

No. 53. An act relating to senior protection and financial services.

(H.222)

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

* * * Life Settlements * * *

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

Subchapter 5B. Life Settlements

§ 3835. DEFINITIONS

As used in this subchapter:

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

(2) “Business of life settlements” means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, financing, monitoring, tracking, administering, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner

acquiring an interest in a life insurance policy by means of a life settlement contract.

(3) “Chronically ill” means:

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

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

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

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

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

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

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

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

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

(6) “Fraudulent life settlement act” includes:

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

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

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

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

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

(IV) premiums paid on an insurance policy;

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

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

(VII) the solicitation, offer, effectuation, or sale of a life settlement contract or insurance policy;

(VIII) the issuance of written evidence of a life settlement contract or insurance; or

(IX) a financing transaction; and

(ii) employing any plan, financial structure, device, scheme, or artifice to defraud related to policies subject to a life settlement contract.

(B) any person in the furtherance of a fraudulent settlement act or to prevent the detection of a fraudulent settlement act committing or permitting its employees or its agents to:

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

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

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

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

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

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

(E) facilitating the change of state of ownership of a policy or certificate or the state of residency of a policy owner to a state or jurisdiction

that does not have a law similar to this subchapter for the express purposes of evading or avoiding the provisions of this subchapter;

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

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

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

(9)(A) “Life settlement contract” means a written agreement between a policy owner and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the policy owner’s present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

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

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

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

(C) “Life settlement contract” does not include:

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

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

(I) premiums for the policy;

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

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

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

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

(vi) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer,

or trust established by the employer, of life insurance on the life of the employee;

(vii) a bona fide business succession planning arrangement:

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

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

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

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

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

(10) “Life settlement investment agent” means a person who is an appointed or contracted agent of a licensed life settlement provider who solicits or arranges the funding for the purchase of a life settlement by a life settlement purchaser and who is acting on behalf of a life settlement provider.

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

(B) “Life settlement provider” does not include:

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

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

(iii) the issuer of the life insurance policy;

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

(v) a financing entity;

(vi) a special purpose entity;

(vii) a related provider trust;

(viii) a life settlement purchaser; or

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

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

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

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

(ii) a financing entity;

(iii) a special purpose entity; or

(iv) a related provider trust.

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

(14)(A) “Policy owner” means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this subchapter, a policy owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition. If there is more than one policy owner on a single policy and the policy owners are residents of different states, the transaction shall be governed by the law of the state in which the policy owner having the largest percentage ownership resides or, if the policy owners hold equal ownership, the state of residence of one policy owner agreed upon in writing by all the policy owners.

(B) “Policy owner” does not include:

(i) Qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended.

(ii) A financing entity.

(iii) A special purpose entity.

(iv) A related provider trust.

(v) A purchaser of a purchased policy.

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

(16) “Related provider trust” means a titling trust or other trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.

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

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

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

(ii) in connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder.

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

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

(20) “Viator” means any person who owns, controls, or has rights to the benefits or values of a life insurance policy or who owns, is covered by, controls, or has rights to the benefits or values of a group policy, either of which insures the life of a person who is terminally or chronically ill or has a life-threatening illness or condition and who enters into an agreement under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the life settlement provider.

§ 3836. LICENSE AND BOND REQUIREMENTS

(a) Life settlement providers.

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

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

(3) Licenses may be renewed from year to year on a date prescribed by the commissioner of the odd-numbered year next following the date of

issuance upon payment of a biennial renewal fee of \$400.00. Failure to pay the fee by the renewal date shall result in expiration of the license.

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

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

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

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

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

(D) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond

executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement provider. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$1,000,000.00, a bond or letter of credit not less than \$50,000.00;

(ii) \$1,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$100,000.00;

(iii) \$15,000,000.00 or more, a bond or letter of credit not less than \$150,000.00; and

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

(6) The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the secretary of state or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the secretary of state, in accordance with section 1633 of Title 11.

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

(b) Life settlement broker.

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

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

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

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

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

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

(A) is competent and trustworthy.

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

(C) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other

amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement broker. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$2,000,000.00, a bond or letter of credit not less than \$25,000.00;

(ii) \$2,000,000.01 to \$5,000,000.00, a bond or letter of credit not less than \$50,000.00;

(iii) \$5,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$75,000.00; and

(iv) \$15,000,000.01 and more, a bond or letter of credit not less than \$100,000.00; and

(7) The commissioner shall not issue a license to a nonresident applicant

unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the secretary of state, in accordance with section 1633 of Title 11.

