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H.222

Introduced by Representatives Kitzmiller of Montpelier, Bissonnette of
Winooski, Botzow of Pownal, Clerkin of Hartford, Dickinson
of St. Albans Town, Keenan of St. Albans City, Lorber of
Burlington, Marcotte of Coventry, Milkey of Brattleboro, Shand
of Weathersfield, Smith of Mendon, Turner of Milton and
Wilson of Manchester

Referred to Committee on

Date:

Subject: Insurance; securities; banking; life settlements; senior designations;
reverse mortgages

Statement of purpose: This bill proposes to: (1) regulate life settlements,
which are transactions in which a policyholder sells a life insurance policy for
more than the cash value of the policy but less than the net death benefit and in
which the purchaser becomes the new beneficiary and is responsible for all
subsequent premium payments; (2) establish standards for the use of
designations and certifications purporting to demonstrate special expertise with
respect to the financial affairs of seniors; and (3) establish consumer protection
standards for reverse mortgage programs.

An act relating to senior protection and financial services

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 * * * Life Settlements * * *

3 Sec. 1. 8 V.S.A. chapter 103, subchapter 5B is added to read:

4 Subchapter 5B. Life Settlements

5 § 3835. DEFINITIONS

6 As used in this subchapter:

7 (1) “Advertising” means any written, electronic, or printed
8 communication or any communication by means of recorded telephone
9 messages or that is transmitted on radio, television, the Internet, or similar
10 communications media, including film strips, motion pictures, and videos, that
11 are published, disseminated, circulated, or placed directly before the public in
12 this state for the purpose of creating an interest in or inducing a person to sell,
13 assign, devise, bequest, or transfer the death benefit or ownership of a life
14 insurance policy pursuant to a life settlement contract.

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

21 (3) “Chronically ill” means:

1 (A) being unable to perform at least two activities of daily living,
2 including eating, toileting, transferring, bathing, dressing, or continence;

3 (B) requiring substantial supervision to protect the individual from
4 threats to health and safety due to severe cognitive impairment; or

5 (C) having a level of disability similar to that described in
6 subdivision (A) of this subdivision (3) as determined by the appropriate
7 administrator of a state or federal public disability insurance or benefit
8 program.

9 (4) “Commissioner” means the commissioner of the department of
10 banking, insurance, securities, and health care administration.

11 (5)(A) “Financing entity” means an insurance underwriter, placement
12 agent, lender, purchaser of securities, purchaser of a policy or certificate from a
13 life settlement provider, credit enhancer, or any entity that has a direct
14 ownership in a policy or certificate that is the subject of a life settlement
15 contract, but:

16 (i) whose principal activity related to the transaction is providing
17 funds to effect the life settlement or purchase of one or more policies subject to
18 a life settlement contract; and

19 (ii) who has an agreement with one or more licensed life
20 settlement providers to finance the acquisition of life settlement contracts.

21 (B) “Financing entity” does not include a life settlement purchaser.

1 (C) “Financing entity” includes an accredited investor as defined by
2 Rule 501 as promulgated under the Federal Securities Act of 1933, as
3 amended.

4 (6) “Fraudulent life settlement act” includes:

5 (A) acts or omissions committed by any person who knowingly or
6 who reasonably should know and, for the purpose of depriving another of
7 property or for pecuniary gain, commits or permits its employees or its agents
8 to engage in acts, including:

9 (i) presenting, causing to be presented, or preparing with
10 knowledge or belief that it will be presented to or by a life settlement provider,
11 life settlement broker, financing entity, insurer, insurance producer, or any
12 other person false material information or concealing material information, as
13 part of, in support of, or concerning a fact material to one or more of the
14 following:

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

17 (II) the underwriting of a life settlement contract or insurance
18 policy;

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

21 (IV) premiums paid on an insurance policy;

- 1 (V) payments and changes in ownership or beneficiary made in
2 accordance with the terms of a life settlement contract or insurance policy;
- 3 (VI) the reinstatement or conversion of an insurance policy;
- 4 (VII) the solicitation, offer, effectuation, or sale of a life
5 settlement contract or insurance policy;
- 6 (VIII) the issuance of written evidence of a life settlement
7 contract or insurance; or
- 8 (IX) a financing transaction; and
- 9 (ii) employing any plan, financial structure, device, scheme, or
10 artifice to defraud related to policies subject to a life settlement contract.
- 11 (B) any person in the furtherance of a fraudulent settlement act or to
12 prevent the detection of a fraudulent settlement act committing or permitting
13 its employees or its agents to:
- 14 (i) remove, conceal, alter, destroy, or sequester from the
15 commissioner the assets or records of a licensee or other person engaged in the
16 business of life settlements;
- 17 (ii) misrepresent or conceal the financial condition of a licensee,
18 financing entity, insurer, or other person;
- 19 (iii) transact the business of life settlements in violation of laws
20 requiring a license, certificate of authority, or other legal authority for the
21 transaction of the business of life settlements; or

1 (iv) file with the commissioner or the equivalent chief insurance
2 regulatory official of another jurisdiction a document that contains false
3 information or that otherwise conceals information about a material fact from
4 the commissioner;

5 (C) embezzlement, theft, misappropriation or conversion of monies,
6 funds, premiums, credits, or other property of a life settlement provider,
7 insurer, insured, policy owner, insurance policy owner, or any other person
8 engaged in the business of life settlements or insurance;

9 (D) recklessly entering into, negotiating, brokering, or otherwise
10 dealing in a life settlement contract, the subject of which is a life insurance
11 policy that was obtained by presenting false information concerning any fact
12 material to the policy or by concealing, for the purpose of misleading another,
13 information concerning any fact material to the policy, where the person or the
14 persons intended to commit a fraudulent settlement act with respect to the
15 policy's issuer, the life settlement provider, or the owner;

16 (E) facilitating the change of state of ownership of a policy or
17 certificate or the state of residency of a policy owner to a state or jurisdiction
18 that does not have a law similar to this subchapter for the express purposes of
19 evading or avoiding the provisions of this subchapter;

1 (F) attempting to commit, assisting, aiding, or abetting in the
2 commission of or conspiracy to commit the acts or omissions specified in this
3 subdivision (6).

4 (7) “Life insurance producer” means any person licensed in this state as
5 a resident or nonresident insurance producer who has received qualification to
6 sell life insurance coverage or a life line of coverage pursuant to chapter 131 of
7 this title.

8 (8) “Life settlement broker” means a natural person who is working
9 exclusively on behalf of a policy owner and, for a fee, commission, or other
10 valuable consideration, offers or attempts to negotiate life settlement contracts
11 between an owner and one or more life settlement providers. Notwithstanding
12 the manner in which the life settlement broker is compensated, a life settlement
13 broker is deemed to represent only the policy owner and not the insurer or the
14 life settlement provider and to owe a fiduciary duty to the policy owner to act
15 according to the policy owner’s instructions and in the best interest of the
16 policy owner. The term does not include an attorney or a certified public
17 accountant who is retained to represent the policy owner and whose
18 compensation is not paid directly or indirectly by the life settlement provider
19 or purchaser.

20 (9)(A) “Life settlement contract” means a written agreement between a
21 policy owner and a life settlement provider or any affiliate of the life

1 settlement provider establishing the terms under which compensation or
2 anything of value is or will be paid, which compensation or value is less than
3 the expected death benefits of the policy, in return for the policy owner's
4 present or future assignment, transfer, sale, devise, or bequest of the death
5 benefit or ownership of any portion of the insurance policy or certificate of
6 insurance.

7 (B) "Life settlement contract" includes a premium finance loan made
8 for a life insurance policy by a lender to a policy owner on, before, or after the
9 date of issuance of the policy where:

10 (i) The policy owner or the insured receives on the date of the
11 premium finance loan a guarantee of a future life settlement value of the
12 policy; or

13 (ii) The policy owner or the insured agrees on the date of the
14 premium finance loan to sell the policy or any portion of its death benefit on
15 any date following the issuance of the policy.

16 (C) "Life settlement contract" does not include:

17 (i) a policy loan or accelerated death benefit made by the insurer
18 pursuant to the policy's terms;

19 (ii) loan proceeds that are used solely to pay:

20 (I) premiums for the policy;

1 (II) the costs of the loan, including, without limitation, interest,
2 arrangement fees, utilization fees and similar fees, closing costs, legal fees and
3 expenses, trustee fees and expenses, and third party collateral provider fees and
4 expenses, including fees payable to letter of credit issuers;

5 (iii) a loan made by a bank or other licensed financial institution in
6 which the lender takes an interest in a life insurance policy solely to secure
7 repayment of a loan or, if there is a default on the loan and the policy is
8 transferred, the transfer of such a policy by the lender, provided that the default
9 itself is not pursuant to an agreement or understanding with any other person
10 for the purpose of evading regulation under this subchapter;

11 (iv) a loan made by a lender that does not violate chapter 143 of
12 this title, provided that the premium finance loan is not described in
13 subdivision (B) of this subdivision (9);

14 (v) an agreement where all the parties are closely related to the
15 insured by blood or law; or have a lawful substantial economic interest in the
16 continued life, health, and bodily safety of the person insured, or are trusts
17 established primarily for the benefit of such parties;

18 (vi) any designation, consent, or agreement by an insured who is
19 an employee of an employer in connection with the purchase by the employer,
20 or trust established by the employer, of life insurance on the life of the
21 employee;

1 (vii) a bona fide business succession planning arrangement:

2 (I) between two or more shareholders in a corporation or
3 between a corporation and one or more of its shareholders or one or more
4 trusts established by its shareholders;

5 (II) between two or more partners in a partnership or between a
6 partnership and one or more of its partners or one or more trusts established by
7 its partners; or

8 (III) between two or more members in a limited liability
9 company or between a limited liability company and one or more of its
10 members or one or more trusts established by its members;

11 (viii) an agreement entered into by a service recipient, or a trust
12 established by the service recipient and a service provider, or a trust
13 established by the service provider who performs significant services for the
14 service recipient's trade or business; or

15 (ix) any other contract, transaction, or arrangement exempted from
16 the definition of life settlement contract by the commissioner by rule or order
17 based on a determination that the contract, transaction, or arrangement is not of
18 the type intended to be regulated by this subchapter.

