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**Report of the Superintendent of Insurance  
on Life Insurance Policy Settlements  
Pursuant to P.L. 2007, ch. 543**

**Presented to the Joint Standing Committee on Insurance and  
Financial Services**

**April 2009**



John Elias Baldacci  
Governor

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Superintendent



# **Report of the Superintendent of Insurance on Life Insurance Policy Settlements pursuant to P.L. 2007, ch. 543**

## **Introduction**

In 2008, Maine enacted a law prohibiting entering into “stranger-originated life insurance” contracts, commonly abbreviated “STOLI.” Although there is broad consensus that STOLI is abusive, there is intense disagreement as to what exactly STOLI is, what is abusive about it, and how best to protect against it. Therefore, the 2008 law left several contested issues unresolved and directed the Superintendent of Insurance to review various possible legal approaches, consulting with a range of interested parties, and to submit recommendations to the Legislature. Based upon that review, the Superintendent concludes that the extensive legal framework currently in place provides appropriate substantive protections. Therefore, recommended legislation should focus on enhanced consumer disclosure and on clarifying existing law.

This Report begins by presenting some historical background on the evolution of the modern secondary market in life insurance policies, and an overview of the policy settlement process and the basic elements of the regulatory framework. Then, after a brief summary of the stakeholder meetings, the Report analyzes the proposals presented by interested persons to address the three issues the Superintendent has been asked to study: the solicitation of life insurance for the purpose of settling policies; the use of premium finance agreements in association with viatical and life settlements; and the disclosures made to viators and owners of life insurance policies. Finally, the Report presents the Superintendent’s recommendations for enhanced consumer disclosures and for clarifications and technical corrections to the Maine Viatical and Life Settlements Act. Appended to this Report are the principal Model Acts and a summary of recent and pending state legislation in this area.

## **Historical Background**

Stranger-originated life insurance is not a recent invention. In the nineteenth century, it was popular in some circles for members of the general public to buy policies on public figures, for the purpose of gambling on when they would die. More nefariously, a criminal might take out a policy on someone who would soon have an unfortunate accident.

Future Massachusetts Insurance Commissioner Elizur Wright observed a related problem in 1844, on “a trip to London where he first heard life insurance described as ‘the greatest humbug in Christendom.’ Curious as to why an industry to which he had devoted so much of his life could be so viciously disparaged, Wright was directed to the weekly auction in London’s Royal Exchange[, where] policyholders who no longer could afford their premium payments would exhibit themselves to prospective bidders. The gallery could then assess each insured’s health for themselves and bid for their life policies. The sickliest looking, of course, would most likely fetch the best price. Wright, an ardent abolitionist, likened the practice to slave auctions

he had witnessed in America and left England determined to prevent such degradation taking root in the United States.”<sup>1</sup>

Although vivid crime stories involving insurance money still make news occasionally, the systemic problems of that era were addressed by nonforfeiture laws and insurable interest laws,<sup>2</sup> establishing minimum benefits to be paid on surrender of a whole life policy and allowing life insurance to be purchased only by the insureds themselves, or – with the insured’s consent – by persons or institutions such as the insured’s dependents or employer, likely to be at risk of a significant loss from the insured’s premature death and thus to have a rational interest in insuring themselves against that loss.

For many years, those aspects of the market remained relatively stable, but there have been dramatic changes over the last two decades, beginning with the rise of a secondary market in life insurance policies. Although it is illegal to take out an insurance policy without an insurable interest in the risk, the insurable interest laws in most states have never prevented a policyowner with an insurable interest from changing his or her mind later on and selling the policy, or pledging it as collateral for a loan.<sup>3</sup>

A commercial market for the sale of life insurance policies to investors began to take shape in the 1980s. The epidemic of acquired immune deficiency syndrome (AIDS) left significant numbers of young people with tragically shortened life expectancies, career-ending disabilities, and high health care costs. Many of them, especially those who had no dependents, had an urgent need for money here and now and little or no need for life insurance.

In response, “viatical settlements” were developed. A viatical settlement is an agreement in which a terminally ill insured, referred to as the “viator,” sells his or her interest in the policy to an investor, who takes over the premium payments and receives the death benefits when the viator dies. Often, a viatical settlement company would buy, pool, and securitize large numbers of policies, selling shares in the pool. These could be an attractive investment because the life expectancy of persons with AIDS was, at the time, predictable and short. The near certainty of early death meant the expected payout on the policy would be considerably higher than its original cost, and the circumstances of the transaction meant that often, those gains would be realized largely by the investors and by the viatical settlement provider that arranged the transaction.

Abuses were often encountered in the early days of viatical settlements. Viators often had few options, and little understanding of the options they had. The lack of transparency often left investors with little understanding of what they were buying, and sometimes they would discover that the policies in question were not really owned by the providers or did not exist at

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<sup>1</sup> Wayne Cotter, “Born to Regulate,” *The Regulator*, Insurance Regulatory Examiners Society, January 2006.

<sup>2</sup> For Maine law, see generally 24-A M.R.S.A. §§ 2404, 2408, and 2529 *et seq.*

<sup>3</sup> Another demonstration of the market’s creativity and the need for more sophisticated regulatory responses, not directly related to life settlements but arising at around the same time, was the expansion of corporate-owned life insurance from “key employee” policies, protecting the business against the loss of its owners or senior managers, to so-called “dead peasant” policies insuring large blocks of employees for investment purposes, typically to fund the pension plan.

all. Unscrupulous insurance producers would arrange for policies to be sold to terminally ill people, falsely vouching for their health, and then immediately settled.

Some argued that viatical settlements were inherently abusive, violated the insurable interest principle, and should be outlawed. They used the “O” in “STOLI” and similar acronyms to stand for stranger-“owned,” rather than its currently understood meaning of stranger-“originated.” Others responded that the right of a policyowner to assign or sell a policy is a fundamental property right, that viatical settlements met a real need and often paid significantly more than the accelerated benefits under the policy or other payments that might be available from the insurer, and that it would be dangerous to give insurers a captive market by making them the only ones with the right to buy the policy back.

A consensus emerged, in most states, that viatical settlements can serve a valuable purpose, are an appropriate option to have in the market, and that both viatical settlements and viatical settlement investments need to be regulated carefully.<sup>4</sup> The National Association of Insurance Commissioners (NAIC) adopted a Model Viatical Settlements Act in 1993, and Maine enacted legislation based on that Model in 1997.<sup>5</sup>

The settlement industry grew and evolved. New treatments for the human immunodeficiency virus (HIV) dramatically improved life expectancies of people with AIDS and earlier stages of HIV infection, eliminating the situation that originally gave rise to the traditional viatical settlement industry. At the same time, settlement providers began identifying a range of other opportunities for mutually beneficial transactions, typically involving elderly policyowners, often in good health. These transactions became known as “life settlements.”

The NAIC amended its Model Act in 1998, and again in 2000, adding additional protections and expanding the scope so that the definition of “viatical settlement” was no longer limited to transactions where the viator is terminally or chronically ill. The National Conference of Insurance Legislators (NCOIL) adopted its own Life Settlements Model Act in 2000. These Models established a mandatory two-year waiting period between the issuance and settlement of a life insurance policy, with limited exceptions based on significant changes in circumstances. The Maine Act was substantially amended in 2004 in similar fashion,<sup>6</sup> and the terminology has also been changed to reflect the changes in the market. The Act is now the “Maine Viatical and Life Settlements Act,” the term “viatical settlement contract” has been changed to “settlement contract,” and similar changes have been made to other terms that formerly included the adjective “viatical.”

There was growing recognition, however, that this generation of life settlement laws did not adequately address the STOLI problem. Legitimate viatical settlement transactions, and most of the early life settlement transactions, involved changes in the policyowners’ circumstances. The owner had originally bought the policy for traditional insurance purposes, but the viator later decided that a settlement transaction would be more advantageous. Stranger-

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<sup>4</sup> In Utah, which had prohibited life insurance policy settlements entirely, the Legislature passed H.B. 170 in March of 2009, a bill to authorize and regulate life settlements. At this writing, the bill is awaiting action by the Governor.

<sup>5</sup> PL 1997. ch. 430

<sup>6</sup> PL 2003. ch. 636

originated policies were by no means unheard of, but most such transactions were fully addressed by existing laws because they involved egregious fraud where the applicant already knew he or she was terminally ill and concealed the illness, or if the applicant was honest, the producer threw away the application and forged a more attractive one.

The recent wave of STOLI transactions is completely different. A settlement transaction is advantageous to an investor whenever the expected death benefit on a policy is enough higher than the premium cost to make up for the costs of the transaction, adjusting everything to present value to account for the timing of payments. Intuitively, one might expect this to be a relatively unusual situation, happening only when the risk has changed (as when the insured becomes seriously ill after buying the policy) or the underwriting process had failed to price the policy accurately. After all, an insurer generally makes its profit on the difference between the expected premium payments and the expected benefit payments.

Investors have discovered, however, that life insurance policies are not always priced at a self-sustaining level. The reason is that even though death is certain, payment of death benefits is not. There are many reasons why “whole life” policies are not always actually held for the insured’s whole life. Instead of the death benefit, the insurer pays only the policy’s accumulated cash value, if any. Due to competitive forces, insurers must pass through much of the savings to their customers and incorporate “lapse assumptions” into their pricing. When a lapse-supported premium rate is enough lower than the expected death benefit to pay for the transaction costs, including some form of compensation to the insured to participate in the scheme, it can become very profitable for investors to recruit members of the public to buy large life insurance policies and sell them to the investors, who will hold the policies to maturity as long-term investments.

In a transaction this complex and speculative, there are many things that can go wrong. STOLI transactions may involve misrepresentations to insureds, insurers, and retail investors. Insureds may find that the policy they have bought for investment purposes prevents them from buying insurance for their own family needs. They also find that large insurance policies on their lives are being held by people who have no interest in their welfare. And even in the best case scenario, where all parties have made fully informed decisions based on accurate information, STOLI impacts the market by increasing the proportion of policies that are held to maturity, with the lower lapse rates resulting in higher prices.

In 2007, the NAIC and NCOIL each made further revisions to their Model Acts to address the STOLI problem. These model laws are attached to this Report as Appendices A and B. Although they have many features in common, they take different approaches to certain key issues, and some of these differences have been controversial. The NAIC Model, for example, extended the waiting period between the issuance and resale of a policy to five years if specified contacts between the policyowner and potential investors have occurred, whereas the NCOIL Model retains the two-year waiting period found in the earlier Models.

Although only seven settlement transactions were reported in Maine in 2008, the Maine settlement market is still developing, and legislative issues have been actively contested. In 2008, the Second Regular Session of the 123<sup>rd</sup> Maine Legislature considered L.D. 2091, “An Act to Protect Life Insurance Consumers,” which was enacted as amended, and signed by Governor

Baldacci, as Chapter 543 of the Public Laws of 2007. Chapter 543 amends the Maine Viatical and Life Settlements Act to clarify and expand the definition of “settlement contract” and to add an express prohibition against stranger-originated life insurance, which is defined to mean:

an act or practice to initiate a life insurance policy for the benefit of a person who, at the time of the origination of the policy, has no insurable interest in the insured. “Stranger-originated life insurance” includes, but is not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person who, at the time of the inception of the policy, could not lawfully initiate the policy and when, at the time of policy inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits to another person. A trust that is created to give the appearance of insurable interest and is used to initiate policies for investors violates insurable interest laws and the prohibition against wagering on life.<sup>7</sup>

Certain other issues raised by the bill were more controversial, and consensus language could not be developed. Instead of trying to resolve those issues immediately, the Legislature instead directed the Superintendent of Insurance to review current Maine law, other states’ laws, and model laws relating to life settlements, in consultation with insurers, producers, settlement providers, and their trade associations.<sup>8</sup> The results of that review are to be incorporated into a report to the Insurance and Financial Services Committee, including recommendations regarding the following three issues:

- the solicitation of life insurance for the purpose of settling policies;
- the use of premium finance agreements in association with viatical and life settlements; and
- the disclosures made to viators and owners of life insurance policies.

### **Overview of the Settlement Process**

Before describing the stakeholder discussions and the Superintendent’s recommendations, it might be helpful to present a brief outline of the settlement process and the regulated entities involved. Because the various state laws and the two major model laws use different terminology, a table with a glossary of key terms is also provided below:

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<sup>7</sup> 24-A M.R.S.A. § 6802-A(12-A), enacted by P.L. 2007, ch. 543, § 5. Certain enumerated exceptions to the definition of “settlement contract,” as set forth in 24-A M.R.S.A. § 6802-A(9-A), are incorporated by reference as exceptions to the definition of STOLI.

<sup>8</sup> PL 2007 c. 543, § 7 (unallocated to the Maine Revised Statutes).

<b>Maine Viatical and Life Settlements Act</b>	<b>NAIC Viatical Settlements Model Act</b>	<b>NCOIL Life Settlements Model Act</b>
settlement contract	viatical settlement contract <sup>9</sup>	Life Settlement Contract
viator	viator	Owner
settlement provider	viatical settlement provider	Provider
settlement producer	viatical settlement broker	Broker
settlement purchaser	viatical settlement purchaser	Purchaser

The **settlement contract** is, in essence, the point at which an interest in a life insurance policy is sold by the last owner with an insurable interest in the insured’s life – the **viator** – to the first owner without an insurable interest – the **settlement provider**. In order to be regulated as a settlement contract, the transaction must involve compensation to the viator that is less than the expected value of the policy’s death benefit.<sup>10</sup> The contract must be in writing, in a form approved by the Superintendent, with extensive disclosure requirements designed to ensure the viator’s informed consent, provisions regulating the transfer of funds, protection against further disclosure of the insured’s identity, and a reconsideration period during which the viator has the unconditional right to rescind the settlement contract.<sup>11</sup>

The **insured** is the individual whose death triggers the payment of policy benefits. Usually, the viator is the same as the insured, or perhaps is a trust controlled by the insured, but this is not always the case. The transaction is more complex, and further protections are required, when a policy is settled that is not owned directly or indirectly by the insured.

A prospective viator typically uses the services of a **settlement producer** to shop for offers from settlement providers. A settlement producer has a fiduciary duty to the viator and has the duty to act solely on the viator’s behalf, even if the settlement producer is compensated by the provider rather than directly by the viator. In Maine, a settlement producer must be licensed as a life insurance producer.<sup>12</sup>

Finally, the settlement provider will often resell interests in the policies, or shares in a securitized pool of policies, to third-party investors, referred to as **settlement purchasers**. Transactions between settlement providers and settlement purchasers are regulated primarily under the Securities Act, and the laws regulating resale to purchasers have not been identified as needing further review at this time.

<sup>9</sup> A drafting note at the beginning of the NAIC Model advises: “In implementing this model act, states may elect to use terminology referring to life settlements rather than viatical settlements.”

<sup>10</sup> The full definition of settlement contract is set forth in 24-A M.R.S.A. § 6802-A(9-A).

<sup>11</sup> 24-A M.R.S.A. §§ 6805, 6806, 6808, 6808-A, & 6809.

<sup>12</sup> 24-A M.R.S.A. § 6802-A(10).



## **Stakeholder Discussions**

As directed, the Bureau met with interested parties on July 11, July 31, and August 27, 2008. Participants in one or more meetings included Michael Bartholomew and John Delahanty, Esq. on behalf of the American Council of Life Insurance (ACLI); Michael Freedman, Bruce Gerrity, Esq., and Andrew Cashman on behalf of Coventry First, a life settlement company; Janie Clark, Esq. of Life Equity, LLC; Daniel Bernier, Esq. on behalf of the National Association of Insurance and Financial Advisors and the Maine Insurance Agents Association; former State Senator Lois Snowe-Mello; and Colleen McCarthy Reid of the Office of Policy and Legal Analysis of the Legislature.

During the past three years, a wide variety of bills seeking to modernize the regulation of settlement transactions and take effective measures to eradicate STOLI have been introduced in state legislatures around the United States. These proposals have been heavily contested by interested parties, with varying results.<sup>13</sup> Throughout the Bureau's review process, life insurance and settlement industry spokespersons have suggested specific developments in other states for consideration by Maine, as discussed in more detail below.

The life insurance industry is generally supportive of both Models, and would prefer an approach that combines some aspects of each Model. The settlement industry is critical of the NAIC Model, and sees the NCOIL Model as a better "starting point." Coventry First has advocated further changes to make it easier to enter into settlement agreements without what it considers inappropriate infringement by insurers on the rights of insureds.<sup>14</sup>

In general, the life insurance industry and the settlement industry have been unable to reach agreement on any of the issues they were called upon to discuss, with the exception of a few of the disclosure recommendations. The debate has been spirited. For example, in a June 27, 2008, letter to the Bureau, Michael Lovendusky, ACLI's Vice-President and Associate General Counsel, warned that legislators may be laboring under an illusion that the stakeholders in this matter might reach consensus, and warned that "there is no common ground between the stakeholders seeking to preserve the integrity of the business of insurance from those seeking to cannibalize insurance values for investors."

