

HOUSE No. 1003

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to viatical settlements ..

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

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2 Official Edition, are hereby repealed.

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

5 Chapter 175L

6 Viatical Settlements Act

7 Section 1. Short Title

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

9 Section 2. Definitions

10 A. “Advertising” means any written, electronic or printed communication or any
11 communication by means of recorded telephone messages or transmitted on radio, television, the
12 Internet or similar communications media, including film strips, motion pictures and videos,

13 published, disseminated, circulated or placed directly before the public, in this state, for the
14 purpose of creating an interest in or inducing a person to sell, assign, devise, bequest or transfer
15 the death benefit or ownership of a life insurance policy pursuant to a viatical settlement
16 contract.

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

22 C. “Chronically ill” means:

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

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

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

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

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

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

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

38 (2) “Financing entity” does not include a non-accredited investor or a viatical
39 settlement purchaser.

40 F. “Fraudulent viatical settlement act” includes:

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

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

49 (i) An application for the issuance of a viatical settlement contract or insurance
50 policy;

51 (ii) The underwriting of a viatical settlement contract or insurance policy;

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

- 54 (iv) Premiums paid on an insurance policy,;
- 55 (v) Payments and changes in ownership or beneficiary made in accordance with the
56 terms of a viatical settlement contract, or insurance policy;
- 57 (vi) The reinstatement or conversion of an insurance policy;
- 58 (vii) In the solicitation, offer, effectuation or sale of a viatical settlement contract, or
59 insurance policy;
- 60 (viii) The issuance of written evidence of viatical settlement contractor insurance; or
- 61 (ix) A financing transaction; and
- 62 (b) Employing any plan, financial structure, device, scheme, or artifice to defraud
63 related to viaticated policies
- 64 (c) ENTERING INTO ANY PRACTICE OR PLAN WHICH INVOLVES STRANGER-
65 ORIGINATED LIFE INSURANCE; AND
- 66 (d) FAILING TO DISCLOSE TO THE INSURER WHEN REQUESTED BY THE
67 INSURER THAT THE PROSPECTIVE INSURED HAS UNDERGONE A LIFE
68 EXPECTANCY EVALUATION BY ANY PERSON OR ENTITY OTHER THAN THE
69 INSURER OR ITS AUTHORIZED REPRESENTATIVES IN CONNECTION WITH THE
70 ISSUANCE OF THE POLICY.
- 71 (2) In the furtherance of a fraud or to prevent the detection of a fraud any person
72 commits or permits its employees or its agents to:

73 Remove, conceal, alter, destroy or sequester from the commissioner the assets or records
74 of a licensee or other person engaged in the business of viatical settlements;

75 Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or
76 other person;

77 Transact the business of viatical settlements in violation of laws requiring a license,
78 certificate of authority or other legal authority for the transaction of the business of viatical
79 settlements; or

80 File with the commissioner or the equivalent chief insurance regulatory official of
81 another jurisdiction a document containing false information or otherwise conceals information
82 about a material fact from the commissioner;

83 (3) Embezzlement, theft, misappropriation or conversion of monies, funds,
84 premiums, credits or other property of a viatical settlement provider, insurer, insured, viator,
85 insurance policyowner or any other person engaged in the business of viatical settlements or
86 insurance;

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

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

98 (6) Attempting to commit, assisting, aiding or abetting in the commission of, or
99 conspiracy to commit the acts or omissions specified in this subsection.

100 G. "Life insurance producer" means any person licensed in this state as a resident or
101 nonresident insurance producer who has received qualification or authority for life insurance
102 coverage or a life line of coverage pursuant to this chapter.

103 H. "Person" means a natural person or a legal entity, including, without limitation, an
104 individual, partnership, limited liability company, association, trust, or corporation.

105 I. "Policy" means an individual or group policy, group certificate, contract or
106 arrangement of life insurance owned by a resident of this state, regardless of whether delivered
107 or issued for delivery in this state.

108 J. "Related provider trust" means a titling trust or other trust established by a
109 licensed viatical settlement provider or a financing entity for the sole purpose of holding the
110 ownership or beneficial interest in purchased policies in connection with a financing transaction.
111 The trust shall have a written agreement with the licensed viatical settlement provider under
112 which the licensed viatical settlement provider is responsible for ensuring compliance with all
113 statutory and regulatory requirements and under which the trust agrees to make all records and
114 files related to viatical settlement transactions available to the commissioner as if those records
115 and files were maintained directly by the licensed viatical settlement provider.

116 K. “Special purpose entity” means a corporation, partnership, trust, limited liability
117 company or other similar entity formed solely to provide either directly or indirectly access to
118 institutional capital markets:

119 (1) For a financing entity or licensed viatical settlement provider; or

120 (2) (i) In connection with a transaction in which the securities in the special
121 purposes entity are acquired by the viator or by “qualified institutional buyers” as defined in
122 Rule 144 promulgated under the Securities Act of 1933, as amended; or

123 (ii) The securities pay a fixed rate of return commensurate with established asset-
124 backed institutional capital markets.

125 “STRANGER-ORIGINATED LIFE INSURANCE”, OR “STOLI”, MEANS A
126 PRACTICE OR A PLAN TO INITIATE A LIFE INSURANCE POLICY FOR THE BENEFIT
127 OF A THIRD PARTY INVESTOR WHO, AT THE TIME OF POLICY ORIGINATION, HAS
128 NO INSURABLE INTEREST IN THE INSURED. STOLI PRACTICES INCLUDE BUT ARE
129 NOT LIMITED TO CASES IN WHICH LIFE INSURANCE IS PURCHASED WITH
130 RESOURCES OR GUARANTEES FROM OR THROUGH A PERSON OR ENTITY WHO,
131 AT THE TIME OF POLICY INCEPTION, COULD NOT LAWFULLY INITIATE THE
132 POLICY HIMSELF OR ITSELF, AND WHERE, AT THE TIME OF POLICY INCEPTION,
133 THERE IS AN ARRANGEMENT OR AGREEMENT, WHETHER VERBAL OR WRITTEN,
134 TO DIRECTLY OR INDIRECTLY TRANSFER THE OWNERSHIP OF THE POLICY
135 AND/OR THE POLICY BENEFITS TO A THIRD PARTY. TRUSTS THAT ARE CREATED
136 TO GIVE THE APPEARANCE OF INSURABLE INTEREST, AND ARE USED TO
137 INITIATE POLICIES FOR INVESTORS, VIOLATE INSURABLE INTEREST LAWS AND

138 THE PROHIBITION AGAINST WAGERING ON LIFE. STOLI ARRANGEMENTS DO
139 NOT INCLUDE THOSE PRACTICES SET FORTH IN SECTION 2 O(3) OF THIS ACT

140

141 “Terminally ill” means having an illness or sickness that can reasonably be expected to
142 result in death in twenty-four (24) months or less.

