

HOUSE No. 3877

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to life settlements and 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 is hereby amended by striking out
2 sections 212 to 223, inclusive, as appearing in the 2010 Official Edition, and inserting in place
3 thereof the following sections:

4 Section 212. As used in sections 212 to 223H inclusive, the following words shall, unless
5 the context clearly requires otherwise, have the following meanings:-

6 “Advertisement”, any written, electronic, or printed communication or any
7 communication by means of recorded telephone messages or transmitted on radio, television, the
8 Internet, or similar communications media, published, disseminated, circulated or placed before
9 the public, for the purpose of creating an interest in or inducing a person to purchase or sell,
10 assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an
11 interest in a life insurance policy pursuant to a life settlement contract.

12 “Business of life settlements”, an activity including offering to enter into, soliciting,
13 negotiating, procuring, effectuating, monitoring or tracking of life settlement contracts.

“Chronically ill”, an individual who has been certified by a licensed health care practitioner as: (1) being unable to perform at least 2 activities of daily living; (2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (3) having a level of disability similar to that described in clause (1) as determined under regulations promulgated by the United States Secretary of Health and Human Services.

“Financing entity”, an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of 1 or more policies and who has an agreement in writing with 1 or more life settlement providers to finance the acquisition of life settlement contracts. A financing entity shall not include a non-accredited investor or purchaser.

“Financing transaction”, a transaction in which a licensed life settlement provider obtains financing from a financing entity including, secured or unsecured financing, a securitization transaction or a securities offering which either is registered or exempt from registration under federal and state securities law.

“Insured”, a person covered under the policy being considered for sale in a life settlement contract.

“Licensee”, a person licensed as a life settlement provider or life settlement broker by the commissioner of insurance.

“Life insurance producer”, any person licensed as a resident or nonresident insurance producer who has received qualification for a license in a line of authority for life insurance coverage pursuant to sections 162H to 162X, inclusive..

“Life settlement”, a transaction by which an insurance policy owner sells a life insurance policy to a third party for an amount that exceeds the policy’s cash surrender value, but is less than the expected death benefit of the policy.

“Life settlement broker”, a person who, on behalf of an owner and for a fee, commission or other consideration, offers or attempts to negotiate life settlement contracts between an owner and life settlement providers. Irrespective of the manner in which the life settlement broker is compensated, a life settlement broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner’s instructions, and in the best interest of the owner.

“Life settlement contract”, an agreement executed pursuant to section 214 that states the terms by which an owner would be compensated by a life settlement provider in exchange for any portion of the owner’s interest in an insurance policy or certificate of insurance.

“Life settlement provider”, a person who enters into a life settlement contract with an owner. A life settlement provider shall not include: (1) a bank, savings bank, savings and loan association or credit union; (2) a licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan; (3) the issuer of a life insurance policy or rider which provides accelerated death benefits pursuant to the contract or cash surrender value; (4) a person who enters into or effectuates not more than 1 agreement in a calendar year for the transfer of a life insurance policy or certificate issued

pursuant to a group life insurance policy for compensation or anything of value less than the expected death benefit payable under the policy; (5) a financing entity; (6) a purchaser; (7) an authorized or eligible insurer that provides stop loss coverage to a life settlement provider, purchaser, financing entity, special purpose entity or related provider trust; (8) a related provider trust; (9) a special purpose entity; (10) a life settlement broker; or (11) an accredited investor or qualified institutional buyer as defined in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended, who purchases a life settlement policy from a life settlement provider.

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

“Owner”, the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a life settlement contract. For the purposes of this act, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal illness or chronic illness or condition except where specifically addressed. The term “owner” shall not include:- (1) a life settlement provider or broker under this act; (2) a qualified institutional buyer as defined in rule 144A of the federal Securities Act of 1933, as amended; (3) a financing entity; (4) a special purpose entity; or (5) a related provider trust.

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

78 “Person”, a natural person or legal entity, including, but not limited to, a partnership,
79 limited liability company, association, trust or corporation.

80 “Policy”, an individual or group policy, group certificate, contract or arrangement of life
81 insurance owned by a resident of the commonwealth, regardless of whether delivered or issued
82 for delivery in the commonwealth.

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

86 “Purchaser”, a person who pays compensation or consideration for a beneficial interest in
87 a trust which is vested with, or for the assignment, transfer or sale of, an ownership or other
88 interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy
89 that has been the subject of a life settlement contract.

90 “Related provider trust”, a titling trust or other trust established by a licensed life
91 settlement provider or a financing entity for the sole purpose of holding the ownership or
92 beneficial interest in purchased policies in connection with a financing transaction. In order to
93 qualify as a related provider trust, the trust shall have a written agreement with a licensed life
94 settlement provider under which the licensed life settlement provider shall be responsible for
95 ensuring compliance with all statutory and regulatory requirements and under which the trust
96 agrees to make all records and files relating to life settlement transactions available to the
97 commissioner as if those records and files were maintained directly by the licensed life
98 settlement provider.

“Settled policy”, a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

“Special purpose entity”, a person other than a natural person formed solely to provide, either directly or indirectly, access to institutional capital markets: (i) for a financing entity or life settlement provider; or (ii) in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a qualified institutional buyer as defined in Rule 144 promulgated under the federal Securities Act of 1933, as amended, or the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

“Stranger-originated life insurance”, an act, practice or arrangement to initiate the issuance of a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the life of the insured. Such acts, practices or arrangements include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person, who, at the time of policy inception, could not lawfully initiate the policy and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Stranger-originated life insurance arrangements shall not include life settlement contracts as permitted by this section.