A discussion of the three specific charges set forth in Chapter 543 follows.

### **1) Develop recommendations, including any recommendations for legislation, relating to the solicitation of life insurance for the purpose of settling policies.**

The NCOIL Model makes it a fraudulent life settlement act to make material misrepresentations in order to "Enter into any practice or plan which involves STOLI,"<sup>15</sup> and also makes it illegal to "issue, solicit, market or otherwise promote the purchase of an insurance

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<sup>13</sup> A summary review of state legislation in this area enacted in 2008, and legislation pending as of March 27, 2009, prepared by the staff of the National Association of Insurance Commissioners, is attached to this Report as Appendix C.

<sup>14</sup> See generally Michael Freedman letter of July 9, 2008 and Bruce Gerrity letter of July 10, 2008.

<sup>15</sup> NCOIL Life Settlements Model Act, § 2(H)(1)(a)(x).

policy for the purpose of or with an emphasis on settling the policy.”<sup>16</sup> These two provisions have no counterpart in the NAIC Model. This reflects one of the principal substantive differences between the NAIC and NCOIL models. The NAIC focused on curtailing the incentives for STOLI through bright-line measures such as extending the waiting period between policy issuance and settlement from two years to five. NCOIL, on the other hand, concluded that a five-year waiting period would be too onerous and would unfairly constrain the policyowner’s choices, even with the additional exceptions adopted by the NAIC. Instead, NCOIL focused on additional regulation at the point of policy issuance.

As originally proposed, L.D. 2091 included the five-year waiting period provision from the NAIC Model. The Legislature decided instead to retain the existing two-year waiting period, to add provisions outlawing STOLI based on the NCOIL Model,<sup>17</sup> and to refer for further study the issue of solicitation of life insurance for the purpose of settling policies.

The stakeholders remain at impasse on this issue.

- The life insurance industry supports the NCOIL Model’s prohibition against soliciting insurance for settlement purposes. Their position, as articulated in the stakeholder meetings by Michael Bartholomew of ACLI, considers buying a policy for settlement purposes to be a serious violation of the insurable interest principle. If the owner’s intent is to sell the policy on the open market as soon as it is legal, it is not being purchased for any of the traditional purposes of life insurance, and the life insurance industry considers this to be a form of STOLI, even if the identity of the investor is not known in advance and no third-party funding is financing the transaction.
- This is one issue where the settlement industry strongly opposes the NCOIL approach. Although they agree that STOLI should be prohibited, they do not agree that it is appropriate to label insurance as “stranger-originated” if the decision driving the purchase of the policy is made entirely by the insured, even if that decision is to settle the policy as soon as the waiting period expires. Michael Freedman and Bruce Gerrity, representing Coventry First, assert that informed consumers should understand all the property rights that go with buying an insurance policy, including the right to sell the policy to a third party, and should be able to consider that right when they make their purchasing decisions.

The Superintendent does not believe that it would be appropriate to enact additional restrictions on solicitations and sales at this time. Transactions where the transfer of the policy is agreed to in advance are already illegal under Maine law. Producers who make unsupported claims of the gains that can be realized on the secondary market can already be disciplined for deceptive practices.

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<sup>16</sup> NCOIL Life Settlements Model Act, § 13(A)(4).

<sup>17</sup> Maine law improves on the NCOIL Model by defining it as a fraudulent practice to enter into stranger-owned life-insurance knowingly for purposes of personal gain. 24-A M.R.S.A. § 6802-A(6)(A)(3), whereas the NCOIL Model, because of where the operative language is placed, only prohibits providing false information or concealing material facts relating to STOLI.

At the other end of the spectrum, it would not be possible, even if it were appropriate, to hide the existence of the settlement market from prospective life insurance purchasers. Furthermore, consumers interested in buying insurance for traditional insurance purposes, but wondering whether that would leave them “locked in” if their circumstances change after several years, would benefit from knowing that settlement is an option. The line between this entirely legitimate practice and solicitation or marketing “with an emphasis on settling the policy” is difficult to draw, and there is no compelling reason to believe it is necessary to try to draw it. Even if we accept the premise that it is abusive to buy a policy with the general intent to settle it as soon as legally possible, it is difficult to read the heart of the purchaser and probably not worth the effort, because there is no evidence that speculative purchases driven primarily by the policyowners themselves have a significant impact on the market.

Therefore, if the Legislature wishes to consider any legislation at all in this area, the Superintendent’s recommendation would be to consider gathering better data by strengthening the settlement provider reporting requirements in 24-A M.R.S.A. § 6806(1), to require a report similar to Subsection 6(A) of the NCOIL Model on all settlement transactions entered into within five years after policy issuance.

## **2) Develop recommendations, including any recommendations for legislation, relating to the use of premium finance agreements in association with viatical and life settlements.**

Stranger-originated life insurance transactions are often carried out through the use of premium financing. They may be structured in various ways, but in one common arrangement, the promoter offers an elderly consumer two years of free life insurance plus the possibility of an additional cash payment. What then happens is that the consumer borrows the money to pay for a high-value policy, pledging the policy as collateral, and keeps the difference between the amount borrowed and the cost of the policy. Although the insured has a contractual obligation to repay the loan, it is a “non-recourse” loan, meaning that if the borrower fails to pay it back, the lender can only take possession of the collateral (*i.e.*, the insurance policy or its proceeds). If the balance owed on the loan exceeds the value of the collateral, the lender cannot collect the difference from the borrower.

The loan comes due in two years, because this is both the statutory waiting period for settlement transactions and the statutory contestability period for life insurance policies. After this point, the insured is free to sell the policy to investors, and the investors can be confident that the insurer will no longer have the right to rescind the policy. Instead of paying back any of the amount borrowed, the insured surrenders – and thus has effectively sold – the policy. The only time the loan is actually intended to be repaid is if the insured dies during the first two years. In that case, the lender recovers the original investment, with enough interest to make the transaction profitable even though the remaining policy proceeds go to the insured’s beneficiaries. That is the “free insurance” part of the transaction – although what the beneficiaries actually get is only a fraction of the face amount of the policy, the insured paid nothing for that coverage. If the loan exceeds the cost of the policy, the insured keeps the difference. Alternatively, if the net settlement value after two years is higher than the loan balance, the insured has the opportunity to pay off the loan and settle the policy elsewhere.

From the insured's perspective, these deals sound too good to be true, and there are a number of things that can go wrong. There may be inadequate disclosures of the details of the transaction, and deceptive provisions in the settlement contract or the premium finance contract. The failure to pay off the loan might end up as an adverse event on a credit report. The insured may be unaware that buying a large policy for investment purposes could limit the ability to buy another policy for traditional insurance purposes. The insured may change his or her mind when it is time to complete the transaction, and be uncomfortable with the idea of "always looking over one's shoulder," thinking about the investor who stands to gain from one's early death.<sup>18</sup> The Bureau notes, however, that the presence of an investor with a financial interest in the insured's early death is equally present in any life settlement transaction.

Furthermore, even though these issues can all be addressed, and it is possible for investment in policies through nonrecourse premium financing arrangements to be mutually advantageous to the insured, the lender, and the settlement provider, they are not the only parties affected by the transaction. Like other forms of STOLI, these transactions impact the market, as discussed earlier, in the form of higher prices for consumers who want to buy policies for traditional insurance purposes.

Again, the stakeholders who have addressed this issue are not in agreement.

- Coventry First takes the position that legislation regulating premium financing is neither necessary nor appropriate. Bruce Gerrity and Michael Freedman stress the historic right of policyholders to use life insurance as collateral, which long pre-dates the life settlement industry, and observe that restrictions on non-recourse premium financing have been roundly criticized by some members of the Life Settlement Subcommittee of NCOIL.<sup>19</sup> Coventry notes further that, notwithstanding their trade association's opposition to STOLI, some life insurers are encouraging life settlement transactions because a sale is still a sale and generates premium dollars for the insurer and commission dollars for the producer.
- ACLI urges legislation, and suggests three possible approaches. Its first choice, which it says is also supported by NAIFA and the American Association of Life Underwriters (AALU), is the NAIC five-year waiting period provision, as initially proposed in L.D. 2091. One trigger for the five-year waiting period is any financing with encumbered funds,<sup>20</sup> including nonrecourse lending or a security interest in excess of the policy's surrender value. The second possibility ACLI proposes is adopting the NCOIL provision making certain types of premium financing arrangements a prohibited practice, and the third is a provision in the

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<sup>18</sup> A plain English discussion of these issues from various perspectives may be found in a blog conversation at <http://blog.accuquote.com/2006/06/20/non-recourse-premium-financing-a-win-win-win-hardly>

<sup>19</sup> Michael Freedman letter of July 9, 2008, p. 3.

<sup>20</sup> The other triggers are an agreement with anyone to purchase or stand ready to purchase the policy or forgive a policy loan, or an evaluation of the value of the policy or the life expectancy of the insured for possible settlement.

2008 Ohio law requiring lenders to disclose premium financing arrangements to life insurers.<sup>21</sup>

Again, the Superintendent's conclusion is that additional legislation does not appear necessary at this time, with the exception of one provision that appears to be more technical than substantive. Currently, 24-A M.R.S.A. § 6802-A(9-A)(B) excludes "A collateral assignment of a policy by the owner of the policy" from the definition of "settlement contract." The intent of this provision appears to be simply to protect the policyowner's traditional right to pledge a policy as collateral for legitimate borrowing purposes. To read it more broadly, as immunizing sham transactions in which an "assignment" of a policy as "collateral" for a "loan" is used as a vehicle for the prearranged transfer of the policy, would directly contradict the provisions expressly defining "settlement contract" to include "a premium finance loan made ... on or before the date of issuance of the policy when the viator or the insured receives ... a guarantee of a future settlement value of the policy or when the viator or the insured agrees ... to sell the policy or any portion of its death benefit on any date following the issuance of the policy."

As long the law makes clear that an assignment of a policy as collateral does fall within the definition of "settlement transaction" when the lender has a reasonable expectation that the borrower's intent is to transfer the policy rather than repaying the loan, then Maine's existing STOLI law already prohibits all premium financing transactions that are vehicles for "an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits to another person."<sup>22</sup> This includes, among other things, any nonrecourse loan that is undersecured from Day One, as such a loan is effectively a transfer of the policy and therefore is already prohibited as STOLI. Further restrictions on premium financing would either be duplicative or would risk impeding legitimate transactions.

Instead, further action in this area should focus on improved transparency. Although ACLI has suggested considering the new Ohio reporting requirements, this would not be the proper approach for Maine, because the Ohio legislation was an amendment to its existing premium finance law. Maine has taken a completely different approach to the regulation of lending under the Consumer Credit Code, and there is no basis for imposing new regulatory burdens. Instead, a better approach would be based on Section 10 of the NCOIL Model, which clarifies the insurer's right to ask for information about premium financing arrangements, and includes a series of optional disclosures insurers may make to applicants and insureds about the effects of assigning a policy as collateral:

- that a change of ownership could lead to a stranger owning an interest in the insured's life;
- that a change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;
- that the insured's ability to obtain coverage at a later date may be limited, or the cost of such coverage may increase, because of such factors as the insured's higher issue age and possible changes in health status; and

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<sup>21</sup> H.B. 404 (2008).

<sup>22</sup> 24-A M.R.S.A. § 6802-A(12-A); *see also* 24-A M.R.S.A. §§ 6802-A(6)(a)(3) & 6818(1)(A).

- that the insured should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.

**3) Develop recommendations, including any recommendations for legislation, relating to the disclosures made to viators and owners of life insurance policies.**

Finally, the Bureau reviewed matters relating to disclosures to be made to viators or potential viators by settlement providers and producers, and also some additional disclosures proposed by interested parties representing the life settlement industry to certain policyowners who are not currently involved in or exploring settlement transactions.

*A. Disclosures to viators and prospective viators:*

The Maine Act currently requires settlement providers to make 9 specific written disclosures to the viator by the time of application, along with providing an informational brochure approved by the Superintendent, and to make 5 additional written disclosures by the time the contract is executed.<sup>23</sup> Additional disclosures of information practices are required under the Maine Insurance Information and Privacy Protection Act.<sup>24</sup>

These include disclosures on:

- alternatives to settlement;
- federal and state tax implications;
- claims of creditors;
- effect on government benefits;
- right to rescind,
- the potential reduction or loss of benefits to the beneficiary;
- escrow arrangements and timing of funds transfer;
- disclosure of personal information;
- contact information for the settlement provider and the affiliation, if any, between the provider and the insurer;
- information regarding the impact on other insureds covered under the policy, if any; and
- information about the current benefit payable under the policy.

Similar, but not identical, lists of required disclosures are set forth in Section 8 of the NAIC Model and Section 9 of the NCOIL Model. The following five disclosures appear in both Models, but not in the Maine Act. L.D. 2091 originally proposed adding the first disclosure, regarding the settlement producer's fiduciary duty to the viator. However, rather than enacting this one disclosure to the exclusion of the others found in the Model Acts, the Legislature directed the Superintendent to consider the disclosure issue more broadly, in consultation with stakeholders:

<sup>23</sup> 24-A M.R.S.A. §§ 6808 & 6808-A.

<sup>24</sup> 24-A M.R.S.A. §§ 2201–2220. Viatical settlement providers and producers are regulated insurance entities as defined in 24-A M.R.S.A. § 2204(23).

- notice that a settlement producer must exclusively represent the viator, not the insurer or the provider, and owes a fiduciary duty to the viator;<sup>25</sup>
- notice regarding future contacts for the purpose of determining the insured's health;<sup>26</sup>
- a description of the offers, counteroffers, acceptances, and rejections relating to the proposed settlement contract;<sup>27</sup>
- the amount and method of calculating the producer's compensation;<sup>28</sup> and
- a reconciliation of the provider's gross offer to the net amount to be received by the viator.<sup>29</sup>

Some additional disclosures appear in one Model but not the other. The disclosures found only in the NAIC Model are already in the Maine Act, but the following two disclosures found only in the NCOIL Model have not been adopted in Maine:

- notice that a fraud warning is required;<sup>30</sup> and
- notice that because of limits insurers may set on the amount of insurance on a single life, a change of ownership could leave the insured without the ability to purchase insurance in the future to replace the transferred policy.<sup>31</sup>

During the Bureau's review process, none of the stakeholders presented any information or argument against the disclosures in Section 9 of the NCOIL Model. With one exception, these disclosures may provide useful information to those contemplating entering into life settlement contracts, and the Superintendent recommends their adoption. The one exception is a superfluous fraud warning disclosure requirement. The Maine Act already requires the statutory fraud warning on every settlement contract and settlement application, a provision that is also found in both the NAIC and NCOIL Models.<sup>32</sup> An additional notice alerting the consumer to look for the fraud warning is unnecessary.

In addition to the Model Act disclosures, the Superintendent's review of legislation introduced in other states identified the following additional disclosures as having a likelihood of assisting consumers. Although these have not been the topic of discussion in the stakeholder review sessions, serious consideration should be given to these disclosures:

- The California bill (which was vetoed) includes provisions for disclosure of life expectancy estimates, subject to applicable privacy laws.<sup>33</sup> The relevant privacy concerns identified by the Superintendent would be addressed by making the

<sup>25</sup> NAIC Viatical Settlements Model Act, § 8(A)(2); NCOIL Life Settlements Model Act, § 9(A)(15).

<sup>26</sup> NAIC Viatical Settlements Model Act, § 8(A)(11); NCOIL Life Settlements Model Act, § 9(A)(13).

<sup>27</sup> NAIC Viatical Settlements Model Act, § 8(C)(2); NCOIL Life Settlements Model Act, § 9(C)(2).

<sup>28</sup> NAIC Viatical Settlements Model Act, § 8(C)(4); NCOIL Life Settlements Model Act, § 9(A)(8).

<sup>29</sup> NAIC Viatical Settlements Model Act, § 8(C)(5); NCOIL Life Settlements Model Act, § 9(C)(5).

<sup>30</sup> NCOIL Life Settlements Model Act, § 9(A)(12).

<sup>31</sup> NCOIL Life Settlements Model Act, § 9(A)(18), with some clarification based on § 10(A)(2)(a)(ii).

<sup>32</sup> 24-A M.R.S.A. § 6818(2); NAIC Viatical Settlements Model Act, § 14(B); NCOIL Life Settlements Model Act, § 14(B).

<sup>33</sup> S.B. 1543 (2008), § 3, proposed Insurance Code § 10113.2(e)(5).

disclosure directly to the insured, if different from the viator, and giving the insured the right to decline the disclosure.