143 N. “Viatical settlement broker” means a person, including a life insurance producer
144 as provided for in Section 3 of this Chapter, who working exclusively on behalf of a viator and
145 for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical
146 settlement contracts between a viator and one or more viatical settlement providers or one or
147 more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement
148 broker is compensated, a viatical settlement broker is deemed to represent only the viator, and
149 not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act
150 according to the viator’s instructions and in the best interest of the viator. The term does not
151 include an attorney, certified public accountant or a financial planner accredited by a nationally
152 recognized accreditation agency, who is retained to represent the viator and whose compensation
153 is not paid directly or indirectly by the viatical settlement provider.

154 O. (1) “Viatical settlement contract” means a written agreement between a viator
155 and a viatical settlement provider or any affiliate of the viatical settlement provider establishing
156 the terms under which compensation or anything of value is or will be paid, which compensation
157 or value is less than the expected death benefits of the policy, in return for the viator’s present or
158 future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any
159 portion of the insurance policy or certificate of insurance. “VIATICAL SETTLEMENT

160 CONTRACT” ALSO INCLUDES THE TRANSFER FOR COMPENSATION OR VALUE OF
161 OWNERSHIP OR BENEFICIAL INTEREST IN A TRUST OR OTHER ENTITY THAT
162 OWNS SUCH POLICY IF THE TRUST OR OTHER ENTITY WAS FORMED OR AVOIDED
163 OF FOR THE PRINCIPAL PURPOSE OF ACQUIRING ONE OR MORE LIFE INSURANCE
164 CONTRACTS, WHICH LIFE INSURANCE CONTRACT INSURES THE LIFE OF A
165 PERSON RESIDING IN THIS STATE.

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

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

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

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

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

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

176 (i) Premiums for the policy;

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

181 A loan made by a bank or other licensed financial institution in which the lender takes an
182 interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on
183 the loan and the policy is transferred, the transfer of such a policy by the lender, provided that
184 NEITHER the default itself NOR THE TRANSFER OF THE POLICY IN CONNECTION
185 WITH SUCH DEFAULT is pursuant to an agreement or understanding with any other person for
186 the purpose of evading regulation under this Act;

187 A loan made by a lender that does not violate Chapter 255C, provided that the premium
188 finance loan is not described in Paragraph (2) of this subsection;

189 (e) An agreement where all the parties (x) are closely related to the insured by blood
190 or law or (y) have a lawful substantial economic interest in the continued life, health and bodily
191 safety of the person insured, or are trusts established primarily for the benefit of such parties;

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

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

196 (i) Between one or more shareholders in a corporation or between a corporation and
197 one or more of its shareholders or one or more trust established by its shareholders;

198 (ii) Between one or more partners in a partnership or between a partnership and one
199 or more of its partners or one or more trust established by its partners; or

200 (iii) Between one or more members in a limited liability company or between a
201 limited liability company and one or more of its members or one or more trust established by its
202 members;

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

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

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

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

212 A bank, savings bank, savings and loan association, credit union, other licensed lending
213 institution that takes an assignment of a life insurance policy solely as collateral for a loan;

214 A premium finance company making premium finance loans and exempted by the
215 commissioner from the licensing requirement under the premium finance laws that takes an
216 assignment of a life insurance policy solely as collateral for a loan;

217 (c) The issuer of the life insurance policy ;

218 (d) An authorized or eligible insurer that provides stop loss coverage or financial
219 guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose
220 entity or related provider trust;

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

224 (f) A financing entity;

225 (g) A special purpose entity;

226 (h) A related provider trust;

227 (i) A viatical settlement purchaser; or

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

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

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

241 (2) “Viator” does not include:

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

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

246 (c) A financing entity;

247 (d) A special purpose entity; or

248 (e) A related provider trust.

249 Section 3. License and Bond Requirements

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

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

258 (b) Not later than thirty (30) days from the first day of operating as a viatical
259 settlement broker, the life insurance producer shall notify the commissioner that he or she is
260 acting as a viatical settlement broker on a form prescribed by the commissioner, and the
261 commissioner shall collect from the applicant and pay to the commonwealth charges and fees to
262 be determined annually by the commissioner of administration under the provision of section

263 three B of chapter seven. Notification shall include an acknowledgement by the life insurance
264 producer that he or she will operate as a viatical settlement broker in accordance with this
265 Chapter.

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

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

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

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

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

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

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

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

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

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

302 (4) (a) If a viatical settlement provider, has demonstrated evidence of financial
303 responsibility in a format prescribed by the commissioner through either a surety bond executed

304 and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash,
305 certificates of deposit or securities or any combination thereof in the amount of \$250,000.

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

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

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

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

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

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

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

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

339 Section 4. License Revocation and Denial

340 A. The commissioner may refuse to issue, suspend, revoke or refuse to renew the
341 license of a viatical settlement provider or viatical settlement broker if the commissioner finds
342 that:

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

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

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

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

353 (5) The viatical settlement provider has entered into any viatical settlement contract
354 that has not been approved pursuant to this Chapter;

355 (6) The viatical settlement provider has failed to honor contractual obligations set out
356 in a viatical settlement contract;

357 (7) The licensee no longer meets the requirements for initial licensure;

358 (8) The viatical settlement provider has assigned, transferred or pledged a viaticated
359 policy to a person other than a viatical settlement provider licensed in this state, viatical
360 settlement purchaser, an accredited investor or qualified institutional buyer as defined
361 respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933,
362 as amended, financing entity, special purpose entity, or related provider trust; or

363 (9) The licensee or any officer, partner, member or key management personnel has
364 violated any provision of this Chapter.