19 (10) "Life settlement investment agent" means a person who is an
20 appointed or contracted agent of a licensed life settlement provider who solicits

1 or arranges the funding for the purchase of a life settlement by a life settlement
2 purchaser and who is acting on behalf of a life settlement provider.

3 (11)(A) "Life settlement provider" means a person other than a policy
4 owner that solicits, enters into, or effectuates a life settlement contract with a
5 policy owner resident in this state.

6 (B) "Life settlement provider" does not include:

7 (i) a bank, savings bank, savings and loan association, credit
8 union, or other licensed lending institution that takes an assignment of a life
9 insurance policy solely as collateral for a loan;

10 (ii) a premium finance company making premium finance loans
11 and exempted by the commissioner from the licensing requirement under the
12 premium finance laws that takes an assignment of a life insurance policy solely
13 as collateral for a loan;

14 (iii) the issuer of the life insurance policy;

15 (iv) an authorized or eligible insurer that provides stop loss
16 coverage or financial guaranty insurance to a life settlement provider,
17 purchaser, financing entity, special purpose entity, or related provider trust;

18 (v) a financing entity;

19 (vi) a special purpose entity;

20 (vii) a related provider trust;

21 (viii) a life settlement purchaser; or

1 (ix) any other person that the commissioner determines by rule or
2 order is not the type of person intended to be covered by the definition of life
3 settlement provider.

4 (12)(A) “Life settlement purchaser” means a person who provides a sum
5 of money as consideration for a life insurance policy or an interest in the death
6 benefits of a life insurance policy, or a person who owns or acquires or is
7 entitled to a beneficial interest in a trust that owns a life settlement contract or
8 is the beneficiary of a life insurance policy that has been or will be the subject
9 of a life settlement contract, for the purpose of deriving an economic benefit.

10 (B) “Life settlement purchaser” does not include:

11 (i) an accredited investor or qualified institutional buyer as
12 defined, respectively, in Rule 501(a) or Rule 144A promulgated under the
13 Federal Securities Act of 1933, as amended;

14 (ii) a financing entity;

15 (iii) a special purpose entity; or

16 (iv) a related provider trust.

17 (13) “Policy” means an individual or group policy, group certificate,
18 contract, or arrangement of life insurance owned by a resident of this state,
19 regardless of whether delivered or issued for delivery in this state.

20 (14)(A) “Policy owner” means the owner of a life insurance policy or a
21 certificate holder under a group policy who resides in this state and enters or

1 seeks to enter into a life settlement contract. For the purposes of this
2 subchapter, a policy owner shall not be limited to an owner of a life insurance
3 policy or a certificate holder under a group policy insuring the life of an
4 individual with a terminal or chronic illness or condition. If there is more than
5 one policy owner on a single policy and the policy owners are residents of
6 different states, the transaction shall be governed by the law of the state in
7 which the policy owner having the largest percentage ownership resides or, if
8 the policy owners hold equal ownership, the state of residence of one policy
9 owner agreed upon in writing by all the policy owners.

10 (B) “Policy owner” does not include:

11 (i) qualified institutional buyer as defined in Rule 144A
12 promulgated under the Federal Securities Act of 1933, as amended;

13 (ii) a financing entity;

14 (iii) a special purpose entity; or

15 (iv) a related provider trust.

16 (15) “Purchased policy” means a life insurance policy or certificate that
17 has been acquired by a life settlement provider pursuant to a life settlement
18 contract.

19 (16) “Related provider trust” means a titling trust or other trust
20 established by a licensed life settlement provider or a financing entity for the
21 sole purpose of holding the ownership or beneficial interest in purchased

1 policies in connection with a financing transaction. The trust shall have a
2 written agreement with the licensed life settlement provider under which the
3 licensed life settlement provider is responsible for ensuring compliance with
4 all statutory and regulatory requirements and under which the trust agrees to
5 make all records and files related to life settlement transactions available to the
6 commissioner as if those records and files were maintained directly by the
7 licensed life settlement provider.

8 (17) “Special purpose entity” means a corporation, partnership, trust,
9 limited liability company, or other similar entity formed solely to provide
10 either directly or indirectly access to institutional capital markets:

11 (A) for a financing entity or licensed life settlement provider; or

12 (B)(i) in connection with a transaction in which the securities in the
13 special purposes entity are acquired by the owner or by “qualified institutional
14 buyers” as defined in Rule 144A promulgated under the Securities Act of
15 1933, as amended, and in which the securities are sold in compliance with
16 chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and
17 rules adopted or issued thereunder; or

18 (ii) in connection with a transaction in which the securities pay a
19 fixed rate of return commensurate with established asset-backed institutional
20 capital markets and in which the securities are sold in compliance with chapter

1 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules
2 adopted or issued thereunder.

3 (18) “Stranger-originated life insurance,” or “STOLI,” means a practice
4 or a plan to initiate a life insurance policy for the benefit of a third party who,
5 at the time of policy origination, has no insurable interest in the insured.
6 STOLI practices include cases in which life insurance is purchased with
7 resources or guarantees from or through a person or entity who, at the time of
8 policy inception, could not lawfully initiate the policy himself, herself, or itself
9 and where, at the time of policy inception, there is an arrangement or
10 agreement, whether verbal or written, to directly or indirectly transfer the
11 ownership of the policy or the policy benefits to a third party. Trusts that are
12 created to give the appearance of insurable interest and are used to initiate
13 policies for investors violate insurable interest laws and the prohibition against
14 wagering on life. STOLI arrangements do not include those practices set forth
15 in subdivision (9)(C) of this section.

16 (19) “Terminally ill” means having an illness or sickness that can
17 reasonably be expected to result in death in 24 months or less.

18 (20) “Viator” means any person who owns, controls, or has rights to the
19 benefits or values of a life insurance policy or who owns, is covered by,
20 controls, or has rights to the benefits or values of a group policy, either of
21 which insures the life of a person who is terminally or chronically ill or has a

1 life-threatening illness or condition and who enters into an agreement under
2 which the life settlement provider will pay compensation or anything of value,
3 which compensation or value is less than the expected death benefit of the
4 insurance policy or certificate, in return for the assignment, transfer, sale,
5 devise, or bequest of the death benefit or ownership of the insurance policy or
6 certificate to the life settlement provider.

7 § 3836. LICENSE AND BOND REQUIREMENTS

8 (a) Life settlement providers.

9 (1) No person shall operate as a life settlement provider without first
10 obtaining a license from the commissioner.

11 (2) Application for a life settlement provider license shall be made to the
12 commissioner by the applicant on a form prescribed by the commissioner, and
13 the application shall be accompanied by an application fee of \$50.00 and a
14 license fee of \$400.00.

15 (3) Licenses may be renewed from year to year on a date prescribed by
16 the commissioner of the odd-numbered year next following the date of
17 issuance upon payment of a biennial renewal fee of \$400.00. Failure to pay
18 the fee by the renewal date shall result in expiration of the license.

19 (4) The applicant shall provide information on forms required by the
20 commissioner. The commissioner shall have authority at any time to require
21 the applicant to disclose fully the identity of all stockholders, partners, officers,

1 members, and employees, and the commissioner may, in the exercise of the
2 commissioner's discretion, refuse to issue a license in the name of a legal
3 entity if not satisfied that any officer, employee, stockholder, partner, or
4 member thereof who may materially influence the applicant's conduct meets
5 the standards of this subchapter.

6 (5) Upon the filing of an application and the payment of the license fee,
7 the commissioner shall make an investigation of each applicant and issue a
8 license if the commissioner finds that the applicant:

9 (A) has provided a detailed and sound plan of operation;

10 (B) is competent and trustworthy and intends to act in good faith in
11 the capacity involved by the license applied for;

12 (C) has a good business reputation and has had experience, training,
13 or education so as to be qualified in the business for which the license is
14 applied for;

15 (D) has demonstrated evidence of financial responsibility in a format
16 prescribed by the commissioner through a surety bond executed and issued by
17 an insurer authorized to issue surety bonds in this state in the amount of
18 \$250,000.00. On each license renewal, the life settlement provider must file
19 and maintain a surety bond or letter of credit solely to the benefit of the
20 commissioner equal to not less than five percent of the sum of the prior year's
21 total life settlement contracts which were executed in Vermont, but not less

1 than \$250,000.00, or such other amount as the commissioner may require. The
2 commissioner may ask for evidence of financial responsibility at any time the
3 commissioner deems necessary. Any surety bond issued pursuant to this
4 subdivision shall be solely in the favor of this state and shall specifically
5 authorize recovery by the commissioner on behalf of any person in this state
6 who sustained damages as the result of erroneous acts, failure to act,
7 conviction of fraud, or conviction of unfair practices by the life settlement
8 provider; and

9 (E) has provided an anti-fraud plan that meets the requirements of
10 section 3847 of this subchapter.

11 (6) The commissioner shall not issue a license to a nonresident applicant
12 unless a written designation of an agent for service of process is filed and
13 maintained with the secretary of state or the applicant has filed with the
14 commissioner the applicant's written irrevocable consent that any action
15 against the applicant may be commenced against the applicant by service of
16 process on the commissioner.

17 (7) A life settlement provider shall provide to the commissioner new or
18 revised information about officers, stockholders holding ten percent or more,
19 partners, directors, members, or designated employees within 30 days of the
20 change.

21 (b) Life settlement broker.

1 (1) A person shall not operate as a life settlement broker without first
2 obtaining a license from the commissioner.

3 (2) A person licensed as an attorney or certified public accountant who
4 is retained to represent the policy owner and whose compensation is not paid
5 directly or indirectly by the life settlement provider may negotiate life
6 settlement contracts on behalf of the policy owner without having to obtain a
7 license as a life settlement broker.