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

Section 213. (a) A life settlement contract may be established by the following transactions:

(1) a written agreement between a life settlement provider and an owner, establishing the terms under which compensation or other consideration shall be paid, which compensation or other consideration is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation; provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract;

(2) a transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in the commonwealth; or

(3) a premium finance loan made for a policy on or before the date of issuance of the policy where: (i) the loan proceeds shall not be used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing; (ii) on the date of the premium finance loan, the owner receives a guarantee of the future life settlement value of the policy; or (iii) the owner agrees on the date of the premium finance loan to sell the policy or a portion of its death benefit on any date following the issuance of the policy.

(b) A life settlement contract shall not include the following:

(1) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;

141 (2) a premium finance loan or a loan made by a bank or other licensed financial
142 institution; provided that neither a default on such loan nor the transfer of a policy in connection
143 with such default is pursuant to an agreement or understanding with another person for the
144 purpose of evading regulation;

145 (3) a collateral assignment of a life insurance policy by an owner;

146 (4) a lender's loan made pursuant to chapter 255C; provided such loan shall not be
147 included in paragraph (3) and shall not be within the definition of life settlement contract;

148 (5) an agreement where all parties are closely related to the insured by blood or law; or
149 have a lawful substantial economic interest in the continued life, health and bodily safety of the
150 insured, or are trusts established primarily for the benefit of such parties;

151 (6) a designation, consent or agreement by an insured who is an employee of an employer
152 in connection with the purchase by the employer or trust established by the employer, of life
153 insurance on the life of the employee;

154 (7) A bona fide business succession planning arrangement: (i) between 1 or more
155 shareholders in a corporation or between a corporation and 1 or more of its shareholders or 1 or
156 more trusts established by its shareholders; (ii) between 1 or more partners in a partnership or
157 between a partnership and 1 or more of its partners or 1 or more trust established by its partners;
158 or (iii) between 1 or more members in a limited liability company or between a limited liability
159 company and 1 or more of its members or 1 or more trust established by its members;

(8) an agreement entered into by a service recipient or a trust established by the service recipient and a service provider, or a trust established by the service provider that performs significant services for the service recipient's trade or business; or

(9) any other contract, transaction or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this act.

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

Section 214. (a) No person may act as a life settlement provider or, except as provided for in clauses (b) and (c) of this section, a life settlement broker with an owner or multiple owners who is a resident of the commonwealth, without first obtaining a license from the commissioner.

(b) The secretary of administration and finance shall determine the fee for a life settlement provider license and life settlement broker license pursuant to section 3B of chapter 7. Licenses may be renewed on their anniversary date upon payment of a renewal fee as determined by the secretary. Failure to pay the fees on or before the renewal date shall result in expiration of the license.

(c) A life insurance producer duly licensed as a resident insurance producer with a life line of authority in the commonwealth, or in his home state, for at least 1 year and is licensed as nonresident producer in the commonwealth shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a life settlement broker; provided, however,

that not later than 30 days from the first day of operating as a life settlement broker, the life insurance producer shall notify the commissioner that the producer is acting as a life settlement broker, on a form prescribed by the commissioner and shall pay the prescribed fee as determined by the secretary of administration pursuant to section 3B of chapter 7. Notification shall include an acknowledgment by the life insurance producer that the producer shall operate as a life settlement broker in accordance with this section.

(d) A licensed attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained in the type of practice customarily performed in their professional capacity to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser, may negotiate life settlement contracts on behalf of the owner without obtaining a license as a life settlement broker.

(e) Upon the filing of an application for initial licensure and payment of the application fee, the commissioner shall examine each applicant and may issue a license if the commissioner finds that the applicant:-

- (1) is a life settlement provider and has provided a detailed plan of operation;
- (2) is competent, trustworthy and intends to transact its business in good faith;
- (3) has a good business reputation and has the experience, training or education to be qualified in the business of life settlements;

201 (4) if a legal entity, is formed or organized pursuant to the laws of the commonwealth or
202 is a foreign legal entity authorized to transact business in the commonwealth, or provides a
203 certificate of good standing from the state of its domicile; and

204 (5) if a life settlement provider, has provided to the commissioner an anti-fraud plan that
205 meets the requirements in subsection (g) of section 223D.

206 (f) An applicant for a license under this section shall provide such information as the
207 commissioner may require on forms authorized by the commissioner. The commissioner may
208 require such applicant to fully disclose the identity of its stockholders owning 10 per cent or
209 more of the shares of an applicant whose shares are publicly traded, partners, officers and
210 employees. The commissioner shall refuse to issue a license to a qualified applicant if the
211 commissioner determines that an officer, employee, stockholder or partner thereof, who may
212 materially influence the applicant's conduct, has failed to establish their individual qualifications
213 for licensure under this chapter.

214 (g) A license issued to a legal entity authorizes all members, officers and designated
215 employees to act as a licensee under the license, provided, however, that those persons were
216 identified in the initial application and any supplements to the application.