- The New York bill (which was not enacted) includes additional language clarifying the required disclosure of compensation and settlement offers, to include the identity of any person compensated directly or indirectly by the settlement provider or settlement producer for the settlement contract, the amount and terms of their compensation, and all offers by the contracting provider or other providers.<sup>34</sup>
- Finally, in case concerns have been raised by any of the information disclosed, but the consumer is not sure what his or her options might be, the required disclosures should include a notice that complaints and inquiries may be brought to the attention of the Superintendent.<sup>35</sup>

*B. Disclosures made to owners of life insurance policies who are not viators or prospective viators:*

In addition to the disclosures to viators and prospective viators discussed above, Coventry First has raised some additional disclosure issues. On January 24, 2008 Coventry First proposed an amendment to LD 2091, not enacted by the Legislature, which would have (1) prohibited insurers from prohibiting agents from advising policyholders of their right to viaticate their policy, and (2) required insurers to provide written notice to policyholders of their life settlement options in five situations. There is no parallel to either provision in the NAIC or NCOIL Model.

During the Bureau's meetings with interested persons, Coventry First recommended that this provision be reconsidered. Coventry First points to Connecticut as a state where it has had some success in advancing its position. ACLI has acknowledged that the insurance industry supported legislation last year in that state (H. 5512) that included a provision that "No insurer shall (1) prohibit a life insurance producer or broker from disclosing to a client the availability of a life settlement contract, or (2) include any provision in a life insurance policy that prohibits the lawful assignment of such policy."

Regarding the second clause, assignment rights, Maine already has stringent nondiscrimination provisions, not found in either the NAIC or the NCOIL Model, prohibiting insurers that permit policy assignment from prohibiting assignment for consideration or restricting the class of potential assignees.<sup>36</sup> Additional language making it unlawful to prohibit lawful assignments is not necessary.

Although Coventry First describes the first portion of its proposal as designed to "limit the ability of an insurer to muzzle its producers,"<sup>37</sup> it was not supported by the producer groups

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<sup>34</sup> A.B. 10401 (2008), § 12, proposed Insurance Law §§ 7810(b)(19), (c)(4), & (c)(6).

<sup>35</sup> For comparable provisions in other laws, see for example Bureau of Insurance Rule 850, § 9(B)(2) (health carriers must give each covered person "a statement of a covered person's right to contact the Superintendent's office for assistance at any time").

<sup>36</sup> 24-A M.R.S.A. §§ 6811(1) & (2).

<sup>37</sup> Michael Freedman letter of July 9, 2008.



during our review process. Mr. Bernier advises that one of his clients, the Maine Insurance Agents Association, considers this proposal inappropriate, while the national trade association, NAIFA, is described as only “lukewarm” to this element of the proposal. Although a producer’s fiduciary duty is to the viator when acting as a settlement producer, the producer is the agent of the insurer when acting as an insurance producer.<sup>38</sup> The relationship between an insurer and its agents has historically been governed by contract rather than by detailed regulatory requirements, and new regulatory restrictions here do not appear to be called for.

Finally, the remaining component of the Coventry First proposal is a requirement for life insurers to notify policyowners that a life settlement is an available alternative transaction whenever a policyowner or certificateholder aged 60 or over, or known to be terminally or chronically ill, allows premium payments to lapse or requests a policy surrender, accelerated death benefit, or assignment of a policy as collateral. There are arguments on both sides that deserve careful consideration.

Coventry First cites Alabama, California, and Washington as states where proposals of this type has been considered.<sup>39</sup> However, the bill containing this provision was not enacted in Alabama, the Washington proposal was “proposed amendments for 2009 pending review by interested parties,” and the California language as adopted by the Legislature (which was not enacted into law due to the Governor’s veto) did not mention life settlements, providing instead that “Life insurers shall provide individual life insurance policyholders with a statement informing them that if they are considering making changes in the status of their policy, they should consult with a licensed insurance or financial advisor. Such statement may accompany or be included in notices or mailings otherwise provided to such policyholders.”<sup>40</sup> This year, similar legislation has been introduced in Kentucky,<sup>41</sup> but was amended to call for a study on the treatment of the issue in other states.

Daniel Bernier, Esq., on behalf of both the Maine Insurance Agents Association and NAIFA, strongly opposed this concept during the Insurance and Financial Services Committee hearing on LD 2091 and again during Bureau’s stakeholder consultations. The principal concern expressed by insurers and producers is that insurers and their producers should not, in essence, be required by law to sell the wares of someone else’s business. Mr. Bernier is concerned further with the imposition of the additional paperwork that would attend this proposal. On the other hand, in connection with any proposed settlement transaction, settlement providers are already required to disclose “Possible alternatives to or options that can be used in conjunction with settlement contracts, including, but not limited to, accelerated death benefits or policy loans offered by the issuer of the life insurance policy.”<sup>42</sup> The proposed disclosure by life insurers could be seen as a comparable disclosure, triggered by a comparable class of transactions.

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<sup>38</sup> 24-A M.R.S.A. §2422(1).

<sup>39</sup> Letter of Bruce Gerrity of July 30, 2008.

<sup>40</sup> S.B. 1543 (2008), § 3, proposed Insurance Code § 10113.2(i).

<sup>41</sup> H.B. 230 (2009).

<sup>42</sup> 24-A M.R.S.A. § 6808(1).

## **Recommendations**

In summary, for the reasons discussed above, the Superintendent recommends the following changes to the Maine Viatical and Life Settlements Act.

To enhance the existing consumer disclosure requirements by requiring settlement providers and producers to make the following additional disclosures:

- notice that a settlement producer must exclusively represent the viator, not the insurer or the provider, and owes a fiduciary duty to the viator;
- notice regarding future contacts for the purpose of determining the insured's health;
- a description of all offers, counteroffers, acceptances, and rejections relating to any proposed settlement of the policy;
- the identity of all persons compensated directly or indirectly by the settlement provider or producer for the settlement contract, and the amount of compensation paid to each and the method of calculating that compensation;
- a reconciliation of the provider's gross offer to the net amount to be received by the viator;
- notice that because of limits insurers may set on the amount of insurance on a single life, a change of ownership could leave the insured without the ability to purchase insurance in the future to replace the transferred policy;
- disclosure to the insured of all life expectancy estimates obtained, subject to the insured's right to opt out of this disclosure; and
- notice that complaints and inquiries may be brought to the attention of the Superintendent

To clarify an insurer's right to ask for information about premium financing arrangements, and to provide optional disclosures insurers to applicants and insureds about the effects of assigning a policy as collateral:

- that a change of ownership could lead to a stranger owning an interest in the insured's life;
- that a change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;
- that the insured's ability to obtain coverage at a later date may be limited, or the cost of such coverage may increase, because of such factors as the insured's higher issue age and possible changes in health status; and
- that the insured should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.

To make the following technical changes to the Maine Viatical and Life Settlements Act:

- The definition of STOLI, 24-A M.R.S.A. § 6802-A(12-A), includes the sentence: “‘Stranger-originated life insurance’ does not include those practices set forth in subsection 9-A.” This language is taken from the NCOIL model, but the cross-reference is broader than the original NCOIL cross-reference, and inadvertently excludes all settlement contracts from the definition of STOLI. The reference should be to “subsection 9-A, paragraphs A through J.”
- The definition of STOLI in 24-A M.R.S.A. § 6802-A(12-A) also provides that “Trusts created to give the appearance of insurable interest and used to initiate policies for investors violate insurable interest laws.” This is a substantive provision and should be moved out of the definition.
- The definition of “life expectancy evaluation” in 24-A M.R.S.A. § 6802-A(6-A) incorporates a specific mathematical formula for “life expectancy” and unintentionally deregulates any other approach to calculating life expectancies, including an estimate of the probability that the insured will die within a specific time period. The definition should either be eliminated, with the term reverting to its common meaning, or broadened substantially.
- The requirement that settlement contracts must be in writing should be moved out of the definition of “settlement contract” in 24-A M.R.S.A. § 6802-A(9-A) and be made a substantive requirement, as it is in the New York bill. If read literally, the current language deregulates oral settlement contracts, rather than prohibiting them, which is the intent.
- The safe harbor for assignments of insurance policies as collateral, 24-A M.R.S.A. § 6802-A(9-A)(B), should be revised to clarify that it does not apply when the lender has a reasonable expectation that the borrower does not intend to repay the loan.
- The fiduciary duty clause and the requirement that a settlement producer be a life insurance producer with settlement authority should be moved from the definition of “settlement producer,” 24-A M.R.S.A. § 6802-A(10), and into the body of the Act, because these provisions impose substantive duties on settlement producers rather than describing who is or is not subject to regulation as a settlement producer.
- 24-A M.R.S.A. § 6808(6) should be revised to make clear that all three sentences describe information that must be disclosed.
- The requirement to use an independent escrow agent should be stated explicitly, rather than merely presuming that such an agent has been engaged, as currently provided in 24-A M.R.S.A. §§ 6808-A(2)(E) and 6809(4).

Finally, in addition to the specific changes recommended, the Superintendent notes two further issues for the Legislature’s consideration, as discussed in the analysis of Charges 1 and

3(B). One is whether to require disclosures by life insurers, at the point of potential policy termination, of the availability of the settlement option, and the other is whether to require reporting of settlement transactions occurring within five years after policy issuance.

## VIATICAL SETTLEMENTS MODEL ACT

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**Drafting Note:** In implementing this model act, states may elect to use terminology referring to life settlements rather than viatical settlements.

### Section 1. Short Title

This Act may be cited as the Viatical Settlements Act.

### Section 2. Definitions

- A. "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 directly before the public, in this state, for the purpose of creating an interest in or inducing a person to [purchase or] sell, assign, devise, bequest or

transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

**Drafting Note:** Throughout this document text related to investments in viatical settlements is in brackets. It should be considered for inclusion in states where securities regulators do not regulate the investment side of the transaction or adapted for inclusion in the securities code.

- B. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.
- C. "Chronically ill" means:
  - (1) Being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
  - (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
  - (3) Having a level of disability similar to that described in Paragraph (1) as determined by the Secretary of Health and Human Services.
- D. "Commissioner" means the insurance commissioner of this state.

**Drafting Note:** Use the title of the chief insurance regulatory official wherever the term "commissioner" appears.

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

- (a) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
  - (b) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.
- (2) “Financing entity” does not include a non-accredited investor or a viatical settlement purchaser.

F. “Fraudulent viatical settlement act” includes:

- (1) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:
- (a) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, [viatical settlement investment agent,] financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:
    - (i) An application for the issuance of a viatical settlement contract or insurance policy;
    - (ii) The underwriting of a viatical settlement contract or insurance policy;
    - (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
    - (iv) Premiums paid on an insurance policy[, or as a result of a viatical settlement purchase agreement];
    - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, [viatical settlement purchase agreement] or insurance policy;

- (vi) The reinstatement or conversion of an insurance policy;
  - (vii) In the solicitation, offer, effectuation or sale of a viatical settlement contract, insurance policy [or viatical settlement purchase agreement];
  - (viii) The issuance of written evidence of viatical settlement contract, [viatical settlement purchase agreement] or insurance; or
  - (ix) A financing transaction; and
- (b) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.
- (2) 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:
- (a) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
  - (b) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
  - (c) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or
  - (d) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;
- (3) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlements or insurance;



- (4) Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical 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 person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator. "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;
  - (5) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this Act for the express purposes of evading or avoiding the provisions of this Act; or
  - (6) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- G. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to [insert reference to applicable producer licensing statute, with specific reference to a life insurance or equivalent line of authority].
- H. "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.
- I. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state , regardless of whether delivered or issued for delivery in this state.
- J. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement

provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

- K. "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:
- (1) For a financing entity or licensed viatical settlement provider; or
  - (2)
    - (i) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or
    - (ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
- L. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- M. "Viatical settlement broker" means a person, including a life insurance producer as provided for in Section 3 of this Act, who working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

- N. (1) “Viatical settlement contract” means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator’s present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.
- (2) “Viatical settlement contract” includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where:
- (a) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or
  - (b) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (3) “Viatical settlement contract” does not include:
- (a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy’s terms;
  - (b) Loan proceeds that are used solely to pay:
    - (i) Premiums for the policy;
    - (ii) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;
  - (c) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that

the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act;

- (d) A loan made by a lender that does not violate [insert reference to state's insurance premium finance law], provided that the premium finance loan is not described in Paragraph (2) of this subsection;
- (e) An agreement where all the parties (x) are closely related to the insured by blood or law or (y) have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
- (f) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
- (g) A bona fide business succession planning arrangement:
  - (i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;
  - (ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or
  - (iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;
- (h) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

- (i) Any other contract, transaction or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this Act.
- [O. “Viatical settlement investment agent” means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider.
- (1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.
  - (2) A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.]
- P. (1) “Viatical settlement provider” means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.
- (2) “Viatical settlement provider” does not include:
- (a) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;
  - (b) A premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;
  - (c) The issuer of the life insurance policy;
  - (d) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

- (e) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- (f) A financing entity;
- (g) A special purpose entity;
- (h) A related provider trust;
- (i) A viatical settlement purchaser; or
- (j) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

[Q. “Viatical settlement purchase agreement” means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.]

R. (1) “Viatical settlement purchaser” means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(2) “Viatical settlement purchaser” does not include:

- (a) A licensee under this Act;
- (b) An accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;
- (c) A financing entity;
- (d) A special purpose entity; or

- (e) A related provider trust.

**Drafting Note:** States should consider ways to encourage cooperation between the regulators of the sale of the insurance policy and the regulators of the purchase of the interest by an investor if these are regulated by different state agencies. States should also review securities laws as they might apply to transactions governed under this Act.

- S. “Viaticated policy” means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.
- T. (1) “Viator” means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.
- (2) “Viator” does not include:
  - (a) A licensee under this Act, including a life insurance producer acting as a viatical settlement broker pursuant to this Act;
  - (b) Qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;
  - (c) A financing entity;
  - (d) A special purpose entity; or
  - (e) A related provider trust.

### Section 3. License and Bond Requirements

- A. (1) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.
- [(2) A person shall not operate as a viatical settlement investment agent without first obtaining a license from the commissioner of the state of residence of the viatical settlement purchaser. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the viatical settlement purchase agreement shall be governed by the law of the state in which the purchaser having the largest percentage ownership resides or, if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers.]

**Drafting Note:** Regulators should be aware of the potential for conflict between the laws governing the sale and purchase of interests in life insurance policies and consider procedures to address any conflicts.

- (3) (a) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.
- (b) Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that he or she is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with this Act.
- (c) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement



transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

**Drafting Note:** Section 3A(3)(a) and (b) would only apply to states that do not require the viatical settlement broker to obtain a separate license or registration. A life insurance producer operating in a state that requires a separate viatical settlement broker license or registration may be required to obtain such license or registration prior to operating as a viatical settlement broker in that state.

- (4) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.
- B. Application for a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in Section [insert appropriate section].
- C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in Section [insert appropriate section]. Failure to pay the fees by the renewal date results in expiration of the license.
- D. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this Act.
- E. A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers, viatical settlement brokers [or viatical settlement investment agents,] as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

- F. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:
- (1) If a viatical settlement provider, has provided a detailed plan of operation;
  - (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
  - (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
  - (4)
    - (a) If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.
    - (b) If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.
    - (c) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary.
    - (d) Any surety bond issued pursuant to Paragraph (4) shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or viatical settlement broker.

- (e) Notwithstanding any provision of this section to contrary, the commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with one state where the applicant is licensed as a viatical settlement provider or viatical settlement broker.
  - (5) If a legal entity, provides a certificate of good standing from the state of its domicile; and
  - (6) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of Section 14G of this Act.
- G. The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.
- H. A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall provide to the commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members or designated employees within thirty (30) days of the change.
- I. An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen (15) hours of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to Subsection A(3) shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

#### **Section 4. License Revocation and Denial**

- A. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] if the commissioner finds that:

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- (1) There was any material misrepresentation in the application for the license;
  - (2) The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;
  - (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
  - (4) The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or *nolo contendere* to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
  - (5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this Act;
  - (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract [or a viatical settlement purchase agreement];
  - (7) The licensee no longer meets the requirements for initial licensure;
  - (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or
  - (9) The licensee or any officer, partner, member or key management personnel has violated any provision of this Act.
- B. The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this Act if the commissioner

finds that the viatical settlement broker or life insurance producer has violated the provisions of this Act or has otherwise engaged in of bad faith conduct with one or more viators.

- C. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent,] or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to this Act the commissioner shall conduct a hearing in accordance with [insert reference to state's administrative procedure act].

### **Section 5. Approval of Viatical Settlement Contracts and Disclosure Statements**

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of Sections 8, 10, 13 and 14B of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

### **Section 6. Reporting Requirements and Privacy**

- A. Each viatical settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by regulation. Such information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial and health information of the viator or insured shall be filed with the commissioner on a confidential basis.
- B. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, [viatical settlement investment agent,] insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:

- (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
- [(2) Is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;]
- (3) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of Section 14C;
- (4) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;
- (5) Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
- (6) Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or
- (7) Is required to purchase stop loss coverage or financial guaranty insurance.

**Drafting Note:** In implementing this section, states should keep in mind privacy considerations of insureds. However, the language needs to be broad enough to allow licensed entities to notify commissioners of unlicensed activity and for insurers to make necessary disclosures to insurers and in similar situations.

