retained by this subsection must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

**4. Immunity.** ~~A licensee responding to an order of the superintendent issued pursuant to this section is immune from any civil action arising out of compliance with the order and is not required to challenge the authority or validity of the order as a prerequisite to receiving immunity.~~ Immunity from liability is determined in accordance with this subsection.

A. A cause of action may not arise against the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

B. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent's authorized representative or examiner pursuant to an examination made under this chapter, if the act

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1 of communication or delivery was performed in good faith and without fraudulent intent  
2 or the intent to deceive. This paragraph does not abrogate or modify in any way any  
3 common law or statutory privilege or immunity heretofore enjoyed by any person  
4 identified in paragraph A.

5  
6 C. A person identified in paragraph A or B is entitled to an award of attorney's fees and  
7 costs if he or she is the prevailing party in a civil cause of action for libel, slander or any  
8 other relevant tort arising out of activities in carrying out the provisions of this chapter  
9 and the party bringing the action was not substantially justified in doing so. For purposes  
10 of this subsection, a proceeding is "substantially justified" if the proceeding had a  
11 reasonable basis in law or fact at the time that it was initiated.

12  
13 5. Conduct of Examinations. The following provisions govern the conduct of  
14 examinations.

15  
16 A. Upon determining that an examination should be conducted, the superintendent shall  
17 issue an examination warrant appointing one or more examiners to perform the  
18 examination and instructing them as to the scope of the examination. In conducting the  
19 examination, the examiner shall observe those guidelines and procedures as the  
20 superintendent may deem appropriate.

21  
22 B. Every licensee or person from whom information is sought, its officers, directors and  
23 agents shall provide to the examiners timely, convenient and free access at all reasonable  
24 hours at its offices to all books, records, accounts, papers, documents, assets and  
25 computer or other recordings relating to the property, assets, business and affairs of the  
26 licensee being examined. The officers, directors, employees and agents of the licensee or  
27 person shall facilitate the examination and aid in the examination so far as it is in their  
28 power to do so. The refusal of a licensee, by its officers, directors, employees or agents,  
29 to submit to examination or to comply with any reasonable written request of the  
30 superintendent shall be grounds for suspension or refusal of, or nonrenewal of any license  
31 or authority held by the licensee to engage in the business of settlements or other business  
32 subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation  
33 or refusal of any license or authority shall be conducted pursuant to Title 5, chapter 375,  
34 subchapter IV.

35  
36 C. The superintendent shall have the power to issue subpoenas, to administer oaths and  
37 to examine under oath any person as to any matter pertinent to the examination. Upon  
38 the failure or refusal of a person to obey a subpoena, the superintendent may petition a  
39 court of competent jurisdiction, and upon proper showing, the Court may enter an order  
40 compelling the witness to appear and testify or produce documentary evidence. Failure  
41 to obey the court order shall be punishable as contempt of court.

42  
43 D. When making an examination under this chapter, the superintendent may retain  
44 attorneys, appraisers, independent actuaries, independent certified public accountants or

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1 other professionals and specialists as examiners, the reasonable cost of which shall be  
2 borne by the licensee that is the subject of the examination.

3  
4 E. This chapter may not be construed to limit the superintendent's authority to terminate  
5 or suspend an examination in order to pursue other legal or regulatory action pursuant to  
6 the insurance laws of this state. Findings of fact and conclusions made pursuant to any  
7 examination shall be prima facie evidence in any legal or regulatory action.

8  
9 F. This chapter may not be construed to limit the superintendent's authority to use and, if  
10 appropriate, to make public any final or preliminary examination report, any examiner or  
11 licensee workpapers or other documents, or any other information discovered or  
12 developed during the course of any examination in the furtherance of any legal or  
13 regulatory action which the superintendent may, in his or her sole discretion, deem  
14 appropriate.

15  
16 **6. Examination Reports.** Examination reports may be comprised of only facts  
17 appearing upon the books, records or other documents of the licensee, its agents or other persons  
18 examined, or as ascertained from the testimony of its officers or agents or other persons  
19 examined concerning its affairs, and such conclusions and recommendations as the examiners  
20 find reasonably warranted from the facts. No later than 60 days following completion of the  
21 examination, the examiner in charge shall file with the superintendent a verified written report of  
22 examination under oath. Upon receipt of the verified report, the superintendent shall transmit the  
23 report to the licensee examined, together with a notice that shall afford the licensee examined a  
24 reasonable opportunity of not more than 30 days to make a written submission or rebuttal with  
25 respect to any matters contained in the examination report. In the event the superintendent  
26 determines that regulatory action is appropriate as a result of an examination, the superintendent  
27 may initiate any proceedings or actions provided by law.

28  
29 **7. Confidentiality of Examination Information.** The disclosure of information is  
30 governed by this subsection.

31  
32 A. Names and individual identification data for all viators and insured persons are  
33 considered private and confidential information and may not be disclosed by the  
34 superintendent, unless required by law.

35  
36 B. Except as otherwise provided in this chapter, all examination reports, working papers,  
37 recorded information, documents and copies thereof produced by, obtained by or  
38 disclosed to the superintendent or any other person in the course of an examination made  
39 under this chapter, or in the course of analysis or investigation by the superintendent of  
40 the financial condition or market conduct of a licensee are confidential by law and  
41 privileged, are not subject to subpoena, and are not subject to discovery or admissible in  
42 evidence in any private civil action. The superintendent is authorized to use the  
43 documents, materials or other information in the furtherance of any regulatory or legal  
44 action brought as part of the superintendent's official duties.  
45

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1 For the purposes of this paragraph and paragraph C, "chapter" includes the law of another  
2 state or jurisdiction that is substantially similar to this chapter.

