

**HOUSE . . . . . No. 984**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act relative to stranger originated life insurance..

*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. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition,  
2 is hereby amended by inserting after section 123 the following section:-

3 123 ½. (a) An insurable interest, with reference to life and disability insurance, is an  
4 interest based upon a reasonable expectation of pecuniary advantage through the continued life,  
5 health, or bodily safety of another person and consequent loss by reason of that person’s death or  
6 disability or a substantial interest engendered by love and affection in the case of individuals  
7 closely related by blood or law.

8 (b) An individual has an unlimited insurable interest in his or her own life, health, and  
9 bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or  
10 bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of  
11 whether the beneficiary designated has an insurable interest.

12 (c) Except as provided in section 123A of this chapter an employer has an insurable  
13 interest, as referred to in sub-section (a), in the life or physical or mental ability of any of its

14 directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries  
15 or any other person whose death or physical or mental disability might cause financial loss to the  
16 employer; or, pursuant to any contractual arrangement with any shareholder concerning the  
17 reacquisition of shares owned by the shareholder at the time of his or her death or disability, on  
18 the life or physical or mental ability of that shareholder for the purpose of carrying out the  
19 contractual arrangement; or, pursuant to any contract obligating the employer as part of  
20 compensation arrangements or pursuant to a contract obligating the employer as guarantor or  
21 surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension,  
22 welfare benefit plan, or trust established by an employer providing life, health, disability,  
23 retirement, or similar benefits to employees and retired employees of the employer or its  
24 affiliates and acting in a fiduciary capacity with respect to those employees, retired employees,  
25 or their dependents or beneficiaries has an insurable interest in the lives of employees and retired  
26 employees for whom those benefits are to be provided. The employer shall obtain the written  
27 consent of the individual being insured.

28 (d) Trusts and special purpose entities, that are used to apply for and initiate the issuance  
29 of policies of insurance for investors, where one or more beneficiaries of those trusts or special  
30 purpose entities do not have an insurable interest in the life of the insured violate the insurable  
31 interest laws and the prohibition against wagering on life.

32 (e) Any device, scheme, or artifice designed to give the appearance of an insurable  
33 interest where there is no legitimate insurable interest violates the insurable interest laws.

34 (f) An insurable interest shall be required to exist at the time the contract of life or  
35 disability insurance becomes effective, but need not exist at the time the loss occurs.

36 (g) Any contract of life or disability insurance procured or caused to be procured upon  
37 another individual is void unless the person applying for the insurance has an insurable interest  
38 in the individual insured at the time of the application.

39 (h) Notwithstanding sub sections (a), (f), and (g), a charitable organization that meets the  
40 requirements of section 501(c)(3), (c)(6), (c)(8) or (c)(9) of the Internal Revenue Code may  
41 effectuate life or disability insurance on an insured who consents to the issuance of that  
42 insurance.

43 (i) This section shall not be interpreted to define all instances in which an insurable  
44 interest exists.

45 SECTION 2. Section 213 of chapter 175 of the General Laws, as appearing in the 2006  
46 Official Edition, is hereby amended by inserting after the definition of “Accelerated benefits” the  
47 following two new definitions:-

48 “Advertisement”, any written, electronic, or printed communication or any  
49 communication by means of recorded telephone messages or transmitted on radio, television, the  
50 Internet, or similar communications media, including film strips, motion pictures, and videos,  
51 published, disseminated, circulated, or placed before the public, directly or indirectly, for the  
52 purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest,  
53 or transfer the death benefit or ownership of a life insurance policy or an interest in a life  
54 insurance policy pursuant to a viatical settlement contract.

55 “Business of viatical settlements”, an activity involved in, but not limited to, offering to  
56 enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of viatical  
57 settlement contracts.;

58 and further, by inserting after the definition of “Financing transaction” the following new  
59 definition:-

60 “Fraudulent viatical settlement act” includes all of the following:

61 (1) Acts or omissions committed by any person that, for the purpose of depriving another  
62 of property or for pecuniary gain, commits or permits its employees or its agents to engage in  
63 acts, including, but not limited to, the following:

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

69 (i) An application for the issuance of a viatical settlement contract or insurance policy.

70 (ii) The underwriting of a viatical settlement contract or insurance policy.

71 (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance  
72 policy.

73 (iv) Premiums paid on an insurance policy.

74 (v) Payments and changes in ownership or beneficiary made in accordance with the terms  
75 of a viatical settlement contract or insurance policy.

76 (vi) The reinstatement or conversion of an insurance policy.

77 (vii) The solicitation, offer to enter into, or effectuation of, a viatical settlement contract  
78 or insurance policy.

79 (viii) The issuance of written evidence of viatical settlement contracts or insurance.

80 (ix) Any application for, or the existence of or any payments related to, a loan secured  
81 directly or indirectly by any interest in a life insurance policy.

82 (B) Entering into Stranger-Originated Life Insurance (STOLI).

83 (C) Employing any device, scheme, or artifice to defraud in the business of viatical  
84 settlements.

85 (2) Any of the following that any person does, or permits his or her employees or agents  
86 to do, in the furtherance of a fraud, or to prevent the detection of a fraud:

87 (A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or  
88 records of a licensee or other person engaged in the business of viatical settlements.

89 (B) Misrepresent or conceal the financial condition of a licensee, financing entity,  
90 insurer, or other person.

91 (C) Transact the business of viatical settlements in violation of laws requiring a license,  
92 certificate of authority, or other legal authority for the transaction of the business of viatical  
93 settlements.

94 (D) File with the commissioner or the chief insurance regulatory official of another  
95 jurisdiction a document containing false information or otherwise concealing information about a  
96 material fact from the commissioner.

97 (E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds,  
98 premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator,  
99 insurance policy owner, or any other person engaged in the business of viatical settlements or  
100 insurance.