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

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

375 Section 5. Approval of Viatical Settlement Contracts and Disclosure Statements

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

383 Section 6. Reporting Requirements and Privacy

384 A. FOR ANY POLICY SETTLED WITHIN FIVE (5) YEARS OF POLICY
385 ISSUANCE, each viatical settlement provider shall file with the commissioner on or before
386 March 1 of each year an annual statement containing such information as the commissioner may

387 prescribe by regulation. IN ADDITION TO ANY OTHER REQUIREMENTS, THE ANNUAL
388 STATEMENT SHALL SPECIFY THE TOTAL NUMBER, AGGREGATE FACE AMOUNT
389 AND LIFE SETTLEMENT PROCEEDS OF POLICIES SETTLED DURING THE
390 IMMEDIATELY PRECEDING CALENDAR YEAR, TOGETHER WITH A BREAKDOWN
391 OF THE INFORMATION BY POLICY ISSUE YEAR. THE ANNUAL STATEMENT
392 SHALL ALSO INCLUDE THE NAMES OF THE INSURANCE COMPANIES WHOSE
393 POLICIES HAVE BEEN SETTLED AND THE VIATICAL SETTLEMENT BROKERS THAT
394 HAVE SETTLED SAID POLICIES. Such information shall be limited to only those transactions
395 where the viator is a resident of this state. Individual transaction data regarding the business of
396 viatical settlements or data that could compromise the privacy of personal, financial and health
397 information of the viator or insured shall be filed with the commissioner on a confidential basis.

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

403 (1) Is necessary to effect a viatical settlement between the viator and a viatical
404 settlement provider and the viator and insured have provided prior written consent to the
405 disclosure;

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

408 (3) Is a term of or condition to the transfer of a policy by one viatical settlement
409 provider to another viatical settlement provider;

410 (4) Is necessary to permit a financing entity, related provider trust or special purpose
411 entity to finance the purchase of policies by a viatical settlement provider and the viator and
412 insured have provided prior written consent to the disclosure;

413 (5) Is necessary to allow the viatical settlement provider or viatical settlement broker
414 or their authorized representatives to make contacts for the purpose of determining health status;
415 or

416 (6) Is required to purchase stop loss coverage or financial guaranty insurance.

417 Section 7. Examination or Investigations

418 A. Authority, Scope and Scheduling of Examinations

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

422 (b) In scheduling and determining the nature, scope, and frequency of the
423 examinations, the commissioner shall consider such matters as the consumer complaints, results
424 of financial statement analyses and ratios, changes in management or ownership, actuarial
425 opinions, report of independent certified public accountants, and other relevant criteria as
426 determined by the commissioner.

427 (2) For purposes of completing an examination of a licensee under this Chapter, the
428 commissioner may examine or investigate any person, or the business of any person, in so far as

429 the examination or investigation is, in the sole discretion of the commissioner, necessary or
430 material to the examination of the licensee.

431 (3) In lieu of an examination under this Chapter of any foreign or alien licensee
432 licensed in this state, the commissioner may, at the commissioner's discretion, accept an
433 examination report on the licensee as prepared by the commissioner for the licensee's state of
434 domicile or port-of-entry state.

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

438 B. Record Retention Requirements

439 A person required to be licensed by this Chapter shall for five (5) years retain copies of
440 all:

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

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

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

447 This section does not relieve a person of the obligation to produce these documents to the
448 commissioner after the retention period has expired if the person has retained the documents.

449 Records required to be retained by this section must be legible and complete and may be
450 retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by
451 any process that accurately reproduces or forms a durable medium for the reproduction of a
452 record.

453 C. Conduct of Examinations

454 (1) Upon determining that an examination should be conducted, the commissioner
455 shall issue an examination warrant appointing one or more examiners to perform the examination
456 and instructing them as to the scope of the examination. In conducting the examination, the
457 examiner shall observe those guidelines and procedures set forth in the Examiners Handbook
458 adopted by the National Association of Insurance Commissioners (NAIC). The commissioner
459 may also employ such other guidelines or procedures as the commissioner may deem
460 appropriate.

461 (2) Every licensee or person from whom information is sought, its officers, directors
462 and agents shall provide to the examiners timely, convenient and free access at all reasonable
463 hours at its offices to all books, records, accounts, papers, documents, assets and computer or
464 other recordings relating to the property, assets, business and affairs of the licensee being
465 examined. The officers, directors, employees and agents of the licensee or person shall facilitate
466 the examination and aid in the examination so far as it is in their power to do so. The refusal of a
467 licensee, by its officers, directors, employees or agents, to submit to examination or to comply
468 with any reasonable written request of the commissioner shall be grounds for suspension or
469 refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical
470 settlement business or other business subject to the commissioner's jurisdiction. Any

471 proceedings for suspension, revocation or refusal of any license or authority shall be conducted
472 pursuant to Chapter 30A.

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

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

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

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

492 D. Examination Reports

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

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

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

507 E. Confidentiality of Examination Information

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

511 (2) Except as otherwise provided in this Chapter, all examination reports, working
512 papers, recorded information, documents and copies thereof produced by, obtained by or
513 disclosed to the commissioner or any other person in the course of an examination made under
514 this Chapter, or in the course of analysis or investigation by the commissioner of the financial

515 condition or market conduct of a licensee shall be confidential by law and privileged, shall not be
516 subject to clause Twenty-sixth of section seven of chapter four and chapter sixty-six, shall not be
517 subject to subpoena, and shall not be subject to discovery or admissible in evidence in any
518 private civil action. The commissioner is authorized to use the documents, materials or other
519 information in the furtherance of any regulatory or legal action brought as part of the
520 commissioner's official duties.

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

525 (a) Created, produced or obtained by or disclosed to the NAIC and its affiliates and
526 subsidiaries in the course of assisting an examination made under this Chapter, or assisting a
527 commissioner in the analysis or investigation of the financial condition or market conduct of a
528 licensee; or

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

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

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

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

539 (a) May share documents, materials or other information, including the confidential
540 and privileged documents, materials or information subject to Subsection E(1), with other state,
541 federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries,
542 and with state, federal and international law enforcement authorities, provided that the recipient
543 agrees to maintain the confidentiality and privileged status of the document, material,
544 communication or other information;

545 (b) May receive documents, materials, communications or information, including
546 otherwise confidential and privileged documents, materials or information, from the NAIC and
547 its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign
548 or domestic jurisdictions, and shall maintain as confidential or privileged any document, material
549 or information received with notice or the understanding that it is confidential or privileged
550 under the laws of the jurisdiction that is the source of the document, material or information; and

551 (c) May enter into agreements governing sharing and use of information consistent
552 with this subsection.