3  
4 C. Documents, materials or other information, including, but not limited to, all working  
5 papers, and copies thereof, in the possession or control of the national association of  
6 insurance commissioners, or its successor organization, and its affiliates and subsidiaries  
7 are confidential by law and privileged, are not subject to subpoena, and are not subject to  
8 discovery or admissible in evidence in any private civil action if they are:

9  
10 (1) Created, produced or obtained by or disclosed to the national association of  
11 insurance commissioners, or its successor organization, and its affiliates and  
12 subsidiaries in the course of assisting an examination made under this chapter, or  
13 assisting a superintendent in the analysis or investigation of the financial  
14 condition or market conduct of a licensee; or

15  
16 (2) Disclosed to the national association of insurance commissioners, or its  
17 successor organization, and its affiliates and subsidiaries under paragraph D by a  
18 superintendent.

19  
20 D. The superintendent or any person that received documents, material or other  
21 information while acting under the authority of the superintendent, including the national  
22 association of insurance commissioners, or its successor organization, and its affiliates  
23 and subsidiaries, may not be permitted to testify in any private civil action concerning  
24 any confidential documents, materials or information subject to paragraph A:

25  
26 E. In order to assist in the performance of the superintendent's duties, the superintendent:

27  
28 (1) May share documents, materials or other information, including the  
29 confidential and privileged documents, materials or information subject to  
30 paragraph A, with other state, federal and international regulatory agencies, with  
31 the national association of insurance commissioners, or its successor organization,  
32 and its affiliates and subsidiaries, and with state, federal and international law  
33 enforcement authorities, provided that the recipient agrees to maintain the  
34 confidentiality and privileged status of the document, material, communication or  
35 other information; and

36  
37 (2) May receive documents, materials, communications or information, including  
38 otherwise confidential and privileged documents, materials or information, from  
39 the national association of insurance commissioners or its successor organization,  
40 and its affiliates and subsidiaries, and from regulatory and law enforcement  
41 officials of other foreign or domestic jurisdictions, and shall maintain as  
42 confidential or privileged any document, material or information received with  
43 notice or the understanding that it is confidential or privileged under the laws of  
44 the jurisdiction that is the source of the document, material or information.  
45

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1 F. A waiver of any applicable privilege or claim of confidentiality in the documents,  
2 materials or information does not occur as a result of disclosure to the superintendent  
3 under this section or as a result of sharing as authorized in paragraph D.

4  
5 G. A privilege established under the law of any state or jurisdiction that is substantially  
6 similar to the privilege established under this subsection shall be available and enforced  
7 in any proceeding in, and in any court of, this state.

8  
9 H. This chapter may not prevent or be construed as prohibiting the superintendent from  
10 disclosing the content of an examination report, preliminary examination report or  
11 results, or any matter relating thereto, to the superintendent of any other state or country,  
12 or to law enforcement officials of this or any other state or agency of the federal  
13 government at any time or to the national association of insurance commissioners or its  
14 successor organization, so long as such agency or office receiving the report or matters  
15 relating thereto agrees in writing to hold it confidential and in a manner consistent with  
16 this chapter.

17  
18 **8. Conflict of Interest.** The following provisions apply.

19  
20 A. An examiner may not be appointed by the superintendent if the examiner, either  
21 directly or indirectly, has a conflict of interest or is affiliated with the management of or  
22 owns a pecuniary interest in any person subject to examination under this chapter. This  
23 section may not be construed to automatically preclude an examiner from being:

24  
25 (1) A viator;

26  
27 (2) An insured in a insurance policy acquired pursuant to a settlement contract; or

28  
29 (3) A beneficiary in an insurance policy that is proposed to be acquired pursuant  
30 to a settlement contract.

31  
32 B. Notwithstanding the requirements of this subsection, the superintendent may retain  
33 from time to time, on an individual basis, qualified actuaries, certified public accountants,  
34 or other similar individuals who are independently practicing their professions, even  
35 though these persons may from time to time be similarly employed or retained by persons  
36 subject to examination under this chapter.

37  
38 **9. Investigative Authority of the superintendent.** In addition to the authority granted  
39 pursuant to section 220, the superintendent may investigate persons engaged in the business of  
40 settlements and persons suspected of engaging in fraudulent viatical or life settlement acts.

41  
42 **§ 6808. Disclosure**

43  
44 With each application for a settlement, A a viatical-settlement provider or independent  
45 viatical producer shall disclose in writing at least the following information disclosures to the

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1 ~~viator prior to the date the viatical settlement contract is signed by the viator. Disclosure to a~~  
2 ~~viator shall include distribution of a brochure, approved by the superintendent, describing the~~  
3 ~~process of settlements. The disclosures shall be provided to the viator no later than the time the~~  
4 ~~application for the settlement contract is signed by all parties and shall be signed by the viator~~  
5 ~~and the settlement provider, and shall provide the following information:~~

6  
7 **1. Alternatives or options.** Possible alternatives to or options that can be used in  
8 conjunction with viatical settlement contracts for persons with catastrophic or life threatening  
9 illnesses, including, but not limited to, accelerated death benefits or policy loans offered by the  
10 issuer of the life insurance policy;