8 (3) Application for a life settlement broker license shall be made to the
9 commissioner by the applicant on a form prescribed by the commissioner, and
10 the application shall be accompanied by an application fee of \$30.00 and a
11 license fee of \$100.00.

12 (4) Licenses may be renewed by the commissioner on the
13 even-numbered year next following the date of issuance upon payment of a
14 biennial renewal fee of \$100.00. Failure to pay the fee by the renewal date
15 shall result in expiration of the license.

16 (5) The applicant shall provide information on forms required by the
17 commissioner.

18 (6) Upon the filing of an application and the payment of the license fee,
19 the commissioner shall make an investigation of each applicant and issue a
20 license if the commissioner finds that the applicant:

21 (A) is competent and trustworthy.

1 (B) has a good business reputation and has had at least two years'
2 prior experience as a licensed life insurance producer;

3 (C) has demonstrated evidence of financial responsibility in a format
4 prescribed by the commissioner through a surety bond executed and issued by
5 an insurer authorized to issue surety bonds in this state in the amount of
6 \$250,000.00. In subsequent years of licensing, the life settlement broker must
7 forward continuing proof of coverage equal to not less than 10 percent of the
8 sum of the prior year's life settlement contracts brokered, but not less than
9 \$250,000.00, or such other amount as the commissioner may require. The
10 commissioner may ask for evidence of financial responsibility at any time the
11 commissioner deems necessary. Any surety bond issued pursuant to this
12 subdivision shall be solely in the favor of this state and shall specifically
13 authorize recovery by the commissioner on behalf of any person in this state
14 who sustained damages as the result of erroneous acts, failure to act,
15 conviction of fraud, or conviction of unfair practices by the life settlement
16 broker; and

17 (7) The commissioner shall not issue a license to a nonresident applicant
18 unless a written designation of an agent for service of process is filed and
19 maintained with the commissioner or the applicant has filed with the
20 commissioner the applicant's written irrevocable consent that any action

1 against the applicant may be commenced against the applicant by service of
2 process on the commissioner.

3 (8) An individual licensed as a life settlement broker shall complete on a
4 biennial basis an additional 15 hours of life insurance producer training related
5 to life settlements and life settlement transactions as determined by the
6 commissioner. Such additional training requirements shall be approved for
7 education under section 4800a of this title. Any person failing to meet the
8 requirements of this subsection shall be subject to the penalties imposed by the
9 commissioner.

10 (9) No life settlement broker may charge or receive a fee, a commission,
11 or other valuable consideration in excess of two percent of the amount paid by
12 the life settlement company to the policy owner on a policy that is the subject
13 of the life settlement broker's services. Upon the written request of the life
14 settlement broker and after conferring with the policy owner, the commissioner
15 may approve another rate of compensation as reasonable and appropriate under
16 highly unusual circumstances.

17 (c) The insurer that issued the policy subject to a life settlement shall not be
18 responsible for any act or omission of a life settlement broker or life settlement
19 provider arising out of or in connection with the life settlement transaction
20 unless the insurer receives compensation for the placement of a life settlement

1 contract from the life settlement provider or life settlement broker in
2 connection with the life settlement contract.

3 § 3837. LICENSE REVOCATION AND DENIAL

4 (a) Life settlement providers. The commissioner may suspend or revoke
5 and may refuse to issue or renew the license of a life settlement provider if the
6 commissioner finds that:

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

9 (2) The licensee or any officer, partner, member, or key management
10 personnel have been convicted of fraudulent or dishonest practices or are
11 subject to a civil judicial adjudication under federal, foreign, or state law or to
12 an administrative action issued by any jurisdiction showing the licensee or any
13 officer, partner, member, or key management personnel to be untrustworthy or
14 incompetent;

15 (3) The licensee demonstrates a pattern of unreasonable payments to
16 policy owners;

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

1 (5) The licensee has entered into any life settlement contract that has not
2 been approved pursuant to this subchapter;

3 (6) The licensee has failed to honor contractual obligations set out in a
4 life settlement contract;

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

6 (8) The licensee has assigned, transferred, or pledged a policy subject to
7 a life settlement contract to a person other than a life settlement provider
8 licensed in this state, an accredited investor or qualified institutional buyer as
9 defined respectively in Rule 501(a) or Rule 144A promulgated under the
10 Federal Securities Act of 1933, as amended, a financing entity, a special
11 purpose entity, or a related provider trust;

12 (9) The licensee or any officer, partner, member, or key management
13 personnel has violated any provision of this subchapter or a rule adopted or
14 order issued under this subchapter;

15 (10) The licensee or any officer, partner, member, or key management
16 personnel have violated any provision of chapter 150 of Title 9 (the Vermont
17 Uniform Securities Act); or

18 (11) The licensee has, in the conduct of his or her affairs, used
19 fraudulent, coercive, or dishonest practices or has shown himself or herself to
20 be incompetent, untrustworthy or financially irresponsible.

1 (b) Life settlement brokers. The commissioner may refuse to issue or
2 renew or may suspend or revoke the license of a life settlement broker if the
3 commissioner finds that:

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

6 (2) The licensee has been convicted of fraudulent or dishonest practices
7 or is subject to a civil judicial adjudication under federal, foreign, or state law
8 or to an administrative action issued by any jurisdiction showing the licensee
9 or any officer, partner, member, or key management personnel to be
10 untrustworthy or incompetent;

11 (3) The licensee has been found guilty of or has pleaded guilty or nolo
12 contendere to any felony or to a misdemeanor involving fraud, dishonesty,
13 breach of trust, or moral turpitude, regardless of whether a judgment of
14 conviction has been entered by the court;

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

16 (5) The licensee has engaged in any one or more of the acts or
17 conditions set forth in subsection 4804(a) of this title;

18 (6) The licensee has violated any provision of this subchapter or a rule
19 adopted or order issued under this subchapter;

1 (7) The licensee or any officer, partner, member, or key management
2 personnel have violated any provision of chapter 150 of Title 9 (the Vermont
3 Uniform Securities Act); or

4 (8) The licensee has otherwise engaged in bad-faith conduct with one or
5 more policy owners.

6 § 3838. APPROVAL OF LIFE SETTLEMENT CONTRACTS,

7 DISCLOSURE STATEMENTS, AND RELATED FORMS

8 (a) A person shall not use a life settlement contract form or related form or
9 provide to a policy owner in this state any of the disclosure statement forms
10 required by subsections 3841(a), (b), and (c) of this title unless such forms are
11 first filed with and approved by the commissioner. Related forms include the
12 statement of attending physician required by subdivision 3843(a)(1)(A) of this
13 title; the medical records release form required by subdivision 3843(a)(1)(B) of
14 this title; the policy owner's statement of understanding form required by
15 subdivision 3843(a)(5) of this title; any application form to be used by the
16 policy owner to request a life settlement; any advertising material that the
17 commissioner, in his or her discretion, requires to be filed; and such other
18 forms as the commissioner may prescribe by rule or order.

19 (b) The commissioner shall disapprove a life settlement contract form,
20 disclosure statement form, or related form if, in the commissioner's judgment,
21 the contract or provisions contained therein fail to meet the requirements of

1 sections 3841, 3843, 3846, and subsection 3847(b) of this title or are
2 unreasonable, contrary to the interests of the public, or otherwise misleading or
3 unfair to the policy owner. Any notice of disapproval of such form shall state
4 the grounds therefore and shall state that a hearing will be granted within
5 20 days upon request of the filer.

6 (c) Any life settlement contract form, disclosure statement form, or related
7 form filed with the commissioner shall be deemed approved if it has not been
8 disapproved within 60 days of the filing. The commissioner may extend by
9 not more than 30 additional days the period within which affirmative approval
10 or disapproval of any such form may be given by notifying the life settlement
11 provider or life settlement broker of such extension before expiration of the
12 initial 60-day period.

13 (d) The commissioner may at any time, after notice and for cause shown,
14 withdraw approval of a previously approved contract form, disclosure
15 statement form, or related form. Any order of the commissioner withdrawing a
16 previous approval shall state the grounds therefor in such detail as reasonably
17 to inform the filer thereof. Any such withdrawal of a previously approved
18 form shall be effective at the expiration of such period not less than 30 days
19 after the giving of notice of withdrawal as the commissioner shall in such
20 notice prescribe. Any demand for a hearing relative to the commissioner's
21 withdrawal of approval of a form which has been received by the

1 commissioner prior to the effective date of such withdrawal shall stay such
2 action pending the hearing thereon.

3 (e) The forms required to be filed by this section shall be filed in a manner
4 prescribed by the commissioner. Filings shall be accompanied by payment to
5 the commissioner of a nonrefundable fee of \$50.00 for each form submitted.

6 § 3839. REPORTING REQUIREMENTS AND PRIVACY

7 (a) Each life settlement provider shall file with the commissioner on or
8 before March 1 of each year an annual statement containing such information
9 as the commissioner may prescribe by rule or order. Unless otherwise
10 requested, such information shall be limited only to those transactions where
11 the policy owner is a resident of this state. Individual transaction data
12 regarding the business of life settlements or data that could compromise the
13 privacy of personal, financial, or health information of the policy owner or the
14 insured shall be filed with the commissioner on a confidential and privileged
15 basis and shall not be disclosed by the department or made public.

16 (b) A life settlement provider, life settlement broker, insurance company,
17 life insurance producer, information bureau, rating agency or company, or any
18 other person with actual knowledge of an insured's or a policy owner's identity
19 shall be subject to the department's Regulation No. IH-2001-I "Privacy of
20 Consumer Financial and Health Information," as amended.

1 § 3840. INVESTIGATIONS AND EXAMINATIONS

2 (a) The commissioner, in addition to all powers granted pursuant to chapter
3 1 of this title, may examine the business and affairs of any licensee or applicant
4 for a license whenever he or she deems it to be prudent for the protection of
5 policyholders or the public. The commissioner shall have the authority to
6 examine any person and to order the production of any records, books, files or
7 other information reasonably necessary to ascertain whether the licensee or
8 applicant is acting or has acted in violation of the law or otherwise contrary to
9 the interests of the public. The expenses incurred in conducting any
10 examination shall be paid by the licensee or applicant.