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

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

(c) The insurer that issued the policy subject to a life settlement shall not be responsible for any act or omission of a life settlement broker or life settlement

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

§ 3837. LICENSE REVOCATION AND DENIAL

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

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

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

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

(4) The licensee or any officer, partner, member, or key management personnel have been found guilty of or have pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud or moral turpitude,

regardless of whether a judgment of conviction has been entered by the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3838. APPROVAL OF LIFE SETTLEMENT CONTRACTS,

DISCLOSURE STATEMENTS, AND RELATED FORMS

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

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

sections 3841, 3843, 3846, and subsection 3847(b) of this title or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner. Any notice of disapproval of such form shall state the grounds therefore and shall state that a hearing will be granted within 20 days upon request of the filer who requests a hearing within 30 days of the date of the notice of disapproval.

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

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

withdrawal of approval of a form which has been received by the commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.

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

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

(a) Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule or order. Information relating to life settlement transactions shall be limited to only those transactions where the policy owner is a resident of this state. Upon proper request by the filer, the commissioner shall maintain the confidentiality of trade secret information. The annual statement shall not contain individually-identifiable life settlement transaction information, but such information shall be provided to the commissioner pursuant to section 3840 of this title. If available to the provider because of the provider's business relationship or affiliation with one or more life settlement purchasers, the annual statement shall also include such information as the commissioner may prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this state.

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

§ 3840. INVESTIGATIONS AND EXAMINATIONS

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

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

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

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

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

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

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

§ 3841. DISCLOSURE TO POLICY OWNER

(a) With each application for a life settlement, a life settlement provider or

a life settlement broker shall provide the policy owner with at least the following disclosures not less than 10 days prior to the time the application for the life settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the policy owner and the life settlement provider or life settlement broker and shall include the following information:

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

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

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

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

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

agencies.

(6) The policy owner has the right to rescind a life settlement contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties. Rescission, if exercised by the policy owner, is effective only if both notice of the rescission is given and the policy owner repays all proceeds and any premiums, loans, and loan interest paid on account of the life settlement within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the policy owner or the policy owner's estate of all life settlement proceeds and any premiums, loans, and loan interest on the life settlement within 60 days of the insured's death.

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

(8) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the policy owner. Assistance should be sought from an independent, qualified professional with experience in these matters.

(9) Disclosure to a policy owner shall include distribution of a brochure approved by the commissioner describing the process of life settlements.

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

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

resided at the time of the life settlement or by the authorized representative of such duly licensed life settlement provider.

(12) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation, and the manner and amount of the broker's compensation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker's fiduciary duty to the policy owner.

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

(A) Unless previously disclosed under subsection (a) of this section, the affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be subject to the life settlement contract;

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

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

(2) If an insurance policy subject to a life settlement contract has been

issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be subject to a life settlement contract, the policy owner or owners shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her or their insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

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

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

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

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

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

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

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

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

(d) If the life settlement provider transfers ownership or changes the

beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

§ 3842. DISCLOSURE TO INSURER

Thirty days prior to the execution of a life settlement contract or the execution or other affirmation of an agreement or arrangement to enter into a life settlement contract, a life settlement provider shall provide notice to the insurer that issued or has assumed the policy, provided the contract, agreement or arrangement is executed or otherwise affirmed prior to, or during the first five years after issuance of a policy. The notice shall contain information identifying the policy and the policy owner, if applicable, and a copy of the proposed life settlement contract.

§ 3843. GENERAL RULES

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

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

(B) if the medical records of the insured are intended or required to be released in connection with a proposed life settlement transaction, a document in which the insured consents to the release of his or her medical

records to a licensed life settlement provider, life settlement broker, the insurance company that issued the life insurance policy covering the life of the insured, and any other person to whom the medical records will be released.

(2) Within 20 days after a policy owner executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to subject the policy to a life settlement contract, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a policy subject to a life settlement contract. The notice shall be accompanied by the documents required by subdivision (3) of this subsection.

(3) The life settlement provider shall deliver a copy of the medical release required under subdivision (1)(B) of this subsection, a copy of the policy owner's application for the life settlement contract, the notice required under subdivision (2) of this subsection, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life settlement transaction. A form for verification of coverage approved by the commissioner shall be used.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall

indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible insurance or life settlement fraud. The insurer shall accept a request for verification of coverage made on a form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the policy owner. Failure by the insurer to meet its obligations under this subsection shall be a violation of sections 3844 and 3848 of this title.

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

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

equirement.