11  
12 **2. Federal tax implications.** The fact that some ~~Some~~ or all of the proceeds of the  
13 ~~viatical or life settlement contract~~ may be free from federal income tax under the federal Health  
14 Insurance Portability and Accountability Act of 1996, Public Law 104- 191; and that restrictions,  
15 qualifications and other tax laws, particularly those of the state in which the viator resides, may  
16 apply and assistance should be sought from a professional tax advisor;

17  
18 **3. State tax implications.** The fact that some or all of the proceeds of the ~~viatical~~  
19 settlement may be free from state income tax under section 6809; and that restrictions,  
20 qualifications and other tax laws, including those of the State in which the viator resides, may  
21 apply and assistance should be sought from a professional tax advisor;

22  
23 **4. Claims of creditors.** The fact that proceeds of the ~~viatical~~ settlement could be subject  
24 to the claims of creditors;

25  
26 **5. Effect on government benefits.** The fact that ~~receipts~~ receipt of the proceeds of the  
27 ~~viatical settlements settlement~~ may adversely affect the recipient's eligibility for Medicaid or  
28 other means-based government programs, benefits or entitlements and that advice should be  
29 obtained from the appropriate agencies;

30  
31 **6. Right to rescind.** ~~The policy owner's or certificate holder's fact that the viator has the~~  
32 ~~right to rescind a viatical settlement contract before the earlier of the 30th day 30 calendar days~~  
33 ~~after the date upon which the viatical settlement contract is executed by both all parties or the~~  
34 ~~15th day 15 calendar days after the date upon which payment is received by the viator as~~  
35 ~~provided in section 6809; and. If exercised by the viator, rescission is effective only if both~~  
36 ~~notice of the rescission is given and repayment of all proceeds and any premiums, loans and loan~~  
37 ~~interest to the settlement provider is made within the rescission period. If the insured dies during~~  
38 ~~the rescission period, the settlement contract is deemed to have been rescinded, subject to~~  
39 ~~repayment of all proceeds and any premiums, loans and loan interest to the settlement provider;~~

40  
41 **7. Potential reduction or loss of benefits to beneficiary.** ~~The fact that a consequence of~~  
42 ~~the viatical settlement will be the loss of some or all of the death benefit payable under the life~~  
43 ~~insurance policy or certificate to the current beneficiary or beneficiaries of the policy or~~  
44 ~~certificate being viaticated. The fact that entering into a settlement contract may cause other~~  
45 ~~rights or benefits, including conversion rights and waiver of premium benefits that may exist~~

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1 under the policy or certificate, to be forfeited by the viator, and that assistance should be sought  
2 from a financial adviser;

3  
4 **8. Funds.** Funds will be sent to the viator within 3 business days after the settlement  
5 provider has received the insurer or group administrator's acknowledgment that ownership of the  
6 policy or interest in the certificate has been transferred and the beneficiary has been designated;  
7 and

8  
9 **9. Privacy Disclosure.** A statement containing the following language: "All medical,  
10 financial or personal information solicited or obtained by a settlement provider or settlement  
11 producer about an insured, including the insured's identity or the identity of family members, a  
12 spouse or a significant other may be disclosed as necessary to effect the settlement contract  
13 between the viator and the settlement provider. If you are asked to provide this information, you  
14 will be asked to consent to the disclosure. The information may be provided to someone who  
15 buys the policy or provides funds for the purchase. You may be asked to renew your permission  
16 to share information every two years."

17  
18 **§ 6808-A. Contact with insured; additional disclosures**

19  
20 **1. Contact with insured.** The insured may be contacted by either the settlement provider  
21 or its authorized representative for the purpose of determining the insured's health status. This  
22 contact is limited to once every 3 months if the insured has a life expectancy of more than one  
23 year, and no more than once per month if the insured has a life expectancy of one year or less.

24  
25 **2. Additional disclosures.** A settlement provider shall provide the viator with at least the  
26 following disclosures no later than the date the settlement contract is signed by all parties. The  
27 disclosures shall be conspicuously displayed in the settlement contract or in a separate document  
28 signed by the viator and the settlement provider or settlement producer, and provide the  
29 following information:

30  
31 **A.** State the affiliation, if any, between the settlement provider and the issuer of the  
32 insurance policy to be acquired pursuant to a settlement contract;

33  
34 **B.** The document must include the name, address and telephone number of the settlement  
35 provider.

36  
37 **C.** If an insurance policy to be purchased has been issued as a joint policy or involves  
38 family riders or any coverage of a life other than the insured under the policy to be  
39 purchased, the viator shall be informed of the possible loss of coverage on the other lives  
40 under the policy and shall be advised to consult with his or her insurance producer or the  
41 insurer issuing the policy for advice on the proposed settlement.

42  
43 **D.** State the dollar amount of the current death benefit payable to the settlement provider  
44 under the policy or certificate. If known, the settlement provider shall also disclose the  
45 availability of any additional guaranteed insurance benefits, the dollar amount of any



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1 accidental death and dismemberment benefits under the policy or certificate and the  
2 settlement provider's interest in those benefits.

3  
4 E. State the name, business address, and telephone number of the independent third party  
5 escrow agent, and the fact that the viator may inspect or receive copies of the relevant  
6 escrow or trust agreements or documents.

7  
8 3. Notice of change in ownership or beneficiary. If the settlement provider transfers  
9 ownership or changes the beneficiary of the insurance policy, the settlement provider shall  
10 communicate the change in ownership or beneficiary to the insured within 20 days after the  
11 change.