217 (h) The commissioner shall not issue a license to a nonresident applicant, unless a written
218 designation of an agent for service of process is filed and maintained with the commissioner or
219 unless the applicant has filed with the commissioner the applicant's written irrevocable consent
220 that any action against the applicant may be commenced against the applicant by service of
221 process on the commissioner.

(i) A life settlement provider shall not use any person to perform the functions of a life settlement broker unless the person holds a current, valid life settlement broker license.

(j) A life settlement broker shall not use any person to perform the functions of a life settlement provider unless such person holds a current, valid life settlement provider license.

(k) All licensees under this section shall provide to the commissioner within 30 days new or revised information about officers, 10 per cent or more stockholders, partners, directors, members or designated employees.

(l) A person licensed as a life settlement broker shall, on a biennial basis, complete 15 hours of training related to the business of life settlements and life settlement transactions as required by the commissioner; provided, however, that a life insurance producer who is operating as a life settlement broker shall not be subject to the requirements of this subsection. Failure to meet the requirements of this subsection may result in suspension or nonrenewal of license by the commissioner.

Section 215. (a) The commissioner may suspend, revoke or refuse to renew the license of a licensee if the commissioner finds that:-

(1) there was a material misrepresentation in the application for the license;

(2) the licensee or any officer, partner, member or director has been convicted or determined by a regulator to have committed a fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(3) if a life settlement provider, the licensee demonstrates a pattern of unreasonably withholding payments to policy owners;

(4) the licensee no longer meets the requirements for initial licensure;

(5) the licensee or any officer, partner, member or director has been convicted of a felony or a misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or had the case continued without a finding with respect to a felony or a misdemeanor of which criminal fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been entered by the court;

(6) the life settlement provider has entered into a life settlement contract using a form that has not been approved pursuant to this act;

(7) the life settlement provider has failed to honor contractual obligations set out in a life settlement contract;

(8) the life settlement provider has assigned, transferred or pledged a settled policy to a person other than a life settlement provider licensed in the commonwealth, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special purpose entity or related provider trust; or

(9) the licensee or any officer, partner, member or key management personnel has violated any of the provisions of this act.

(b) Before the commissioner denies a license application or suspends, revokes or refuses to renew the license of a licensee under this act, the commissioner shall conduct a hearing in accordance with chapter 30A.

Section 216. (a) No person shall use any form of life settlement contract or provide to an owner a disclosure statement form unless it has been filed with and approved by the commissioner . The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 220, 221, 223, and subsection (b) of section 223D or are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the owner.

(b) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, life settlement provider or life settlement broker sign any form, disclosure, consent, waiver or acknowledgment that has not been expressly approved by the commissioner for use in connection with a life settlement contract.

Section 217. (a) Each life settlement provider shall file with the commissioner, on or before March 1, an annual statement containing such information as the commissioner may prescribe by regulation. In addition to any other requirements, the annual statement shall: (i) specify the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year for each carrier; (ii) include the names of the insurance companies whose policies have been settled; and (iii) include only those transactions where the owner is a resident

of the commonwealth and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

(b) A life settlement provider that willfully fails to file an annual statement or willfully fails to reply within 30 days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties prescribed by law, be subject, upon due notice and opportunity to be heard, to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for each such failure.

Section 218. (a) Except as otherwise allowed or required by law, a life settlement provider, life settlement broker, insurance company, life insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure is:

(1) necessary to effect a life settlement contract between the owner and a life settlement provider and the owner and insured have provided prior written consent to the disclosure;

(2) necessary to effectuate the sale of a life settlement contract, or interests therein, as investments; provided the sale is conducted in accordance with applicable state and federal securities law; and provided further that the owner and the insured have both provided prior written consent to the disclosure;

(3) provided in response to an investigation or examination by the commissioner or any other governmental officer or agency;

(4) a term or condition to the transfer of a policy by 1 life settlement provider to another life settlement provider;

(5) necessary to allow the life settlement provider or life settlement broker, or an authorized representative to make contacts for the purpose of determining health status. For the purposes of this section, the term "authorized representative" shall not include any person who has or may have any financial interest in the life settlement contract other than a licensed life settlement provider, licensed life settlement broker, financing entity, related provider trust or special purpose entity; provided further that a life settlement provider or life settlement broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this act; or

(6) required to purchase stop loss coverage.

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

Section 219. (a) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner may order a licensee or applicant to produce records, books, files or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting an examination shall be paid by the licensee or applicant.

(b) For a foreign or alien licensee, the commissioner may accept an examination report on the licensee as prepared by the appropriate licensing authority for the licensee's state of domicile or port-of-entry state.

(c) Names and individual identification data for all owners, purchasers and insured shall be considered private and confidential information and shall not be disclosed by the commissioner unless the disclosure is required by law or is disclosed to the National Association of Insurance Commissioners, to the insurance department of any other state or country or to law enforcement officials of the commonwealth or any other state or agency of the federal government at any time, so long as the agency or office receiving the information agrees in writing to hold such material confidential.

(d) Records of all completed transactions and life settlement contracts shall be maintained by the life settlement provider for 3 years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

(e) (1) In conducting an examination, the commissioner shall use methods common to the examination of licensees including guidelines and procedures for examinations as adopted by the National Association of Insurance Commissioners.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the commissioner timely, convenient and free access at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers,

directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension, refusal or nonrenewal of a license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction.