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

(c) All life settlement contracts entered into in this state shall provide the policy owner with an absolute right to rescind the contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties. Rescission by the policy owner may be conditioned upon the policy owner's both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the life settlement provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded

transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the policy owner's notice of rescission if rescinded at the election of the policy owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) The life settlement provider shall instruct the policy owner to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to an independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the life settlement provider receives the documents, if the policy owner erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state- or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the

properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the policy owner.

(e) Failure to tender consideration to the policy owner for the life settlement contract within the time set forth in the disclosure pursuant to subdivision 3841(a)(7) of this title renders the life settlement contract voidable by the policy owner for lack of consideration until the time consideration is tendered to and accepted by the policy owner. Funds shall be deemed sent by a life settlement provider to a policy owner as of the date that the escrow agent either releases funds for wire transfer to the policy owner or places a check for delivery to the policy owner via the United States Postal Service or another nationally recognized delivery service.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than six months and to no more than once every two months for insureds with a life expectancy of six months or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not

apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement brokers shall be responsible for the actions of their authorized representatives.

(g)(1) In order to assure that terminally ill policy owners receive a reasonable return for entering into a life settlement contract, the following shall be minimum payouts; provided that upon request of the policy owner the commissioner may waive the requirements of this subdivision:

| <u>Terminally Ill Policy Owner'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 Settlement</u> | <u>Any Cash Surrender Value) to be</u> |
| | <u>Received by the Terminally Ill</u> |
| | <u>Policy Owner</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> |

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

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

(4) Payouts may be reduced by the minimum premium, including premiums payable for additional benefits retained at the option of the terminally ill policy owner, if any, required to keep the contract in force for the duration of the terminally ill policy owner's remaining life expectancy. Other than this allowable reduction in payout, there shall be no other retention for expenses or broker's fees. At the time of settlement, the life settlement provider shall place in trust a sum equal to the amount the payout was reduced for future premiums. Sums placed in trust under this section shall only be reduced by the life settlement provider upon payment of policy premiums as they come due. If the terminally ill policy owner dies with a sum held in trust under this section, the sum remaining in trust shall become the property of the life settlement provider.

(5) If the life settlement provider becomes insolvent or is the subject of a bankruptcy or other insolvency proceeding during the life of the terminally ill policy owner whose policy had riders retained, the life settlement provider shall notify the terminally ill policy owner and other insureds of the insolvency or initiation of insolvency proceedings. Persons with an interest in the

continuation of riders retained may pay any premiums required to keep riders retained in force.

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

(7) Life expectancy shall be determined by a physician selected by the terminally ill policy owner, on the basis of medical records. The physician selected will send life expectancy information to the life settlement provider. If the life settlement provider disagrees with the life expectancy estimate of the physician selected by the terminally ill policy owner, the terminally ill policy owner will select a second physician to make an estimate of life expectancy, based on medical records. The second physician's decision shall be final.

§ 3844. PROHIBITED PRACTICES

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

(1) commit any fraudulent life settlement acts;

(2) enter into any practice, agreement, arrangement, or transaction which results in or is intended to result in the issuance of stranger-originated life insurance or STOLI; or

(3) enter, within a five-year period commencing with the date of

issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period:

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

(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period:

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

(ii) The policy owner's spouse dies;

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

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

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

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

(vii) The policy owner has suffered a significant economic reversal, as demonstrated by a 50 percent decline in the policy owner's annual adjusted gross income, or by a 50 percent decline in the policy owner's net worth, or as demonstrated by other facts and circumstances approved by the commissioner; or

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

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

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the

policy, including through an assumption or forgiveness of the loan; and

(iii) A life settlement provider or a life settlement broker has not conducted a life expectancy evaluation of the insured in connection with a proposed settlement of the policy, and the insured has not undergone a life expectancy evaluation for settlement in connection with the issuance of the policy.

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

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

(d) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30

calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

(e) It shall be a violation of this section to enter into a life settlement contract in reliance on the conditions established in subdivision (a)(3)(B) of this section if such condition commenced or occurred prior to the issuance of the insurance policy or certificate.

(f) The commissioner shall adopt rules regulating the marketing and solicitation of life settlement products.

§ 3845. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST

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

(b) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation

conflicts with the broker's fiduciary duty to the policy owner.