101 (F) Enter into, broker, or otherwise deal in a viatical settlement contract, the subject of  
102 which is a life insurance policy that was obtained by presenting false information concerning any  
103 fact material to the policy or by concealing, for the purpose of misleading another, information  
104 requested concerning any fact material to the policy, where the viator or the viator's agent  
105 intended to defraud the policy's issuer.

106 (G) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit  
107 the acts or omissions specified in this sub-section.

108 (H) Misrepresent the state of residence of a viator to be a state or jurisdiction that does  
109 not have a law substantially similar to this act for the purpose of evading or avoiding the  
110 provisions of this

111 act.;

112 and further, by inserting after the definition of "Insured" the following four new  
113 definitions:-

114 "Life expectancy", the arithmetic mean of the number of months the insured under the  
115 life insurance policy to be settled can be expected to live as determined by a life expectancy  
116 company considering medical records and appropriate experiential data.

117 “Life insurance producer”, any person licensed in this state as a resident or nonresident  
118 insurance agent who has received qualification or authority for life insurance coverage or a life  
119 line of coverage pursuant to this chapter;

120 “Net death benefit”, the amount of the life insurance policy or certificate to be settled less  
121 any outstanding debts or liens.

122 “Patient identifying information”, an insured’s address, telephone number, facsimile  
123 number, electronic mail address, photograph or likeness, employer, employment status, social  
124 security number, or any other information that is likely to lead to the identification of the  
125 insured.;

126 and further, by inserting after the definition of “Person” the following seven new  
127 definitions:-

128 “Policy”, an individual or group policy, group certificate, contract, or arrangement of life  
129 insurance owned by a resident of this state, regardless of whether delivered or issued for delivery  
130 in this state.

131 “Premium finance loan” is a loan made primarily for the purpose of making premium  
132 payments on a life insurance policy, which loan is secured by an interest in such life insurance  
133 policy.

134 “Purchaser”, a person who pays compensation or anything of value as consideration for a  
135 beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an  
136 ownership or other interest in a life insurance policy or a certificate issued pursuant to a group  
137 life insurance policy which has been the subject of a viatical settlement contract.

138 “Related provider trust”, a titling trust or other trust established by a licensed viatical  
139 settlement provider or a financing entity for the sole purpose of holding the ownership or  
140 beneficial interest in purchased policies in connection with a financing transaction. In order to  
141 qualify as a related provider trust, the trust must have a written agreement with the licensed  
142 viatical settlement provider under which the licensed viatical settlement provider is responsible  
143 for ensuring compliance with all statutory and regulatory requirements and under which the trust  
144 agrees to make all records and files relating to viatical settlement transactions available to the  
145 Division of Insurance as if those records and files were maintained directly by the licensed  
146 viatical settlement provider.

147 “Special purpose entity”, a corporation, partnership, trust, limited liability company, or  
148 other legal entity whose securities pay a fixed rate of return commensurate with established  
149 asset-backed capital markets, or has been formed solely to provide either directly or indirectly  
150 access to institutional capital markets:

151 (1) For a financing entity or viatical settlement provider.

152 (2) In connection with a transaction in which the securities in the special purpose entity  
153 are acquired by the viator or by a “qualified institutional buyer” as defined in Rule 144  
154 promulgated under the federal Securities Act of 1933, as amended.

155 “Stranger-originated life insurance” or “STOLI” is an act, practice, or arrangement to  
156 initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor  
157 who, at the time of policy origination, has no insurable interest, under the laws of this state, in  
158 the life of the insured. STOLI practices include, but are not limited to, cases in which life  
159 insurance is purchased with resources or guarantees from or through a person or entity, that, at



160 the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and  
161 where, at the time of inception, there is an arrangement or agreement, to directly or indirectly  
162 transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created  
163 to give the appearance of insurable interest and that are used to initiate policies for investors  
164 violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements  
165 do not include otherwise lawful viatical settlement contracts as defined below.

166 “Terminally ill”, having an illness or sickness that can reasonably be expected to result in  
167 death in 24 months or less.;

168 and further, by striking the definitions of “Viatical settlement contract” and “Viatical  
169 settlement provider” and replacing them with the following two definitions:-

170 “Viatical settlement contract”, a written agreement entered into between a viatical  
171 settlement provider and a viator. The agreement shall establish the terms under which the viatical  
172 settlement provider will pay compensation or anything of value, which compensation or value is  
173 less than the expected death benefit of the insurance policy or certificate, in return for the  
174 viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a  
175 portion of the insurance policy or certificate of insurance for compensation, provided, however,  
176 that the minimum value for a viatical settlement contract shall be greater than a cash surrender  
177 value or accelerated death benefit available at the time of an application for a viatical settlement  
178 contract. “Viatical settlement contract” also includes the transfer for compensation or value of  
179 ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other  
180 entity was formed or availed of for the principal purpose of acquiring one or more life insurance  
181 contracts, which life insurance contract insures the life of a person residing in this state.

182 (1) A “Viatical settlement contract” includes a premium finance loan made for a policy  
183 on or before the date of issuance of the policy where one or more of the following conditions  
184 apply:

185 (A) The loan proceeds are not used solely to pay premiums for the policy and any costs  
186 or expenses incurred by the lender or the borrower in connection with the financing.

187 (B) The viator receives on the date of the premium finance loan a guarantee of the future  
188 viatical settlement value of the policy.

189 (C) The viator agrees on the date of the premium finance loan to sell the policy or any  
190 portion of the policy’s death benefit on any date following the issuance of the policy, not  
191 including an agreement to sell the policy in the event of a default, provided that the default is not  
192 pursuant to an agreement or understanding with any other person for the purpose of evading  
193 regulation under this act.

194 (2) “Viatical settlement contract” does not include any of the following:

195 (A) A policy loan by a life insurance company pursuant to the terms of the life insurance  
196 policy or accelerated death provisions contained in the life insurance policy, whether issued with  
197 the original policy or as a rider.