## **Section 7. Examination or Investigations**

### **A. Authority, Scope and Scheduling of Examinations**

- (1) (a) The commissioner may conduct an examination under this Act of a licensee as often as the commissioner in his or her discretion deems appropriate after considering the factors set forth in this paragraph.

- (b) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the commissioner.
- (2) For purposes of completing an examination of a licensee under this Act, the commissioner 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 commissioner, necessary or material to the examination of the licensee.
- (3) In lieu of an examination under this Act of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.
- (4) As far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.

B. Record Retention Requirements

- (1) A person required to be licensed by this Act shall for five (5) years retain copies of all:
  - (a) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;
  - (b) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date the transaction; and
  - (c) All other records and documents related to the requirements of this Act.

- (2) This section does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.
- (3) Records required to be retained by this section 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.

C. Conduct of Examinations

- (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the *Examiners Handbook* adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.
- (2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section [insert reference to cease and desist statute or other law having a post-order hearing mechanism].



- (3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.
- (4) When making an examination under this Act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.
- (5) Nothing contained in this Act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be *prima facie* evidence in any legal or regulatory action.
- (6) Nothing contained in this Act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate.

**Drafting Note:** In many states examination work papers remain confidential. The previous paragraph should be adjusted to conform to state statute and practice.

#### D. Examination Reports

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

- (2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.
- (3) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

E. Confidentiality of Examination Information

- (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- (2) Except as otherwise provided in this Act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this Act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- (3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

- (a) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this Act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or
  - (b) Disclosed to the NAIC and its affiliates and subsidiaries under Subsection E(4) by a commissioner.
  - (c) For the purposes of Subsection E(2), “Act” includes the law of another state or jurisdiction that is substantially similar to this Act.
- (4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection E(1).
- (5) In order to assist in the performance of the commissioner’s duties, the commissioner:
- (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection E(1), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;
  - (b) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the

jurisdiction that is the source of the document, material or information; and

- (c) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.
- (6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection E(4).
- (7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.
- (8) Nothing contained in this Act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this Act.

F. Conflict of Interest

- (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this Act. This section shall not be construed to automatically preclude an examiner from being:
  - (a) A viator;
  - (b) An insured in a viaticated insurance policy; or
  - (c) A beneficiary in an insurance policy that is proposed to be viaticated.

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

#### G. Cost of Examinations

**Drafting Note:** The NAIC Model State Insurance Department Funding Bill or such funding mechanism as may be currently authorized by law should be incorporated here by reference. Any funding mechanism should assure that the manner in which examinations are funded does not influence the scheduling, scope or conduct of examination.

#### H. Immunity from Liability

- (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- (2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Paragraph (1).
- (3) A person identified in Paragraph (1) or (2) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

I. Investigative Authority of the Commissioner

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

**Section 8. Disclosure to Viator**

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

- (1) There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
- (2) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.
- (3) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
- (4) Proceeds of the viatical settlement could be subject to the claims of creditors.
- (5) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- (6) The viator has the right to rescind a viatical settlement contract before the earlier of sixty (60) calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty (30) calendar days after the viatical settlement proceeds have been paid to the viator, as provided in Section

10F. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans and loan interest the viatical settlement within sixty (60) days of the insured's death.

- (7) Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- (8) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- (9) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The NAIC's form for the brochure shall be used unless another form is developed or approved by the commissioner.
- (10) The disclosure document shall contain the following language:  
"All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."
- (11) Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street

address and telephone number, or as otherwise provided in this Act. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

- B. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:
- (1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;
  - (2) The document shall include the name, business address and telephone number of the viatical settlement provider;
  - (3) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser.
  - (4) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;
  - (5) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and



- (6) State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
- C. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:
- (1) The name, business address and telephone number of the viatical settlement broker;
  - (2) A full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract;
  - (3) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;
  - (4) The amount and method of calculating the broker's compensation, which term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and
  - (5) Where any portion of the viatical settlement broker's compensation, as defined in Paragraph (3) of this subsection, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.
- D. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty (20) days after the change.

E. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:

- (1) The purchaser will receive no returns (i.e., dividends and interest) until the insured dies and a death claim payment is made.
- (2) The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.
- (3) The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.
- (4) The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.
- (5) The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.
- (6) The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums, if applicable.

- (7) State the name, business address and telephone number of the independent third party providing escrow services and the relationship to the broker.
- (8) The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.
- (9) State whether the purchaser is entitled to a refund of all or part of his or her investment under the settlement contract if the policy is later determined to be null and void.
- (10) Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.
- (11) Disclose the risks associated with policy contestability including, but not limited to, the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.
- (12) Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including, but not limited to, the risk that the beneficiary may be changed or the premium may not be paid.
- (13) Describe the experience and qualifications of the person who determines the life expectancy of the insured, i.e., in-house staff, independent physicians and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.
- (14) Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The NAIC's form for the brochure shall be used unless one is developed by the commissioner.]

- F. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:
- (1) Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.
  - (2) State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.
  - (3) State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.
  - (4) Disclose the type of policy offered or sold, i.e., whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.
  - (5) If the policy is term insurance, disclose the special risks associated with term insurance including, but not limited to, the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.
  - (6) State whether the policy is contestable.
  - (7) State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.

- (8) State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.]

[G. The viatical settlement purchase agreement is voidable by the purchaser at any time within three (3) days after the disclosures mandated by Subsections E and F of this section are received by the purchaser.]

### **Section 9. Disclosure to Insurer**

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

### **Section 10. General Rules**

- A. (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:
  - (a) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and
  - (b) A document in which the insured consents to the release of his or her medical records to a licensed viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.
- (2) Within twenty (20) days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty (20) days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that

insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by Paragraph (3).

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

**Drafting Note:** The NAIC's forms are Appendices B and C of the Viatical Settlements Model Regulation.

- (4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of Section 11C and Section 16 of this Act.
- (5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

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

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

**Drafting Note:** A state may wish to make specific reference to the privacy provisions adopted in response to the requirements of the Gramm-Leach-Bliley Act, such as the state equivalent to the NAIC's Privacy of Consumer Financial and Health Information Regulation. Consider whether the state's privacy provision allows continual sharing of medical information or whether permission must be renewed.

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

[D. The purchaser shall have the right to rescind a viatical settlement contract within three (3) days after the disclosures mandated by Section 8D and 8E are received by the purchaser.]

- E. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three (3) business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.
- F. Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to Section 8A(7) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.
- G. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three (3) months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.



## Section 11. Prohibited Practices

- A. It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:
- (1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty (60) months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - (2) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:
    - (a) The viator or insured is terminally or chronically ill;
    - (b) The viator's spouse dies;
    - (c) The viator divorces his or her spouse;
    - (d) The viator retires from full-time employment;
    - (e) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or
    - (f) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets; or

- (3) The viator enters into a viatical settlement contract more than two (2) years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two (2) years after policy issuance, the following conditions are met:
  - (a) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in Section 2N(3)(e);
  - (b) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
  - (c) Neither the insured nor the policy has been evaluated for settlement.
- B. Copies of the independent evidence described in Subsection A(2) and documents required by Section 10A shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.
- C. If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by Subsection A(2) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.
- D. No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms,

disclosures, consent or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

- E. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty (30) calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

## **Section 12. Prohibited Practices and Conflicts of Interest**

- A. With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical settlement provider, viatical settlement purchaser, [viatical settlement investment agent], financing entity or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker.
- B. With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, [viatical settlement investment agent], financing entity or related provider trust that is involved in such viatical settlement contract.
- C. A violation of Subsection A or Subsection B shall be deemed a fraudulent viatical settlement act.
- D. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this Act.

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

### **Section 13. Advertising for Viatical Settlements [and Viatical Settlements Purchase Agreements]**

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

- A. This section shall apply to any advertising of viatical settlement contracts, [viatical purchase agreements] or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.
- B. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

- C. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract [or viatical settlement purchase agreement, product or service] shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
- [D. Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:
- (1) “Guaranteed,” “fully secured,” “100 percent secured,” “fully insured,” “secure,” “safe,” “backed by rated insurance companies,” “backed by federal law,” “backed by state law,” or “state guaranty funds,” or similar representations;
  - (2) “No risk,” “minimal risk,” “low risk,” “no speculation,” “no fluctuation,” or similar representations;
  - (3) “Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers,” “tax deferred,” or similar representations;
  - (4) Utilization of the word “guaranteed” to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;
  - (5) “No sales charges or fees” or similar representations;
  - (6) “High yield,” “superior return,” “excellent return,” “high return,” “quick profit,” or similar representations; and
  - (7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.]

- E. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- (1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, [purchasers or prospective purchasers] as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract [or viatical settlement purchase agreement] offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract [or viatical settlement purchase agreement] includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.
  - (2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
  - [(3) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement in order to maintain that policy, unless that is the fact.]
  - (4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.
  - (5) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.
  - (6) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract [or viatical settlement purchase agreement,] product or service advertised,

if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators [or purchasers] as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, a licensee under this Act makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

- (a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
  - (b) An advertisement shall not state or imply that a viatical settlement contract [or viatical settlement purchase agreement,] benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
  - (c) When an endorsement refers to benefits received under a viatical settlement contract [or viatical settlement purchase agreement] all pertinent information shall be retained for a period of five (5) years after its use.
- F. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- G. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.

- H. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract [or viatical settlement purchase agreements], products or services, and if any specific viatical settlement contract [or viatical settlement purchase agreement] is advertised, the viatical settlement contract [or viatical settlement purchase agreement] shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
- I. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract [or viatical settlement purchase agreement].
- J. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators [or purchasers] into believing that the solicitation is in some manner connected with a government program or agency.
- K. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] is licensed.
- L. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts [or viatical settlement purchase agreement forms] are recommended or endorsed by any government entity.



- M. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
- N. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U. S. government endorses, approves or favors:
- (1) Any viatical settlement licensee or its business practices or methods of operation;
  - (2) The merits, desirability or advisability of any viatical settlement contract or [viatical settlement purchase agreement];
  - (3) Any viatical settlement contract or [viatical settlement purchase agreement]; or
  - (4) Any life insurance policy or life insurance company.
- O. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.
- P. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.

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

- A. Fraudulent Viatical Settlement Acts, Interference and Participation of Convicted Felons Prohibited.
- (1) A person shall not commit a fraudulent viatical settlement act.
  - (2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.

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

B. Fraud Warning Required.

- (1) Viatical settlements contracts [and purchase agreement forms] and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

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

**Drafting Note:** The preceding will be tailored to whether the form is related to a viatical settlement contract or purchase agreement.

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

C. Mandatory Reporting of Fraudulent Viatical Settlement Acts.

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

D. Immunity from Liability.

- (1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical

settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- (a) The commissioner or the commissioner's employees, agents or representatives;
  - (b) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;
  - (c) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;
  - (d) The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or
  - (e) The life insurer that issued the life insurance policy covering the life of the insured.
- (2) Paragraph (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that Paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.
- (3) A person furnishing information as identified in Paragraph (1) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.

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

E. Confidentiality.

- (1) The documents and evidence provided pursuant to Subsection D or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.
- (2) Paragraph (1) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:
  - (a) In administrative or judicial proceedings to enforce laws administered by the commissioner;
  - (b) To federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or
  - (c) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
- (3) Release of documents and evidence under Paragraph (2) does not abrogate or modify the privilege granted in Paragraph (1).

F. Other Law Enforcement or Regulatory Authority.

This Act shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

- (3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Viatical Settlement Antifraud Initiatives.

- (1) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.
- (2) Antifraud initiatives shall include:
  - (a) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and
  - (b) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:
    - (i) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
    - (ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;
    - (iii) A description of the plan for antifraud education and training of underwriters and other personnel; and

- (iv) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- (3) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

### **Section 15. Injunctions; Civil Remedies; Cease and Desist**

- A. In addition to the penalties and other enforcement provisions of this Act, if any person violates this Act or any regulation implementing this Act, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.
- B. Any person damaged by the acts of a person in violation of this Act may bring a civil action against the person committing the violation in a court of competent jurisdiction.
- [C. A violation of this Act attendant to the execution of a viatical settlement purchase agreement renders the viatical settlement purchase agreement voidable and subject to rescission by the viatical settlement purchaser, upon return of the policy received to the viatical settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.]
- D. The commissioner may issue, in accordance with [cite the state administrative procedure act], a cease and desist order upon a person that violates any provision of this Act, any regulation or order adopted by the commissioner, or any written agreement entered into with the commissioner.
- E. When the commissioner finds that an activity in violation of this Act presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying

the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to [cite the state administrative procedure act].

**Drafting Note:** States should review their laws to see if the provisions of Subsections D and E are already in state law.

- F. In addition to the penalties and other enforcement provisions of this Act, any person who violates this Act is subject to civil penalties of up to \$[insert amount] per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued under [insert reference to statutes relating to hearings conducted by the commissioner]. The commissioner's order may require a person found to be in violation of this Act to make restitution to persons aggrieved by violations of this Act.
- G. A person convicted of a violation of this Act by a court of competent jurisdiction [insert classifications for misdemeanor and felony penalties that match provisions in state's penal codes for theft offenses]. A person convicted of a violation of this Act shall be ordered to pay restitution to persons aggrieved by the violation of this Act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.
- H. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

**Drafting Note:** The following is an example of a graded sentencing requirement and a stay of the statute of limitations.

A person convicted of a violation of this Act by a court of competent jurisdiction may be sentenced in accordance with Paragraphs (1), (2), (3) or (4) based on the greater of (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation. A person convicted of a fraudulent viatical settlement act must be ordered to pay restitution to persons aggrieved by the fraudulent viatical settlement act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment.

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the value of viatical settlement contract is more than \$35,000;

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of viatical settlement contract is more than \$2,500 but not more than \$35,000;

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of viatical settlement contract is more than \$500 but not more than \$2,500; or

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of viatical settlement contract is \$500 or less.

In any prosecution under this section under Paragraphs (1), (2), (3) and (4) the value of the viatical settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision under [states should insert here the applicable statute of limitations provision cite] shall not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven years after the act has occurred.

### **Section 16. Unfair Trade Practices**

A violation of this Act, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under Sections [insert reference to state's Unfair Trade Practices Act] subject to the penalties contained in that Act.

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

The commissioner shall have the authority to:

- A. Promulgate regulations implementing this Act;
- B. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;
- C. Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers, brokers [and viatical settlement investment agents];

**Drafting Note:** Fees need not be mentioned if the fee is set by statute.

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



- E. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, viatical settlement brokers [and viatical settlement investment agents] during the viatication of a life insurance policy or certificate.

### **Section 18. Severability**

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

### **Section 19. Effective Date**

This Act shall take effect on [insert date]. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] transacting business in this state may continue to do so pending approval or disapproval of the provider, broker [or investment agent's] application for a license as long as the application is filed with the commissioner by [insert date].

Viatical Settlements Model Act

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1993 Proc. 3<sup>rd</sup> Quarter 7, 30, 427-428, 435-439 (adopted).*

*1998 Proc. 1<sup>st</sup> Quarter 14, 17, 678, 701-706 (amended and reprinted).*

*2000 Proc. 4<sup>th</sup> Quarter 16, 17, 103-104, 107-126 (amended and reprinted).*

*2007 Proc. 2<sup>nd</sup> Quarter (amended).*

# NCOIL

National Conference of Insurance Legislators

...for the states

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## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS LIFE SETTLEMENTS MODEL ACT

*Adopted by the NCOIL Executive Committee on November 16, 2007.*

*Adopted by the NCOIL Life Insurance & Financial Planning Committee on November 15, 2007*

*Adopted by the Executive Committee on November 17, 2000.*

*Amended by the Executive Committee on July 16, 2004.*

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*[DRAFTING NOTE: "It is an essential public policy objective to protect consumers against stranger-originated life insurance (STOLI). STOLI is a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity, who, at the time of policy inception, could not lawfully initiate the policy themselves, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts, that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in Section 2L(2) of this Act.*

*Trusts that are created to give the appearance of insurable interest and are used to manufacture policies for investors are illegal STOLI schemes. As the United States Supreme Court held, a person with insurable interest cannot lend that insurable interest "as a cloak to what is in its inception a wager." Grigsby v. Russell, 222 U.S. 149 (1911).*

*Therefore, states should consider adopting an amendment to their insurable interest laws, if necessary, to provide additional protection against trust-initiated STOLI and other schemes involving a cloak, as follows:*

*'In accordance with Grigsby v. Russell, 222 U.S. 149, it shall be a violation of insurable interest for any person or entity without insurable interest to provide or arrange for the funding ultimately used to pay premiums, or the majority of premiums, on a life insurance policy, and, at policy inception have an arrangement for such person or entity to have an ownership interest in the majority of the death benefit of that life insurance policy.'*"

**Section 1. Short Title**

Sections 1 through 18 of this Act may be cited as the 'Life Settlements Act.'