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

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

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

(6) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if the commissioner deems appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents or any other information discovered or developed during the course of an examination in the furtherance of a legal or regulatory action.

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

(2) No later than 60 days following completion of the examination, the commissioner shall transmit a report of the examination to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report, which shall become part of the report, or to request a hearing on any matter in dispute.

(g) Except as otherwise provided, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to chapter 66 and clause 26 of section 7 of chapter 4, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

(h) (1) An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination; provided, however, that an examiner

393 may be: (i) an owner; (ii) an insured in a life settlement contract or insurance policy; or (iii) a
394 beneficiary in an insurance policy that is proposed for a life settlement contract.

395 (2) Notwithstanding the requirements of this subsection, the commissioner may retain
396 from time to time, on an individual basis, qualified actuaries, certified public accountants or
397 other similar individuals who are independently practicing their professions, even though these
398 persons may from time to time be similarly employed or retained by persons subject to
399 examination under this life settlement act.

400 (i) (1) No cause of action shall arise, nor shall any liability be imposed against the
401 commissioner, the commissioner's authorized representatives or any examiner appointed by the
402 commissioner for statements made or conduct performed in good faith while carrying out the
403 provisions of this act.

404 (2) No cause of action shall arise, nor shall any liability be imposed against a person for
405 the act of communicating or delivering information or data to the commissioner, the
406 commissioner's authorized representative or an examiner related to an examination if the act of
407 communication or delivery was performed in good faith and without fraudulent intent or the
408 intent to deceive. This paragraph does not abrogate or modify any common law or statutory
409 privilege or immunity enjoyed by any person identified in paragraph (1).

410 (3) A person identified in paragraph (1) or (2) shall be entitled to an award of attorney's
411 fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or
412 any other relevant tort arising out of activities in carrying out the provisions of this act and the
413 party bringing the action was not substantially justified in doing so. For purposes of this section a

proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(j) The charge for each such examination shall be determined annually by the secretary of administration and finance under the provision of section 3B of chapter 7 and shall be paid by each licensee within 30 days after notice from the commissioner of such charge. Such charge shall include an amount equal to the cost of fringe benefits as established by the secretary of administration and finance pursuant to section 6B of chapter 29. If in the course of an examination of a domestic or foreign licensee that maintains a branch office outside the commonwealth, it becomes necessary or expedient for the commissioner or any deputies or examiners to travel outside the commonwealth, such licensee shall pay the proper expenses of the commissioner or any deputies or examiners incurred. Whenever the commissioner deems it advisable, the commissioner shall cause a complete audit of the books of the licensee to be made by a disinterested expert accountant, and such licensee shall pay the proper expenses of such audit.

Section 220. (a) A licensed life settlement broker or life settlement provider may conduct or participate in advertisements. Such advertisements shall comply with all advertising laws or rules and regulations promulgated by the commissioner that are applicable to insurers, life insurance producers, brokers and providers.

(b) Advertisements shall be accurate, truthful and not misleading in fact or by implication.

(c) No person in the business of insurance or the business of life settlements shall:

(1) directly or indirectly market, advertise or solicit the purchase of a new policy for the purpose of or with a significant emphasis on settling the policy; or

(2) use the words “free” or “no cost” or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

(3) with respect to a life settlement provider, enter into a life settlement contract unless the related advertisements, as may be prescribed by regulation, have been filed with the commissioner;

(d) Prior to publication, the commissioner may require the submission of advertising material.

(e) The commissioner shall require delivery of a buyer’s guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process.

Section 221. (a) No later than the date of application for a life settlement contract, a life settlement provider shall provide to the owner in writing, in a separate document signed by the owner, the following information:

(1) that possible alternatives to life settlement contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(2) that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(3) that the proceeds from a life settlement contract may be subject to the claims of creditors;

456 (4) that receipt of proceeds from a life settlement contract may adversely affect the
457 recipients' eligibility for public assistance or other government benefits or entitlements and that
458 advice should be obtained from the appropriate agencies;

459 (5) that the owner has a right to terminate a life settlement contract within 15 days of the
460 date it is executed by all parties; that the owner has received the disclosures required by this
461 section; and that the following statement regarding rescission is included: "Rescission, if
462 exercised by the owner, is effective only if both notice of the rescission is given, and the owner
463 repays all proceeds and any premiums, loans, and loan interest paid on account of the life
464 settlement provider within the rescission period. If the insured dies during the rescission period,
465 the life settlement contract shall be deemed to have been rescinded subject to repayment by the
466 owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the life
467 settlement provider";

468 (6) that proceeds will be sent to the owner within 3 business days after the life settlement
469 provider has received the insurer or group administrator's acknowledgement that ownership of
470 the policy or interest in the certificate has been transferred and the beneficiary has been
471 designated in accordance with the terms of the life settlement contract;

472 (7) that entering into a life settlement contract may cause other rights or benefits,
473 including conversion rights and waiver of premium benefits that may exist under the policy or
474 certificate of a group policy to be forfeited by the owner and that assistance should be sought
475 from a professional financial advisor;

476 (8) the amount and method of calculating the compensation paid, or to be paid, to the life
477 settlement broker or any other person acting for the owner in connection with the transaction;

478 (9) the date by which the funds will be available to the owner and the transmitter of the
479 funds;