198 (B) A premium finance loan, as defined herein, or any loan made by a bank or other  
199 licensed financial institution, provided that neither default on such loan nor the transfer of the  
200 policy in connection with such default is pursuant to an agreement or understanding with any  
201 other person for the purpose of evading regulation under this act.

202 (C) A collateral assignment of a life insurance policy by a viator.

203 (D) A loan made by a lender that does not violate chapter 255C, provided such loan is not  
204 described in paragraph (1), and is not otherwise within the definition of viatical settlement  
205 contract.

206 (E) An agreement where all of the parties satisfy one of the following conditions:

207 (i) They are closely related to the insured by blood or law.

208 (ii) They have a lawful substantial economic interest in the continued life, health, and  
209 bodily safety of the person insured.

210 (iii) They are trusts established primarily for the benefit of those parties.

211 (F) Any designation, consent, or agreement by an insured who is an employee of an  
212 employer in connection with the purchase by the employer, or by a trust established by the  
213 employer of life

214 insurance on the life of the employee.

215 (G) A bona fide business succession planning arrangement:

216 (i) Between one or more shareholders in a corporation or between a corporation and one  
217 or more of its shareholders or one or more trust established by its shareholders.

218 (ii) Between one or more partners in a partnership or between a partnership and one or  
219 more of its partners or one or more trust established by its partners.

220 (iii) Between one or more members in a limited liability company or between a limited  
221 liability company and one or more of its members or one or more trusts established by its  
222 members.

223 (H) An agreement entered into by a service recipient, or a trust established by the service  
224 recipient, and a service provider, or a trust established by the service provider, who performs  
225 significant services for the service recipient’s trade or business.

226 (I) Any other contract, transaction, or arrangement from the definition of “viatical  
227 settlement contract” that the commissioner determines is not of the type intended to be regulated  
228 by this act.

229 “Viatical settlement provider” a person, other than a viator, who enters into a viatical  
230 settlement contract, or who obtains financing from a financing entity for the purchase,  
231 acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated  
232 policies or interests therein or who otherwise sells, assigns, transfers, pledges, hypothecates or  
233 otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests  
234 therein. A viatical settlement provider does not include:

235 (1) a bank, savings bank, savings and loan association, credit union or other licensed  
236 lending institution which takes an assignment of a life insurance policy as collateral for a loan;

237 (2) the issuer of a life insurance policy providing accelerated benefits and pursuant to the  
238 contract;

239 (3) a natural person who enters into not more than one agreement in a calendar year for  
240 the transfer of life insurance policies for any value less than the expected death benefit;

241 (4) a family member or friend who is not in the business of providing or obtaining  
242 viatical settlements, who enters into a viatical settlement agreement for any value less than the  
243 expected death benefit; or

244 (5) a financing entity.

245 (6) a purchaser.

246 (7) Any authorized or eligible insurer that provides stop loss coverage to a viatical  
247 settlement provider, purchaser, financing entity, special purpose entity, or related provider trust.

248 (8) A financing entity.

249 (9) A related provider trust.

250 (10) A viatical settlement broker.

251 (11) An accredited investor or qualified institutional buyer as defined respectively in  
252 Regulation D, Rule 501 or Rule 144A of the federal Securities Act of 1933, as amended, who  
253 purchases a

254 viatical settlement policy from a viatical settlement provider.;

255 and further, by striking the definition of “Viator” and replacing it with the following new  
256 definition:-

257 “Viator”, the owner of a life insurance policy or a certificate holder under a group policy  
258 insuring the life of an individual with a catastrophic, life-threatening or chronic illness or  
259 condition who enters or seeks to enter into a viatical settlement contract. For the purposes of this  
260 article, an owner shall not be limited to an owner of a life insurance policy or a certificate holder  
261 under a group policy that insures the life of an individual with a terminal illness or condition  
262 except where specifically addressed. The term “viator” does not include any of the following:

263 (1) Any viatical settlement provider or other licensee under this act.

264 (2) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act  
265 of 1933, as amended.

266 (3) A financing entity.

267 (4) A special purpose entity.

268 (5) A related provider trust.

269 SECTION 3. Chapter 175 of the General Laws, as appearing in the 2006 Official  
270 Edition, is hereby amended by striking section 214 in its entirety and replacing with the  
271 following:-

272 214. (a) This section applies to any person entering into, brokering, or soliciting viatical  
273 settlements pursuant to sections 212 to 223.

274 (b) (1) Except as provided in subparagraph (B), no person may enter into, broker, or  
275 solicit viatical settlements pursuant to sections 212 to 223, unless that person has been licensed  
276 by the commissioner under this section. The person shall file an application for a license in the  
277 form prescribed by the commissioner, and the application shall be accompanied by a fee  
278 established by the commissioner. The license fees for a viatical settlement provider license shall  
279 be reasonable, and the license and renewal fees for a viatical settlement broker shall not exceed  
280 the license and renewal fees established for an insurance producer who is acting as a viatical  
281 settlement broker. The applicant shall provide any information the commissioner may require.  
282 The commissioner may issue a license, or deny the application if, in his or her discretion, it is  
283 determined that it is contrary to the interests of the public to issue a license to the applicant. The  
284 reasons for a denial shall be set forth in writing.

285 (A) An individual acting as a viatical settlement broker under this section shall complete  
286 at least 15 hours of continuing education related to viatical settlements and viatical settlement  
287 transactions, as required and approved by the commissioner, prior to operating as a viatical  
288 settlement broker. This requirement shall not apply to a life insurance producer who qualifies  
289 under subparagraph (D).

290 (B) A person licensed as an attorney, certified public accountant, or financial planner  
291 accredited by a nationally recognized accreditation agency, who is retained to represent the  
292 viator, and whose compensation is not paid directly or indirectly by the viatical settlement  
293 provider or purchaser, may negotiate a viatical settlement contract on behalf of the viator without  
294 having to obtain a license as a viatical settlement broker.