12  
13 **§ 6809. General provisions for ~~viatical or life~~ settlement contracts**

14  
15 **1. Prior conditions.** A ~~viatical~~-settlement provider entering into a ~~viatical~~-settlement  
16 contract with a viator shall first obtain:

17  
18 **A.** If the viator is the insured, a written statement from a licensed attending physician that  
19 the viator is of sound mind and under no constraint or undue influence to enter into a  
20 settlement contract;

21  
22 **B.** Prior to or at the time of execution of the settlement contract, the settlement provider  
23 shall obtain A a witnessed document in which the viator consents to the ~~viatical~~  
24 settlement contract, ~~acknowledges that the insured has a catastrophic or life-threatening~~  
25 ~~illness,~~ represents that the insured viator has a full and complete understanding of the  
26 ~~viatical~~-settlement contract and that the insured viator has a full and complete  
27 understanding of the benefits of the life insurance policy and acknowledges that the  
28 insured viator has entered into the ~~viatical~~-settlement contract freely and voluntarily and,  
29 for persons who are terminally ill or chronically ill, acknowledges that the insured is  
30 terminally ill or chronically ill and that the terminal or chronic illness was diagnosed after  
31 the life insurance policy was issued; and

32  
33 **C.** ~~Notwithstanding section 2159, subsection 3 or any other provisions of state law, a~~  
34 ~~witnessed document in which the insured consents to the release of the insured's medical~~  
35 ~~records.~~

36  
37 **D.** Notwithstanding section 2159, subsection 3 or any other provisions of state law, a  
38 document in which the insured consents to the release of his or her medical records to a  
39 settlement provider and, if the life insurance policy was issued less than two years from  
40 the date of application for a settlement contract to the insurance company that issued the  
41 life insurance policy covering the life of the insured.

42  
43 The insurer shall respond to a request for verification of coverage submitted by a settlement  
44 provider not later than 30 calendar days of the date the request is received. The request for  
45 verification of coverage must be made on a form approved by the superintendent. In its response,

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1 the insurer shall indicate whether, based on the medical evidence and documents provided, the  
2 insurer intends to pursue an investigation regarding the validity of the insurance contract.  
3

4 **2. Confidentiality of medical information.** All medical information solicited or  
5 obtained by any licensee is subject to the applicable provisions of state law relating to  
6 confidentiality of medical information.  
7

8 **3. Unconditional rescission.** All ~~viatical~~ settlement contracts entered into in this State  
9 ~~or entered into with residents of this State~~ must contain a provision for an unconditional rescission  
10 ~~period of the earlier of the 30th day after the date upon which the viatical settlement contract is~~  
11 ~~executed by both parties or the 15th day after the date upon which payment is received by the~~  
12 ~~viator~~ that the viator has the right to rescind a settlement contract before the earlier of 30  
13 calendar days after the date upon which the settlement contract is executed by all parties or 15  
14 calendar days after the date upon which payment is received by the viator as provided in section  
15 6808. Rescission if exercised by the viator is effective only if both notice of the rescission is  
16 given and a full return of funds to the trustee or escrow agent repayment of all proceeds and any  
17 premiums, loans and loan interest to the settlement provider is made within the rescission period.  
18 If the insured dies during the rescission period, the settlement contract shall be deemed to have  
19 been rescinded, subject to repayment of all proceeds and any premiums, loans and loan interest  
20 to the settlement provider.  
21

22 **4. Transfer of insurance policy.** Immediately upon receipt from the viator of  
23 documents to effect the transfer of the insurance policy, the ~~viatical settlement provider~~ shall pay  
24 ~~the proceeds of the settlement to an escrow or trust account managed by an independent trustee~~  
25 ~~or escrow agent in a state chartered or federally chartered financial institution, whose deposits~~  
26 ~~are insured by the Federal Deposit Insurance Corporation or its successor, pending~~  
27 ~~acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall~~  
28 ~~transfer the proceeds due to the viator or otherwise according to the viator's written instructions~~  
29 ~~immediately upon receipt of acknowledgment of the transfer from the insurer. The settlement~~  
30 ~~provider shall instruct the viator to send the executed documents required to effect the change in~~  
31 ~~ownership, assignment or change in beneficiary directly to the independent escrow agent. Within~~  
32 ~~3 business days after the date the escrow agent receives the document, or from the date the~~  
33 ~~settlement provider receives the documents, if the viator erroneously provides the documents~~  
34 ~~directly to the provider, the settlement provider shall pay or transfer the proceeds of the~~  
35 ~~settlement into an escrow or trust account maintained in a state or federally-chartered financial~~  
36 ~~institution whose deposits are insured by the Federal Deposit Insurance Corporation or its~~  
37 ~~successor. Upon payment of the settlement proceeds into the escrow account, the escrow agent~~  
38 ~~shall deliver the original change in ownership, assignment or change in beneficiary forms to the~~  
39 ~~settlement provider or related provider trust. Upon the escrow agent's receipt of the~~  
40 ~~acknowledgment of the properly completed transfer of ownership, assignment or designation of~~  
41 ~~beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to~~  
42 the viator.  
43

44 **5. Effect of failure to tender consideration.** Failure to tender consideration for the  
45 ~~viatical~~ settlement under the terms of the ~~viatical~~ settlement contract renders the contract

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voidable for lack of consideration until the time consideration is tendered to and accepted by the viator.