**Section 2. Definitions**

- A. 'Advertisement' 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 purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a Life Settlement Contract.
- B. 'Broker' means a Person who, on behalf of an Owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate Life Settlement Contracts between an Owner and Providers. A Broker represents only the Owner and owes a fiduciary duty to the Owner to act according to the Owner's instructions, and in the best interest of the Owner, notwithstanding the manner in which the Broker is compensated. A Broker does not include an attorney, certified public accountant or financial planner retained in the type of practice customarily performed in their professional capacity to represent the Owner whose compensation is not paid directly or indirectly by the Provider or any other person, except the Owner.
- C. 'Business of life settlements' means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking, of Life Settlement Contracts.
- D. 'Chronically ill' means:
  - 1. being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
  - 2. requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
  - 3. having a level of disability similar to that described in Paragraph (1) as determined by the United States Secretary of Health and Human Services.
- E. 'Commissioner' means the Commissioner or Superintendent of the Department of Insurance.
- F. 'Financing Entity' means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a Provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a Life Settlement Contract, but:

1. whose principal activity related to the transaction is providing funds to effect the Life Settlement Contract or purchase of one or more policies; and
2. who has an agreement in writing with one or more Providers to finance the acquisition of Life Settlement Contracts.

'Financing Entity' does not include a non-accredited investor or Purchaser.

G. 'Financing Transaction' means a transaction in which a licensed Provider obtains financing from a Financing Entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

H. 'Fraudulent Life Settlement Act' includes:

1. Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including, but not limited to:
  - (a) Presenting, causing to be presented or preparing with knowledge and belief that it will be presented to or by a Provider, Premium Finance lender, Broker, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
    - (i) An application for the issuance of a Life Settlement Contract or insurance policy;
    - (ii) The underwriting of a Life Settlement Contract or insurance policy;
    - (iii) A claim for payment or benefit pursuant to a Life Settlement Contract or insurance policy;
    - (iv) Premiums paid on an insurance policy;
    - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a Life Settlement Contract or insurance policy;
    - (vi) The reinstatement or conversion of an insurance policy;
    - (vii) In the solicitation, offer to enter into, or effectuation of a Life Settlement Contract, or insurance policy;
    - (viii) The issuance of written evidence of Life Settlement Contracts or insurance;
    - (ix) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or
    - (x) Enter into any practice or plan which involves STOLI.
  - (b) Failing to disclose to the insurer where the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life

expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy.

- (c) Employing any device, scheme, or artifice to defraud in the business of life settlements.
  - (d) In the solicitation, application or issuance of a life insurance policy, employing any device, scheme or artifice in violation of state insurable interest laws.
2. 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;
- (a) Remove, conceal, alter, destroy or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of life settlements;
  - (b) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
  - (c) Transact the business of life settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of life settlements;
  - (d) File with the Commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the Commissioner;
  - (e) Engage in embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a Provider, insurer, insured, owner, insurance, policy owner or any other person engaged in the business of life settlements or insurance;
  - (f) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a Life 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 owner or the owner's agent intended to defraud the policy's issuer;
  - (g) Attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts or omissions specified in this subsection; or
  - (h) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this Act for the purpose of evading or avoiding the provisions of this Act.
- I. 'Insured' means the person covered under the policy being considered for sale in a Life Settlement Contract.
- J. 'Life expectancy' means the arithmetic mean of the number of months the Insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.
- K. 'Life insurance producer' means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a

life line of coverage pursuant to *[insert reference to applicable producer licensing statute, with specific reference to a life insurance or equivalent line of authority]*.

L. 'Life Settlement Contract' means a written agreement entered into between a Provider and an Owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a Life Settlement Contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a Life Settlement Contract. "Life Settlement Contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State.

1. 'Life Settlement Contract' also includes

- (a) a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or
- (b) a premium finance loan made for a policy on or before the date of issuance of the policy where:
  - (i.) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing; or
  - (ii.) The Owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
  - (iii.) The Owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

2. 'Life Settlement Contract' does not include:

- (a) A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;
- (b) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act;
- (c) A collateral assignment of a life insurance policy by an owner;
- (d) A loan made by a lender that does not violate *[insert reference to state's insurance premium finance law]*, provided such loan is not described in Paragraph (1) above, and is not otherwise within the definition of Life Settlement Contract;

- (e) An agreement where all the parties [i] are closely related to the insured by blood or law or [ii] have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
- (f) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
- (g) A bona fide business succession planning arrangement:
  - (i.) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;
  - (ii.) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or
  - (iii.) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;
- (h) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (i) Any other contract, transaction or arrangement from the definition of Life Settlement Contract that the Commissioner determines is not of the type intended to be regulated by this Act.

M. 'Net death benefit' means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

N. 'Owner' means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a Life Settlement Contract. For the purposes of this article, an Owner shall not be limited to an Owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. The term 'Owner' does not include:

1. any Provider or other licensee under this Act;
2. a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as amended;
3. a financing entity;
4. a special purpose entity; or
5. a related provider trust.



- O. 'Patient identifying information' means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.
- P. 'Policy' means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.
- Q. 'Premium Finance Loan' is a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
- R. 'Person' means any natural person or legal entity, including but not limited to, a partnership, Limited Liability Company, association, trust or corporation.
- S. 'Provider' means a Person, other than an Owner, who enters into or effectuates a Life Settlement Contract with an Owner, A Provider does not include:
1. any bank, savings bank, savings and loan association, credit union;
  2. a licensed lending institution or creditor or secured party pursuant to a Premium Finance Loan agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan;
  3. the insurer of a life insurance policy or rider to the extent of providing accelerated death benefits or riders under [*refer to law or regulation implementing or accelerated death benefits provision*] or cash surrender value;
  4. any natural Person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy;
  5. a Purchaser;
  6. any authorized or eligible insurer that provides stop loss coverage to a provider; purchaser, financing entity, special purpose entity, or related provider trust;
  7. a Financing Entity;
  8. a Special Purpose Entity;
  9. a Related Provider Trust;
  10. a Broker; or
  11. an accredited investor or qualified institutional buyer as defined in respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a life settlement policy from a Provider.
- T. 'Purchased Policy' means a policy or group certificate that has been acquired by a Provider pursuant to a Life Settlement Contract.

- U. 'Purchaser' means a Person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a Life Settlement Contract.
- V. 'Related Provider Trust' means a titling trust or other trust established by a licensed Provider or a Financing Entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a Financing Transaction. In order to qualify as a Related Provider Trust, the trust must have a written agreement with the licensed Provider under which the licensed Provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the Department of Insurance as if those records and files were maintained directly by the licensed Provider.
- W. 'Settled policy' means a life insurance policy or certificate that has been acquired by a Provider pursuant to a Life Settlement Contract.
- X. 'Special Purpose Entity' means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets:
  - 1. for a financing entity or provider; or
    - (a) in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in Rule 144 promulgated under The Securities Act of 1933, as amended; or
    - (b) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
- Y. 'Stranger-Originated Life Insurance' or 'STOLI' is a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity, who, at the time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts, that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in Section 2L(2) of this Act.
- Z. 'Terminally Ill' means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

### **Section 3. Licensing Requirements**

- A. No Person, wherever located, shall act as a Provider or Broker with an Owner or multiple Owners who is a resident of this state, without first having obtained a license from the Commissioner. If there is more than one owner on a single policy and the owners are residents of different states, the Life Settlement Contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

- B. Application for a Provider, or Broker, license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and the application shall be accompanied by a fee in an amount established by the Commissioner, provided, however, that the license and renewal fees for a Provider license shall be reasonable and that the license and renewal fees for a Broker license shall not exceed those established for an insurance producer, as such fees are otherwise provided for in this chapter.
- C. A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a Broker.
- D. Not later than thirty (30) days from the first day of operating as a Broker, the life insurance producer shall notify the Commissioner that he or she is acting as a Broker on a form prescribed by the Commissioner, and shall pay any applicable fee to be determined by the Commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a Broker in accordance with this Act.
- E. The insurer that issued the policy that is the subject of a Life Settlement Contract shall not be responsible for any act or omission of a Broker or Provider or Purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a Life Settlement Contract from the Provider or Purchaser or Broker in connection with the Life Settlement Contract.
- F. A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the Owner, whose compensation is not paid directly or indirectly by the Provider or Purchaser, may negotiate Life Settlement Contracts on behalf of the Owner without having to obtain a license as a Broker.
- G. Licenses may be renewed every *[INSERT NUMBER OF YEARS]* on the anniversary date upon payment of the periodic renewal fee. As specified by subsection B of this section, the renewal fee for a Provider shall not exceed a reasonable fee. Failure to pay the fee within the terms prescribed shall result in the automatic revocation of the license requiring periodic renewal.
- H. The term of a Provider license shall be equal to that of a domestic stock life insurance company and the term of a Broker license shall be equal to that of an insurance producer license. Licenses requiring periodic renewal may be renewed on their anniversary date upon payment of the periodic renewal fee as specified in subsection B of this section. Failure to pay the fees on or before the renewal date shall result in expiration of the license.
- I. The applicant shall provide such information as the Commissioner may require on forms prepared by the Commissioner. The Commissioner shall have authority, at any time, to require such applicant to fully disclose the identity of its stockholders (except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded), partners, officers and employees, and the Commissioner may, in the exercise of the Commissioner's sole discretion, refuse to issue such a license in the name of any Person if not satisfied that any officer, employee, stockholder or partner thereof who may materially influence the applicant's conduct meets the standards of Sections 1 to 14 of this Act.
- J. A license issued to a partnership, corporation or other entity authorizes all members, officers and designated employees to act as a licensee under the license, if those Persons are named in the application and any supplements to the application.

- K. Upon the filing of an application and the payment of the license fee, the Commissioner shall make an investigation of each applicant and may issue a license if the Commissioner finds that the applicant:
1. if a Provider, has provided a detailed plan of operation;
  2. is competent and trustworthy and intends to transact its business in good faith;
  3. has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied;
  4. if the applicant is a legal entity, is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and
  5. has provided to the Commissioner an anti-fraud plan that meets the requirements of section 13 of this Act and includes:
    - (a) a description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;
    - (b) a description of the procedures for reporting fraudulent insurance acts to the Commissioner;
    - (c) a description of the plan for anti-fraud education and training of its underwriters and other personnel; and
    - (d) a written description or chart outlining the arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- L. The Commissioner shall not issue any license to any nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the Commissioner or unless the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Commissioner.
- M. Each licensee shall file with the Commissioner on or before the first day of March of each year an annual statement containing such information as the Commissioner by rule may prescribe.
- N. A Provider may not use any Person to perform the functions of a Broker as defined in this Act unless the Person holds a current, valid license as a Broker, and as provided in this Section.
- O. A Broker may not use any Person to perform the functions of a Provider as defined in this Act unless such Person holds a current, valid license as a Provider, and as provided in this Section.
- P. A Provider, or Broker shall provide to the Commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members or designated employees within thirty days of the change.
- Q. An individual licensed as a Broker shall complete on a biennial basis fifteen (15) hours of training related to life settlements and life settlement transactions, as required by the Commissioner;

provided, however, that a life insurance producer who is operating as a Broker pursuant to this Section shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the Commissioner.

**Section 4. License Suspension, Revocation or Refusal to Renew**

- A. The Commissioner may suspend, revoke or refuse to renew the license of any licensee if the Commissioner finds that:
1. there was any material misrepresentation in the application for the license;
  2. the licensee or any officer, partner, member or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
  3. the Provider demonstrates a pattern of unreasonably withholding payments to policy Owners;
  4. the licensee no longer meets the requirements for initial licensure;
  5. the licensee or any officer, partner, member or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;
  6. the Provider has entered into any Life Settlement Contract that has not been approved pursuant to the Act;
  7. the Provider has failed to honor contractual obligations set out in a Life Settlement Contract;
  8. the Provider has assigned, transferred or pledged a settled policy to a person other than a Provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or
  9. the licensee or any officer, partner, member or key management personnel has violated any of the provisions of this Act.
- B. Before the Commissioner denies a license application or suspends, revokes or refuses to renew the license of any licensee under this Act, the Commissioner shall conduct a hearing in accordance with this state's laws governing administrative hearings.

**Section 5. Contract Requirements**

- A. No Person may use any form of Life Settlement Contract in this state unless it has been filed with and approved, if required, by the Commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies and contracts.

- B. No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a Life Settlement Contract, require that the Owner, Insured, Provider or Broker sign any form, disclosure, consent, waiver or acknowledgment that has not been expressly approved by the Commissioner for use in connection with Life Settlement Contracts in this state.
- C. A Person shall not use a Life Settlement Contract form or provide to an Owner a disclosure statement form in this state unless first filed with and approved by the Commissioner. The Commissioner shall disapprove a Life Settlement Contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of Sections 8, 9, 11 and 15B of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the Owner. At the Commissioner's discretion, the Commissioner may require the submission of advertising material.

**Section 6. Reporting Requirements and Privacy**

- A. For any policy settled within five (5) years of policy issuance, each Provider shall file with the Commissioner on or before March 1 of each year an annual statement containing such information as the Commissioner may prescribe by regulation. In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the Brokers that have settled said policies.
  - 1. Such information shall be limited to only those transactions where the Insured is a resident of this state and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the Owner or the Insured.
  - 2. Every Provider that willfully fails to file an annual statement as required in this section, or willfully fails to reply within thirty days to a written inquiry by the Commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to two hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.
- B. Except as otherwise allowed or required by law, a Provider, Broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:
  - 1. is necessary to effect a Life Settlement Contract between the owner and a Provider and the owner and insured have provided prior written consent to the disclosure;
  - 2. is necessary to effectuate the sale of Life Settlement Contracts, or interests therein, as investments, provided the sale is conducted in accordance with applicable state and federal securities law and provided further that the Owner and the insured have both provided prior written consent to the disclosure;
  - 3. is provided in response to an investigation or examination by the Commissioner or any other governmental officer or agency or pursuant to the requirements of Section 13;

4. is a term or condition to the transfer of a policy by one Provider to another Provider, in which case the receiving Provider shall be required to comply with the confidentiality requirements of Section 6B;
5. is necessary to allow the Provider or Broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this section, the term "authorized representative" shall not include any person who has or may have any financial interest in the settlement contract other than a Provider, licensed Broker, financing entity, related provider trust or special purpose entity; further, a Provider or Broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this Act; or
6. is required to purchase stop loss coverage.

*[Drafting Note: In implementing this section, states should keep in mind privacy considerations of insureds. However, the language needs to be broad enough to allow licensed entities to notify Commissioners of unlicensed activity and for insurers to make necessary disclosures to insurers and in similar situations.]*

- C. Non-public personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other state and federal laws relating to confidentiality of non-public personal information.

#### **Section 7. Examination**

*[Drafting Note: NCOIL has established a Model Act for the examination of insurers. This Model should be applied to settlement companies. Where practicable, examination should be detailed in a rule adopted by the Commissioner under the authority of this law.]*

- A. The Commissioner may, when the Commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The Commissioner may order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.
- B. In lieu of an examination under this Act of any foreign or alien licensee licensed in this state, the Commissioner may, at the Commissioner's discretion, accept an examination report on the licensee as prepared by the Commissioner for the licensee's state of domicile or port-of-entry state.
- C. Names of and individual identification data, or for all Owners and insureds shall be considered private and confidential information and shall not be disclosed by the Commissioner unless required by law.
- D. Records of all consummated transactions and Life Settlement Contracts shall be maintained by the Provider for three years after the death of the insured and shall be available to the Commissioner for inspection during reasonable business hours.
- E. Conduct of Examinations
  1. Upon determining that an examination should be conducted, the Commissioner shall Issue an examination warrant appointing one or more examiners to perform the

examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and should use those guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

2. Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the Commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the Commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section [insert reference to cease and desist statute or other law having a post-order hearing mechanism].
3. The Commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence.
4. When making an examination under this Act, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.
5. Nothing contained in this Act shall be construed to limit the Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.
6. Nothing contained in this Act shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may, in his or her sole discretion, deem appropriate.

*[Drafting Note: In many states examination work papers remain confidential. The previous paragraph should be adjusted to conform to state statute and practice.]*

#### F. Examination Reports

1. Examination reports shall be comprised of only facts appearing upon the books, from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.



2. No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the Commissioner a verified written report of examination under oath. Upon receipt of the verified report, the Commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.
3. In the event the Commissioner determines that regulatory action is appropriate as a result of an examination, the Commissioner may initiate any proceedings or actions provided by law.