295 (C) A person licensed to act as a viatical settlement broker or viatical settlement provider  
296 as of December 31, 2010, shall be deemed qualified for licensure as a viatical settlement broker  
297 or viatical settlement provider, and shall be subject to all the provisions of this article as if such  
298 person were originally licensed as a viatical settlement broker or viatical settlement provider.

299 (D) (i) A life insurance producer who has been duly licensed as a life agent for at least  
300 one year or as a licensed nonresident producer in this state for one year shall be deemed to meet  
301 the licensing requirements of this section and shall be permitted to operate as a viatical  
302 settlement broker.

303 (ii) Not later than 10 days from the first day of operating as a viatical settlement broker,  
304 the life insurance producer shall notify the commissioner that he or she is acting as a viatical  
305 settlement broker, on a form prescribed by the commissioner, and shall pay any applicable fee to  
306 be determined by the commissioner. Notification shall include an acknowledgment by the life

307 insurance producer that he or she will operate as a viatical settlement broker in accordance with  
308 this act.

309 (iii) The insurer that issued the policy that is the subject of a viatical settlement contract  
310 shall not be responsible for any act or omission of a viatical settlement broker or viatical  
311 settlement provider arising out of, or in connection with, the viatical settlement transaction,  
312 unless the insurer receives compensation for the replacement of the viatical settlement contract  
313 for the viatical settlement provider or viatical settlement broker.

314 (E) The commissioner shall review the examination for the licensing of life insurance  
315 agents and may recommend any changes to the examination to the department's curriculum  
316 committee in order to carry out the purposes of sections 212 to 223.

317 (2) Each licensee shall owe and pay in advance to the commissioner an annual renewal  
318 fee in an amount and form as prescribed by the commissioner.

319 (3) Any licensee that intends to discontinue transacting viatical settlements in this state  
320 shall so notify the commissioner, and shall surrender its license.

321 (c) Viatical settlements licensees shall be required to provide any applicant for a viatical  
322 settlement contract, at the time of application for the viatical settlement contract, all of the  
323 following disclosures in writing and signed by the viator, in at least 12-point type:

324 (1) That there are possible alternatives to viatical settlements, including, but not limited  
325 to, accelerated benefits options that may be offered by the life insurer.

326 (2) The fact that some or all of the proceeds of a viatical settlement may be taxable and  
327 that assistance should be sought from a professional tax adviser.



328 (3) Consequences for interruption of public assistance as provided by information  
329 provided by the state department of transitional assistance and the state department of social  
330 services.

331 (4) That the proceeds from a viatical settlement could be subject to the claims of  
332 creditors.

333 (5) That entering into a viatical settlement contract may cause other rights or benefits,  
334 including conversion rights and waiver of premium benefits that may exist under the policy or  
335 certificate of

336 a group policy to be forfeited by the viator and that assistance should be sought from a  
337 professional financial adviser.

338 (6) That a change in ownership of the settled policy could limit the insured's ability to  
339 purchase insurance in the future on the insured's life because there is a limit to how much  
340 coverage insurers will issue on one life.

341 (7) That the viator has a right to rescind a viatical settlement contract within 30 days of  
342 the date it is executed by all parties and the viator has received all required disclosures, or 15  
343 days from receipt by the viator of the proceeds of the settlement, whichever is sooner.  
344 Rescission, if exercised by the viator, is effective only if both notice of rescission is given and  
345 the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the  
346 viatical settlement provider within the rescission period. If the insured dies during the rescission  
347 period, the contract shall be deemed to have been rescinded subject to repayment by the viator or  
348 the viator's estate of all proceeds and any premiums, loans, and loan interest to the viatical  
349 settlement provider.

350 (8) That proceeds will be sent to the viator within three business days after the viatical  
351 settlement provider has received the insurer or group administrator's acknowledgment that  
352 ownership of the policy or the interest in the certificate has been transferred and the beneficiary  
353 has been designated in accordance with the terms of the viatical settlement contract.

354 (9) The date by which the funds will be available to the viator and the transmitter of the  
355 funds.

356 (10) The disclosure document shall include the following language:

357 "All medical, financial, or personal information solicited or obtained by a viatical  
358 settlement provider or viatical settlement broker about an insured, including the insured's  
359 identity or the identity of family members, a spouse, or a significant other may be disclosed as  
360 necessary to effect the viatical settlement contract between the viator and viatical settlement  
361 provider. If you are asked to provide this information, you will be asked to consent to the  
362 disclosure. The information may be provided to someone who buys the policy or provides funds  
363 for the purchase. You may be asked to renew your permission to share information every two  
364 years."

365 (11) That the insured may be contacted by either the viatical settlement provider or the  
366 viatical settlement broker or its authorized representative for the purpose of determining the  
367 insured's health status or to verify the insured's address. This contact is limited to once every  
368 three months if the insured has a life expectancy of more than one year, and no more than once  
369 per month if the insured has a life expectancy of one year or less.

370 (12) Any affiliations or contractual relations between the viatical settlement provider and  
371 the viatical settlement broker, and the affiliation, if any, between the viatical settlement provider  
372 and the issuer of the policy to be settled.

373 (13) That a viatical settlement broker represents exclusively the viator, and not the insurer  
374 or the viatical settlement provider or any other person, and owes a fiduciary duty to the viator,  
375 including a duty to act according to the viator's instructions and in the best interest of the viator.

376 (14) The name, business address, and telephone number of the viatical settlement broker.

377 (d) The viatical settlement broker shall provide the viator and the insured with at least all  
378 of the following disclosures in writing prior to the signing of the viatical settlement contract by  
379 all parties. The disclosures shall be clearly displayed in the viatical settlement contract or in a  
380 separate document signed by the viator:

381 (1) The name, business address, and telephone number of the viatical settlement broker.

382 (2) A full, complete, and accurate description of all of the offers, counteroffers,  
383 acceptances, and rejections relating to the proposed viatical settlement contract.

384 (3) A disclosure of any affiliations or contractual arrangements between the viatical  
385 settlement broker and any person making an offer in connection with the proposed viatical  
386 settlement contract.