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

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

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

565 F. Conflict of Interest

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

570 (a) A viator;

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

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

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

578 G. Cost of Examinations

579 The charge for each such examination shall be determined annually by the commissioner
580 of administration under the provision of section three B of chapter seven, and shall be paid by
581 each company within thirty days after notice from the commissioner of such charge. Such charge
582 shall include an amount equal to the cost of fringe benefits as established by the commissioner of
583 administration pursuant to section six B of chapter twenty-nine. If in the course of an
584 examination of a domestic company or foreign company which maintains a branch office outside
585 the commonwealth, it becomes necessary or expedient for the commissioner or any deputies or
586 examiners to travel outside the commonwealth, such company shall pay the proper expenses of
587 the commissioner, or any deputies or examiners incurred by reason thereof. Whenever the
588 commissioner deems it advisable the commissioner shall cause a complete audit of the books of
589 the company to be made by a disinterested expert accountant, and such company shall pay the
590 proper expenses of such audit. When making an examination under this chapter, the
591 commissioner may retain attorneys, appraisers independent actuaries, independent certified
592 public accountants and other professionals and specialists as examiners, the proper cost of which
593 shall be borne by the company which is the subject of the examination.

594 H. Immunity from Liability

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

599 (2) No cause of action shall arise, nor shall any liability be imposed against any
600 person for the act of communicating or delivering information or data to the commissioner or the

601 commissioner’s authorized representative or examiner pursuant to an examination made under
602 this Chapter, if the act of communication or delivery was performed in good faith and without
603 fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way
604 any common law or statutory privilege or immunity heretofore enjoyed by any person identified
605 in Paragraph (1).

606 (3) A person identified in Paragraph (1) or (2) shall be entitled to an award of
607 attorney’s fees and costs if he or she is the prevailing party in a civil cause of action for libel,
608 slander or any other relevant tort arising out of activities in carrying out the provisions of this
609 Chapter and the party bringing the action was not substantially justified in doing so. For purposes
610 of this section a proceeding is “substantially justified” if it had a reasonable basis in law or fact at
611 the time that it was initiated.

612 I. Investigative Authority of the Commissioner

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

615 Section 8. Disclosure to Viator

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

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

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

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

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

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

633 (6) The viator has the right to rescind a viatical settlement contract before the earlier
634 of sixty (60) calendar days after the date upon which the viatical settlement contract is executed
635 by all parties or thirty (30) calendar days after the viatical settlement proceeds have been paid to
636 the viator, as provided in Section 10F. Rescission, if exercised by the viator, is effective only if
637 both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans
638 and loan interest paid on account of the viatical settlement within the rescission period. If the
639 insured dies during the rescission period, the viatical settlement contract shall be deemed to have
640 been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement
641 proceeds and any premiums, loans and loan interest the viatical settlement within sixty (60) days
642 of the insured's death.

643 (7) Funds will be sent to the viator within three (3) business days after the viatical
644 settlement provider has received the insurer or group administrator’s written acknowledgment
645 that ownership of the policy or interest in the certificate has been transferred and the beneficiary
646 has been designated.

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

650 (9) Disclosure to a viator shall include distribution of a brochure describing the
651 process of viatical settlements. The NAIC’s form for the brochure shall be used unless another
652 form is developed or approved by the commissioner.

653 (10) The disclosure document shall contain the following language: “All medical,
654 financial or personal information solicited or obtained by a viatical settlement provider or
655 viatical settlement broker about an insured, including the insured’s identity or the identity of
656 family members, a spouse or a significant other may be disclosed as necessary to effect the
657 viatical settlement between the viator and the viatical settlement provider. If you are asked to
658 provide this information, you will be asked to consent to the disclosure. The information may be
659 provided to someone who buys the policy or provides funds for the purchase. You may be asked
660 to renew your permission to share information every two years.”

661 (11) Following execution of a viatical contract, the insured may be contacted for the
662 purpose of determining the insured’s health status and to confirm the insured’s residential or
663 business street address and telephone number, or as otherwise provided in this Chapter. This
664 contact shall be limited to once every three (3) months if the insured has a life expectancy of

665 more than one year, and no more than once per month if the insured has a life expectancy of one
666 year or less. All such contracts shall be made only by a viatical settlement provider licensed in
667 the state in which the viator resided at the time of the viatical settlement, or by the authorized
668 representative of a duly licensed viatical settlement provider.

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

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

675 (2) The document shall include the name, business address and telephone number of
676 the viatical settlement provider;

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

682 (5) State the dollar amount of the current death benefit payable to the viatical
683 settlement provider under the policy or certificate. If known, the viatical settlement provider
684 shall also disclose the availability of any additional guaranteed insurance benefits, the dollar
685 amount of any accidental death and dismemberment benefits under the policy or certificate and

686 the extent to which the viator's interest in those benefits will be transferred as a result of the
687 viatical settlement contract; and

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

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

696 (1) The name, business address and telephone number of the viatical settlement
697 broker;

698 (2) A full, complete and accurate description of all offers, counter-offers, acceptances
699 and rejections relating to the proposed viatical settlement contract;

700 (3) A written disclosure of any affiliations or contractual arrangements between the
701 viatical settlement broker and any person making an offer in connection with the proposed
702 viatical settlement contracts;

703 (4) The amount and method of calculating the broker's compensation, which term
704 "compensation" includes anything of value paid or given to a viatical settlement broker for the
705 placement of a policy; and

706 (5) Where any portion of the viatical settlement broker's compensation, as defined in
707 Paragraph (3) of this subsection, is taken from a proposed viatical settlement offer, the broker
708 shall disclose the total amount of the viatical settlement offer and the percentage of the viatical
709 settlement offer comprised by the viatical settlement broker's compensation.

710 D. If the viatical settlement provider transfers ownership or changes the beneficiary
711 of the insurance policy, the provider shall communicate in writing the change in ownership or
712 beneficiary to the insured within twenty (20) days after the change.