G. Confidentiality of Examination Information

1. Names and individual identification data for all owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the Commissioner, unless the disclosure is to another regulator or is required by law.
2. Except as otherwise provided in this Act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this Act, or in the course of analysis or investigation by the Commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to [INSERT OPEN RECORDS, FREEDOM OF INFORMATION, SUNSHINE OR OTHER APPROPRIATE PHRASE] shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

H. Conflict of Interest

1. An examiner may not be appointed by the Commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this Act. This section shall not be construed to automatically preclude an examiner from being:
  - (a) an owner;
  - (b) an insured in a Life Settlement Contract or insurance policy; or
  - (c) a beneficiary in an insurance policy that is proposed for a Life Settlement Contract.
2. Notwithstanding the requirements of this clause, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this Act.

I. Immunity from Liability

1. No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
2. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Paragraph (1).
3. A person identified in Paragraph (1) or (2) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

J. Investigative Authority of the Commissioner

1. The Commissioner may investigate suspected Fraudulent Life Settlement Acts and persons engaged in the business of life settlements.

K. Cost of Examinations

*[Drafting Note: The Insurance Department may have a funding mechanism for examinations and it should be inserted in this section and be consistent with other examination expenses.]*

**Section 8. Advertising**

- A. A broker, or provider licensed pursuant to this act may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws [statutory cite] or rules and regulations promulgated by the Commissioner that are applicable to life insurers or to brokers, and providers licensed pursuant to this act.
- B. Advertisements shall be accurate, truthful and not misleading in fact or by implication.
- C. No person or trust shall:
  1. directly or indirectly, market, advertise, solicit or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or
  2. use the words "free", "no cost" or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

**Section 9. Disclosures to Owners**

- A. The Provider shall provide in writing, in a separate document that is signed by the Owner and Provider, the following information to the Owner no later than the date the Life Settlement Contract is signed by all parties:

1. the fact that possible alternatives to Life Settlement Contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;
2. the fact that some or all of the proceeds of a Life Settlement Contract may be taxable and that assistance should be sought from a professional tax advisor;
3. the fact that the proceeds from a Life Settlement Contract could be subject to the claims of creditors;
4. the fact that receipt of proceeds from a Life Settlement Contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;
5. the fact that the Owner has a right to terminate a Life Settlement Contract within fifteen (15) days of the date it is executed by all parties and the Owner has received the disclosures contained herein. Rescission, if exercised by the Owner, is effective only if both notice of the rescission is given, and the Owner repays all proceeds and any premiums, loans, and loan interest paid on account of the Provider within the rescission period. If the insured dies during the rescission period, the Contract shall be deemed to have been rescinded subject to repayment by the Owner or the Owner's estate of all proceeds and any premiums, loans, and loan interest to the Provider;
6. the fact that proceeds will be sent to the Owner within three (3) business days after the Provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the Life Settlement Contract;
7. the fact that entering into a Life Settlement Contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy to be forfeited by the Owner and that assistance should be sought from a professional financial advisor;
8. the amount and method of calculating the compensation paid or to be paid to the Broker, or any other person acting for the Owner in connection with the transaction, wherein the term compensation includes anything of value paid or given;
9. the date by which the funds will be available to the Owner and the transmitter of the funds;
10. the fact that the Commissioner shall require delivery of a Buyer's Guide or a similar consumer advisory package in the form prescribed by the Commissioner to Owners during the solicitation process;
11. the disclosure document shall contain the following language: "all medical, financial or personal information solicited or obtained by a Provider or Broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the Life Settlement Contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years;

12. the fact that the Commissioner shall require Providers and Brokers to print separate signed fraud warnings on their applications and on their Life Settlement Contracts is as follows:

“Any person who knowingly presents false information in an application for insurance or Life Settlement Contract is guilty of a crime and may be subject to fines and confinement in prison.”
  13. the fact that the insured may be contacted by either the Provider or broker or its authorized representative for the purpose of determining the insured’s health status or to verify the insured’s address. This contact is limited to once every three (3) months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less;
  14. the affiliation, if any, between the Provider and the issuer of the insurance policy to be settled;
  15. that a Broker represents exclusively the Owner, and not the insurer or the Provider or any other person, and owes a fiduciary duty to the Owner, including a duty to act according to the Owner’s instructions and in the best interest of the Owner;
  16. the document shall include the name, address and telephone number of the Provider;
  17. the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents;
  18. the fact that a change of ownership could in the future limit the insured’s ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life;
- B. The written disclosures shall be conspicuously displayed in any Life Settlement Contract furnished to the Owner by a Provider including any affiliations or contractual arrangements between the Provider and the Broker.
- C. A Broker shall provide the Owner and the Provider with at least the following disclosures no later than the date the Life Settlement Contract is signed by all parties. The disclosures shall be conspicuously displayed in the Life Settlement Contract or in a separate document signed by the Owner and provide the following information:
- (1) The name, business address and telephone number of the Broker;
  - (2) A full, complete and accurate description of all the offers, counter-offers, acceptances and rejections relating to the proposed Life Settlement Contract;
  - (3) A written disclosure of any affiliations or contractual arrangements between the Broker and any person making an offer in connection with the proposed Life Settlement Contracts;
  - (4) The name of each Broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the Broker in connection with the life settlement contract;

- (5) A complete reconciliation of the gross offer or bid by the Provider to the net amount of proceeds or value to be received by the Owner. For the purpose of this section, gross offer or bid shall mean the total amount or value offered by the Provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and
- (6) The failure to provide the disclosures or rights described in this Section 9 shall be deemed an Unfair Trade Practice pursuant to Section 17.

**Section 10. Disclosure to Insurer**

*[Drafting Note: The provisions in this Section pertaining to premium finance arrangements and disclosures may be inserted into a state's premium finance law. If so, it is recommended that the disclosures be made to the borrower and/or insured by a lender which takes the policy as collateral for a premium finance loan.]*

- A. Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.
  1. If, as described in Section 2L, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the Prohibited Practices in Section 13 of this Act.
  2. If the financing does not violate Section 13 in this manner, the insurance carrier:
    - (a) may make disclosures, including but not limited to such as the following, to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy:

“If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

      - (i.) a change of ownership could lead to a stranger owning an interest in the insured's life;
      - (ii.) a change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;
      - (iii.) should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;
      - (iv.) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan;” and

- (b) may require certifications, such as the following, from the applicant and/or the insured:
  - (i) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;
  - (ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and
  - (iii) the borrower has an insurable interest in the insured.”

**Section 11. General Rules**

- A. A Provider entering into a Life Settlement Contract with any Owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:
  - 1. if the Owner is the insured, a written statement from a licensed attending physician that the Owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and
  - 2. a document in which the insured consents to the release of his medical records to a Provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.
- B. The insurer shall respond to a request for verification of coverage submitted by a Provider, settlement broker, or life insurance producer not later than thirty calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the Commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.
- C. Before or at the time of execution of the settlement contract, the Provider shall obtain a witnessed document in which the Owner consents to the settlement contract, represents that the Owner has a full and complete understanding of the settlement contract, that the Owner has a full and complete understanding of the benefits of the policy, acknowledges that the Owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.
- D. The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any Life Settlement Contract lawfully entered into in this state or with a resident of this state.
- E. If a settlement broker or life insurance producer performs any of these activities required of the Provider, the Provider is deemed to have fulfilled the requirements of this section.
- F. If a Broker performs those verification of coverage activities required of the Provider, the provider is deemed to have fulfilled the requirements of section 9A.

- G. Within twenty (20) days after an owner executes the Life Settlement Contract, the Provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a Life Settlement Contract. The notice shall be accompanied by the documents required by Section 10 A. (2).
- H. All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this Act.
- I. All Life Settlement Contracts entered into in this state shall provide that the Owner may rescind the Contract on or before fifteen (15) days after the date it is executed by all parties thereto. Rescission, if exercised by the Owner, is effective only if both notice of the rescission is given, and the Owner repays all proceeds and any premiums, loans, and loan interest paid on account of the Provider within the rescission period. If the insured dies during the rescission period, the Contract shall be deemed to have been rescinded subject to repayment by the Owner or the Owner's estate of all proceeds and any premiums, loans, and loan interest to the Provider.
- J. Within three business days after receipt from the Owner of documents to effect the transfer of the insurance policy, the Provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the Owner within three business days of acknowledgement of the transfer from the insurer.
- K. Failure to tender the Life Settlement Contract proceeds to the Owner by the date disclosed to the Owner renders the Contract voidable by the Owner for lack of consideration until the time the proceeds are tendered to and accepted by the Owner. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until thirty days after the written notice of the right of rescission has been given.
- L. Any fee paid by a Provider, party, individual, or an Owner to a Broker in exchange for services provided to the Owner pertaining to a Life Settlement Contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this Section shall be construed as prohibiting a Broker from reducing such Broker's fee below this percentage if the Broker so chooses.
- M. The Broker shall disclose to the Owner anything of value paid or given to a Broker, which relate to a Life Settlement Contract.
- N. No person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall enter into a Life Settlement regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the policy is to occur. This prohibition shall not apply if the Owner certifies to the Provider that:
1. the policy was issued upon the Owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

2. the Owner submits independent evidence to the Provider that one or more of the following conditions have been met within the two-year period:
  - (a) the Owner or insured is terminally or chronically ill;
  - (b) the Owner or insured disposes of his ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;
  - (c) the Owner's spouse dies;
  - (d) the Owner divorces his or her spouse;
  - (e) the Owner retires from full-time employment;
  - (f) the Owner becomes physically or mentally disabled and a physician determines that the disability prevents the Owner from maintaining full-time employment; or
  - (g) a final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the Owner, adjudicating the Owner bankrupt or insolvent, or approving a petition seeking reorganization of the Owner or appointing a receiver, trustee or liquidator to all or a substantial part of the Owner's assets;
3. Copies of the independent evidence required by Section 11.N(2) shall be submitted to the insurer when the Provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the Provider that the copies are true and correct copies of the documents received by the Provider. Nothing in this Section shall prohibit an insurer from exercising its right to contest the validity of any policy;
4. If the Provider submits to the insurer a copy of independent evidence provided for in item (2)(a) when the Provider submits a request to the insurer to effect the transfer of the policy to the Provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

**Section 12. Authority to Promulgate Regulations; Conflict of Laws**

A. The Commissioner may:

1. promulgate regulations implementing Sections 1 to 18 of this Act and regulating the activities and relationships of Providers, Brokers, insurers and their agents, subject to statutory limitations on administrative rule making.

[Drafting Note: *Fees need not be mentioned if the fee is set by statute.*]

B. Conflict of Laws.

1. If there is more than one Owner on a single policy, and the Owners are residents of different states, the Life Settlement Contract shall be governed by the law of the state in which the Owner having the largest percentage ownership resides or, if the Owners hold equal ownership, the state of residence of one Owner agreed upon in writing by all of the



Owners. The law of the state of the Insured shall govern in the event that equal Owners fail to agree in writing upon a state of residence for jurisdictional purposes.

2. A Provider from this state who enters into a Life Settlement Contract with an Owner who is a resident of another state that has enacted statutes or adopted regulations governing Life Settlement Contracts, shall be governed in the effectuation of that Life Settlement Contract by the statutes and regulations of the Owner's state of residence. If the state in which the Owner is a resident has not enacted statutes or regulations governing Life Settlement Contracts, the Provider shall give the Owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the Provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the Department.
3. If there is a conflict in the laws that apply to an Owner and a Purchaser in any individual transaction, the laws of the state that apply to the Owner shall take precedence and the Provider shall comply with those laws.

### **Section 13. Prohibited Practices**

#### **A. IT IS UNLAWFUL FOR ANY PERSON TO:**

1. enter into a Life Settlement Contract if such Person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive or misleading application for such policy;
2. engage in any transaction, practice or course of business if such Person knows or reasonably should have known that the intent was to avoid the notice requirements of this Section;
3. engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an Owner who is a resident of this state;
4. issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy;
5. enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person shall receive any proceeds, fees or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to his or her estate if he or she is not living at the time of the determination of the overpayment;
6. with respect to any settlement contract or insurance policy and a Broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any Provider, financing entity or related provider trust that is controlling, controlled by, or under common control with such Broker;

7. with respect to any Life Settlement Contract or insurance policy and a Provider, knowingly enter into a Life Settlement Contract with a Owner, if, in connection with such Life Settlement Contract, anything of value will be paid to a Broker that is controlling, controlled by, or under common control with such Provider or the financing entity or related Provider trust that is involved in such settlement contract;
8. with respect to a Provider, enter into a Life Settlement Contract unless the life settlement promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the Commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an Owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this Act; or
9. with respect to any life insurance producer, insurance company, Broker, or Provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

B. A violation of Section 13 shall be deemed a Fraudulent Life Settlement Act.

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

A. Fraudulent Life Settlement Acts, Interference and Participation of Convicted Felons Prohibited.

1. A person shall not commit a Fraudulent Life Settlement Act.
2. A person shall not knowingly and intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.
3. A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

B. Fraud Warning Required

1. Life Settlement Contracts and applications for Life Settlement Contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or Life Settlement Contract is guilty of a crime and may be subject to fines and confinement in prison."

2. The lack of a statement as required in Paragraph (1) of this subsection does not constitute a defense in any prosecution for a Fraudulent Life Settlement Act.

C. Mandatory Reporting of Fraudulent Life Settlement Acts

1. Any person engaged in the business of life settlements having knowledge or a reasonable belief that a Fraudulent Life Settlement Act is being, will be or has been committed shall provide to the Commissioner the information required by, and in a manner prescribed by, the Commissioner.

2. Any other person having knowledge or a reasonable belief that a Fraudulent Life Settlement Act is being, will be or has been committed may provide to the Commissioner the information required by, and in a manner prescribed by, the Commissioner.

D. Immunity from Liability

1. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed Fraudulent Life Settlement Acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
  - (a) the Commissioner or the Commissioner's employees, agents or representatives;
  - (b) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;
  - (c) a person involved in the prevention and detection of Fraudulent Life Settlement Acts or that person's agents, employees or representatives;
  - (d) any regulatory body or their employees, agents or representatives, overseeing life insurance, life settlements, securities or investment fraud;
  - (e) the life insurer that issued the life insurance policy covering the life of the insured; or
  - (f) the licensee and any agents, employees or representatives.
2. Paragraph (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a Fraudulent Life Settlement Act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that Paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.
3. A person identified in Paragraph (1) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.
4. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in Paragraph (1).

E. Confidentiality

1. The documents and evidence provided pursuant to Subsection D of this section or obtained by the Commissioner in an investigation of suspected or actual Fraudulent Life Settlement Acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

2. Paragraph (1) of this subsection does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual Fraudulent Life Settlement Acts:
  - (a) in administrative or judicial proceedings to enforce laws administered by the Commissioner;
  - (b) to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing Fraudulent Life Settlement Acts or to the NAIC; or
  - (c) at the discretion of the Commissioner, to a person in the business of life settlements that is aggrieved by a Fraudulent Life Settlement Act.
3. Release of documents and evidence under Paragraph (2) of this subsection does not abrogate or modify the privilege granted in Paragraph (1).

F. Other Law Enforcement or Regulatory Authority. This Act shall not:

1. preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
2. preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;
3. prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or
4. limit the powers granted elsewhere by the laws of this state to the Commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Life Settlement Antifraud Initiatives.

1. Providers and Brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent Fraudulent Life Settlement Acts. At the discretion of the Commissioner, the Commissioner may order, or a licensee may request and the Commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:
  2. Fraud investigators, who may be Provider or Broker employees or independent contractors; and
  3. An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan shall include, but not be limited to:
    - (a) a description of the procedures for detecting and investigating possible Fraudulent Life Settlement Acts and procedures for resolving material inconsistencies between medical records and insurance applications;

- (b) a description of the procedures for reporting possible Fraudulent Life Settlement Acts to the Commissioner;
  - (c) a description of the plan for antifraud education and training of underwriters and other personnel; and
  - (d) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible Fraudulent Life Settlement Acts and investigating unresolved material inconsistencies between medical records and insurance applications.
4. Antifraud plans submitted to the Commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

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

- A. In addition to the penalties and other enforcement provisions of this Act, if any Person violates this Act or any rule implementing this Act, the Commissioner may seek an injunction in a court of competent jurisdiction in the county where the Person resides or has a principal place of business and may apply for temporary and permanent orders that the Commissioner determines necessary to restrain the Person from further committing the violation.
- B. Any Person damaged by the acts of another Person in violation of this Act or any rule or regulation implementing this Act, may bring a civil action for damages against the Person committing the violation in a court of competent jurisdiction.
- C. The Commissioner may issue a cease and desist order upon a Person who violates any provision of this part, any rule or order adopted by the Commissioner, or any written agreement entered into with the Commissioner, in accordance with this State's Act governing administrative procedures.
- D. When the Commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, he may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the department begins non-emergency cease and desist proceedings under paragraph A, the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to [cite the state's administrative procedure Act]. In the event of a willful violation of this Act, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this Act may not be waived by agreement. No choice of law provision may be utilized to prevent the application of this Act to any settlement in which a party to the settlement is a resident of this state.