11 (b) A person required to be licensed by this subchapter shall for five years
12 following the death of the insured retain copies of all:

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

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

20 (3) all other records and documents related to the requirements of this
21 subchapter.

1 (c) Except as otherwise provided in this subchapter, all examination
2 reports, working papers, recorded information, documents and copies thereof
3 produced by, obtained by, or disclosed to the commissioner or any other
4 person in the course of an examination or investigation made under this
5 subchapter or in the course of analysis or investigation by the commissioner of
6 the financial condition or market conduct of a licensee shall be confidential by
7 law and privileged, shall not be subject to disclosure as a public record under
8 section 317 of Title 1, shall not be subject to subpoena, and shall not be subject
9 to discovery or admissible in evidence in any private civil action. The
10 commissioner is authorized to use the documents, materials, or other
11 information in the furtherance of any regulatory or legal action brought as part
12 of the commissioner's official duties.

13 (d) The expense incurred in conducting any examination shall be paid by
14 the licensee or applicant.

15 § 3841. DISCLOSURE TO POLICY OWNER

16 (a) With each application for a life settlement, a life settlement provider or
17 a life settlement broker shall provide the policy owner with at least the
18 following disclosures not less than 10 days prior to the time the application for
19 the life settlement contract is signed by all parties. The disclosures shall be
20 provided in a separate document that is signed by the policy owner and the life
21 settlement provider or life settlement broker and shall include the following

1 information:

2 (1) There are possible alternatives to life settlement contracts, including
3 any accelerated death benefits or policy loans offered under the policy owner's
4 life insurance policy.

5 (2) That a life settlement broker represents exclusively the policy owner
6 and not the insurer or the life settlement provider and owes a fiduciary duty to
7 the policy owner, including a duty to act according to the policy owner's
8 instructions and in the best interest of the policy owner.

9 (3) Some or all of the proceeds of the life settlement may be taxable
10 under federal income tax and state franchise and income tax laws, and
11 assistance should be sought from a professional tax advisor.

12 (4) Proceeds of the life settlement could be subject to the claims of
13 creditors.

14 (5) Receipt of the proceeds of a life settlement may adversely affect the
15 policy owner's eligibility for Medicaid or other government benefits or
16 entitlements, and advice should be obtained from the appropriate government
17 agencies.

18 (6) The policy owner has the right to rescind a life settlement contract
19 before the earlier of 60 calendar days after the date upon which the life
20 settlement contract is executed by all parties or 30 calendar days after the life
21 settlement proceeds have been paid to the policy owner, as provided in section

1 3843 of this title. Rescission, if exercised by the policy owner, is effective
2 only if both notice of the rescission is given and the policy owner repays all
3 proceeds and any premiums, loans, and loan interest paid on account of the life
4 settlement within the rescission period. If the insured dies during the
5 rescission period, the life settlement contract shall be deemed to have been
6 rescinded, subject to repayment by the policy owner or the policy owner's
7 estate of all life settlement proceeds and any premiums, loans, and loan interest
8 on the life settlement within 60 days of the insured's death.

9 (7) Funds will be sent to the policy owner within three business days
10 after the life settlement provider has received the insurer or group
11 administrator's written acknowledgment that ownership of the policy or
12 interest in the certificate has been transferred and that the beneficiary has been
13 designated.

14 (8) Entering into a life settlement contract may cause other rights or
15 benefits, including conversion rights and waiver of premium benefits that may
16 exist under the policy or certificate, to be forfeited by the policy owner.

17 Assistance should be sought from an independent, qualified professional with
18 experience in these matters.

19 (9) Disclosure to a policy owner shall include distribution of a brochure
20 describing the process of life settlements. The current form for the brochure
21 prepared by National Association of Insurance Commissioners shall be used

1 unless another form is developed or approved by the commissioner.

2 (10) The disclosure document shall contain the following language:

3 “All medical, financial, or personal information solicited or obtained by a life
4 settlement provider or life settlement broker about an insured, including the
5 insured’s identity or the identity of family members, a spouse or party to a civil
6 union or a significant other may be disclosed as necessary to effect the life
7 settlement between the policy owner and the life settlement provider. If you
8 are asked to provide this information, you will be asked to consent to the
9 disclosure. The information may be provided to someone who buys the policy
10 or provides funds for the purchase who may not be obligated to protect and
11 keep the information confidential. You may be asked to renew your
12 permission to share information every two years.”

13 (11) Following execution of a life settlement contract, the insured may
14 be contacted for the purpose of determining the insured’s health status and to
15 confirm the insured’s residential or business street address and telephone
16 number, or as otherwise provided in this subchapter. This contact shall be
17 limited to once every three months if the insured has a life expectancy of six
18 months or more, and no more than once every two months if the insured has a
19 life expectancy of six months or less. All such contracts shall be made only by
20 a life settlement provider licensed in the state in which the policy owner
21 resided at the time of the life settlement or by the authorized representative of

1 such duly licensed life settlement provider.

2 (b)(1) A life settlement provider shall provide the policy owner with at
3 least the following disclosures no later than 10 days before the date the life
4 settlement contract is signed by all parties. The disclosures shall be
5 conspicuously displayed in the life settlement contract or in a separate
6 document signed by the policy owner and provide the following information:

7 (A) the affiliation, if any, between the life settlement provider and the
8 issuer of the insurance policy to be subject to the life settlement contract;

9 (B) the name, business address, and telephone number of the life
10 settlement provider;

11 (C) any affiliations or contractual arrangements between the life
12 settlement provider and the life settlement purchaser.

13 (2) If an insurance policy subject to a life settlement contract has been
14 issued as a joint policy or involves family riders or any coverage of a life other
15 than the insured under the policy to be subject to a life settlement contract, the
16 policy owner or owners shall be informed of the possible loss of coverage on
17 the other lives under the policy and shall be advised to consult with his or her
18 or their insurance producer or the insurer issuing the policy for advice on the
19 proposed life settlement.

20 (3) The document shall state the dollar amount of the current death
21 benefit payable to the life settlement provider under the policy or certificate.

1 The life settlement provider shall also disclose the availability, if known, of
2 any additional guaranteed insurance benefits, the dollar amount of any
3 accidental death and dismemberment benefits under the policy or certificate,
4 and the extent to which the policy owner's interest in those benefits will be
5 transferred as a result of the life settlement contract.

6 (4) The document shall state whether the funds will be escrowed with an
7 independent third party or placed in trust during the transfer process. If an
8 escrow account is used, the document shall provide the name, business
9 address, and telephone number of the independent third party escrow agent. If
10 a trust account is used, the document shall identify the state or federally
11 chartered institution. The document shall state that the policy owner may
12 inspect or receive copies of the relevant escrow or trust agreements or
13 documents.

14 (c) A life settlement broker shall provide the policy owner with at least the
15 following disclosures no later than 10 days before the date the life settlement
16 contract is signed by all parties. The disclosures shall be conspicuously
17 displayed in the life settlement contract or in a separate document signed by
18 the policy owner and provide the following information:

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

21 (2) a full, complete, and accurate description of all offers, counteroffers,

1 acceptances, and rejections relating to the proposed life settlement contract;

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

5 (4) the amount and method of calculating the broker's compensation,
6 which term includes anything of value paid or given to a life settlement broker
7 for the placement of a policy; and

8 (5) where any portion of the life settlement broker's compensation, as
9 defined in subdivision (4) of this subsection, is taken from a proposed life
10 settlement offer, a disclosure of the total amount of the life settlement offer and
11 the percentage of the life settlement offer constituted by the life settlement
12 broker's compensation.

13 (6) all offers made in connection with the proposed life settlement
14 contract must be disclosed to the policy owner.

15 (d) If the life settlement provider transfers ownership or changes the
16 beneficiary of the insurance policy, the provider shall communicate in writing
17 the change in ownership or beneficiary to the insured within 20 days after the
18 change.

19 § 3842. DISCLOSURE TO INSURER

20 Prior to the initiation of a plan, a transaction, or a series of transactions, a
21 life settlement broker or life settlement provider shall fully disclose to an

1 insurer a plan, a transaction, or a series of transactions to which the life
2 settlement broker or life settlement provider is a party to originate, renew,
3 continue, or finance a life insurance policy with the insurer for the purpose of
4 engaging in the business of life settlements at any time prior to or during the
5 first five years after issuance of the policy.

6 § 3843. GENERAL RULES

7 (a)(1) A life settlement provider entering into a life settlement contract
8 shall first obtain:

9 (A) if the policy owner is the insured, a written statement from a
10 licensed attending physician that the policy owner is of sound mind and under
11 no constraint or undue influence to enter into a life settlement contract; and

12 (B) a document in which the insured consents to the release of his or
13 her medical records to a licensed life settlement provider, a life settlement
14 broker, and the insurance company that issued the life insurance policy
15 covering the life of the insured.

16 (2) Within 20 days after a policy owner executes documents necessary
17 to transfer any rights under an insurance policy or within 20 days of entering
18 any agreement, option, promise, or any other form of understanding, expressed
19 or implied, to subject the policy to a life settlement contract, the life settlement
20 provider shall give written notice to the insurer that issued that insurance
21 policy that the policy has or will become a policy subject to a life settlement

1 contract. The notice shall be accompanied by the documents required by
2 subdivision (3) of this subsection.

3 (3) The life settlement provider shall deliver a copy of the medical
4 release required under subdivision (1)(B) of this subsection, a copy of the
5 policy owner's application for the life settlement contract, the notice required
6 under subdivision (2) of this subsection, and a request for verification of
7 coverage to the insurer that issued the life policy that is the subject of the life
8 settlement transaction. The current form for verification of coverage prepared
9 by the National Association of Insurance Commissioners shall be used unless
10 another form is developed and approved by the commissioner.