~~6. Unlicensed provider.~~ An independent viatical producer or viatical producer may not receive a fee, commission or other valuable consideration for services from a viatical settlement provider not licensed in this State as a viatical settlement provider with respect to viatical settlements in this State.

~~7. Income.~~ Income received by the original policyowner or original certificate holder from a viatical settlement contract is subject to state income tax only to the extent the income is subject to federal income tax.

~~8. Advertising standards.~~ The following requirements apply to advertising.

~~A. Advertising must be truthful and may not mislead by fact or implication.~~

~~B. The names of licensed viatical settlement providers, viatical producers and independent viatical producers must be clearly identified in all advertisements placed by these entities.~~

**9. Contacts with the insured.** An insured may designate one or more adult individuals in regular contact with the insured as the individual for all inquiries regarding the insured's health status and, if that designation is made, a viatical settlement provider, ~~viatical producer or independent viatical producer~~ may not make these inquiries to the insured unless the settlement provider; producer or independent producer is unable, for more than 30 days, to contact the designee after diligent effort. The insured may change this designation at any time upon written notice to the settlement provider or producer. Contacts with the insured for the purpose of determining the health status of the insured after the viatical settlement has occurred are limited to once every 3 months for insureds with an estimated life expectancy of more than one year and once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain to the insured the procedure for these contacts prior to the time the insured enters into the viatical settlement contract is entered into. The limitation in this rule on contacts does not apply to contacts made for reasons other than determining the insured's health status or necessary to maintain the policy in force. Settlement providers shall be responsible for the actions of their authorized representatives.

**§ 6810. Rules**

The superintendent may adopt rules implementing this chapter; ~~including establishing standards for reasonableness of payments to viators under a viatical settlement contract.~~ These rules are routine technical rules under Title 5, chapter 375, subchapter II-A 2-A. Rules may be adopted to:

A. Establish standards for evaluating the reasonableness of payments to viators under a viatical settlement contract only where the insured in the policy which is the subject of a

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1 settlement contract is terminally ill or chronically ill. This authority includes, but is not  
2 limited to, regulation of discount rates used to determine the amount paid in exchange for  
3 assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;  
4

5 B. Establish appropriate licensing requirements and standards for continued licensure for  
6 settlement providers;  
7

8 C. Require a bond or other mechanism for financial accountability for settlement  
9 providers;  
10

11 D. Govern the relationship and responsibilities of both insurers and settlement providers  
12 and settlement producers and others in the business of settlement during the period of  
13 consideration or effectuation of a settlement contract ; and  
14

15 E. Implement any other requirements of this chapter.  
16

17 **§ 6811. Prohibited practices and provisions under policies**  
18

19 **1. Assignment.** The following provisions govern assignment.  
20

21 **A.** A policy of individual or group life insurance that permits assignment issued or  
22 delivered in this State may not, in any way, restrict ~~the insured~~ a person from making an  
23 absolute assignment of rights for consideration. Prohibited restrictions include, but are  
24 not limited to, assignments only as a gift and without consideration, assignments only to a  
25 limited class of persons and assignments only to a natural person and not to a legal entity.  
26

27 **B.** A life insurance company that acknowledges and records an absolute assignment of  
28 life insurance policy or rights under a group life insurance policy may rely solely on the  
29 authorization of the assignor to make the assignment and the life insurance company is  
30 not obligated to inquire into the validity, sufficiency or terms of the assignment. In  
31 acknowledging and recording an assignment, a life insurance company acting in good  
32 faith and reliance on the presentation of the absolute assignment, acts in a ministerial  
33 capacity and may exhibit no discretion as to whether an assignor may make the  
34 assignment or whether the assignment conforms with applicable law.  
35

36 **2. Rights under an assignment.** The following provisions apply to an assignment.  
37

38 **A.** For life insurance contracts that permit assignment:  
39

40 (1) ~~An insured~~ A person has the right to assign, transfer, sell or bequeath the  
41 ownership of or death benefit payable under a life insurance policy or certificate  
42 at any time for any remaining portion of that coverage after exercising any option  
43 for accelerated benefits;  
44

45 (2) ~~An insured~~ A person also has the right to assign, transfer, sell, devise or

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1 bequeath the ownership of or death benefit payable under a life insurance policy  
2 or certificate if that coverage is on disability waiver of premium at any time; and  
3

4 (3) The absolute assignee of an individual life insurance policy or of all rights  
5 under a group life insurance policy has all rights at law or in equity as the assignor  
6 held under that policy, including, but not limited to, the right to convert the  
7 coverage to an individual policy, the right to timely notice of the right to that  
8 conversion at the time that right accrues, the right to make premium payments or  
9 take such other action as may be necessary under the policy in order to preserve  
10 the value of the coverage assigned, the right to receive information concerning the  
11 coverage, the right to receive notice of a lapse or discontinuation of coverage, the  
12 exclusive right to exercise any options concerning the assigned coverage during  
13 an open enrollment period and all such other rights and privileges initially granted  
14 to ~~the insured~~ a person under the terms of the individual or group life insurance  
15 policy.  
16

17 B. ~~An insured~~ A person has the right to exercise any option for accelerated benefits  
18 under the terms of any individual or group life insurance policy at any time for any  
19 unassigned portion of that policy or certificate.  
20