387 (4) A complete reconciliation of the gross offer or bid by the viatical settlement provider  
388 to the net amount of proceeds or value to be received by the viator. For the purpose of this  
389 section, gross offer or bid shall mean the total amount or value offered by the viatical settlement

390 provider for the purchase of one or more life insurance policies, inclusive of commissions and  
391 fees.

392 (5) All estimates of the life expectancy of the insured which are obtained by the licensee  
393 in connection with the viatical settlement, unless such disclosure would violate any  
394 Massachusetts or federal privacy laws.

395 (6) The commissioner may consider any failure to provide the disclosures or rights  
396 described in this section as a basis for suspending or revoking a viatical settlement broker's or  
397 viatical settlement provider's license pursuant to section 218 of this chapter.

398 (e) All medical information solicited or obtained by any person soliciting or entering into  
399 a viatical settlement is subject to the provisions of chapter 175I of the general laws, concerning  
400 confidentiality of medical information.

401 (f) Except as otherwise allowed or required by law, a viatical settlement provider, viatical  
402 settlement broker, insurance company, insurance producer, information bureau, rating agency, or  
403 company, or any other person with actual knowledge of an insured's identity, shall not disclose  
404 the identity of an insured or information that there is a reasonable basis to believe that could be  
405 used to identify the insured or the insured's financial or medical information to any other person  
406 unless the disclosure is one of the following:

407 (1) It is necessary to effect a viatical settlement contract between the viator and a viatical  
408 settlement provider and the viator and insured have provided prior written consent to the  
409 disclosure.

410 (2) It is necessary to effectuate the sale of viatical settlement contracts, or interests  
411 therein, as investments, provided the sale is conducted in accordance with applicable state and  
412 federal securities law and provided further that the viator and the insured have both provided  
413 prior written consent to the disclosure.

414 (3) It is provided in response to an investigation or examination by the commissioner or  
415 any other governmental officer or agency or any other provision of law.

416 (4) It is a term or condition to the transfer of a policy by one viatical settlement provider  
417 to another viatical settlement provider, in which case the receiving viatical settlement provider  
418 shall be required to comply with the confidentiality requirements of chapter 175I of the general  
419 laws.

420 (5) It is necessary to allow the viatical settlement provider or viatical settlement broker or  
421 their authorized representatives to make contacts for the purpose of determining health status.  
422 For the purposes of this section, the term “authorized representative” shall not include any  
423 person who has or may have any financial interest in the settlement contract other than a viatical  
424 settlement provider, licensed viatical settlement broker; further, a viatical settlement provider or  
425 viatical settlement broker shall require its authorized representative to agree in writing to adhere  
426 to the privacy provisions of this act.

427 (6) It is required to purchase stop loss coverage.

428 (g) In addition to other questions an insurance carrier may lawfully pose to a life  
429 insurance applicant, insurance carriers may inquire in the application for insurance whether the  
430 proposed viator intends to pay premiums with the assistance of financing from a lender that will  
431 use the policy as collateral to support the financing.

432 (1) If the premium finance loan provides funds which can be used for a purpose other  
433 than paying for the premiums, costs, and expenses associated with obtaining and maintaining the  
434 life insurance policy and loan, the application may be rejected as a prohibited practice under this  
435 act.

436 (2) If the financing does not violate paragraph (1) or violate the insurer's lawful  
437 underwriting guidelines, the insurer may not reject life insurance application solely because the  
438 premiums will be financed. The insurance carrier may make disclosures to the applicant, either  
439 on the application or an amendment to the application to be completed no later than the delivery  
440 of the policy, including, but not limited to, the following:

441 "If you have entered into a loan arrangement where the policy is used as collateral, and  
442 the policy changes ownership at some point in the future in satisfaction of the loan, the following  
443 may be true:

444 "(A) A change of ownership could lead to a stranger owning an interest in the insured's  
445 life.

446 "(B) A change of ownership could in the future limit your ability to purchase insurance  
447 on the insured's life because there is a limit to how much coverage insurers will issue on a life.

448 "(C) You should consult a professional adviser since a change in ownership in  
449 satisfaction of the loan may result in tax consequences to the viator, depending on the structure  
450 of the loan."

451 (3) In addition to the disclosures in paragraph (2), the insurance carrier may require the  
452 following certifications from the applicant or the insured:

453           “(A) I have not entered into any agreement or arrangement under which I have agreed to  
454 make a future sale of this life insurance policy.”

455           “(B) My loan arrangement for this policy provides funds sufficient to pay for some or all  
456 of the premiums, costs, and expenses associated with obtaining and maintaining my life  
457 insurance policy, but I have not entered into any agreement by which I am to receive  
458 consideration in exchange for procuring this policy.”

459           “(C) The borrower has an insurable interest in the insured.”

460           (h) Life insurers shall provide individual life insurance policyholders with a statement  
461 informing them that if they are considering making changes in the status of their policy, they  
462 should consult with a licensed insurance or financial advisor. Such statement may accompany or  
463 be included in notices or mailings otherwise provided to such policyholders.

464           (i) The commissioner may adopt rules and regulations reasonably necessary to govern  
465 viatical settlements and transactions.

466           (j) The commissioner may, whenever he or she deems it reasonably necessary to protect  
467 the interests of the public, examine the business and affairs of any licensee or applicant for a  
468 license.

469           The commissioner shall have the authority to order any licensee or applicant to produce  
470 any records, books, files, or other information as is reasonably necessary to ascertain whether or  
471 not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to  
472 the interests of the public. The expenses incurred in conducting any examination shall be paid by  
473 the licensee or applicant.

474 (k) The commissioner may investigate the conduct of any licensee, its officers,  
475 employees, agents, or any other person involved in the business of the licensee, or any applicant  
476 for a license, whenever the commissioner has reason to believe that the licensee or applicant for  
477 a license may have acted, or may be acting, in violation of the law, or otherwise contrary to the  
478 interests of the public. The commissioner may initiate an investigation on his or her own, or upon  
479 a complaint filed by any other person.