11 (4) The insurer shall respond to a request for verification of coverage
12 submitted on an approved form by a life settlement provider or life settlement
13 broker within 30 calendar days of the date the request is received and shall
14 indicate whether, based on the medical evidence and documents provided, the
15 insurer intends to pursue an investigation at this time regarding the validity of
16 the insurance contract or possible insurance or life settlement fraud. The
17 insurer shall accept a request for verification of coverage made on the current
18 form prepared by the National Association of Insurance Commissioners or any
19 other form approved by the commissioner. The insurer shall accept an original
20 or facsimile or electronic copy of such request and any accompanying
21 authorization signed by the policy owner. Failure by the insurer to meet its

1 obligations under this subsection shall be a violation of sections 3844 and 3848
2 of this title.

3 (5) Prior to or at the time of execution of the life settlement contract, the
4 life settlement provider shall obtain a witnessed document in which the policy
5 owner consents to the life settlement contract, represents that the policy owner
6 has a full and complete understanding of the life settlement contract and of the
7 benefits of the life insurance policy, acknowledges that he or she is entering
8 into the life settlement contract freely and voluntarily, has received the
9 disclosures required in section 3841 of this title and, for persons with a
10 terminal or chronic illness or condition, acknowledges that the insured has a
11 terminal or chronic illness and that the terminal or chronic illness or condition
12 was diagnosed after the life insurance policy was issued.

13 (6) If a life settlement broker performs any of these activities required of
14 the life settlement provider, the provider is deemed to have fulfilled such
15 requirement.

16 (b) All medical information solicited or obtained by any licensee shall be
17 subject to the applicable provisions of state law relating to confidentiality of
18 medical information and to the department's Regulation No. IH-2001-I,
19 Privacy of Consumer Financial and Health Information.

20 (c) All life settlement contracts entered into in this state shall provide the
21 policy owner with an absolute right to rescind the contract before the earlier of

1 60 calendar days after the date upon which the life settlement contract is
2 executed by all parties or 30 calendar days after the life settlement proceeds
3 have been sent to the policy owner as provided in subsection (f) of this section.
4 Rescission by the policy owner may be conditioned upon the policy owner's
5 both giving notice and repaying to the life settlement provider within the
6 rescission period all proceeds of the settlement and any premiums, loans, and
7 loan interest paid by or on behalf of the life settlement provider in connection
8 with or as a consequence of the life settlement. If the insured dies during the
9 rescission period, the life settlement contract shall be deemed to have been
10 rescinded, subject to repayment to the life settlement provider or purchaser of
11 all life settlement proceeds and any premiums, loans, and loan interest that
12 have been paid by the life settlement provider or purchaser, which shall be paid
13 within 60 calendar days of the death of the insured. In the event of any
14 rescission, if the life settlement provider has paid commissions or other
15 compensation to a life settlement broker in connection with the rescinded
16 transaction, the life settlement broker shall refund all such commissions and
17 compensation to the life settlement provider within five business days
18 following receipt of written demand from the life settlement provider, which
19 demand shall be accompanied by either the policy owner's notice of rescission
20 if rescinded at the election of the policy owner or notice of the death of the
21 insured if rescinded by reason of the death of the insured within the applicable

1 rescission period.

2 (d) The life settlement provider shall instruct the policy owner to send the
3 executed documents required to effect the change in ownership, assignment, or
4 change in beneficiary directly to an independent escrow agent. Within three
5 business days after the date the escrow agent receives the document (or from
6 the date the life settlement provider receives the documents, if the policy
7 owner erroneously provides the documents directly to the provider), the
8 provider shall pay or transfer the proceeds of the life settlement into an escrow
9 or trust account maintained in a state- or federally chartered financial
10 institution whose deposits are insured by the Federal Deposit Insurance
11 Corporation. Upon payment of the settlement proceeds into the escrow
12 account, the escrow agent shall deliver the original change in ownership,
13 assignment, or change in beneficiary forms to the life settlement provider or
14 related provider trust or other designated representative of the life settlement
15 provider. Upon the escrow agent's receipt of the acknowledgment of the
16 properly completed transfer of ownership, assignment, or designation of
17 beneficiary from the insurance company, the escrow agent shall pay the
18 settlement proceeds to the policy owner.

19 (e) Failure to tender consideration to the policy owner for the life
20 settlement contract within the time set forth in the disclosure pursuant to
21 subdivision 3841(a)(7) of this title renders the life settlement contract voidable

1 by the policy owner for lack of consideration until the time consideration is
2 tendered to and accepted by the policy owner. Funds shall be deemed sent by
3 a life settlement provider to a policy owner as of the date that the escrow agent
4 either releases funds for wire transfer to the policy owner or places a check for
5 delivery to the policy owner via the United States Postal Service or another
6 nationally recognized delivery service.

7 (f) Contacts with the insured for the purpose of determining the health
8 status of the insured by the life settlement provider or life settlement broker
9 after the life settlement has occurred shall only be made by the life settlement
10 provider or broker licensed in this state or its authorized representatives and
11 shall be limited to once every three months for insureds with a life expectancy
12 of more than six months and to no more than once every two months for
13 insureds with a life expectancy of six months or less. The provider or broker
14 shall explain the procedure for these contacts at the time the life settlement
15 contract is entered into. The limitations set forth in this subsection shall not
16 apply to any contacts with an insured for reasons other than determining the
17 insured's health status. Life settlement providers and life settlement brokers
18 shall be responsible for the actions of their authorized representatives.

19 (g)(1) In order to assure that viators receive a reasonable return for
20 viaticating an insurance policy, the following shall be minimum payouts:

<u>Viator's or Insured Person's</u>	<u>Minimum Percentage of Expected</u>
-------------------------------------	---------------------------------------

<u>Remaining Life Expectancy</u>	<u>Death Benefit (Net of Loans and</u>
<u>At Time of Viatication</u>	<u>Any Cash Surrender Value To Be</u>
	<u>Received by Viator</u>
<u>Less than 6 months</u>	<u>85%</u>
<u>At least 6 but less than 12 months</u>	<u>80%</u>
<u>At least 12 but less than 18 months</u>	<u>75%</u>
<u>At least 18 but less than 24 months</u>	<u>70%</u>
<u>At least 24 but less than 36 months</u>	<u>60%</u>
<u>Thirty-six months or more</u>	<u>50%</u>

10 (2) The expected death benefit is the death benefit provided under the
11 terms of the policy being viaticated, assuming the death of the insured were to
12 occur on the date the life settlement contract is signed.

13 (3) The payout shall be increased by 100 percent of any net cash
14 surrender value of the insurance at the time the life settlement contract is
15 issued.

16 (4) Payouts may be reduced by the minimum premium (including
17 premiums payable for additional benefits retained at the option of the viator), if
18 any, required to keep the contract in force for the duration of the viator's
19 remaining life expectancy. Other than this allowable reduction in payout, there
20 shall be no other retention for expenses or broker's fees. At the time of
21 settlement, the life settlement provider shall place in trust a sum equal to the

1 amount the payout was reduced for future premiums. Sums placed in trust
2 under this section shall only be reduced by the life settlement provider upon
3 payment of policy premiums as they come due. If the viator dies with a sum
4 held in trust under this section, the sum remaining in trust shall become the
5 property of the life settlement provider.

6 (5) If the life settlement provider becomes insolvent or is the subject of a
7 bankruptcy or other insolvency proceeding during the life of the viator whose
8 policy had riders retained, the life settlement provider shall notify the viator
9 and other insureds of the insolvency or initiation of insolvency proceedings.

10 Persons with an interest in the continuation of riders retained may pay any
11 premiums required to keep riders retained in force.

12 (6) In computing the minimum percentage of expected death benefit (net
13 of loans and cash surrender value) the death benefit value of any accidental
14 death benefit rider shall not be included. There shall be no minimum
15 percentage payment required for the transfer of an accidental death benefit
16 rider to the life settlement company.

17 (7) Life expectancy shall be determined by a physician selected by the
18 viator on the basis of medical records. The physician selected will send life
19 expectancy information to the life settlement provider. If the life settlement
20 provider disagrees with the life expectancy estimate of the physician selected
21 by the viator, the viator will select a second physician to make an estimate of

1 life expectancy based on medical records. The second physician's decision
2 shall be final.

3 § 3844. PROHIBITED PRACTICES

4 (a) It is a violation of this subchapter for any person to:

5 (1) commit any fraudulent life settlement acts;

6 (2) enter into any practice or plan which results in or is intended to
7 result in the issuance of stranger-originated life insurance or STOLI; or

8 (3) to enter, within a three-year period commencing with the date of
9 issuance of the insurance policy or certificate, into a life settlement contract
10 unless the policy owner certifies to the life settlement provider that one or
11 more of the following conditions have been met within the three-year period:

12 (A) The policy was issued upon the policy owner's exercise of
13 conversion rights arising out of a group or individual policy, provided the total
14 of the time covered under the conversion policy plus the time covered under
15 the prior policy is at least 36 months. The time covered under a group policy
16 shall be calculated without regard to any change in insurance carriers, provided
17 the coverage has been continuous and under the same group sponsorship;

18 (B) The policy owner submits independent evidence to the life
19 settlement provider that one or more of the following conditions have been met
20 within the three-year period:

21 (i) The policy owner or insured is terminally or chronically ill;

1 (ii) The policy owner's spouse dies;

2 (iii) The policy owner divorces his or her spouse;

3 (iv) The policy owner retires from full-time employment;

4 (v) The policy owner becomes physically or mentally disabled and
5 a physician determines that the disability prevents the policy owner from
6 maintaining full-time employment; or

7 (vi) A final order, judgment, or decree is entered by a court of
8 competent jurisdiction, on the application of a creditor of the policy owner,
9 adjudicating the policy owner bankrupt or insolvent or approving a petition
10 seeking reorganization of the policy owner or appointing a receiver, trustee, or
11 liquidator to all or a substantial part of the policy owner's assets; or

12 (C) The policy owner enters into a life settlement contract more than
13 two years after the date of issuance of a policy and, with respect to the policy,
14 at all times prior to the date that is two years after policy issuance, the
15 following conditions are met:

16 (i) Policy premiums have been funded exclusively with
17 unencumbered assets, including an interest in the life insurance policy being
18 financed only to the extent of its net cash surrender value, provided by or with
19 full recourse liability incurred by the insured or a person described in
20 subdivision 3835(9)(C)(v) of this title;

21 (ii) There is no agreement or understanding with any other person

1 to guarantee any such liability or to purchase or stand ready to purchase the
2 policy, including through an assumption or forgiveness of the loan; and

3 (iii) Neither the insured nor the policy has been evaluated for
4 settlement.