480 (10) that the commissioner shall require delivery of a buyer's guide or a similar consumer
481 advisory package in the form prescribed by the commissioner to owners during the solicitation
482 process;

483 (11) the following statement: "All medical, financial or personal information solicited or
484 obtained by a life settlement provider or life settlement broker about an insured, including the
485 insured's identity or the identity of family members, a spouse or a significant other, may be
486 disclosed as necessary to effect the life settlement contract between the owner and life settlement
487 provider. If you are asked to provide this information, you will be asked to consent to the
488 disclosure. The information may be provided to someone who buys the policy or provides funds
489 for the purchase. You may be asked to renew your permission to share information every 2
490 years.";

491 (12) that the commissioner shall require life settlement providers and life settlement
492 brokers to print separate signed fraud warnings on their applications and on their life settlement
493 contracts is as follows: "Any person who knowingly presents false information in a life
494 settlement application or contract may be found guilty of a crime and may be subject to fines and
495 confinement in prison."

496 (13) that the insured may be contacted by either the life settlement provider or life
497 settlement broker or its authorized representative for the purpose of determining the insured's
498 health status or to verify the insured's address; provided, that this contact is limited to once every

499 3 months if the insured has a life expectancy of more than 1 year and no more than once per
500 month if the insured has a life expectancy of 1 year or less;

501 (14) the affiliation, if any, between the life settlement provider and the issuer of the
502 insurance policy to be settled;

503 (15) that a life settlement broker represents exclusively the owner and not the insurer, the
504 life settlement provider or any other person, and owes a fiduciary duty to the owner, including a
505 duty to act according to the owner's instructions and in the best interest of the owner;

506 (16) the name, address and telephone number of the provider;

507 (17) the name, business address and telephone number of the independent third party
508 escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or
509 trust agreements or documents; and

510 (18) that a change of ownership may, in the future, limit the insured's ability to purchase
511 future insurance on the insured's life because there is a limit to how much coverage insurers will
512 issue on 1 life.

513 The written disclosures shall be conspicuously displayed in any life settlement contract
514 furnished to the owner by a life settlement provider including any affiliations or contractual
515 arrangements between the life settlement provider and the life settlement broker.

516 (b) A life settlement broker shall provide the owner and the life settlement provider with
517 the following disclosures no later than the date the life settlement contract is signed by all
518 parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a
519 separate document signed by the owner and provide the following information:

(1) the name, business address and telephone number of the life settlement broker;

(2) a complete and accurate description of all the offers, counter-offers, acceptances and rejections relating to the proposed life settlement contract;

(3) any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(4) the name of each life settlement broker involved in the life settlement agreement who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the life settlement broker in connection with the life settlement contract;

(5) a complete reconciliation of the gross offer or bid by the life settlement provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid shall mean the total amount or value offered by the life settlement provider for the purchase of 1 or more life insurance policies, inclusive of commissions and fees; and

(6) that a failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice pursuant to chapter 176D.

(c) A life settlement broker shall disclose to the owner anything of value paid or given to a life settlement broker relating to a life settlement contract.

Section 222. (a) Insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) If the premium financing loan provides funds which can be used for a purpose other than paying for the premiums, costs and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of this act.

(c) The insurance carrier may disclose certain information to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including, but not limited to, the following disclosure:

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

(1) a change of ownership could lead to a stranger owning an interest in the insured’s life;

(2) a change of ownership could in the future limit your ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life;

(3) should there be a change of ownership and you wish to obtain more insurance coverage on the insured’s life in the future, the insured’s higher issue age, a change in health status, and other factors may reduce the ability to obtain coverage or may result in significantly higher premiums;

(4) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.”

(d) The insurance carrier may require certifications from the applicant or the insured, including the following certified statement:

561 “(1) I have not entered into any agreement or arrangement providing for the future sale of
562 this life insurance policy;

563 (2) my loan arrangement for this policy provides funds sufficient to pay for some or all of
564 the premiums, costs, and expenses associated with obtaining and maintaining my life insurance
565 policy; however, I have not entered into any agreement by which I am to receive consideration in
566 exchange for procuring this policy; and

567 (3) the borrower has an insurable interest in the insured.”

568 Section 223. (a) A life settlement provider entering into a life settlement contract with an
569 owner of a policy, where the insured is terminally or chronically ill, shall first obtain:

570 (1) if the owner is the insured, a written statement from a licensed attending physician
571 that the owner is of sound mind; and

572 (2) a document in which the insured consents to the release of his medical records to a
573 life settlement provider, life settlement broker or insurance producer and, if the policy was issued
574 less than 2 years from the date of application for a life settlement contract, to the insurance
575 company that issued the policy.

576 Within 20 days after an owner executes the life settlement contract, the life settlement
577 provider shall give written notice to the insurer that issued that insurance policy that the policy
578 has become subject to a life settlement contract. The notice shall be accompanied by the
579 documents required by clauses (i) and (ii).

580 (b) The insurer shall respond to a request for verification of coverage submitted by a life
581 settlement provider, life settlement broker or life insurance producer not later than 30 calendar

days of the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

(c) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner: (1) consents to the life settlement contract, (2) represents that the owner has a full and complete understanding of the life settlement contract, (3) represents that the owner has a full and complete understanding of the benefits of the policy, (4) acknowledges that the owner is entering into the life settlement contract freely and voluntarily, and (5) for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

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

(e) If a life settlement broker or life insurance producer performs any of the activities in subsections (a) or (c), the life settlement provider is deemed to have fulfilled the requirements of this section.