**Section 16. Penalties**

- A. It is a violation of this Act for any Person, Provider, Broker, or any other party related to the business of life settlements, to commit a Fraudulent Life Settlement Act.
- B. For criminal liability purposes, a person that commits a Fraudulent Life Settlement Act is guilty of committing insurance fraud and shall be subject to additional penalties under [*insert State statute regarding insurance fraud*].

- C. The Commissioner shall be empowered to levy a civil penalty not exceeding *[insert appropriate State fine]* and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this Act, who is found to have committed a Fraudulent Life Settlement Act or violated any other provision of this Act.
- D. The license of a person licensed under this Act that commits a Fraudulent Life Settlement Act shall be revoked for a period of at least *[insert appropriate State penalty]*.

**Section 17. Unfair Trade Practices**

A violation of Sections 1 to 16 of this Act shall be considered an unfair trade practice pursuant to state law and subject to the penalties provided by state law.

**Section 18. Effective Date**

- A. A Provider lawfully transacting business in this state prior to the effective date of this Act may continue to do so pending approval or disapproval of that person's application for a license as long as the application is filed with the Commissioner not later than 30 days after publication by the Commissioner of an application form and instructions for licensure of Providers. If the publication of the application form and instructions is prior to the effective date of this chapter, then the filing of the application shall not be later than 30 days after the effective date of this Act. During the time that such an application is pending with the Commissioner, the applicant may use any form of Life Settlement Contract that has been filed with the Commissioner pending approval thereof, provided that such form is otherwise in compliance with the provisions of this Act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this Act.
- B. A person who has lawfully negotiated Life Settlement Contracts between any Owner residing in this state and one or more Providers for at least one year immediately prior to the effective date of this Act may continue to do so pending approval or disapproval of that person's application for a license as long as the application is filed with the Commissioner not later than 30 days after publication by the Commissioner of an application form and instructions for licensure of Brokers. If the publication of the application form and instructions is prior to the effective date of this chapter, then the filing of the application shall not be later than 30 days after the effective date of this Act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this Act.

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

4/10/09

The date following each state indicates the last time information for the state was reviewed/changed.

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
AL (4/09)	HB 453 pending (2009)  SB 457 pending (2009)	<i>Introduced and assigned to Banking &amp; Insurance, 2/10/09.</i>  <i>Read 1<sup>st</sup> time and referred to Banking &amp; Insurance, 3/3/09.</i>			
AK (4/09)					
AZ (4/09)	Ariz. Rev. Stat. Ann. §20-443.02 (2008) (HB 2513/2008)	Signed by Governor, 5/23/08.		As proposed for amendment in Committee and passed by the House, HB 2513 has elements of the NCOIL model related to a STOLI definition and prohibits STOLI practices, which is the intentional practice or planning to initiate a life insurance policy for the benefit of a person that, at the time of policy origination, has no insurable interest in the insured.	

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STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
AR (4/09)	HB 2113 (2009)	Filed, read the 1 <sup>st</sup> time, rules suspended, read 2 <sup>nd</sup> time and referred to the Committee on Insurance & Commerce, 3/9/09. Placed on 2 <sup>nd</sup> reading for the purpose of amendment, 3/19/09. Amendment No. 1 read and adopted and the bill ordered engrossed, 3/19/09. Reported correctly engrossed, 3/19/09. Returned by the Cmte Do Pass, 3/25/09. Read 3 <sup>rd</sup> time and passed and ordered transmitted to the Senate, 3/26/09. Received from the House, 3/26/09. Read 1 <sup>st</sup> time, rules suspended, read 2 <sup>nd</sup> time, referred to the Senate Committee on Insurance and Commerce, 3/26/09. Returned by Committee w/ recommendation that it DO PASS, 3/31/09. Read 3 <sup>rd</sup> time & passed; returned to House as passed; returned from Senate as passed; to be enrolled, 4/1/09. Correctly enrolled & ordered transmitted to the Governor's office, 4/2/09. <b>Signed by Governor, now Act 796, 4/3/09.</b>  <a href="http://www.arkleg.state.ar.us/assembly/2009/R/Acts/Act796.pdf">http://www.arkleg.state.ar.us/assembly/2009/R/Acts/Act796.pdf</a>		HB 2113 is based on the NCOIL model.	
CA (4/09)	SB 98 pending (2009)	Introduced, 1/26/09. From Committee w/ author's amendments; read 2 <sup>nd</sup> time; Amended; re-referred to Common on Business, Finance & Ins., 4/1/09.  <a href="http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0051-0100/sb_98_bill_20090401_amended_sen_v98.pdf">http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0051-0100/sb_98_bill_20090401_amended_sen_v98.pdf</a>		SB 98, as amended, tracks the NCOIL model provisions.	
CO (4/09)					



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STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
CT (4/09)	Conn. Gen. Stat. §§ 38a-465 to 38a-465m (1998/2008) (HB 5512/2008)	Signed by Governor 6/12/08.		HB 5512 is based on the NCOIL model, includes a STOLI definition.	
DE (4/09)					
DC (4/09)					
FL (4/09)	SB 1882 pending (2009)  HB 1167 pending (2009)	Filed, 2/18/09. Referred to Banking and Insurance; Judiciary; General Govt Appropriations, 2/26/09. Introduced & referred to Banking and Insurance; Judiciary; General Gov't Appropriations, 3/3/09. <i>Pending withdrawal, 4/8/09.</i>  <a href="http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s1882.pdf">http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s1882.pdf</a>  Filed, 2/25/09. Introduced, 3/3/09. Now in Ins., Bus. & Fin. Affairs Policy Comm., 3/9/09  <a href="http://www.flsenate.gov/data/session/2009/House/bills/billtext/pdf/h116700.pdf">http://www.flsenate.gov/data/session/2009/House/bills/billtext/pdf/h116700.pdf</a>			SB 1882 includes elements of the NCOIL model with a STOLI definition and elements of the NAIC model with language related to 5-year transactional waiting period.  HB 1167 is patterned after elements in both the NAIC model and the NCOIL model.

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FL (cont.)	SB 1924 pending (2009)	Filed, 2/19/09. Introduced, ref to Banking & Ins.; Judiciary; Gen Gov't Appropriations, 3/5/09.  <a href="http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s1924.pdf">http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s1924.pdf</a>		SB 1924 is patterned after the NCOIL model.	
	HB 1461 pending (2009)	Filed, 3/2/09. Introduced, 3/3/09. Now in Ins., Bus. & Fin. Affairs Policy Comm., 3/9/09  <a href="http://www.flsenate.gov/data/session/2009/House/bills/billtext/pdf/h146100.pdf">http://www.flsenate.gov/data/session/2009/House/bills/billtext/pdf/h146100.pdf</a>		HB 1461 is patterned after elements of the NCOIL model.	
GA (4/09)	SB 61 pending (2009)	Read and referred to I & L, 1/29/09. Committee favorable reported, 1/30/09. Read 2 <sup>nd</sup> time, 2/2/09. Passed Senate, 2/4/09. House 1 <sup>st</sup> readers, 2/5. House 2 <sup>nd</sup> readers, 2/6. Committee favorably reported, 2/11. House Third Readers, 3/26/09. House Passed/Adopted, 3/26/09. Bill scheduled to be heard by CPC/JUD on Monday, 3-30-09 2 p.m. in House conference room 325, 3/27/09.  <a href="http://www.legis.ga.gov/legis/2009_10/pdf/sb61.pdf">http://www.legis.ga.gov/legis/2009_10/pdf/sb61.pdf</a>		SB 61 is patterned after the NCOIL model.	

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STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
HI (4/09)	Hawaii Rev. Stat. §§ -1 to -53 (2008) (HB 94/2008)	Signed by Governor 6/16/08.		HB 94 is a companion bill to SB 3246, but includes STOLI language.	
	HB 1439 pending (2009)	<i>Introduced and passed 1<sup>st</sup> reading, 1/28/09. Passed House, 3/10/09. Passed 1<sup>st</sup> reading; referred to CPN, 3/12/09.</i>		HB 1439 appears to amend the statute enacted in 2008 to clarify certain provisions and make technical revisions and corrections.	
	HB 261 pending (2009)	<i><a href="http://www.capitol.hawaii.gov/session2009/bills/HB1439_HDI_.pdf">http://www.capitol.hawaii.gov/session2009/bills/HB1439_HDI_.pdf</a> Introduced and passed 1<sup>st</sup> reading, 1/23/09. Referred to HLT, CPC/JUD, referral sheet 2, 1/26/09.</i>		HB 261 is a cross-filed bill of SB 53.	
	SB 53 pending (2009)	<i><a href="http://www.capitol.hawaii.gov/session2009/bills/HB261_.pdf">http://www.capitol.hawaii.gov/session2009/bills/HB261_.pdf</a> Introduced, 1/23/09. Passed Senate, 3/6/09. Referred to HLT, CPC/JUD, referral sheet 26; Pass 1<sup>st</sup> reading; bill scheduled to be heard by HLT on 3/13 @ 9:30 a.m. in House conf rm 329, 3/10/09. Committee on HLT recommends that the measure be passed, unamended, 3/13/09. Reported from HLT, recommending passage on 2<sup>nd</sup> reading and referral to CPC/JUD, 3/23/08. Passed 2<sup>nd</sup> reading and referred to the committee(s) on CPC/JUD with none voting no and Takai excused, 3/24/09. Bill scheduled to be heard by CPC/JUD on Monday, 03-30-09 2:00PM, 3/27/09. The committees on CPC &amp; JUD recommend that the measure be PASSED, WITH AMENDMENTS, 3/30/09. Reported from CPC/JUD as amended in HD 1, recommending passage on 3<sup>rd</sup> reading, 4/8/09.</i>		SB 53 amends the 2008 Session Laws to repeal the requirement that the Insurance Commissioner report annually to the legislature on the implementation and effects of Act 177 and makes Act 177 permanent. As amended, SB 53 includes provisions from HB 1439.	

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STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
ID (4/09)	HB 75 (2009)	Introduced, 1 <sup>st</sup> reading – to printing, 2/6/09. To Business, 2/9/09. Passed House, 3/2/09. Introduced in Senate, 1 <sup>st</sup> reading, to Com/HuRes, 3/3/09. Report out, received do pass – to 2 <sup>nd</sup> reading, 3/13/09. 2 <sup>nd</sup> reading to 3 <sup>rd</sup> reading, 3/16/09. 3 <sup>rd</sup> reading, passed 3/24/09. To enroll, 3/25/09. Report enrolled. Speaker signed, 3/26/09. President signed, 3/27/09. <b>Signed by Governor, 4/1/09. Eff. 7/1/09, Session Law Chpt. 69.</b>  <a href="http://www.legislature.idaho.gov/legislation/2009/H0075.pdf">http://www.legislature.idaho.gov/legislation/2009/H0075.pdf</a>		HB 75 is patterned after the NCOIL model.	
IL (4/09)	SB 2091 pending (2009)	Filed, 1 <sup>st</sup> reading, referred to Assignments, 2/20/09. Assigned to Executive, 3/5/09. Do Pass Executive; Placed on Calendar Order of 2 <sup>nd</sup> reading March 17 <sup>th</sup> , 3/12/09. 2 <sup>nd</sup> Floor Amendment No. 1 filed w/ Secretary; Senate floor Amendment No. 1 referred to Assignments, 3/25/09. Senate floor Amendment No. 2 filed with Secretary, 3/27/09. Senate floor Amendment No. 2 referred to Assignments. <b>Passed Senate, 4/1/09. Arrived in House; 1<sup>st</sup> reading; referred to Rules Committee, 4/2/09.</b>  <a href="http://www.ilga.gov/legislation/96/SB/PDF/09600SB2091lv.pdf">http://www.ilga.gov/legislation/96/SB/PDF/09600SB2091lv.pdf</a>			SB 2091 appears to be a hybrid version of the NAIC model and the NCOIL model. It includes a STOLI definition and a provision with the 5-year transactional waiting period language.

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<b>STATE</b>	<b>LEGISLATION INTRODUCED/ STATUTE</b>	<b>STATUS</b>	<b>NAIC MODEL</b>	<b>NCOIL MODEL</b>	<b>HYBRID MODEL</b>
IN (4/09)	Ind. Code §§ 27-8-19.8-1 to 27-8-19.8-26 (1994/2003); § 27-1-12-44 (2008) (HB 1379/2008)	Signed by the Governor 3/21/08.		As passed by the House, HB 1379 was amended to reflect the NCOIL model provisions. HB 1379, as engrossed and passed by Senate, includes only provisions related to regulating STOLI transactions as that term is defined in the legislation.	
IA (4/09)	Iowa Code Chapter 508E (2008) (SF 2392/2008)	Signed by Governor 5/10/08.			As passed by the House and Senate, SF 2392 includes the NAIC model's 5-year transactional waiting period definition provision and also includes a definition of STOLI.
KS (4/09)	Kan. Stat. Ann. §§ 40-5001 to 40-5016 (2002/2008) (HB 2110/2008)	Approved by the Governor 4/21/08.		As amended, HB 2110 includes elements of the NCOIL model, including a STOLI definition.	

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<b>STATE</b>	<b>LEGISLATION INTRODUCED/ STATUTE</b>	<b>STATUS</b>	<b>NAIC MODEL</b>	<b>NCOIL MODEL</b>	<b>HYBRID MODEL</b>
KY (4/09)	KY Rev. Stat. §§ 304.15-700 to 304.15-725 (1998/2005/2008) (HB 348/2008)	Signed by the Governor 4/9/08.		Elements of NCOIL model including STOLI definition.	
LA (4/09)					
ME (4/09)	ME. Rev. Stat. Ann. tit. 24-A §§ 6801 – 6819 (1997/2008) (LD 2091/2008)	Signed by the Governor 4/2/08.		As agreed to by the Joint Standing Committee on Insurance and Financial Services, LD 2091, as revised, includes elements of the NCOIL model, such as a STOLI definition and retains the 2-year waiting period.	
MD (4/09)					

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STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
MA (4/09)	HB 1003 pending (2009)	File & referred to Joint Committee on Financial Services, 1/13/09.  <a href="http://www.mass.gov/legis/bills/house/186/ht01pdf/ht01003.pdf">http://www.mass.gov/legis/bills/house/186/ht01pdf/ht01003.pdf</a>			Unclear whether NCOIL or NAIC model based bill. Bill text truncated.
	HB 984 pending (2009)	Filed & referred to Joint Committee on Financial Services, 1/14/09.  <a href="http://www.mass.gov/legis/bills/house/186/ht00pdf/ht00984.pdf">http://www.mass.gov/legis/bills/house/186/ht00pdf/ht00984.pdf</a>			Unclear whether NCOIL or NAIC model based bill. Bill text truncated.
MI (4/09)					
MN (4/09)	SF 166 pending (2009)	Introduction and 1 <sup>st</sup> reading and referred to Commerce and Consumer Protection Cmte 1/22/09; Committee report to pass as amend & re-ref to Judiciary Cmte 2/5/09. Committee report: to pass as amended; 2 <sup>nd</sup> reading, 2/19/09. General orders: to pass as amended, 2/23/09. 3 <sup>rd</sup> reading passed, 2/26/09. Rec'd from Senate, Sen. File 1 <sup>st</sup> reading, referred to Civil Justice, 3/2/09. <b>Committee report, to pass as amended and re-refer to Commerce &amp; Labor, 4/2/09.</b>  <a href="https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S0166.3.html&amp;session=1s86">https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S0166.3.html&amp;session=1s86</a>			Does not totally reflect either the NCOIL model or NAIC model. Takes a different approach by using insurable interest laws with a STOLI definition and different language applying the NAIC model's 5-year transactional waiting period.

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
MN (cont.)	HF 704 pending (2009)	Introduced & 1 <sup>st</sup> reading, ref to Civil Justice, 2/12/09. Authors added, 2/16/09. Author added, 2/23/09. Author added, 2/26/09. Author added, 3/18/09. Author added; see SF166 in House, 3/24/09. <a href="http://wdoc.house.leg.state.mn.us/leg/LS86/HF0704.0.p df">http://wdoc.house.leg.state.mn.us/leg/LS86/HF0704.0.p df</a>			Appears to be a cross-filed bill of SF 166.
	SF 769 pending (2009)	Introduced and 1 <sup>st</sup> reading, referred to Commerce & Consumer Protection, 2/16/09. <a href="https://www.revisor.leg.state.mn.us/bin/showPDF.php">https://www.revisor.leg.state.mn.us/bin/showPDF.php</a>		SF 769 is patterned after provisions in the NCOIL model.	
	HF 1166 pending (2009)	Introduced & 1 <sup>st</sup> reading, referred to Commerce & Labor, 2/26/09. Author stricken, 3/24/09. <a href="http://wdoc.house.leg.state.mn.us/leg/LS86/HF1166.0.p df">http://wdoc.house.leg.state.mn.us/leg/LS86/HF1166.0.p df</a>		HF 1166 is a cross-file of SF 769.	