5 (b) Copies of the independent evidence described in subdivision (a)(3)(B)
6 of this section and documents required by subsection 3842(a) of this title shall
7 be submitted to the insurer when the life settlement provider or other party
8 entering into a life settlement contract with a policy owner submits a request to
9 the insurer for verification of coverage. The copies shall be accompanied by a
10 letter of attestation from the life settlement provider that the copies are true and
11 correct copies of the documents received by the life settlement provider.

12 (c) No insurer may, as a condition of responding to a request for
13 verification of coverage or effecting the transfer of a policy pursuant to a life
14 settlement contract, require that the policy owner, insured, life settlement
15 provider, or life settlement broker sign any forms or disclosures of consent or
16 waiver that have not been expressly approved by the commissioner for use in
17 connection with life settlement contracts in this state.

18 (d) Upon receipt of a properly completed request for change of ownership
19 or beneficiary of a policy, the insurer shall respond in writing within 30
20 calendar days with written acknowledgment confirming that the change has
21 been effected or specifying the reasons why the requested change cannot be

1 processed. The insurer shall not unreasonably delay effecting change of
2 ownership or beneficiary and shall not otherwise seek to interfere with any life
3 settlement contract lawfully entered into in this state.

4 § 3845. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST

5 (a) With respect to any life settlement contract or insurance policy, no life
6 settlement broker shall solicit an offer from, effectuate a life settlement with,
7 or make a sale to any life settlement provider, financing entity, or related
8 provider trust that is controlling, controlled by, or under common control with
9 such life settlement broker.

10 (b) No broker shall have a financial relationship or affiliation with a life
11 settlement provider unless the broker fully discloses such relationship or
12 affiliation. A broker shall not participate in or form a financial arrangement or
13 affiliation with a life settlement provider if such arrangement or affiliation
14 conflicts with the broker's fiduciary duty to the policy owner.

15 (c) With respect to any life settlement contract or insurance policy, no life
16 settlement provider shall knowingly enter into a life settlement contract with a
17 policy owner if, in connection with such life settlement contract, anything of
18 value will be paid to a life settlement broker that is controlling, controlled by,
19 or under common control with such life settlement provider, the life settlement
20 purchaser, life settlement investment agent, a financing entity, or a related
21 provider trust that is involved in such life settlement contract.

1 (d) A violation of subsection (a), (b), or (c) of this section shall be deemed
2 a fraudulent life settlement act.

3 (e) No life settlement provider shall enter into a life settlement contract
4 unless the life settlement promotional, advertising, and marketing materials, as
5 may be prescribed by regulation, have been filed with the commissioner. In no
6 event shall any marketing materials expressly reference that the insurance is
7 “free” for any period of time. The inclusion of any reference in the marketing
8 materials that would cause a policy owner to reasonably believe that the
9 insurance is free for any period of time shall be considered a violation of this
10 subchapter.

11 (f) No life insurance producer, insurance company, life settlement broker,
12 or life settlement provider shall make any statement or representation to the
13 applicant or policyholder in connection with the sale or financing of a life
14 insurance policy to the effect that the insurance is free or without cost to the
15 policyholder for any period of time unless provided in the policy.

16 § 3846. ADVERTISING FOR LIFE SETTLEMENTS

17 (a) The purpose of this section is to provide prospective policy owners with
18 clear and unambiguous statements in the advertisement of life settlements and
19 to assure the clear, truthful, and adequate disclosure of the benefits, risks,
20 limitations, and exclusions of any life settlement contract. This purpose is
21 intended to be accomplished by the establishment of guidelines and standards

1 of permissible and impermissible conduct in the advertising of life settlements
2 to assure that product descriptions are presented in a manner that prevents
3 unfair, deceptive, or misleading advertising and that is conducive to accurate
4 presentation and description of life settlements through the advertising media
5 and material used by life settlement licensees.

6 (b) This section shall apply to any advertising of life settlement contracts or
7 related products or services intended for dissemination in this state, including
8 Internet advertising viewed by persons located in this state. Where disclosure
9 requirements are established pursuant to federal regulation, this section shall be
10 interpreted so as to minimize or eliminate conflict with federal regulation
11 wherever possible.

12 (c) Every life settlement licensee shall establish and at all times maintain a
13 system of control over the content, form, and method of dissemination of all
14 advertisements of its contracts, products, and services. All advertisements,
15 regardless of who wrote, created, designed, or presented them, shall be the
16 responsibility of the life settlement licensees as well as the individual who
17 created or presented the advertisement. A system of control shall include
18 regular routine notification, at least once a year, to agents and others
19 authorized by the life settlement licensee who disseminate advertisements of
20 the requirements and procedures for approval prior to the use of any
21 advertisements not furnished by the life settlement licensee.

1 (d) Advertisements shall be truthful and not misleading in fact or by
2 implication. The form and content of an advertisement of a life settlement
3 contract shall be sufficiently complete and clear so as to avoid deception. It
4 shall not have the capacity or tendency to mislead or deceive. Whether an
5 advertisement has the capacity or tendency to mislead or deceive shall be
6 determined by the commissioner from the overall impression that the
7 advertisement may be reasonably expected to create upon a person of average
8 education or intelligence within the segment of the public to which it is
9 directed.

10 (e) The information required to be disclosed under this section shall not be
11 minimized, rendered obscure, or presented in an ambiguous fashion or
12 intermingled with the text of the advertisement so as to be confusing or
13 misleading.

14 (1) An advertisement shall not omit material information or use words,
15 phrases, statements, references, or illustrations if the omission or use has the
16 capacity, tendency, or effect of misleading or deceiving policy owners as to the
17 nature or extent of any benefit, loss covered, premium payable, or state or
18 federal tax consequence. The fact that the life settlement contract offered is
19 made available for inspection prior to consummation of the sale or that an offer
20 is made to refund the payment if the policy owner is not satisfied or that the
21 life settlement contract includes a “free look” period that satisfies or exceeds

1 legal requirements does not remedy misleading statements.

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

5 (3) An advertisement shall not represent that premium payments will not
6 be required to be paid on the life insurance policy that is the subject of a life
7 settlement contract in order to maintain that policy unless that is the fact.

8 (4) An advertisement shall not state or imply that interest charged on an
9 accelerated death benefit or a policy loan is unfair, inequitable, or in any
10 manner an incorrect or improper practice.

11 (5) The words “free,” “no cost,” “without cost,” “no additional cost,” at
12 no extra cost,” or words of similar import shall not be used with respect to any
13 benefit or service unless true. An advertisement may specify the charge for a
14 benefit or a service or may state that a charge is included in the payment or use
15 other appropriate language.

16 (6) Testimonials, appraisals, and analysis used in advertisements must
17 be genuine; represent the current opinion of the author; be applicable to the life
18 settlement contract, product, or service advertised, if any; and be accurately
19 reproduced with sufficient completeness to avoid misleading or deceiving
20 prospective policy owners as to the nature or scope of the testimonials,
21 appraisal, analysis, or endorsement. In using testimonials, appraisals, or

1 analysis, a licensee under this subchapter makes as its own all the statements
2 contained therein, and the statements are subject to all the provisions of this
3 section.

4 (A) If the individual making a testimonial, appraisal, analysis, or
5 endorsement has a financial interest in the party making use of the testimonial,
6 appraisal, analysis, or endorsement, either directly or through a related entity
7 as a stockholder, director, officer, employee, or otherwise, or receives any
8 benefit directly or indirectly other than required union scale wages, that fact
9 shall be prominently disclosed in the advertisement.

10 (B) An advertisement shall not state or imply that a life settlement
11 contract, benefit, or service has been approved or endorsed by a group of
12 individuals, a society, an association, or another organization unless that is the
13 fact and unless any relationship between an organization and the life settlement
14 licensee is disclosed. If the entity making the endorsement or testimonial is
15 owned, controlled, or managed by the life settlement licensee or receives any
16 payment or other consideration from the life settlement licensee for making an
17 endorsement or testimonial, that fact shall be disclosed in the advertisement.

18 (C) When an endorsement refers to benefits received under a life
19 settlement contract, all pertinent information shall be retained by the licensee
20 for a period of five years after its use.

21 (f) An advertisement shall not contain statistical information unless it

1 accurately reflects recent and relevant facts. The source of all statistics used in
2 an advertisement shall be identified.

3 (g) An advertisement shall not disparage insurers, life settlement providers,
4 life settlement brokers, life settlement investment agents, insurance producers,
5 policies, services, or methods of marketing.

6 (h) The name of the life settlement licensee shall be clearly identified in all
7 advertisements about the licensee or its life settlement contract, products, or
8 services, and if any specific life settlement contract is advertised, the life
9 settlement contract shall be identified either by form number or some other
10 appropriate description. If an application is part of the advertisement, the
11 name of the life settlement provider shall be shown on the application.

12 (i) An advertisement shall not use a trade name, group designation, name of
13 the parent company of a life settlement licensee, name of a particular division
14 of the life settlement licensee, service mark, slogan, symbol, or other device or
15 reference without disclosing the name of the life settlement licensee, if the
16 advertisement would have the capacity or tendency to mislead or deceive as to
17 the true identity of the life settlement licensee, or to create the impression that
18 a company other than the life settlement licensee would have any responsibility
19 for the financial obligation under a life settlement contract.

20 (j) An advertisement shall not use any combination of words, symbols, or
21 physical materials that by their content, phraseology, shape, color, or other

1 characteristics are so similar to a combination of words, symbols, or physical
2 materials used by a government program or agency or otherwise appear to be
3 of such a nature that they tend to mislead prospective policy owners into
4 believing that the solicitation is in some manner connected with a government
5 program or agency.