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

(g) All medical information solicited or obtained by a licensee shall be subject to any applicable provisions of this act and state law relating to confidentiality of medical information, if not otherwise provided in this life settlement act.

(h) All life settlement contracts shall provide that the owner may rescind the life settlement contract on or before 15 days after the date it is executed by all parties. Rescission, if exercised by the owner, shall be effective only if: (1) notice of the rescission is given, and (2) the owner repays all proceeds and any premiums, loans and loan interest paid on account of the life settlement provider within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life settlement provider.

Failure to give written notice of the right of rescission shall toll the right of rescission until 30 days after the written notice of the right of rescission has been given.

(i) Within 3 business days after receipt from the owner of documents to effect the transfer of the policy pursuant to a life settlement contract, the life settlement provider shall pay the proceeds of the life settlement contract to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within 3 business days of acknowledgement of the transfer from the insurer.

(j) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the life settlement contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner.

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

(l) No person at any time prior to, or at the time of the application for, or issuance of a policy, or during a 2 year period commencing with the date of issuance of the policy, shall enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the policy is to occur.

(m)(1) This prohibition shall not apply if:

(i) the owner certifies to the provider that the policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy; provided that the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months; provided, further that the time covered under a group policy shall be calculated without regard to a change in insurance carriers, if the coverage has been continuous and under the same group sponsorship; or

(ii) the owner submits independent evidence to the life settlement provider that 1 or more of the following conditions have been met within the 2 year period:

646 (A) the owner or insured is terminally or chronically ill;

647 (B) the owner or insured disposes of his ownership interests in a closely held corporation,
648 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance
649 policy was initially issued;

650 (C) the owner's spouse dies;

651 (D) the owner divorces their spouse;

652 (E) the owner retires from full-time employment;

653 (F) the owner becomes physically or mentally disabled and a physician determines that
654 the disability prevents the owner from maintaining full-time employment; or

655 (G) a final order, judgment or decree is entered by a court of competent jurisdiction on
656 the application of a creditor of the owner adjudicating the owner bankrupt or insolvent, or
657 approving a petition seeking reorganization of the owner or appointing a receiver, trustee or
658 liquidator to all or a substantial part of the owner's assets;

659 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the
660 insurer when the life settlement provider submits a request to the insurer for verification of
661 coverage. The copies shall be accompanied by a letter of attestation from the life settlement
662 provider that the copies are true and correct copies of the documents received by the life
663 settlement provider. Nothing in this section shall prohibit an insurer from exercising its right to
664 contest the validity of any policy.

665 (3) If the life settlement provider submits to the insurer a copy of independent evidence
666 provided for in subclause (A) of clause (ii) when the life settlement provider submits a request to

the insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed to establish that the life settlement contract satisfies the requirements of this section.

Section 223A. (a) (1) If there is more than 1 owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of 1 owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(b) A life settlement provider from the commonwealth who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the life settlement provider shall give the owner notice that neither state regulates the transaction upon which he is entering. For transactions in those states, however, the life settlement provider is to maintain all records required if the transactions were executed in the owner's state of residence. The forms used in those states need not be approved by the commissioner.

(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

Section 223B. A person shall not commit a fraudulent life settlement act. A fraudulent life settlement act shall include:

(1) Acts or omissions committed by a person who, in connection with a life settlement contract, knowingly and with an intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts, including, but not limited to, the following:

(i) Presenting, causing to be presented or preparing with knowledge and belief that it will be presented to or by a life settlement provider, premium finance lender, life settlement broker, insurer, insurance producer or any other person, false material information or concealing material information, as part of, in support of or concerning a fact material to 1 or more of the following:

(A) an application for the issuance of a life settlement contract or insurance policy;

(B) the underwriting of a life settlement contract or insurance policy;

(C) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(D) premiums paid on an insurance policy;

(E) payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;

(F) the reinstatement or conversion of an insurance policy;

(G) the solicitation, offer to enter into or effectuation of, a life settlement contract or insurance policy;

708 (H) the issuance of written evidence of life settlement contracts or insurance;

709 (I) an application for, or the existence of or any payments related to, a loan secured
710 directly or indirectly by any interest in a life insurance policy; or

711 (J) engaging in stranger-originated life insurance.

712 (ii) Failing to disclose to the insurer, where the request for such disclosure has been asked
713 for by the insurer, that the prospective insured has undergone a life expectancy evaluation by a
714 person or entity other than the insurer or its authorized representatives in connection with the
715 issuance of the policy.

716 (iii) Employing any device, scheme, or artifice to defraud in the business of life
717 settlements.

718 (2) The following acts committed by a person, or that such person permits an employee
719 or agent to commit, in the furtherance of a fraud, or to prevent the detection of fraud:

720 (i) remove, conceal, alter, destroy or sequester from the commissioner the assets or
721 records of a licensee or other person engaged in the business of life settlements;

722 (ii) misrepresent or conceal the financial condition of a licensee, financing entity, insurer
723 or other person;

724 (iii) transact the business of life settlements in violation of laws requiring a license,
725 certificate of authority or other legal authority for the transaction of the business of life
726 settlements;

(iv) file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;

(v) engage in embezzlement, theft, misappropriation or conversion of money, funds, premiums, credits or other property of a life settlement provider, insurer, insured, owner, insurance policy owner or other person engaged in the business of life settlements or insurance;

(vi) knowingly and with an intent to defraud, enter into, broker or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information requested concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;

(vii) attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts or omissions specified in this subsection; or

(viii) misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this act for the purpose of evading or avoiding the provisions of this act.