**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
MS (4/09)					
MO (4/09)					
MT (4/09)	SB 151 pending (2009)	Introduced 12/22/2008. First reading, 1/5/2009. Hearing to be held 1/27/2009. Bill passed as amended, 2/17/09. Passed Senate, 2/21/09. House referred to Business & Labor, 1 <sup>st</sup> reading, 2/23/09. Hearing, 3/20/09. Committee executive action, report – bill concurred, 3/24/09. Passed House, 4/2/09. Signed by Senate President, 4/8/09. Signed by Speaker, 4/9/09. Transmitted to Governor, 4/9/09.  AMENDED VERSION: <a href="http://data.opi.mt.gov/bills/2009/billpdf/SB0151.pdf">http://data.opi.mt.gov/bills/2009/billpdf/SB0151.pdf</a>		SB 151 appears to include elements of the NCOIL model and includes a STOLI definition.	As amended, SB 151 no longer tracks provisions in the NCOIL model.
NE (4/09)	Neb. Rev. Stat. §§ 44-1101 to 44-1117 (2001/2008) (LB 853/2008)	Approved by the Governor 4/17/08.	LB 853 is based on the NAIC Model, including the 5-year transactional waiting period definition provision.		

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
NV (4/09)	SB 388 pending (2009)	Introduced, read 1 <sup>st</sup> time; ref to Commerce & Labor; to printer, 3/23/09. From printer; to committee, 3/24/09. Hearing scheduled for 4/3/09, no action. Next hearing scheduled for 4/8/09.  <a href="http://www.leg.state.nv.us/75th2009/Bills/SB/SB388.pdf">http://www.leg.state.nv.us/75th2009/Bills/SB/SB388.pdf</a>	SB 388 tracks the NAIC model provisions.		
NH (4/09)	HB 660 pending (2009)	Introduced and referred to Commerce and Consumer Affairs, 1/8/2009. Public Hearing: 2/17/09 at 10:00 a.m., 1/29/09. Executive session: 3/17/09 at 1 p.m., 2/10/09. Retained in Committee, 3/18/09.  <a href="http://www.gencourt.state.nh.us/legislation/2009/HB0660.html">http://www.gencourt.state.nh.us/legislation/2009/HB0660.html</a>			HB 660 includes elements of both the NCOIL model with a STOLI definition and the NAIC model with a 5-year transactional waiting period.
	SB 141 pending (2009)	Introduced and referred to Commerce, Labor & Consumer Protection, 1/8/2009. Public Hearing: 2/17/09 at 8:30 a.m., 2/2/09. Comm report; Ought to pass; referred to Committee, 3/5/09. Re-referred to Committee, MA, VV, 3/11/09.  <a href="http://www.gencourt.state.nh.us/legislation/2009/SB0141.html">http://www.gencourt.state.nh.us/legislation/2009/SB0141.html</a>		SB 141 is patterned after the NCOIL model.	

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
NH (cont.)	HB 668 pending (2009)	Introduced and referred to Commerce and Consumer Affairs, 1/8/2009. Public Hearing: 2/17/09 at 11:00 a.m., 1/29/09, Executive session: 3/17/09 at 1 p.m., 2/10/09. Retained in Committee, 3/18/09.  <a href="http://www.gencourt.state.nh.us/legislation/2009/HB0668.html">http://www.gencourt.state.nh.us/legislation/2009/HB0668.html</a>		HB 668 is a cross file of SB 141.	
NJ (4/09)	S2747 pending (2009)				
NM (4/09)	Considering for 2009				
NY (4/09)	A1873 pending (2009)	Introduced and referred to Insurance, 1/12/2009.  <a href="http://assembly.state.ny.us/leg/?bn=a1873">http://assembly.state.ny.us/leg/?bn=a1873</a>	A1873 appears to track elements of the NAIC model without the 5-year transactional definition provision.		

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
NY (cont.)	A7131 pending (2009)	<i>Introduced and referred to Insurance, 3/23/09.</i> <a href="http://www.assembly.state.ny.us/leg/?bn=A07131&amp;sh=t">http://www.assembly.state.ny.us/leg/?bn=A07131&amp;sh=t</a>	A7131 appears to be a cross-file bill of S3655.		
	S3655 pending (2009)	<i>Introduced and referred to Insurance, 3/26/09.</i> <a href="http://assembly.state.ny.us/leg/?bn=S03655&amp;sh=t">http://assembly.state.ny.us/leg/?bn=S03655&amp;sh=t</a>	S3655 appears to be a version of the NAIC model act without the 5-year transactional waiting period provision.		
NC (4/09)					
ND (4/09)	HB 1397 pending (2009)	<i>Introduced, first reading, referred Industry, Business and Labor, 1/12/09. House committee hearing 08:00, 2/2/09. House reported, do not pass, placed on calendar, 2/17/09. 2<sup>nd</sup> reading, failed to pass, 2/19/09.</i> <a href="http://www.legis.nd.gov/assembly/61-2009/bill-text/IBDP0200.pdf">http://www.legis.nd.gov/assembly/61-2009/bill-text/IBDP0200.pdf</a>			HB 1397 is a hybrid of NCOIL model that includes a STOLI definition and the NAIC model because it retains the 5-year transactional waiting period.

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
ND (cont.)	HB 1284 pending (2009)	<p><i>Introduced, first reading, referred Industry, Business and Labor, 1/12/09. House committee hearing 08:00, 2/2/09. House reported back amended, do pass, 2/17/09. 2<sup>nd</sup> reading, passed, 2/19/09. Senate received from House, 2/25/09. Senate introduced, first reading, referred Industry, Business and Labor, 2/26/09. Senate Committee hearing, 10:45, 3/11/09. Reported back amended, do pass, amendment, 3/19/09. Amendment adopted, placed on calendar, 3/23/09. 2<sup>nd</sup> reading, passed as amended, 3/24/09. Returned to House, 3/25/09.</i></p> <p><a href="http://www.legis.nd.gov/assembly/61-2009/bill-text/IBDT0300.pdf">http://www.legis.nd.gov/assembly/61-2009/bill-text/IBDT0300.pdf</a></p>		As introduced, HB 1284 is patterned after the NCOIL model act.	As amended, HB 1284 retains elements of the NAIC model, including the 5-year transactional waiting period provision. It also retains some elements of the NCOIL model by including a STOLI definition.
OH (4/09)	Ohio Rev. Code Ann. §§ 3916.01 – 3916.2 (2000/2008) (HB 404/2008)	Signed by the Governor 6/11/08.			

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

<b>STATE</b>	<b>LEGISLATION INTRODUCED/ STATUTE</b>	<b>STATUS</b>	<b>NAIC MODEL</b>	<b>NCOIL MODEL</b>	<b>HYBRID MODEL</b>
OK (4/09)	Okla. Stat. tit. 36 §§ 4055.3 – 4055.17 (2008) (SB 1980/ 2008)	Signed by the Governor 5/15/08.			As amended and passed by the House, SB 1980 includes elements of the NCOIL model, including a definition of STOLI and the shorter rescission period. It does not include some of the NCOIL model insurer disclosure provisions.
OR (4/09)					
PA (4/09)					
PR (4/09)	Rule 85 (2008)	Effective 4/13/08	Tracks NAIC model provisions.		

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
RI (4/09)	HB 5199 pending (2009)	Introduced and referred to Corporations, 1/28/2009. Scheduled for hearing and/or consideration; Committee recommended measure be held for further study, 3/24/09.  <a href="http://www.rilin.state.ri.us/billtext09/housetext09/h5199.pdf">http://www.rilin.state.ri.us/billtext09/housetext09/h5199.pdf</a>		HB 5199 is patterned after the NCOIL model.	
	SB 229 pending (2009)	Introduced and referred to Corporations, 2/11/09.  <a href="http://www.rilin.state.ri.us/BillText09/SenateText09/SO229.pdf">http://www.rilin.state.ri.us/BillText09/SenateText09/SO229.pdf</a>		SB 229 is patterned after the NCOIL model provisions.	
SC (4/09)	SB 636 pending (2009)	Introduced & read 1 <sup>st</sup> time; referred to Banking & Insurance, 3/31/09.  <a href="http://www.sc.statehouse.gov/secs/118_2009-2010/bills/636.htm">http://www.sc.statehouse.gov/secs/118_2009-2010/bills/636.htm</a>		SB 636 is patterned after the NCOIL model provisions.	
SD (4/09)	Considering for 2009				
TN (4/09)	SB 1368 pending (2009)	Filed for introduction and introduced, 2/12/09; ref to S. C, L&A Comm, 2/18/09.  <a href="http://www.capitol.tn.gov/Bills/106/Bill/HB1526.pdf">http://www.capitol.tn.gov/Bills/106/Bill/HB1526.pdf</a>			SB 1368 is not patterned after either the NAIC model or the NCOIL model, but includes a provision to target STOLI transactions without defining or using that term.

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
TN (cont.)	HB 1526 pending (2009)	Filed for introduction 2/18/09; Introduced 2/19/09. Ref. To Judiciary, 2/23/09. Assigned to s/c Civil Practice and Procedure of JUD, 2/25/09. <a href="http://www.capitol.tn.gov/Bills/106/Bill/HB1526.pdf">http://www.capitol.tn.gov/Bills/106/Bill/HB1526.pdf</a>			HB 1526 is a cross-file of SB 1368.
	SB 2284 pending (2009)	Filed for introduction, Introduced, 2/26/09. PIC, 3/2/09. Placed on S.C. L&A Comm. Cal. For 3/31/09, 3/26/09. Action Def. in S.C., L & A Comm. to 4/7/09, 3/31/09. Placed on S. C, L&A Comm. Cal. For 4/15/09, 4/9/09. <a href="http://www.capitol.tn.gov/Bills/106/Bill/SB2284.pdf">http://www.capitol.tn.gov/Bills/106/Bill/SB2284.pdf</a>			SB 2284 appears to include elements of the NAIC model and the NCOIL model. However, it does not specifically refer to a 5-year transactional waiting period, but provides for a time frame to be set by rule.
	HB 2296 pending (2009)	Filed for introduction, Introduced, PIC, 2/26/09. P2C, ref. S.C. L&A Comm., 3/2/09. P2C, ref. to Judiciary – Gov't Operations for review, 3/4/09. Assigned to s/c Civil Practice and Procedure of JUD, 3/10/09. Sponsor change, 3/12/09. Placed on s/c cal Civil Practice & Procedure of JUD on 3/31/09, 325/09. Action Def. in s/c Civil Practice & Procedure of JUD to 4/14/09, 3/31/09. Placed on s/c cal Civil Practice and Procedure of JUD for 4/14/09, 4/8/09. <a href="http://www.capitol.tn.gov/Bills/106/Bill/HB2296.pdf">http://www.capitol.tn.gov/Bills/106/Bill/HB2296.pdf</a>			HB 2296 is a cross-file of SB 2284.



**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
TX (4/09)	SB 1550 pending (2009)	Filed; rec'd by Sec. of State, 3/9/09. Read 1 <sup>st</sup> time, referred to State Affairs, 3/17/09.  <a href="http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01550L.pdf">http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB01550L.pdf</a>		SB 1550 is patterned after the NCOIL model provisions.	
	HB 2739 pending (2009)	Filed, 3/6/09. Read 1 <sup>st</sup> time, referred to Insurance, 3/17/09.  <a href="http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB02739L.pdf">http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/HB02739L.pdf</a>		HB 2739 appears to be a cross-filed bill of SB 1550.	
UT (4/09)	HB 170 (2009)	Introduced and read 1 <sup>st</sup> time, 2/10/09. To printing w/ fiscal note, 2/12. To standing committee, 2/13/09. Favorable committee, 2/17/09. Comm. report favorable, read 2 <sup>nd</sup> time, 2/18/09. House read 3 <sup>rd</sup> time, amended, passed 3 <sup>rd</sup> reading, 2/25/09. Senate received from House, read 1 <sup>st</sup> time (introduced), 2/25/09. Senate to standing committee, 2/26/09. Amendment recommendation; favorable recommendation, 3/2/09. Sen/comm. report/amended, 3/3/09. Passed Senate w/ House Speaker, 3/9/09. Signed by Sen. President and Prepared, 3/11/09. Enrolled bill returned to House or Senate; enrolled bill to printing, 3/20/09. To Governor, 3/24/09. <b>Signed by Governor, 3/30/09.</b>  <a href="http://le.utah.gov/~2009/bills/hbillenr/hb0170.pdf">http://le.utah.gov/~2009/bills/hbillenr/hb0170.pdf</a>		HB 170 is generally patterned after provisions in the NCOIL model.	

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

<b>STATE</b>	<b>LEGISLATION INTRODUCED/ STATUTE</b>	<b>STATUS</b>	<b>NAIC MODEL</b>	<b>NCOIL MODEL</b>	<b>HYBRID MODEL</b>
VT (4/09)	HB 222 pending (2009)	Read 1 <sup>st</sup> time and referred to Commerce & Econ. Dev., 2/17/09. <a href="http://www.leg.state.vt.us/docs/2010/bills/Intro/H-222.pdf">http://www.leg.state.vt.us/docs/2010/bills/Intro/H-222.pdf</a>			HB 222 includes elements of both the NAIC model and the NCOIL model. Instead of a 5-year transactional waiting period, HB 222 provides for a 3-year period.
VI (4/09)					
VA (4/09)	HB 1864 pending (2009)	Prefiled and ordered printed, referred to Commerce & Labor, 1/12/09. Offered 1/14/09, Stricken from docket by Commerce and Labor by voice vote, 1/22/09. <a href="http://leg1.state.va.us/cgi-bin/legp504.exe?091+fil+HB1864+pdf">http://leg1.state.va.us/cgi-bin/legp504.exe?091+fil+HB1864+pdf</a>			HB 1864 is a hybrid version of the NAIC model and the NCOIL model provisions, with the 5-year transactional definition provision and a STOLI definition.

**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
WA (4/09)	SB 5195 pending (2009)	<p><i>1<sup>st</sup> reading, referred to Financial Institutions, Housing &amp; Insurance, 1/16/09. Scheduled for public hearing in the Senate Committee on Financial Institutions and Housing &amp; Insurance at 3:30 PM. (Subject to change), 1/28/09. Public hearing in the Senate Committee on Financial Institutions and Housing &amp; Insurance at 10:00 a.m., 2/3/09. Executive action taken in the Senate Committee on Financial Institutions and Housing &amp; Insurance at 10:00 AM., 2/10/09. FIHI - Majority; 1st substitute bill be substituted, do pass. (View 1st Substitute) Passed to Rules Committee for second reading, 2/11/09. Placed on 2<sup>nd</sup> reading by Rules Comm., 2/17/09. Passed Senate, 3/2/09. 1<sup>st</sup> reading, ref to Financial Institutions &amp; Ins., 3/4/09. Public hearing in the House Committee on Financial Institutions &amp; Insurance at 8 a.m., 3/17/09. Scheduled for Executive session at 1:30 p.m., 3/19/09. Referred to General Gov't Appropriations, 3/23/09. Public hearing @ 1:30 p.m., 3/24/09. Executive action taken by Committee at 1:30, Majority do pass, minority without recommendation, 3/26/09. Passed to Rules Committee for 2<sup>nd</sup> reading, 3/30/09. Placed on 2<sup>nd</sup> reading by Rules, 4/6/09. Rules suspended; Placed on 3<sup>rd</sup> reading; 3<sup>rd</sup> reading passed, 4/7/09. President signed, 4/9/09.</i></p> <p><a href="http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Bills/5195.pdf">http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Bills/5195.pdf</a></p> <p>Senate substitute: <a href="http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Bills/5195-S.pdf">http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Bills/5195-S.pdf</a></p>		SB 5195 tracks NCOIL model provisions, including a STOLI definition.	
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**VIATICAL SETTLEMENTS/STOLI  
2009 LEGISLATION**

STATE	LEGISLATION INTRODUCED/ STATUTE	STATUS	NAIC MODEL	NCOIL MODEL	HYBRID MODEL
WV (4/09)	W. V.A. Code §§ 33-13C-1 to 33-13C-18 (2008) (SB 704/2008)	Signed by the Governor 3/13/08.			As passed by the Senate and signed by the Governor, SB 704 is now a hybrid version of the NAIC and NCOIL models, with the NAIC 5-year transactional waiting period definition provision and a STOLI definition.
	HB 2824 pending (2009)	Introduced and to Committee on Banking & Insurance, 2/25/09. Committee do pass; to Judiciary, 3/5/09. <a href="http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2824%20intr.htm&amp;yr=2009&amp;sessstype=RS&amp;t=2824">http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2824%20intr.htm&amp;yr=2009&amp;sessstype=RS&amp;t=2824</a>			HB 2824 provides authorization for the Insurance Commissioner to promulgate a legislative rule relating to Viatical settlements.
WI (4/09)					
WY (4/09)	Will not be introducing in 2009				

Please note that the language in this color reflects changes from the 3/27/09 viatical/life settlement legislative tracking chart.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted. The NAIC attempts to provide current information; however, readers should consult state law for additional adoptions.