480 (l) The commissioner may issue orders to licensees whenever he or she determines that it  
481 is reasonably necessary to ensure or obtain compliance with this section, or chapter 220A. This  
482 authority includes, but is not limited to, orders directing a licensee to cease and desist in any  
483 practice that is in violation of this section, or chapter 220A, or otherwise contrary to the interests  
484 of the public. Any licensee to which an order pursuant to this sub-section is issued may, within  
485 15 days of receipt of that order, request a hearing at which the licensee may challenge the order.

486 (m) The commissioner may, after notice and a hearing at which it is determined that a  
487 licensee has violated this section or chapter 220A or any order issued pursuant to this section,  
488 order the licensee to pay a monetary penalty of up to ten thousand dollars (\$10,000), which may  
489 be recovered in a civil action. Any hearing conducted pursuant to this section shall be in  
490 accordance with section 11A ½ of chapter 30A of the general laws, except that the hearing may  
491 be conducted by administrative law judges or appointed by the commissioner, and the  
492 commissioner shall have the powers granted therein.

493 (n) Each licensed viatical settlement provider shall file with the commissioner on or  
494 before March 1 of each year an annual statement in the form prescribed by the commissioner.  
495 The information that the commissioner may require in the annual statement shall include, but not



496 be limited to, the total number, aggregate face amount, and viatical settlement proceeds of  
497 policies settled during the immediately preceding calendar year, together with a breakdown of  
498 the information by policy issue year. The annual statement shall also include the names of the  
499 insurance companies whose policies have been settled and the viatical settlement brokers that  
500 have settled those policies, and that information shall be received in confidence within the  
501 meaning of chapter 66 and chapter 66A of the general laws and exempt from disclosure. The  
502 annual statement shall not include individual transaction data regarding the business of viatical  
503 settlements or information that there is a reasonable basis to believe could be used to identify the  
504 viator or the insured.

505 (o) No person who is not a resident of the commonwealth may receive or maintain a  
506 license unless a written designation of an agent for service of process is filed and maintained  
507 with the commissioner. The provisions of section 151 of this chapter shall apply to viatical  
508 settlement licensees as if they were foreign insurers, their license a certificate of authority, and  
509 the viatical settlement a policy, and the commissioner may modify the agreement set forth in  
510 section 151 of this chapter accordingly.

511 (p) No person licensed pursuant to this section shall engage in any false or misleading  
512 advertising, solicitation, or practice. In no case shall a viatical settlement broker or viatical  
513 settlement provider, directly or indirectly, market, advertise, solicit, or otherwise promote the  
514 purchase of a new policy for the sole purpose of or with a primary emphasis on settling the  
515 policy or use the words “free,” “no cost,” or words of similar import in the marketing,  
516 advertising, soliciting, or otherwise promoting of the purchase of a policy. The provisions of  
517 section 176D and section 181 of this chapter shall apply to viatical settlement licensees as if they  
518 were insurers, their license a certificate of authority or producer’s license, and the viatical

519 settlements a policy, and the commissioner shall liberally construe these provisions so as to  
520 protect the interests of the public.

521 (q) Records of all consummated transactions and viatical settlement contracts shall be  
522 maintained by the viatical settlement provider for three years after the death of the insured and  
523 shall be available to the commissioner for inspection during reasonable business hours.

524 (r) A violation of this section is a misdemeanor.

525 SECTION 4. Chapter 175 of the General Laws, as appearing in the 2006 Official  
526 Edition, is hereby amended by inserting after section 220 the following new section:-

527 220A. (a) A viatical settlement provider entering into a viatical settlement contract with  
528 any viator of a policy, wherein the insured is terminally ill, shall first obtain the following:

529 (1) If the viator is the insured, a written statement from a licensed attending physician  
530 that the viator is of sound mind and under no constraint or undue influence to enter into a  
531 settlement contract.

532 (2) A document in which the insured consents to the release of his or her medical records  
533 to a viatical settlement provider, viatical settlement broker, or insurance producer and, if the  
534 policy was issued less than two years from the date of application for a settlement contract, to the  
535 insurance company that issued the policy.

536 (b) The insurer shall respond to a request for verification of coverage submitted by a  
537 viatical settlement provider, viatical settlement broker, or life insurance producer not later than  
538 30 calendar days of the date the request is received. The request for verification of coverage must  
539 be made on a form approved by the commissioner. The insurer shall complete and issue the

540 verification of coverage or indicate in which respects it is unable to respond. In its response, the  
541 insurer shall indicate whether, based on the medical evidence and documents provided, the  
542 insurer intends to pursue an investigation at this time regarding the validity of the insurance  
543 contract.

544 (c) Before or at the time of execution of the settlement contract, the viatical settlement  
545 provider shall obtain a witnessed document in which the viator consents to the settlement  
546 contract, represents that the viator has a full and complete understanding of the settlement  
547 contract and a full and complete understanding of the benefits of the policy, acknowledges that  
548 the viator is entering into the settlement contract freely and voluntarily, and, for persons with a  
549 terminal illness or condition, acknowledges that the insured has a terminal illness and that the  
550 terminal illness or condition was diagnosed after the policy was issued.

551 (d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary  
552 with any viatical settlement contract lawfully entered into in this state or with a resident of this  
553 state.

554 (e) If a viatical settlement broker or life insurance producer performs any of these  
555 activities required of the viatical settlement provider, the viatical settlement provider is deemed  
556 to have fulfilled the requirements of this section.

557 (f) If a viatical settlement broker performs those verification of coverage activities  
558 required of the viatical settlement provider, the viatical settlement provider is deemed to have  
559 fulfilled the requirements of this section.

560 (g) Within 20 days after a viator executes the viatical settlement contract, the viatical  
561 settlement provider shall give written notice to the insurer that issued that insurance policy that

562 the policy has become subject to a viatical settlement contract. The notice shall be accompanied  
563 by the documents required under the definition of “Fraudulent viatical settlement act” provided  
564 in section 214 of this chapter.