6 (k) An advertisement may state that a life settlement licensee is licensed in
7 the state where the advertisement appears, provided that it does not exaggerate
8 that fact or suggest or imply that a competing life settlement licensee may not
9 be so licensed. The advertisement may ask the audience to consult the
10 licensee's website or to contact the department of banking, insurance,
11 securities, and health care administration to find out what the state's licensing
12 and registration requirements are and to confirm that the life settlement
13 provider, life settlement investment advisor, and life settlement broker are
14 properly licensed.

15 (l) An advertisement shall not create the impression that the life settlement
16 provider, its financial condition or status, the payment of its claims, or the
17 merits, desirability, or advisability of its life settlement contracts are
18 recommended or endorsed by any government entity.

19 (m) The name of the actual licensee shall be stated in all of its
20 advertisements. An advertisement shall not use a trade name, any group
21 designation, the name of any affiliate or controlling entity of the licensee, a

1 service mark, a slogan, a symbol, or another device in a manner that would
2 have the capacity or tendency to mislead or deceive as to the true identity of
3 the actual licensee or create the false impression that an affiliate or controlling
4 entity would have any responsibility for the financial obligation of the licensee.

5 (n) An advertisement shall not directly or indirectly create the impression
6 that any division or agency of the state or of the U.S. government endorses,
7 approves, or favors:

8 (1) any life settlement licensee or its business practices or methods of
9 operation;

10 (2) the merits, desirability, or advisability of any life settlement contract;

11 (3) any life settlement contract; or

12 (4) any life insurance policy or life insurance company.

13 (o) If the advertiser emphasizes the speed with which the life settlement
14 transaction will occur, the advertising must disclose the average time span
15 from completed application to the date of offer and from acceptance of span
16 offer to receipt of the funds by the policy owner.

17 (p) If the advertising emphasizes the dollar amounts available to policy
18 owners, the advertising shall disclose the average purchase price as a percent
19 of face value obtained by policy owners contracting with the licensee during
20 the past six months.

1 § 3847. FRAUD PREVENTION AND CONTROL

2 (a)(1) A person shall not commit a fraudulent life settlement act.

3 (2) A person shall not knowingly or with reason to know interfere with
4 the enforcement of the provisions of this subchapter or investigations of
5 suspected or actual violations of this subchapter.

6 (3) It shall be a violation of this subchapter for a person in the business
7 of life settlements who with knowledge or who reasonably should know to
8 permit any person convicted of a felony involving dishonesty or breach of trust
9 to participate in the business of life settlements.

10 (b)(1) Life settlement contracts and applications for life settlements,
11 regardless of the form of transmission, shall contain the following statement or
12 a substantially similar statement:

13 “Any person who knowingly presents false information in an
14 application for insurance or life settlement contract may be guilty of a crime
15 and may be subject to fines and confinement in prison.”

16 (2) The lack of a statement as required in subdivision (1) of this
17 subsection does not constitute a defense in any prosecution for a fraudulent life
18 settlement act.

19 (c)(1) Any person engaged in the business of life settlements having
20 knowledge or a reasonable suspicion that a fraudulent life settlement act is
21 being, will be, or has been committed shall immediately provide to the

1 commissioner such information as required and in a manner prescribed by the
2 commissioner by rule or order.

3 (2) Any other person having knowledge or a reasonable belief that a
4 fraudulent life settlement act is being, will be, or has been committed may
5 provide to the commissioner such information required and in a manner
6 prescribed by the commissioner by order or rule.

7 (d)(1) No civil liability shall be imposed on and no cause of action shall
8 arise from a person's furnishing information concerning suspected, anticipated,
9 or completed fraudulent life settlement acts or suspected or completed
10 fraudulent insurance acts if the information is provided to or received from:

11 (A) the commissioner or the commissioner's employees, agents, or
12 representatives;

13 (B) federal, state, or local law enforcement or regulatory officials or
14 their employees, agents, or representatives;

15 (C) a person involved in the prevention and detection of fraudulent
16 viatical settlement acts or that person's agents, employees, or representatives;

17 (D) the National Association of Insurance Commissioners, the
18 Financial Industry Regulatory Authority (FINRA), the North American
19 Securities Administrators Association (NASAA), or their employees, agents,
20 or representatives, or another regulatory body overseeing life insurance, life
21 settlements, or securities or investment fraud; or

1 (E) the life insurer that issued the life insurance policy covering the
2 life of the insured.

3 (2) Subdivision (1) of this subsection shall not apply to statements made
4 with actual malice. In an action brought against a person for filing a report or
5 furnishing other information concerning a fraudulent life settlement act, the
6 party bringing the action shall plead specifically any allegation that subdivision
7 (1) of this subsection does not apply because the person filing the report or
8 furnishing the information did so with actual malice.

9 (3) A person furnishing information as identified in subdivision (1) of
10 this subsection shall be entitled to an award of attorney's fees and costs if he or
11 she is the prevailing party in a civil cause of action for libel, slander, or any
12 other relevant tort arising out of activities in carrying out the provisions of this
13 subchapter and if the party bringing the action was not substantially justified in
14 doing so. For the purposes of this section, a proceeding is "substantially
15 justified" if it had a reasonable basis in law or fact at the time that it was
16 initiated. However, such an award does not apply to any person furnishing
17 information concerning his or her own fraudulent life settlement acts.

18 (4) This section does not abrogate or modify common law or statutory
19 privileges or immunities enjoyed by a person described in subdivision (1) of
20 this subsection.

21 (5) Confidentiality.

1 (A) The documents and evidence provided pursuant to this
2 subsection or obtained by the commissioner in an investigation of suspected or
3 actual fraudulent life settlement acts shall be privileged and confidential and
4 shall not be a public record and shall not be subject to discovery or subpoena in
5 any private civil action.

6 (B) Subdivision (A) of this subdivision does not prohibit release by
7 the commissioner of documents and evidence obtained in an investigation of
8 suspected or actual fraudulent life settlement acts:

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

11 (ii) to federal, state, or local law enforcement or regulatory
12 agencies, to an organization established for the purpose of detecting and
13 preventing fraudulent viatical settlement acts, or to the National Association of
14 Insurance Commissioners; or

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

17 (C) Release of documents and evidence under subdivision (B) of this
18 subdivision does not abrogate or modify the privilege granted in subdivision
19 (A) of this subdivision.

20 (6) This subchapter shall not:

21 (A) preempt the authority or relieve the duty of other law

1 enforcement or regulatory agencies to investigate, examine, and prosecute
2 suspected violations of law;

3 (B) prevent or prohibit a person from disclosing voluntarily or
4 otherwise information concerning life settlement fraud to a law enforcement or
5 regulatory agency other than the department of banking, insurance, securities,
6 and health care administration; or

7 (C) limit the powers granted elsewhere by the laws of this state to the
8 commissioner or an insurance fraud unit to investigate and examine possible
9 violations of law and to take appropriate action against wrongdoers.

10 (7)(A) Life settlement providers shall have in place antifraud initiatives
11 reasonably calculated to detect, prosecute, and prevent fraudulent life
12 settlement acts. The commissioner may, at his or her discretion, order or a
13 licensee may request and the commissioner may grant such modifications of
14 the required initiatives listed in subdivision (B) of this subdivision (7) as
15 necessary to ensure an effective antifraud program. The modifications may be
16 more or less restrictive than the required initiatives so long as the
17 modifications may reasonably be expected to accomplish the purpose of this
18 section.

19 (B) Antifraud initiatives shall include:

20 (i) the use of fraud investigators, who may be life settlement
21 provider employees or independent contractors; and

1 (ii) an antifraud plan, which shall be submitted to the department
2 at the request of the commissioner. The antifraud plan shall include:

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

7 (II) a description of the procedures for reporting possible
8 fraudulent life settlement acts to the commissioner;

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

11 (IV) a description or chart outlining the organizational
12 arrangement of the antifraud personnel who are responsible for the
13 investigation and reporting of possible fraudulent life settlement acts and
14 investigating unresolved material inconsistencies between medical records and
15 insurance applications.

16 (c) Antifraud plans submitted to the commissioner shall be privileged and
17 confidential and shall not be a public record and shall not be subject to
18 discovery or subpoena in a civil or criminal action.

19 § 3848. CIVIL REMEDIES, PENALTIES, AND ENFORCEMENT;

20 CRIMINAL PENALTIES

21 (a) In addition to any other civil and administrative remedies, penalties, and

1 enforcement authority provided for by law:

2 (1) A violation of this subchapter, including the commission of a
3 fraudulent life settlement act, shall constitute an unfair trade practice under
4 chapter 129 of this title (Insurance Trade Practices) and shall be subject to the
5 remedies, penalties, and enforcement authority provided for in chapter 129 of
6 this title.

7 (2) The commissioner may issue a cease and desist order upon a person
8 that violates any provision of this subchapter, any rule or order adopted or
9 issued by the commissioner, or any written agreement with a licensee entered
10 into with the commissioner.

11 (3) When the commissioner finds that an activity in violation of this
12 subchapter presents an immediate danger to the public that requires an
13 immediate final order, the commissioner may issue an emergency cease and
14 desist order reciting with particularity the facts underlying the findings. The
15 emergency cease and desist order is effective immediately upon service of a
16 copy of the order on the respondent and remains effective for 90 days. If the
17 commissioner begins nonemergency cease and desist proceedings, the
18 emergency cease and desist order remains effective absent a petition by the
19 respondent and an order by a superior court of Washington County vacating
20 the commissioner's emergency order.

21 (4) A commissioner's order under this subsection may require a person

1 found to be in violation of this subchapter to make restitution to persons
2 aggrieved by violations of this subchapter or to take further actions necessary
3 to remedy violations of this subchapter.