713 Section 9. Disclosure to Insurer

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

720 Section 10. General Rules

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

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

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

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

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

740 (4) The insurer shall respond to a request for verification of coverage submitted on an
741 approved form by a viatical settlement provider or viatical settlement broker within thirty (30)
742 calendar days of the date the request is received and shall indicate whether, based on the medical
743 evidence and documents provided, the insurer intends to pursue an investigation at this time
744 regarding the validity of the insurance contract or possible fraud. The insurer shall accept a
745 request for verification of coverage made on an NAIC form or any other form approved by the
746 commissioner. The insurer shall accept an original or facsimile or electronic copy of such request
747 and any accompanying authorization signed by the viator. Failure by the insurer to meet its

748 obligations under this subsection shall be a violation of Section 11C and Section 16 of this
749 Chapter.

750 (5) Prior to or at the time of execution of the viatical settlement contract, the viatical
751 settlement provider shall obtain a witnessed document in which the viator consents to the viatical
752 settlement contract, represents that the viator has a full and complete understanding of the
753 viatical settlement contract, that he or she has a full and complete understanding of the benefits
754 of the life insurance policy, acknowledges that he or she is entering into the viatical settlement
755 contract freely and voluntarily and, for persons with a terminal or chronic illness or condition,
756 acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic
757 illness or condition was diagnosed after the life insurance policy was issued.

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

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

763 C. All viatical settlement contracts entered into in this state shall provide the viator
764 with an absolute right to rescind the contract before the earlier of sixty (60) calendar days after
765 the date upon which the viatical settlement contract is executed by all parties or thirty (30)
766 calendar days after the viatical settlement proceeds have been sent to the viator as provided in
767 Section 10F. Rescission by the viator may be conditioned upon the viator both giving notice and
768 repaying to the viatical settlement provider within the rescission period all proceeds of the
769 settlement and any premiums, loans and loan interest paid by or on behalf of the viatical

770 settlement provider in connection with or as a consequence of the viatical settlement. If the
771 insured dies during the rescission period, the viatical settlement contract shall be deemed to have
772 been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement
773 proceeds, and any premiums, loans and loan interest that have been paid by the viatical
774 settlement provider, which shall be paid within sixty (60) calendar days of the death of the
775 insured. In the event of any rescission, if the viatical settlement provider has paid commissions
776 or other compensation to a viatical settlement broker in connection with the rescinded
777 transaction, the viatical settlement broker shall refund all such commissions and compensation to
778 the viatical settlement provider within five business days following receipt of written demand
779 from the viatical settlement provider, which demand shall be accompanied by either the viator's
780 notice of rescission if rescinded at the election of the viator, or notice of the death of the insured
781 if rescinded by reason of the death of the insured within the applicable rescission period.

782

783 E. The viatical settlement provider shall instruct the viator to send the executed
784 documents required to effect the change in ownership, assignment or change in beneficiary
785 directly to the independent escrow agent. Within three (3) business days after the date the escrow
786 agent receives the document (or from the date the viatical settlement provider receives the
787 documents, if the viator erroneously provides the documents directly to the provider), the
788 provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust
789 account maintained in a state or federally-chartered financial institution whose deposits are
790 insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement
791 proceeds into the escrow account, the escrow agent shall deliver the original change in
792 ownership, assignment or change in beneficiary forms to the viatical settlement provider or

793 related provider trust or other designated representative of the viatical settlement provider. Upon
794 the escrow agent's receipt of the acknowledgment of the properly completed transfer of
795 ownership, assignment or designation of beneficiary from the insurance company, the escrow
796 agent shall pay the settlement proceeds to the viator.

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

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

814 Section 11. Prohibited Practices

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

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

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

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

828 (b) The viator's spouse dies;

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

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

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

833 (f) A final order, judgment or decree is entered by a court of competent jurisdiction,
834 on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or

835 approving a petition seeking reorganization of the viator or appointing a receiver, trustee or
836 liquidator to all or a substantial part of the viator's assets; or

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

840 (a) Policy premiums have been funded exclusively with unencumbered assets,
841 including an interest in the life insurance policy being financed only to the extent of its net cash
842 surrender value, provided by, or fully recourse liability incurred by, the insured or a person
843 described in Section 2-O (3)(e);

844 (b) There is no agreement or understanding with any other person to guarantee any
845 such liability or to purchase, or stand ready to purchase, the policy, including through an
846 assumption or forgiveness of the loan; and

847 (c) Neither the insured nor the policy has been evaluated for settlement.

848 B. Copies of the independent evidence described in Subsection A(2) and documents
849 required by Section 10A shall be submitted to the insurer when the viatical settlement provider
850 or other party entering into a viatical settlement contract with a viator submits a request to the
851 insurer for verification of coverage. The copies shall be accompanied by a letter of attestation
852 from the viatical settlement provider that the copies are true and correct copies of the documents
853 received by the viatical settlement provider.

854 C. If the viatical settlement provider submits to the insurer a copy of the owner or
855 insured's certification described in and the independent evidence required by Subsection A(2)

856 when the provider submits a request to the insurer to effect the transfer of the policy or certificate
857 to the viatical settlement provider, the copy shall be deemed to conclusively establish that the
858 viatical settlement contract satisfies the requirements of this section and the insurer shall timely
859 respond to the request.

860 D. No insurer may, as a condition of responding to a request for verification of
861 coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require
862 that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms,
863 disclosures, consent or waiver form that has not been expressly approved by the commissioner
864 for use in connection with viatical settlement contracts in this state.

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

871 Section 12. Prohibited Practices and Conflicts of Interest

872 A. With respect to any viatical settlement contract or insurance policy, no viatical
873 settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or
874 make a sale to any viatical settlement provider, financing entity or related provider that is
875 controlling, controlled by, or under common control with such viatical settlement broker.

876 B. With respect to any viatical settlement contract or insurance policy, no viatical
877 settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in

878 connection with such viatical settlement contract, anything of value will be paid to a viatical
879 settlement broker that is controlling, controlled by, or under common control with such viatical
880 settlement provider, financing entity or related provider trust that is involved in such viatical
881 settlement contract.