Section 223C. (a) It is unlawful for a person to:

(1) enter into a life settlement contract if such person knows or reasonably should have known that the policy was obtained by means of a false, deceptive or misleading application for such policy;

747 (2) engage in a transaction, practice or course of business if such person knows or
748 reasonably should have known that the intent was to avoid the notice requirements of this act;

749 (3) engage in any fraudulent act or practice in connection with any transaction relating to
750 any settlement involving an owner who is a resident of the commonwealth;

751 (4) issue, solicit or market the purchase of a new policy for the purpose of or with a
752 significant emphasis on settling the policy;

753 (5) if providing premium financing, receive any proceeds, fees or other consideration
754 from the policy or owner of the policy that are in addition to the amounts required to pay
755 principal, interest and any reasonable costs or expenses incurred by the lender or borrower in
756 connection with the premium finance agreement, except in the event of a default, unless either
757 the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding
758 with another person for the purpose of evading regulation under this act;

759 (6) with respect to any life settlement contract or insurance policy and a life settlement
760 broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale
761 to any life settlement provider, financing entity or related provider trust that is controlling,
762 controlled by or under common control with such life settlement broker unless such relationship
763 is disclosed to the owner;

764 (7) with respect to a life settlement contract or insurance policy and a life settlement
765 provider, knowingly enter into a life settlement contract with an owner if, in connection with the
766 life settlement contract, anything of value will be paid to a life settlement broker that is
767 controlling, controlled by or under common control with the life settlement provider, the

768 financing entity or a related provider trust that is involved in the life settlement contract unless
769 the relationship is disclosed to the owner;

770 (8) create a trust that gives the appearance of insurable interest and is used to initiate
771 policies for investors;

772 (9) include any reference in an advertisement that would cause an owner to reasonably
773 believe that the insurance is free for any period of time; or

774 (10) with respect to any life insurance producer, insurance company, life settlement
775 broker or life settlement provider, make a statement or representation to the applicant or
776 policyholder in connection with the sale or financing of a policy to the effect that the policy is
777 free or without cost to the policyholder for any period of time unless provided in the policy.

778 (b) A violation of this section shall be deemed a fraudulent life settlement act.

779 (c) The commissioner may investigate suspected fraudulent life settlement acts and
780 persons engaged in the business of life settlements.

781 Section 223D. (a) (1) A person shall not knowingly and intentionally interfere with the
782 enforcement or investigations of suspected or actual violations of sections 212 to 223H.

783 (2) A person in the business of life settlements shall not knowingly or intentionally
784 permit any person convicted of a felony involving dishonesty or breach of trust to participate in
785 the business of life settlements.

786 (b) (1) Life settlement contracts and applications for life settlement contracts, regardless
787 of the form of transmission, shall contain the following statement or a substantially similar
788 statement:

789 “Any person who knowingly presents false information in a life settlement application or
790 contract may be found guilty of a crime and may be subject to fines and confinement in prison.”

791 (2) The lack of a statement as required in paragraph (1) shall not constitute a defense in a
792 prosecution for a fraudulent life settlement act.

793 (c) (1) A person engaged in the business of life settlements having knowledge or a
794 reasonable belief that a fraudulent life settlement act is being, will be or has been committed
795 shall provide to the commissioner the information required by, and in a manner prescribed by,
796 the commissioner.

797 (2) A person not engaged in the business of life settlements having knowledge or a
798 reasonable belief that a fraudulent life settlement act is being, will be or has been committed may
799 provide to the commissioner the information required by, and in a manner prescribed by, the
800 commissioner.

801 (d) (1) No civil liability shall be imposed on and no cause of action shall arise from a
802 person furnishing information concerning suspected, anticipated or completed fraudulent life
803 settlement acts or suspected or completed fraudulent insurance acts if the information is provided
804 to:

805 (i) the commissioner or the commissioner’s employees, agents or representatives;

806 (ii) federal, state or local law enforcement or regulatory officials or their employees,
807 agents or representatives;

808 (iii) a person involved in the prevention and detection of fraudulent life settlement acts or
809 that person’s agents, employees or representatives;

(iv) a regulatory body or its employees, agents or representatives, overseeing life insurance, the business of life settlements, securities or investment fraud;

(v) the insurer that issued the life insurance policy covering the life of the insured; or

(vi) the licensee and its agents, employees or representatives.

(2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or insurance that was fraudulently obtained, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

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

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

(e) (1) The documents and evidence provided pursuant to subsection (d) or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential, shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

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

833 (i) in administrative or judicial proceedings to enforce laws administered by the
834 commissioner;

835 (ii) to federal, state or local law enforcement or regulatory agencies or to an organization
836 established for the purpose of detecting and preventing fraudulent life settlement acts; or

837 (iii) at the discretion of the commissioner, to a person in the business of life settlements
838 that is aggrieved by a fraudulent life settlement act.