21 **3. Failure to give notice under group life insurance policy.** If the rights under a  
22 group life insurance policy have been assigned and the administrator of the policy fails to give  
23 notice to the assignee that ~~the insured~~ a person is no longer a covered person under the group and  
24 of the right to convert the policy to an individual life insurance policy, the period of time during  
25 which the assignee must make application for conversion under the terms of the group life  
26 insurance policy begins from the date the notice is given to the assignee.  
27

28 **4. Riders and postsettlement increases or additions.** With respect to policies  
29 containing a provision for double or additional indemnity for accidental death or any other riders  
30 or additional death benefits, including the increase in the death benefit in excess of the amount of  
31 the death benefits of the date the ~~vatical~~ settlement contract is effected at the time the policy is  
32 assigned, transferred, sold, ~~devised~~ or bequeathed, unless otherwise mutually agreed to in writing  
33 by the viator and the ~~vatical~~ settlement provider, the additional amount remains payable to the  
34 beneficiary last named by the viator prior to entering into the ~~vatical~~ settlement contract or to  
35 such other beneficiary other than the ~~vatical~~ settlement provider as the viator may thereafter  
36 designate or, in the absence of a designation, to the estate of the viator.  
37

38 **5. Prohibition on settlements.** It is a violation of this chapter for any person to  
39 enter into a settlement contract within a two-year period commencing with the date of issuance  
40 of the insurance policy or certificate unless the viator certifies to the settlement provider that one  
41 or more of the following conditions have been met within the two-year period:  
42

43 A. The policy was issued upon the viator's exercise of conversion rights arising out of a  
44 group or individual policy, provided the total of the time covered under the conversion  
45 policy plus the time covered under the prior policy is at least twenty-four months. The

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1 time covered under a group policy shall be calculated without regard to any change in  
2 insurance carriers, provided the coverage has been continuous and under the same group  
3 sponsorship;

4  
5 B. The viator submits independent evidence to the settlement provider that one or more  
6 of the following conditions have been met within the two-year period:

7  
8 (1) The viator or insured is terminally ill or chronically ill; or

9  
10 (2) The viator or insured disposes of the viator's entire ownership interests in a  
11 closely held corporation pursuant to the terms of a buyout or other similar  
12 agreement in effect at the time the insurance policy was initially issued;

13  
14 C. If the settlement provider submits to the insurer a copy of the owner or insured's  
15 certification described in this chapter when the provider submits a request to the insurer  
16 to effect the transfer of the policy or certificate to the settlement provider, the copy shall  
17 be deemed to conclusively establish that the settlement contract satisfies the requirements  
18 of this section and the insurer shall timely respond to the request.

19  
20 **§ 6812. Insurance company practices**

21  
22 **1. Duty to provide information.** In addition to the provision of section 6809 of this  
23 chapter, An an insurance company that is licensed to do business in this State shall promptly  
24 respond to reasonable requests for policy information from a viatical-settlement provider, viatical  
25 settlement producer or independent viatical producer upon the receipt of the following  
26 documents in the office of the insurance company:

27  
28 **A.** An authorization signed by the viator to release specified information regarding the  
29 policy or certificate to a named licensed viatical-settlement provider, viatical-settlement  
30 agent or viatical-settlement broker or settlement producer; and

31  
32 **B.** A request in writing from the named licensed viatical-settlement provider, viatical  
33 settlement agent or viatical-settlement broker or settlement producer for the specified  
34 policy or certificate information.

35  
36 Requests for the following items related to the policy or certificate being viaticated which  
37 is the subject of a settlement transaction are deemed to be reasonable: ownership of and death  
38 benefits under the policy or certificate; premium information on the policy or certificate; liens,  
39 assignments and additional benefits; waiver of premium; and ownership and assignment  
40 provisions. The information provided must be the most recent information on file. By rule, the  
41 superintendent may specify additional criteria for information requests deemed reasonable under  
42 this section by a viatical-settlement provider or an independent viatical producer.

43  
44 **2. Conversion of group insurance.** An issuer or 3rd-party administrator of a group life  
45 insurance policy shall promptly issue an individual conversion policy if the conversion is being

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requested for the purpose of entering into a ~~viatical~~-settlement contract. For the purposes of this section, issuance of such a policy is deemed timely if it meets relevant standards for timeliness under Chapter 23. This subsection may not be construed to create any new conversion rights not already granted by the policy or certificate being ~~viaticated~~ acquired pursuant to a settlement contract.

**3. Right to assign rights or benefits.** Subsection 1 or 2 does not prohibit a viator under a group life insurance policy from assigning rights or benefits under the policy to a licensed ~~viatical~~-settlement provider or converting the coverage to an individual life insurance policy.

**4. Assignment restrictions prohibited.** A policy of group life insurance issued or in existence in this State that permits any assignment of a viator's rights may not restrict the viator from making assignments other than by gift.

**5. Purchase of securities.** This chapter does not require notice to the superintendent of, or restrict an insurance company from investing in, or participating in, or purchasing any securities issued in any transaction including without limitation any financing, securitization transaction or securities offering in which the licensed ~~viatical~~-settlement provider sells, assigns, transfers, pledges, hypothecates or otherwise disposes of ~~viatical~~-settlement contracts, ~~viaticated~~ policies acquired pursuant to settlement contracts or any interest therein.

**~~§ 6813. Financing~~**

~~**1. Financing entity.** A financing entity is not required to obtain a license as a viatical settlement provider or an independent viatical producer.~~

~~**2. Fee.** This chapter does not restrict a person from receiving a fee, commission or other valuable consideration for services in connection with a financing transaction.~~

**§ 6814. Unfair trade practices**

A violation of this chapter is an unfair trade practice under Title 5, Chapter 10 and subject to the penalties contained in that chapter.