4 (b) A person that violates a provision of this subchapter or a rule or an
5 order of the commissioner adopted or issued pursuant to this subchapter shall
6 be:

7 (1) fined not more than \$100,000.00 or imprisoned not more than 20
8 years or both if the value of the life settlement contract is more than
9 \$35,000.00;

10 (2) fined not more than \$20,000.00 or imprisoned not more than 10
11 years or both if the value of the life settlement contract is more than \$2,500.00
12 but not more than \$35,000.00;

13 (3) fined not more than \$10,000.00 or imprisoned not more than five
14 years or both if the value of the life settlement contract is more than \$500.00
15 but not more than \$2,500.00; or

16 (4) fined not more than \$3,000.00 or imprisoned not more than one year
17 or both if the value of the life settlement contract is \$500.00 or less.

18 (c) In any prosecution under subsection (b) of this section, the value of the
19 life settlement contracts within any six-month period may be aggregated and
20 the defendant charged accordingly in applying the provisions of this section.

21 The applicable statute of limitations provision under section 4501 of Title 13

1 shall not begin to run until the insurance company or law enforcement agency
2 is aware of the fraud, but in no event may the prosecution be commenced later
3 than seven years after the act has occurred.

4 (d) A person convicted of a violation of this subchapter may be sentenced
5 in accordance with subdivision (b)(1), (2), (3), or (4) based on the greater of:

6 (1) the value of property, services, or other benefit wrongfully obtained
7 or attempted to obtain; or

8 (2) the aggregate economic loss suffered by any person as a result of the
9 violation.

10 (e) Except for a fraudulent life settlement act committed by a policy owner,
11 the enforcement provisions and penalties of this section shall not apply to a
12 policy owner.

13 § 3849. ADOPTION OF RULES

14 The commissioner may:

15 (1) adopt rules necessary to carry out the purposes of this subchapter;

16 (2) establish standards for evaluating reasonableness of payments under
17 life settlement contracts for persons who are terminally or chronically ill. This
18 authority includes the regulation of discount rates used to determine the
19 amount paid in exchange for assignment, transfer, sale, devise, or bequest of a
20 benefit under a life insurance policy insuring the life of a person who is
21 chronically or terminally ill; and

1 (3) adopt rules governing the relationships and responsibilities of
2 insurers, life settlement providers, and life settlement brokers during life
3 settlement transaction.

4 Sec. 2. SAVINGS CLAUSE; RULES UNDER THE VERMONT UNIFORM
5 SECURITIES ACT; TRANSITION

6 (a) Nothing in this act is intended to alter, abrogate, limit, rescind, or
7 otherwise affect the obligations, operation, and administration of chapter 150
8 of Title 9 (the Vermont Uniform Securities Act; hereinafter “the Act”), and the
9 orders issued and any rules adopted thereunder, including:

10 (1) the operation and administration of the antifraud provisions of the
11 Act;

12 (2) the regulation of life settlement contracts to the extent that such
13 contracts constitute “securities” under the Act;

14 (3) the registration and regulation of investment advisors, investment
15 advisor representatives, broker-dealers, and sales representatives under the Act,
16 and, to the extent their activities subject them to the Act, life settlement
17 providers, life settlement purchasers, life settlement investment agents,
18 financing entities, related trust providers, and special purpose entities;

19 (4) the retention of records and production requirements under the Act;

20 (5) the conduct of investigations, the issuance of subpoenas, the conduct
21 of audits or inspections, or the production of books and records under the Act;

1 (6) the regulation of advertising and testimonials under the Act;

2 (7) required disclosures to life settlement purchasers and investors under
3 the Act; and

4 (8) the regulation of conflicts of interest and other prohibited practices
5 under the Act.

6 (b) The commissioner may adopt by rule under section 5605 of Title 9
7 standards and procedures relating to transactions involving life settlement
8 purchase agreements or viatical settlement purchase agreements or similar
9 investment contracts, including the following:

10 (1) standards of conduct for investment advisors, investment advisor
11 representatives, and broker-dealers;

12 (2) record retention requirements;

13 (3) required disclosures to life settlement purchasers or investors prior to
14 the date the life settlement purchase agreement is signed;

15 (4) required disclosures to life settlement purchasers or investors at the
16 time of the assignment, transfer, or sale of all or a portion of an insurance
17 policy;

18 (5) a suitable rescission period for life settlement purchasers or
19 investors;

20 (6) standards prohibiting unfair, deceptive, or misleading advertising;

21 (7) fraud prevention and control;

1 (8) any other requirement necessary or desirable to carry out the
2 purposes of this act or the purposes of chapter 150 of Title 9 (the Vermont
3 Uniform Securities Act).

4 (c) The commissioner's rules adopted under subsection (b) of this section
5 shall endeavor to be consistent with the requirements of the Viatical
6 Settlements Model Act adopted by the National Association of Insurance
7 Commissioners relating to viatical settlement investment agents and viatical
8 settlement purchase agreements to the extent feasible and desirable.

9 (d) A life settlement provider or life settlement broker transacting business
10 in this state may continue to do so pending approval or disapproval of the
11 provider's or broker's application for a license as long as the application is
12 filed with the commissioner on or before January 1, 2010. All viatical
13 settlement brokers shall be renewed as of April 1, 2010.

14 * * * Senior Designations * * *

15 Sec. 3. 8 V.S.A. § 24 is added to read:

16 § 24. SENIOR INVESTOR PROTECTION

17 (a) The commissioner may, in addition to other powers conferred on the
18 commissioner by law, adopt rules and issue orders necessary to protect senior
19 investors from being misled by false or misleading certifications, licenses,
20 professional designations, or other credentials that imply or indicate a special

1 level of knowledge with regard to senior investors or their needs in the sale of
2 securities or insurance or both in the providing of investment advice.

3 (b) To implement the protections described in subsection (a) of this section,
4 the commissioner may:

5 (1) establish standards for senior-specific certifications, licenses,
6 professional designations, and other credentials;

7 (2) develop initiatives to investigate and take action against fraudulent,
8 misleading, dishonest, or unethical marketing practices directed toward
9 seniors;

10 (3) develop educational materials and training aimed at reducing such
11 marketing practices; and

12 (4) accept grants from government or private entities to fund the
13 activities set forth in this section.

14 (c) Any rules adopted or orders issued by the commissioner under this
15 section shall conform to the extent practicable to the NASAA Model Rule on
16 the Use of Senior-Specific Certifications and Professional Designation, as
17 amended, and the NAIC Model Regulation on the Use of Senior-Specific
18 Certifications and Professional Designations in the Sale of Life Insurance and
19 Annuities, as amended.

20 (d)(1) A violation of a rule adopted or orders issued under this section with
21 respect to the business of insurance shall constitute an unfair or deceptive act

1 or practice in the business of insurance, and the commissioner may enforce
2 such violations pursuant to the commissioner's authority conferred by the
3 Insurance Trade Practices Act, chapter 129 of this title, and pursuant to any
4 other authority conferred upon the commissioner by law.

5 (2) A violation of a rule adopted or order issued under this section with
6 respect to the business of securities and investment advise shall constitute a
7 violation of subdivision 5412(d)(13) of Title 9, and the commissioner may
8 enforce such violations pursuant to the commissioner's authority conferred by
9 the Vermont Uniform Securities Act, chapter 150 of Title 9, and pursuant to
10 any other authority conferred upon the commissioner by law.

11 Sec. 4. 8 V.S.A. chapter 200, subchapter 7 is added to read:

12 Subchapter 7. Reverse Mortgages

13 § 10701. DEFINITIONS

14 As used in this subchapter:

15 (1) "Financial institution" means a financial institution as defined in
16 section 10202(5) of this chapter.

17 (2) "Reverse mortgage loan" means a loan that:

18 (A) is a loan wherein the committed principal amount is secured by a
19 mortgage on residential property owned by the borrower;

1 (B) is due upon sale of the property securing the loan or upon the
2 death of the last surviving borrower or upon the borrower terminating use of
3 the real property as a principal residence or upon the borrower's default;

4 (C) provides cash advances to the borrower based upon the equity or
5 the value in the borrower's owner-occupied principal residence; and

6 (D) requires no payment of principal or interest until the entire loan
7 becomes due and payable.

8 § 10702. COUNSELING

9 Prior to accepting an application for a reverse mortgage loan, a financial
10 institution shall refer every borrower to counseling from an organization that is
11 a housing counseling agency approved by the United States Department of
12 Housing and Urban Development and shall receive certification from the
13 counselor that the borrower has received in person face-to-face counseling.

14 The certificate shall be signed by the borrower and the counselor, shall include
15 the date of counseling, the name, address, and telephone number of both the
16 borrower and the organization providing counseling, and shall be maintained
17 by the holder of the reverse mortgage throughout the term of the reverse
18 mortgage loan.

19 § 10703. ANNUITIES

1 A financial institution shall not require an applicant for a reverse mortgage
2 to purchase an annuity as a condition of obtaining a reverse mortgage loan. A
3 financial institution or a broker arranging a reverse mortgage loan shall not:

4 (1) offer an annuity to the mortgagor prior to the closing of the reverse
5 mortgage or before the expiration of the right of the mortgagor to rescind the
6 reverse mortgage agreement.

7 (2) refer the mortgagor to anyone for the purchase of an annuity prior to
8 the closing of the reverse mortgage or before the expiration of the right of the
9 mortgagor to rescind the reverse mortgage agreement.

10 § 10704. LIMITATION ON REVERSE MORTGAGE LOAN PROGRAMS

11 No financial institution shall issue a reverse mortgage loan unless it is a
12 lender approved by the federal department of housing and urban development
13 (HUD) to enter into a loan insured by the federal government and the reverse
14 mortgage loan complies with all requirements for participation in the HUD
15 Home Equity Conversion Mortgage Program (or other similar federal reverse
16 mortgage loan program from time to time created) and is insured by the federal
17 housing administration or other similar federal agency or is a government
18 sponsored enterprise reverse mortgage loan.

19 Sec. 5. REPEAL

20 Subchapter 5A of chapter 103 of Title 8 (viatical settlements) is repealed on
21 January 1, 2010.

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of

3 this act shall take effect January 1, 2010.