565 (h) All medical information solicited or obtained by any licensee shall be subject to the  
566 applicable provision of state law relating to confidentiality of medical information, if not  
567 otherwise provided in this act.

568 (i) All viatical settlement contracts entered into in this state shall provide that the viator  
569 may rescind the contract on or before 30 days after the date it is executed by all parties thereto,  
570 and the viator has received all required disclosures, or 15 days from receipt by the viator of the  
571 full payment of the proceeds as specified below, whichever is sooner. Rescission, if exercised by  
572 the viator, is effective only if both notice of the rescission is given, and the viator repays all  
573 proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement  
574 provider within the rescission period. If the insured dies during the rescission period, the  
575 contract shall be deemed to have been rescinded subject to repayment by the viator or the  
576 viator’s estate of all proceeds and any premiums, loans, and loan interest to the viatical  
577 settlement provider.

578 (j) Within three business days after receipt from the viator of documents to effect the  
579 transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the  
580 settlement to an escrow or trust account managed by a trustee or escrow agent in a state or  
581 federally chartered financial institution pending acknowledgment of the transfer by the issuer of  
582 the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator  
583 within three business days of acknowledgment of the transfer from the insurer.

584 (k) Failure to tender the viatical settlement contract proceeds to the viator by the date  
585 disclosed to the viator renders the contract voidable by the viator for lack of consideration until  
586 the time the proceeds are tendered to and accepted by the viator. A failure to give written notice  
587 of the right of rescission hereunder shall toll the right of rescission until 30 days after the written  
588 notice of the right of rescission has been given.

589 (l) Any fee paid by a viatical settlement provider, party, individual, or an viator to a  
590 viatical settlement broker in exchange for services provided to the viator pertaining to a viatical  
591 settlement contract shall be computed as a percentage of the offer obtained, not the face value of  
592 the policy. Nothing in this section shall be construed as prohibiting a viatical settlement broker  
593 from reducing such viatical settlement broker's fee below this percentage if the viatical  
594 settlement broker so chooses.

595 (m) The viatical settlement broker shall disclose to the viator anything of value paid or  
596 given to a viatical settlement broker, which relates to a viatical settlement contract.

597 (n) No person at any time prior to, or at the time of, the application for, or issuance of, a  
598 policy, or during a two-year period commencing with the date of issuance of the policy, shall  
599 enter into a viatical settlement regardless of the date the compensation is to be provided and  
600 regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is  
601 to occur.

602 (1) This prohibition shall not apply if the viator certifies to the viatical settlement  
603 provider that the policy was issued upon the viator's exercise of conversion rights arising out of a  
604 group or individual policy, provided the total of the time covered under the conversion policy  
605 plus the time covered under the prior policy is at least 24 months. The time covered under a

606 group policy must be calculated without regard to a change in insurance carriers, provided the  
607 coverage has been continuous and under the same group sponsorship.

608 (2) This prohibition shall not apply if the viator submits independent evidence to the  
609 viatical settlement provider that one or more of the following conditions have been met within  
610 the two-year period:

611 (A) The viator or insured is terminally ill.

612 (B) The viator or insured disposes of his or her ownership interests in a closely held  
613 corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the  
614 insurance policy was initially issued.

615 (C) The viator's spouse dies.

616 (D) The viator divorces his or her spouse.

617 (E) The viator retires from full-time employment.

618 (F) The viator becomes physically or mentally disabled and a physician determines that  
619 the disability prevents the viator from maintaining full-time employment.

620 (G) A final order, judgment, or decree is entered by a court of competent jurisdiction, on  
621 the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or  
622 approving

623 a petition seeking reorganization of the viator or appointing a receiver, trustee, or  
624 liquidator to all or a substantial part of the viator's assets.

625 (3) (A) Copies of the independent evidence required by paragraph (2) shall be submitted  
626 to the insurer when the viatical settlement provider submits a request to the insurer for  
627 verification of coverage. The copies shall be accompanied by a letter of attestation from the  
628 viatical settlement provider that the copies are true and correct copies of the documents received  
629 by the viatical settlement provider. Nothing in this section shall prohibit an insurer from  
630 exercising its right to contest the validity of any policy.

631 (B) If the viatical settlement provider submits to the insurer a copy of independent  
632 evidence provided for in subparagraph (A) of paragraph (2) when the viatical settlement provider  
633 submits a request to the insurer to effect the transfer of the policy to the viatical settlement  
634 provider, the copy shall be deemed to establish that the settlement contract satisfies the  
635 requirements of this section.

636 (4) This prohibition shall apply only to policies issued on or after the effective date of this  
637 section.

638 (o) An insurer shall not:

639 (1) Engage in any transaction, act, or practice that restricts, limits, or impairs the lawful  
640 transfer of ownership, change of beneficiary, or assignment of a policy.

641 (2) Make any false or misleading statement for the purpose of dissuading a viator or  
642 insured from a lawful viatical settlement contract.

643 (p) No person providing premium financing shall receive any proceeds, fees, or other  
644 consideration from the policy or viator of the policy that are in addition to the amounts required  
645 to pay principal, interest, and any reasonable costs or expenses incurred by the lender or

646 borrower in connection with the premium finance agreement, except for the event of a default,  
647 unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or  
648 understanding with any other person for the purpose of evading regulation under this act.

649 (q) If there is more than one viator on a single policy, and the viators are residents of  
650 different states, the viatical settlement contract shall be governed by the law of the state in which  
651 the viator having the largest percentage ownership resides or, if the viators hold equal ownership,  
652 the state of residence of one viator agreed upon in writing by all of the viators. The law of the  
653 state of the insured shall govern in the event that equal viators fail to agree in writing upon a  
654 state of residence for jurisdictional purposes.