**§ 6815. Assignment or resale of viaticated policies; securities registration**

**1. Prohibited transfers.** A ~~viatical~~ settlement provider may not sell, assign, transfer or pledge a ~~viaticated~~ policy acquired pursuant to a settlement contract except to a licensed ~~viatical~~ settlement provider or a person exempt from licensing under section 6803 or 6813.

**2. Securities registration.** Any sale by a ~~viatical~~-settlement provider of ~~viatical~~ settlement contracts, ~~viaticated~~ policies acquired pursuant to settlement contracts or interests ~~therein in a viatical settlement contract or viaticated policy~~ that constitute a "security" within the meaning of the United States Securities Act of 1933, as amended, or the Revised Maine Securities Act, as amended, must be registered under those statutes unless there is an available

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1 exemption from registration under those statutes.

2  
3 § 6816. Permitted operations before formal approval

4  
5 ~~—— A viatical or life settlement provider or independent viatical or life producer that is~~  
6 ~~currently acting lawfully in this State may continue to operate pending approval or disapproval~~  
7 ~~of the applicant's license under this Chapter if an application is filed with the superintendent~~  
8 ~~pursuant to this Chapter prior to January 1, 1998.~~

9  
10 §6817. Advertising of settlements

11  
12 1. Advertising for settlements. Every settlement provider licensee shall establish and at  
13 all times maintain a system of control over the content, form and method of dissemination of all  
14 advertisements of its contracts, products and services. All advertisements, regardless of by whom  
15 written, created, designed or presented, are the responsibility of the settlement provider licensee,  
16 as well as the individual who created or presented the advertisement. A system of control must  
17 include regular routine notification, at least once a year, to agents and others authorized by the  
18 settlement licensee who disseminate advertisements of the requirements and procedures for  
19 approval prior to the use of any advertisements not furnished by the settlement provider licensee.

20  
21 2. Form and content. Advertisements must be truthful and not misleading in fact or by  
22 implication. The form and content of an advertisement of a settlement contract must be  
23 sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency  
24 to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or  
25 deceive must be determined by the superintendent from the overall impression that the  
26 advertisement may be reasonably expected to create upon a person of average education or  
27 intelligence within the segment of the public to which it is directed.

28  
29 3. Standards for disclosure. An advertisement must comply with standards for  
30 disclosure determined by rule by the superintendent.

31  
32 4. Applicability. This section applies to any advertisement of settlement contracts or  
33 related products or services intended for dissemination in this state, including Internet  
34 advertising viewed by persons located in this state. If disclosure requirements are established  
35 pursuant to federal regulation, this section must be interpreted so as to minimize or eliminate  
36 conflict with federal regulation wherever possible.

37  
38 §6818. Fraud prevention and control

39  
40 1. Fraudulent viatical or life settlement acts prohibited. Notwithstanding any other  
41 provision of law to the contrary,

42  
43 A. A person may not commit a fraudulent viatical or life settlement act.

44  
45 B. A person may not knowingly or intentionally interfere with the enforcement of the



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1 provisions of this chapter or investigations of suspected or actual violations of this  
2 chapter.

3  
4 C. A person in the business of settlements may not knowingly or intentionally permit any  
5 person convicted of a crime involving dishonesty or breach of trust to participate in the  
6 business of settlements.

7  
8 2. Fraud warning required. Settlement contracts and applications for settlements,  
9 regardless of the form of transmission, must contain the following statement or a substantially  
10 similar statement: "Any person who knowingly presents false information in an application for  
11 insurance or settlement contract is guilty of a crime and may be subject to fines and confinement  
12 in prison." The lack of a statement as required in this subdivision does not constitute a defense in  
13 any prosecution for a fraudulent viatical or life settlement act.

14  
15 3. Mandatory reporting of fraudulent viatical or life settlement acts. Any person  
16 engaged in the business of settlements having knowledge or a reasonable belief that a fraudulent  
17 viatical or life settlement act is being, will be or has been committed shall provide to the  
18 superintendent the information required by, and in a manner prescribed by, the superintendent.  
19 Any other person having knowledge or a reasonable belief that a fraudulent viatical or life  
20 settlement act is being, will be or has been committed may provide to the superintendent the  
21 information required by, and in a manner prescribed by, the superintendent.

22  
23 4. Immunity from liability. Civil liability may not be imposed on and a cause of action  
24 may not arise from a person's furnishing information concerning suspected, anticipated or  
25 completed fraudulent viatical or life settlement acts or suspected or completed fraudulent  
26 insurance acts, if the information is provided to or received from:

27  
28 A. The superintendent or the superintendent's employees, agents or  
29 representatives;

30  
31 B. Federal, state or local law enforcement or regulatory officials or their  
32 employees, agents or representatives;

33  
34 C. The National Association of Insurance Commissioners, National Association  
35 of Securities Dealers, the North American Securities Administrators Association,  
36 or their employees, agents or representatives, or other regulatory body overseeing  
37 life insurance, settlements securities or investment fraud;

38  
39 D. A person involved in the prevention and detection of fraudulent viatical or life  
40 settlement acts or that person's agents, employees or representatives; or

41  
42 E. The life insurer that issued the life insurance policy covering the life of the  
43 insured.