882 C. A violation of Subsection A or Subsection B shall be deemed a fraudulent viatical
883 settlement act.

884 D. NO PERSON SHALL ISSUE, SOLICIT, MARKET OR OTHERWISE PROMOTE
885 THE PURCHASE OF AN INSURANCE POLICY FOR THE PURPOSE OF OR WITH AN
886 EMPHASIS ON SETTTLING THE POLICY.

887 E. NO PERSON SHALL ENTER INTO A PREMIUM FINANCE AGREEMENT WITH
888 ANY OTHER PERSON OR AGENCY, OR ANY PERSON AFFILIATED WITH SUCH
889 PERSON OR AGENCY, PURSUANT TO WHICH SUCH PERSON SHALL RECEIVE ANY
890 PROCEEDS, FEES OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY, FROM
891 THE POLICY OR OWNER OF THE POLICY OR ANY OTHER PERSON WITH RESPECT
892 TO THE PREMIUM FINANCE AGREEMENT OR ANY VIATICAL SETTLEMENT
893 CONTRACT OR OTHER TRANSACTION RELATED TO SUCH POLICY THAT ARE IN
894 ADDITION TO THE AMOUNTS REQUIRED TO PAY THE PRINCIPAL, INTEREST AND
895 SERVICES CHARGES RELATED TO POLICY PREMIUMS PURSUANT TO THE
896 PREMIUM FINANCE AGREEMENT OR SUBSEQUENT SALE OF SUCH AGREEMENT;
897 PROVIDED, FURTHER, THAT ANY PAYMENTS, CHARGES, FEES OR OTHER
898 AMOUNTS IN ADDITION TO THE AMOUNTS REQUIRED TO PAY THE PRINCIPAL,
899 INTEREST AND SERVICE CHARGES RELATED TO POLICY PREMIUMS PAID UNDER

900 THE PREMIUM FINANCE AGREEMENT SHALL BE REMITTED TO THE ORIGINAL
901 OWNER OF THE POLICY OR TO HIS OR HER ESTATE IF HE OR SHE IS NOT LIVING
902 AT THE TIME OF THE DETERMINATION OF OVERPAYMENT.

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

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

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

918 Section 13. Advertising for Viatical Settlements

919 The purpose of this section is to provide prospective viators with clear and unambiguous
920 statements in the advertisement of viatical settlements and to assure the clear, truthful and
921 adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement

922 contract bought or sold. This purpose is intended to be accomplished by the establishment of
923 guidelines and standards of permissible and impermissible conduct in the advertising of viatical
924 settlements to assure that product descriptions are presented in a manner that prevents unfair,
925 deceptive or misleading advertising and is conducive to accurate presentation and description of
926 viatical settlements through the advertising media and material used by viatical settlement
927 licensees.

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

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

941 C. Advertisements shall be truthful and not misleading in fact or by implication. The
942 form and content of an advertisement of a viatical settlement contract shall be sufficiently
943 complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead

944 or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be
945 determined by the commissioner from the overall impression that the advertisement may be
946 reasonably expected to create upon a person of average education or intelligence within the
947 segment of the public to which it is directed.

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

951 (1) An advertisement shall not omit material information or use words, phrases,
952 statements, references or illustrations if the omission or use has the capacity, tendency or effect
953 of misleading or deceiving viators as to the nature or extent of any benefit, loss covered,
954 premium payable, or state or federal tax consequence. The fact that the viatical settlement
955 contract offered is made available for inspection prior to consummation of the sale, or an offer is
956 made to refund the payment if the viator is not satisfied or that the viatical settlement contract
957 includes a “free look” period that satisfies or exceeds legal requirements, does not remedy
958 misleading statements.

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

961 (3) An advertisement shall not state or imply that interest charged on an accelerated
962 death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper
963 practice.

964 (4) The words “free,” “no cost,” “without cost,” “no additional cost,” at no extra
965 cost,” or words of similar import shall not be used with respect to any benefit or service unless

966 true. An advertisement may specify the charge for a benefit or a service or may state that a
967 charge is included in the payment or use other appropriate language.

968 (5) Testimonials, appraisals or analysis used in advertisements must be genuine;
969 represent the current opinion of the author; be applicable to the viatical settlement contract,
970 product or service advertised, if any; and be accurately reproduced with sufficient completeness
971 to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials,
972 appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, a licensee under
973 this Chapter makes as its own all the statements contained therein, and the statements are subject
974 to all the provisions of this section.

975 (a) If the individual making a testimonial, appraisal, analysis or an endorsement has a
976 financial interest in the party making use of the testimonial, appraisal, analysis or endorsement,
977 either directly or through a related entity as a stockholder, director, officer, employee or
978 otherwise, or receives any benefit directly or indirectly other than required union scale wages,
979 that fact shall be prominently disclosed in the advertisement.

980 (b) An advertisement shall not state or imply that a viatical settlement contract,
981 benefit or service has been approved or endorsed by a group of individuals, society, association
982 or other organization unless that is the fact and unless any relationship between an organization
983 and the viatical settlement licensee is disclosed. If the entity making the endorsement or
984 testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any
985 payment or other consideration from the viatical settlement licensee for making an endorsement
986 or testimonial, that fact shall be disclosed in the advertisement.

987 (c) When an endorsement refers to benefits received under a viatical settlement
988 contract all pertinent information shall be retained for a period of five (5) years after its use.

989 E. An advertisement shall not contain statistical information unless it accurately
990 reflects recent and relevant facts. The source of all statistics used in an advertisement shall be
991 identified.

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

994 G. The name of the viatical settlement licensee shall be clearly identified in all
995 advertisements about the licensee or its viatical settlement contract, products or services, and if
996 any specific viatical settlement contract is advertised, the viatical settlement contract shall be
997 identified either by form number or some other appropriate description. If an application is part
998 of the advertisement, the name of the viatical settlement provider shall be shown on the
999 application.

1000 H. An advertisement shall not use a trade name, group designation, name of the
1001 parent company of a viatical settlement licensee, name of a particular division of the viatical
1002 settlement licensee, service mark, slogan, symbol or other device or reference without disclosing
1003 the name of the viatical settlement licensee, if the advertisement would have the capacity or
1004 tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to
1005 create the impression that a company other than the viatical settlement licensee would have any
1006 responsibility for the financial obligation under a viatical settlement contract.