655 (r) A viatical settlement provider from this state who enters into a viatical settlement  
656 contract with a viator who is a resident of another state that has enacted statutes or adopted  
657 regulations governing viatical settlement contracts shall be governed in the effectuation of that  
658 viatical settlement contract by the statutes and regulations of the viator's state of residence. If the  
659 state in which the viator is a resident has not enacted statutes or regulations governing viatical  
660 settlement contracts, the viatical settlement provider shall give the viator notice that neither state  
661 regulates the transaction upon which he or she is entering. For transactions in those states,  
662 however, the viatical settlement provider is to maintain all records required if the transactions  
663 were executed in the state of residence. The forms used in those states need not be approved by  
664 the department.

665 (s) If there is a conflict in the laws that apply to an viator and a purchaser in any  
666 individual transaction, the laws of the state that apply to the viator shall take precedence and the  
667 viatical settlement provider shall comply with those laws.



668 (t) It is a fraudulent viatical settlement act and a violation of this section for any person to  
669 do any of the following, or any of the acts listed as a “Fraudulent viatical settlement act” as  
670 provided in section 214 of this chapter.

671 (1) Enter into a viatical settlement contract if a person knows or reasonably should have  
672 known that the life insurance policy was obtained by means of a false, deceptive, or misleading  
673 application for such policy.

674 (2) Engage in any transaction, practice, or course of business if a person knows or  
675 reasonably should have known that the intent was to avoid the notice requirements of this  
676 section.

677 (3) Engage in any fraudulent act or practice in connection with any transaction relating to  
678 any settlement involving a viator who is a resident of this state.

679 (4) Fail to provide the disclosures or file the required reports with the commissioner as  
680 required by this act.

681 (5) Issue, solicit, or market, the purchase of a new life insurance policy for the purpose  
682 of, or with a primary emphasis on, settling the policy.

683 (6) Enter into a premium finance agreement with any person or agency, or any person  
684 affiliated with a person or agency that is prohibited under sub-section (p).

685 (7) With respect to any settlement contract or insurance policy and a viatical settlement  
686 broker, knowingly solicit an offer from, effectuate a viatical settlement contract with, or make a  
687 sale to any viatical settlement provider, financing entity, or related provider trust that is

688 controlling, controlled by, or under common control with a viatical settlement broker, unless the  
689 relationship has been fully disclosed to the viator.

690 (8) With respect to any viatical settlement contract or insurance policy and a viatical  
691 settlement provider, knowingly enter into a viatical settlement contract with an viator, if, in  
692 connection with a viatical settlement contract, anything of value will be paid to a viatical  
693 settlement broker that is controlling, controlled by, or under common control with a viatical  
694 settlement provider or the financing entity, or related provider trust that is involved in a  
695 settlement contract, unless the relationship has been fully disclosed to the viator.

696 (9) With respect to a viatical settlement provider, enter into a viatical settlement contract  
697 unless the viatical settlement promotional, advertising, and marketing materials, as may be  
698 prescribed by regulation, have been filed with the commissioner. In no event shall any  
699 marketing materials expressly reference that the insurance is “free” for any period of time. The  
700 inclusion of any reference in the marketing materials that would cause a viator to reasonably  
701 believe that the insurance is free for any period of time shall be considered a violation of this act;  
702 or with respect to any life insurance producer, insurance company, viatical settlement broker, or  
703 viatical settlement provider make any statement or representation to the applicant or policyholder  
704 in connection with the sale or financing of a life insurance policy to the effect that the insurance  
705 is free or without cost to the policyholder for any period of time unless provided in the policy.

706 (u) Viatical settlement contracts and applications for viatical settlement contracts,  
707 regardless of the form of transmission, shall contain the following statement or a substantially  
708 similar statement:

709           “Any person who knowingly presents false information in an application for insurance or  
710 for a viatical settlement contract may be subject to criminal or civil liability.”

711           (1) The lack of a statement as required by this sub-section does not constitute a defense in  
712 any prosecution for a fraudulent viatical settlement act.

713           (2) This act shall not:

714           (A) Preempt the authority or relieve the duty of other law enforcement or regulatory  
715 agencies to investigate, examine, and prosecute suspected violations of law.

716           (B) Preempt, supersede, or limit any provision of any state securities law or any rule,  
717 order, or notice issued thereunder.

718           (C) Prevent or prohibit a person from disclosing voluntarily information concerning  
719 viatical settlement fraud to a law enforcement or regulatory agency other than the insurance  
720 department.

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

724           (v) A viatical settlement provider lawfully transacting business in this state prior to the  
725 effective date of this act may continue to do so, pending approval or disapproval of that person’s  
726 application for a license as long as the application is filed with the commissioner not later than  
727 30 days after publication by the commissioner of an application form and instructions for  
728 licensure of viatical settlement providers. If the publication of the application form and  
729 instructions is prior to the effective date of this chapter, then the filing of the application shall not

730 be later than 30 days after the effective date of this act. During the time that an application is  
731 pending with the commissioner, the applicant may use any form of viatical settlement contract  
732 that has been filed with the commissioner pending approval thereof, provided that such form is  
733 otherwise in compliance with the provisions of this act. Any person transacting business in this  
734 state under this provision shall be obligated to comply with all other requirements of this act. A  
735 person who has lawfully acted as a viatical settlement broker and negotiated viatical settlement  
736 contracts between any viator residing in this state and one or more viatical settlement providers  
737 for at least one year immediately prior to the effective date of this act may continue to do so  
738 pending approval or disapproval of that person's application for a license, as long as the  
739 application is filed with the commissioner not later than 30 days after publication by the  
740 commissioner of an application form and instructions for licensure of viatical settlement brokers.  
741 If the publication of the application form and instructions is prior to the effective date of this  
742 chapter, then the filing of the application shall not be later than 30 days after the effective date of  
743 this act. Any person transacting business in this state under this provision shall be obligated to  
744 comply with all other requirements of this act.

745 SECTION 5. This act shall apply to all viatical settlement contracts entered into after July  
746 1, 2010. This act shall apply to any transaction involving any life insurance policy in effect, or  
747 entered into, on or after the operative date of this act.