839 (3) Release of documents and evidence under paragraph (2) shall not abrogate or modify
840 the privilege granted in paragraph (1).

841 (f) Sections 212 to 223H shall not:

842 (1) preempt the authority or relieve the duty of law enforcement or regulatory agencies to
843 investigate, examine and prosecute suspected violations of law;

844 (2) preempt, supersede or limit state securities law or any rule, order or notice issued
845 thereunder;

846 (3) prevent or prohibit a person from disclosing voluntarily information concerning life
847 settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

848 (4) limit the powers granted elsewhere by the laws of this state to the commissioner or an
849 insurance fraud unit to investigate and examine possible violations of law and to take appropriate
850 action against wrongdoers.

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

(i) fraud investigators, who may be life settlement provider or life settlement broker employees or independent contractors; and

(ii) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting possible fraudulent life settlement acts to the Commissioner;

(C) a description of the plan for antifraud education and training of underwriters and other personnel; and

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life

871 settlement acts and investigating unresolved material inconsistencies between medical records
872 and insurance applications.

873 (2) Antifraud plans submitted to the commissioner shall be privileged and confidential,
874 shall not be a public record and shall not be subject to discovery or subpoena in a civil or
875 criminal action.

876 Section 223E. (a) If a person violates sections 212 to 223H or any rule or regulation
877 promulgated thereunder, the commissioner may seek an injunction in a court of competent
878 jurisdiction in the county where the person resides or has a principal place of business and may
879 apply for temporary and permanent orders that the commissioner determines necessary to
880 restrain the person from further committing the violation.

881 (b) A person damaged by the acts of another person in violation of sections 212 to 223H
882 or any rule or regulation promulgated thereunder may bring a civil action for damages against
883 the person committing the violation in a court of competent jurisdiction.

884 (c) The commissioner may issue a cease and desist order, in accordance with chapter
885 30A, upon a person who violates any provision of sections 212 to 223H, any regulation, rule or
886 order adopted by the commissioner or any written agreement entered into with the commissioner.

887 (d) When the commissioner finds that an action presents an immediate danger to the
888 public and requires immediate action, he may issue an emergency cease and desist order reciting
889 with particularity the facts underlying such findings. The emergency cease and desist order shall
890 be effective immediately upon service of a copy of the order on the respondent and shall remain
891 effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings
892 under subsection (c), the emergency cease and desist order shall remain effective, absent an order

893 by an appellate court of competent jurisdiction pursuant to chapter 30A. In the event of a willful
894 violation of this act, the trial court may award statutory damages in addition to actual damages in
895 an amount up to 3 times the actual damage award.

896 (e) The provisions of sections 212 to 223H shall not be waived by any agreement. A
897 choice of law provision shall not be utilized to prevent the application of these sections to a life
898 settlement contract in which a party to the life settlement contract is a resident of the
899 commonwealth.

900 Section 223F. (a) If a person is found guilty of committing a fraudulent life settlement
901 act, that person shall also be found guilty of committing insurance fraud and shall be subject to
902 additional penalties.

903 (b) The commissioner may levy a civil penalty, not to exceed \$10,000 for each violation,
904 upon any person, including those persons and their employees licensed pursuant to sections 212
905 to 223H, who is found to have committed a fraudulent life settlement act or violated any other
906 provision of this act.

907 (c) The license of a person licensed under this chapter that has committed a fraudulent
908 life settlement act shall be revoked for a period of at least 1 year.

909 Section 223G. A violation of sections 212 to 223H shall be considered an unfair trade
910 practice under sections 3 and 4 of chapter 176D, and shall be subject to the penalties set forth in
911 section 7 of said chapter 176D.

912 Section 223H. The commissioner may promulgate regulations to implement the
913 provisions of sections 212 to 223G.

SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical settlement provider as of the effective date of this act, shall be deemed qualified for licensure as a life settlement broker or life settlement provider, respectively, and shall be subject to all the provisions of this article as if the person were originally licensed as a life settlement broker or life settlement provider.

(b) A viatical settlement provider lawfully transacting business prior to the effective date of this act may continue to do so pending approval or disapproval of the application for a license as long as the application is filed with the commissioner not later than 30 days after publication by the commissioner of an application form and instructions for licensure of life settlement providers. During the time that an application is pending with the commissioner, the applicant may use any form of life settlement contract that has been filed with the commissioner pending approval thereof; provided that such form is otherwise in compliance with the provisions of this life settlement act. Any person transacting business under this provision shall be obligated to comply with all other requirements of this act.

(c) A person who has lawfully negotiated life settlement contracts between an owner residing in the commonwealth and 1 or more life settlement providers for at least 1 year immediately prior to the effective date of this act may continue to do so pending approval or disapproval of that person's application for a license as long as the application is filed with the commissioner not later than 30 days after publication by the commissioner of an application form and instructions for licensure of life settlement brokers. Any person transacting business under this provision shall be obligated to comply with all other requirements of this act.

935 SECTION 3. This act shall apply to all life settlement contracts entered into on or after
936 January 1, 2012, involving a life insurance policy in effect, or entered into, on or after the
937 effective date of this act.

938 SECTION 4. Nothing in this act shall be construed to limit the incontestability standard
939 as set forth in section 132 of chapter 175 of the Massachusetts General Laws.