1007 I. An advertisement shall not use any combination of words, symbols or physical
1008 materials that by their content, phraseology, shape, color or other characteristics are so similar to

1009 a combination of words, symbols or physical materials used by a government program or agency
1010 or otherwise appear to be of such a nature that they tend to mislead prospective viators into
1011 believing that the solicitation is in some manner connected with a government program or
1012 agency.

1013 J. An advertisement may state that a viatical settlement licensee is licensed in the
1014 state where the advertisement appears, provided it does not exaggerate that fact or suggest or
1015 imply that competing viatical settlement licensee may not be so licensed. The advertisement may
1016 ask the audience to consult the licensee's web site or contact the department of insurance to find
1017 out if the state requires licensing and, if so, whether the viatical settlement provider or viatical
1018 settlement broker is licensed.

1019 K. An advertisement shall not create the impression that the viatical settlement
1020 provider, its financial condition or status, the payment of its claims or the merits, desirability, or
1021 advisability of its viatical settlement contracts forms are recommended or endorsed by any
1022 government entity.

1023 L. The name of the actual licensee shall be stated in all of its advertisements. An
1024 advertisement shall not use a trade name, any group designation, name of any affiliate or
1025 controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that
1026 would have the capacity or tendency to mislead or deceive as to the true identity of the actual
1027 licensee or create the false impression that an affiliate or controlling entity would have any
1028 responsibility for the financial obligation of the licensee.

1029 M. An advertisement shall not directly or indirectly create the impression that any
1030 division or agency of the state or of the U. S. government endorses, approves or favors:

- 1031 (1) Any viatical settlement licensee or its business practices or methods of operation;
- 1032 (2) The merits, desirability or advisability of any viatical settlement contract;
- 1033 (3) Any viatical settlement contract or viatical settlement purchase agreement; or
- 1034 (4) Any life insurance policy or life insurance company.

1035 N. If the advertiser emphasizes the speed with which the viatication will occur, the
1036 advertising must disclose the average time frame from completed application to the date of offer
1037 and from acceptance of the offer to receipt of the funds by the viator.

1038 O. If the advertising emphasizes the dollar amounts available to viators, the
1039 advertising shall disclose the average purchase price as a percent of face value obtained by
1040 viators contracting with the licensee during the past six (6) months.

1041 Section 14. Fraud Prevention and Control

1042 A. Fraudulent Viatical Settlement Acts, Interference and Participation of Convicted
1043 Felons Prohibited.

1044 (1) A person shall not commit a fraudulent viatical settlement act.

1045 (2) A person shall not knowingly or intentionally interfere with the enforcement of
1046 the provisions of this Chapter or investigations of suspected or actual violations of this Chapter.

1047 (3) A person in the business of viatical settlements shall not knowingly or
1048 intentionally permit any person convicted of a felony involving dishonesty or breach of trust to
1049 participate in the business of viatical settlements.

1050 B. Fraud Warning Required.

1051 (1) Viatical settlements contracts and applications for viatical settlements, regardless
1052 of the form of transmission, shall contain the following statement or a substantially similar
1053 statement:

1054 “Any person who knowingly presents false information in an application for insurance or
1055 viatical settlement contract is guilty of a crime and may be subject to fines and confinement in
1056 prison.”

1057 (2) The lack of a statement as required in Paragraph (1) of this subsection does not
1058 constitute a defense in any prosecution for a fraudulent viatical settlement act.

1059 C. Mandatory Reporting of Fraudulent Viatical Settlement Acts.

1060 (1) Any person engaged in the business of viatical settlements having knowledge or a
1061 reasonable suspicion that a fraudulent viatical settlement act is being, will be or has been
1062 committed shall provide to the commissioner such information as required by, and in a manner
1063 prescribed by, the commissioner.

1064 (2) Any other person having knowledge or a reasonable belief that a fraudulent
1065 viatical settlement act is being, will be or has been committed may provide to the commissioner
1066 the information required by, and in a manner prescribed by, the commissioner.

1067 D. Immunity from Liability.

1068 (1) No civil liability shall be imposed on and no cause of action shall arise from a
1069 person’s furnishing information concerning suspected, anticipated or completed fraudulent

1070 viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is
1071 provided to or received from:

1072 (a) The commissioner or the commissioner's employees, agents or representatives;

1073 (b) Federal, state or local law enforcement or regulatory officials or their employees,
1074 agents or representatives;

1075 (c) A person involved in the prevention and detection of fraudulent viatical
1076 settlement acts or that person's agents, employees or representatives;

1077 (d) The National Association of Insurance Commissioners (NAIC), National
1078 Association of Securities Dealers (NASD), the North American Securities Administrators
1079 Association (NASAA), or their employees, agents or representatives, or other regulatory body
1080 overseeing life insurance, viatical settlements, securities or investment fraud; or

1081 (e) The life insurer that issued the life insurance policy covering the life of the
1082 insured.

1083 (2) Paragraph (1) of this subsection shall not apply to statements made with actual
1084 malice. In an action brought against a person for filing a report or furnishing other information
1085 concerning a fraudulent viatical settlement act, the party bringing the action shall plead
1086 specifically any allegation that Paragraph (1) does not apply because the person filing the report
1087 or furnishing the information did so with actual malice.

1088 (3) A person furnishing information as identified in Paragraph (1) shall be entitled to
1089 an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action
1090 for libel, slander or any other relevant tort arising out of activities in carrying out the provisions

1091 of this Chapter and the party bringing the action was not substantially justified in doing so. For
1092 purposes of this section a proceeding is “substantially justified” if it had a reasonable basis in law
1093 or fact at the time that it was initiated. However, such an award does not apply to any person
1094 furnishing information concerning his or her own fraudulent viatical settlement acts.

1095 (4) This section does not abrogate or modify common law or statutory privileges or
1096 immunities enjoyed by a person described in Paragraph (1).

1097 E. Confidentiality.

1098 (1) The documents and evidence provided pursuant to Subsection D or obtained by
1099 the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts
1100 shall be privileged and confidential and shall not be a public record and shall not be subject to
1101 discovery or subpoena in a civil or criminal action.

1102 (2) Paragraph (1) does not prohibit release by the commissioner of documents and
1103 evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

1104 (a) In administrative or judicial proceedings to enforce laws administered by the
1105 commissioner;

1106 (b) To federal, state or local law enforcement or regulatory agencies, to an
1107 organization established for the purpose of detecting and preventing fraudulent viatical
1108 settlement acts or to the NAIC; or

1109 (c) At the discretion of the commissioner, to a person in the business of viatical
1110 settlements that is aggrieved by a fraudulent viatical settlement act.