44  
45 B. Paragraph A does not apply to statements made with actual malice. In an action

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1 brought against a person for filing a report or furnishing other information concerning a  
2 fraudulent viatical or life settlement act or a fraudulent insurance act, the party bringing  
3 the action shall plead specifically any allegation that paragraph A does not apply because  
4 the person filing the report or furnishing the information did so with actual malice.  
5

6 C. Paragraph A does not apply to a person's furnishing information concerning his or  
7 her own suspected, anticipated or completed fraudulent viatical or life settlement acts or  
8 suspected or completed fraudulent insurance acts.  
9

10 D. A person identified in paragraph A is entitled to an award of attorney's fees and costs  
11 if that person is the prevailing party in a civil cause of action for libel, slander or any  
12 other relevant tort arising out of activities in carrying out the provisions of this chapter  
13 and the party bringing the action was not substantially justified in doing so. For purposes  
14 of this subsection, a proceeding is "substantially justified" if it had a reasonable basis in  
15 law or fact at the time that it was initiated.  
16

17 E. This subsection does not abrogate or modify common law or statutory privileges or  
18 immunities enjoyed by a person described in paragraph A.  
19

20 5. Confidentiality. The following provisions apply.  
21

22 A. The documents and evidence provided pursuant to subsection 4 or obtained by the  
23 superintendent in an investigation of suspected or actual fraudulent viatical or life  
24 settlement acts is privileged and confidential and is not a public record and is not subject  
25 to discovery or subpoena in a civil or criminal action.  
26

27 B. Paragraph A does not prohibit release by the superintendent of documents and  
28 evidence obtained in an investigation of suspected or actual fraudulent viatical or life  
29 settlement acts:  
30

31  
32 (1) In administrative or judicial proceedings to enforce laws administered by the  
33 superintendent;  
34

35 (2) To federal, state or local law enforcement or regulatory agencies, to an  
36 organization established for the purpose of detecting and preventing fraudulent  
37 viatical or life settlement acts or to the national association of insurance  
38 commissioners or its successor organization; or  
39

40 (3) At the discretion of the superintendent, to a person in the business of  
41 settlements that is aggrieved by a fraudulent viatical or life settlement act.  
42

43 C. Release of documents and evidence under paragraph B does not abrogate or modify  
44 the privilege granted in paragraph A.  
45

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1 6. Other law enforcement or regulatory authority. This chapter does not:  
2

3 A. Preempt the authority or relieve the duty of other law enforcement or regulatory  
4 agencies to investigate, examine and prosecute suspected violations of law;  
5

6 B. Prevent or prohibit a person from disclosing voluntarily information concerning  
7 viatical or life settlement fraud to a law enforcement or regulatory agency other than the  
8 bureau; or  
9

10 C. Limit the powers granted elsewhere by the laws of this state to the superintendent or  
11 an insurance fraud unit to investigate and examine possible violations of law and to take  
12 appropriate action against wrongdoers.  
13

14 7. Viatical or life settlement antifraud initiatives. In accordance with this subsection, a  
15 settlement provider licensee shall have in place antifraud initiatives reasonably calculated to  
16 detect, prosecute and prevent fraudulent viatical or life settlement acts.  
17

18 A. At the discretion of the superintendent, the superintendent may order, or a licensee  
19 may request and the superintendent may grant, such modifications of the following  
20 required initiatives as necessary to ensure an effective antifraud program. The  
21 modifications may be more or less restrictive than the required initiatives so long as the  
22 modifications may reasonably be expected to accomplish the purpose of this subsection.  
23

24 B. Antifraud initiatives must include:  
25

26 (1) Fraud investigators, who may be employees of a settlement provider or  
27 independent contractors; and  
28

29 (2) An antifraud plan, which must be submitted to the superintendent. The  
30 antifraud plan must include, but is not limited to:  
31

32 (a) A description of the procedures for detecting and investigating possible  
33 fraudulent viatical or life settlement acts and procedures for resolving  
34 material inconsistencies between medical records and insurance  
35 applications;  
36

37 (b) A description of the procedures for reporting possible fraudulent  
38 viatical or life settlement acts to the superintendent;  
39

40 (c) A description of the plan for antifraud education and training of  
41 underwriters and other personnel; and  
42

43 (d) A description or chart outlining the organizational arrangement of the  
44 antifraud personnel who are responsible for the investigation and reporting  
45 of possible fraudulent viatical or life settlement acts and investigating

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1                    unresolved material inconsistencies between medical records and  
2                    insurance applications.

3  
4                    C. Antifraud plans submitted to the superintendent are privileged and confidential and  
5                    are not a public record or subject to discovery or subpoena in a civil or criminal action.  
6

7                    **§6820. Civil remedies; individual remedy**  
8

9                    **1. Civil remedies and enforcement.** In addition to the penalties available pursuant to  
10                    section 6814, the superintendent may assess civil penalties or take any other enforcement action  
11                    permitted under section 12-A against any person who violates any provision of this chapter.  
12

13                    **2. Superior Court action.** Any person who is injured by any action of a person in  
14                    violation of this chapter may bring an action in Superior Court. The requirements for notice and  
15                    filing of a cause of action under this subsection are governed by the Maine Rules of Civil  
16                    Procedure. The person may recover damages, together with costs and disbursements.  
17

18                    **3. No private right of action.** Except as specifically provided in subsection 2, this  
19                    chapter provides no express or implied private right of action.  
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