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

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

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

(f) No life insurance producer, insurance company, life settlement broker, or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life

insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

§ 3846. ADVERTISING FOR LIFE SETTLEMENTS

(a) No person engaged in the business of life settlements shall make, issue, circulate, or cause to be made, issued, or circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or by Internet, or in any other way, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, which:

(1) misrepresents or fails to adequately disclose the benefits, advantages, conditions, exclusions, limitations, or terms of any life settlement contract;

(2) uses any name or title of any life settlement contract or class of life settlement contracts misrepresenting the true nature thereof; or

(3) is a misrepresentation for the purpose of inducing or tending to induce a policy owner to enter into a life settlement contract in violation of the provisions of this chapter;

(4) is inaccurate, untruthful, deceptive or misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be

determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed;

(5) directly or indirectly markets, advertises, solicits, or otherwise promotes the purchase of a policy for the purpose or, or with an emphasis on entering into a life settlement contract; or

(6) uses the word “free”, “no cost”, “without cost”, no additional cost”, “at no extra cost” or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

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

(c) The name of the life settlement licensee shall be clearly identified in all

advertisements about the licensee or its life settlement contract, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

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

(e) The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or that an offer is made to refund the payment if the policy owner is not satisfied, or that the life settlement contract includes a “free look” period that satisfies or exceeds legal requirements does not remedy any inaccurate, untruthful, deceptive or misleading statements.

§ 3847. FRAUD PREVENTION AND CONTROL

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

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

(3) It shall be a violation of this subchapter for a person in the business

of life settlements who with knowledge or who reasonably should know to permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

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

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

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

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

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

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

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

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

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

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

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

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

subdivision (1) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

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

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

(5) Confidentiality.

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

(B) Subdivision (A) of this subsection does not prohibit release by

the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

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

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

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

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

(6) This subchapter shall not:

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

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

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

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

(B) Antifraud initiatives shall include:

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

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

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

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

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

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

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

§ 3848. CIVIL REMEDIES, PENALTIES, AND ENFORCEMENT

In addition to any other civil and administrative remedies, penalties, and enforcement authority provided for by law:

(1) A violation of this subchapter or of a rule or order adopted or issued under this subchapter, including the commission of a fraudulent life settlement act, shall constitute an unfair trade practice under chapter 129 of this title (Insurance Trade Practices) and shall be subject to the remedies, penalties, and enforcement authority provided for in chapter 129 of this title. The commissioner may report any violation of this subchapter to the attorney

general, who may prosecute therefor if he or she deems desirable.

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

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

(4) A commissioner's order under this subsection may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter or to take further actions necessary to remedy violations of this subchapter.

§ 3849. ADOPTION OF RULES

The commissioner may:

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

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

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

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

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

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

(2) the regulation of life settlement contracts to the extent that such

contracts constitute “securities” under the Act;

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

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

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

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

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

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

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

(1) standards of conduct for investment advisors, investment advisor broker-dealer agents, and broker-dealers;

(2) record retention requirements;

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

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

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

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

(7) fraud prevention and control;

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

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

* * * Senior Designations * * *

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

§ 24. SENIOR INVESTOR PROTECTION

(a) The commissioner may, in addition to other powers conferred on the commissioner by law, adopt rules and issue orders necessary to protect senior investors from being misled by false or misleading certifications, licenses, professional designations, or other credentials that imply or indicate a special level of knowledge with regard to senior investors or their needs in the sale of securities or insurance or both in the providing of investment advice.

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

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

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

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

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

(c) Any rules adopted or orders issued by the commissioner under this section shall conform to the extent practicable to the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation, as amended, and the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended.

(d)(1) A violation of a rule adopted or orders issued under this section with respect to the business of insurance shall constitute an unfair or deceptive act or practice in the business of insurance, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Insurance Trade Practices Act, chapter 129 of this title, and pursuant to any other authority conferred upon the commissioner by law.

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

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

Subchapter 7. Reverse Mortgages

§ 10701. DEFINITIONS

As used in this subchapter:

(1) “Financial institution” means a financial institution as defined in section 10202(5) of this chapter.

(2) “Reverse mortgage loan” means a loan that:

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

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

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

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

§ 10702. COUNSELING

Prior to accepting an application for a reverse mortgage loan, a financial institution shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the

counselor that the borrower has received in person face-to-face counseling.
However, if the borrower cannot or chooses not to travel to a counselor and cannot be visited by a counselor in their home, telephone counseling shall be provided by counseling agencies that are authorized by the department of banking, insurance, securities and health care administration. The certificate shall be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

§ 10703. ANNUITIES

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

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

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

§ 10704. LIMITATION ON REVERSE MORTGAGE LOAN PROGRAMS

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

Sec. 5. REPEAL

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

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.

Approved: June 1, 2009