1111 (3) Release of documents and evidence under Paragraph (2) does not abrogate or
1112 modify the privilege granted in Paragraph (1).

1113 F. Other Law Enforcement or Regulatory Authority.

1114 This Chapter shall not:

1115 (1) Preempt the authority or relieve the duty of other law enforcement or regulatory
1116 agencies to investigate, examine and prosecute suspected violations of law;

1117 (2) Prevent or prohibit a person from disclosing voluntarily information concerning
1118 viatical settlement fraud to a law enforcement or regulatory agency other than the insurance
1119 department; or

1120 (3) Limit the powers granted elsewhere by the laws of this state to the commissioner
1121 or an insurance fraud unit to investigate and examine possible violations of law and to take
1122 appropriate action against wrongdoers.

1123 G. Viatical Settlement Antifraud Initiatives.

1124 (1) Viatical settlement providers and viatical settlement brokers shall have in place
1125 antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical
1126 settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee
1127 may request and the commissioner may grant, such modifications of the following required
1128 initiatives as necessary to ensure an effective antifraud program. The modifications may be more
1129 or less restrictive than the required initiatives so long as the modifications may reasonably be
1130 expected to accomplish the purpose of this section.

1131 (2) Antifraud initiatives shall include:

1132 (a) Fraud investigators, who may be viatical settlement provider or viatical settlement
1133 broker employees or independent contractors; and

1134 (b) An antifraud plan, which shall be submitted to the commissioner. The antifraud
1135 plan shall include, but not be limited to:

1136 (i) A description of the procedures for detecting and investigating possible fraudulent
1137 viatical settlement acts and procedures for resolving material inconsistencies between medical
1138 records and insurance applications;

1139 (ii) A description of the procedures for reporting possible fraudulent viatical
1140 settlement acts to the commissioner;

1141 (iii) A description of the plan for antifraud education and training of underwriters and
1142 other personnel; and

1143 (iv) A description or chart outlining the organizational arrangement of the antifraud
1144 personnel who are responsible for the investigation and reporting of possible fraudulent viatical
1145 settlement acts and investigating unresolved material inconsistencies between medical records
1146 and insurance applications.

1147 (3) Antifraud plans submitted to the commissioner shall be privileged and
1148 confidential and shall not be a public record and shall not be subject to discovery or subpoena in
1149 a civil or criminal action.

1150 Section 15. Injunctions; Civil Remedies; Cease and Desist

1151 A. In addition to the penalties and other enforcement provisions of this Chapter, if
1152 any person violates this Chapter or any regulation implementing this Chapter, the commissioner

1153 may seek an injunction in a court of competent jurisdiction and may apply for temporary and
1154 permanent orders that the commissioner determines are necessary to restrain the person from
1155 committing the violation.

1156 B. Any person damaged by the acts of a person in violation of this Chapter may
1157 bring a civil action against the person committing the violation in a court of competent
1158 jurisdiction.

1159 C. The commissioner may issue a cease and desist order upon a person that violates
1160 any provision of this Chapter, any regulation or order adopted by the commissioner, or any
1161 written agreement entered into with the commissioner.

1162 D. When the commissioner finds that an activity in violation of this Chapter presents
1163 an immediate danger to the public that requires an immediate final order, the commissioner may
1164 issue an emergency cease and desist order reciting with particularity the facts underlying the
1165 findings. The emergency cease and desist order is effective immediately upon service of a copy
1166 of the order on the respondent and remains effective for ninety (90) days. If the commissioner
1167 begins non-emergency cease and desist proceedings, the emergency cease and desist order
1168 remains effective, absent an order by a court of competent jurisdiction.

1169 E. In addition to the penalties and other enforcement provisions of this Chapter, any
1170 person who violates this Chapter is subject to civil penalties of up to \$500 per violation.
1171 Imposition of civil penalties shall be pursuant to an order of the commissioner issued under
1172 Chapter 30A]. The commissioner's order may require a person found to be in violation of this
1173 Chapter to make restitution to persons aggrieved by violations of this Chapter.

1174 F. Except for a fraudulent viatical settlement act committed by a viator, the
1175 enforcement provisions and penalties of this section shall not apply to a viator.

1176 Section 16. Unfair Trade Practices

1177 A violation of this Chapter, including the commission of a fraudulent viatical settlement
1178 act, shall be considered an unfair trade practice under Chapter 176D subject to the penalties
1179 contained in that Chapter.

1180 Section 17. Authority to Promulgate Regulations

1181 The commissioner shall have the authority to:

1182 A. Promulgate regulations implementing this Chapter;

1183 B. Establish standards for evaluating reasonableness of payments under viatical
1184 settlement contracts. This authority includes, but is not limited to, regulation of discount rates
1185 used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest
1186 of a benefit under a life insurance policy insuring the life of a person that is chronically or
1187 terminally ill;

1188 C. Establish appropriate licensing requirements and standards for continued licensure
1189 for viatical settlement providers and brokers;

1190 D. Require a bond or other mechanism for financial accountability for viatical
1191 settlement providers and brokers; and

1192 E. Adopt rules governing the relationship and responsibilities of both insurers and
1193 viatical settlement providers and viatical settlement brokers during the viatication of a life
1194 insurance policy or certificate.

1195 Section 18. Severability

1196 If any portion of this Chapter or any amendments thereto, or its applicability to any
1197 person or circumstance is held invalid by a court, the remainder of this Chapter or its
1198 applicability to other persons or circumstances shall not be affected.

1199 Section 19. Effective Date

1200 A viatical settlement provider or viatical settlement broker transacting business in this
1201 state may continue to do so pending approval or disapproval of the provider or broker's
1202 application for a license as long as the application is filed with the commissioner within 30 days
1203 of the effective date of this Chapter.

1204 SECTION 3. Chapter 175, Section 14, of the General Laws as appearing in the 2006
1205 Official Edition, is hereby amended by adding the following subsection:-

1206 For each license or renewal thereof to a viatical settlement provider or viatical settlement
1207 broker under Chapter 175L, section three;