

# Connecticut

## Title 38A. Insurance Chapter 700B. Life Insurance, Annuities, Burial Contracts and Life Settlements Part III. Life Settlements

§ 38a-465. Definitions .....	2
§ 38a-465a. Licensing of life settlement providers and brokers .....	7
§ 38a-465b. Denial, suspension or revocation of license. Refusal to renew license. Appeals .....	10
§ 38a-465c. Contract form and disclosure statements. Filing and approval requirements. Disclosure of life settlement contract availability and lawful assignment not to be prohibited ...	11
38a-465d. Annual statements. Penalty. Confidentiality of insured's information. Reasons for disclosure of insured's identity .....	12
§ 38a-465e. Examination of licensees and applicants. Commissioner's access to records. Retention of records. Expenses of examination. Confidentiality of examination workpapers and reports .....	13
§ 38a-465f. Required disclosures .....	16
§ 38a-465g. Prerequisites to a life settlement contract wherein insured is terminally or chronically ill. Medical release and confidentiality of medical information. Verification of coverage. Notice to insurer. Change of ownership or beneficiary. Rescission. Escrow agent or trustee. Broker fee calculation and disclosure of compensation. Prohibitions. Exemptions .....	19
§ 38a-465h. Premium finance loans. Disclosures and certifications .....	23
§ 38a-465i. Violations .....	23
§ 38a-465j. Fraudulent life settlement acts prohibited. Confidentiality of documents and evidence. Antifraud plans .....	25
§ 38a-465k. Injunctions. Cease and desist orders. Damages .....	29
§ 38a-465l. Penalties .....	29
§ 38a-465m. Regulations. Imposition of bond or other mechanism as proof of financial accountability. Conflict of laws .....	30
§ 38a-465n. Life settlement advertisements .....	31
§ 38a-465o. Life settlement broker deemed to represent only the owner. Fiduciary duty to owner .....	31
§ 38a-465p. Provider or broker lawfully transacting business in the state or person lawfully negotiating life settlement contracts prior to October 1, 2008 .....	31
§ 38a-465q. Related provider trusts .....	32
§§ 38a-466 to 38a-468. Reserved for future use .....	32

## § 38a-465. Definitions

As used in sections 38a-465 to 38a-465q, inclusive, and subdivision (20) of section 38a-816:

- (1) “Advertisement” means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including, but not limited to, film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
- (2) “Broker” means a person who, on behalf of an 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 providers. “Broker” does not include an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency retained to represent the owner, whose compensation is not paid directly or indirectly by a provider or any other person except the owner.
- (3) “Business of life settlements” means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring or tracking of life settlement contracts.
- (4) “Chronically ill” means: (A) Being unable to perform at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing or continence; (B) requiring substantial supervision to protect from threats to health and safety due to severe cognitive impairment; or (C) having a level of disability similar to that described in subparagraph (A) of this subdivision as determined by the federal Secretary of Health and Human Services.
- (5) “Commissioner” means the Insurance Commissioner.
- (6) (A) “Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a 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:
  - (i) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and
  - (ii) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

(B) “Financing entity” does not include a nonaccredited investor or a purchaser.

(7) “Financing transaction” means any transaction in which a provider obtains financing from a financing entity, including, but not limited to, any secured or unsecured financing, any securitization transaction or any securities offering which is registered or exempt from registration under federal or state securities law.

(8) “Insured” means the person covered under the policy being considered for sale in a life settlement contract.

(9) “Life expectancy” means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company, life settlement company or investor considering medical records and experiential data.

(10) “Life insurance producer” means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line coverage pursuant to chapter 702. [FN1]

(11) (A) “Life settlement contract” means:

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

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

(iii) A written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or

(iv) A premium finance loan made for a policy on or before the date of issuance of the policy where (I) the loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing, (II) the owner receives, on the date of the premium finance loan, a guarantee of the future life settlement value of the policy, or (III) the owner agrees on the date of the premium finance loan to sell the policy,

or any portion of its death benefit, on any date following the issuance of the policy.

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

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

(ii) A premium finance loan, as defined in subparagraph (A)(iv) of this subdivision, or any loan made by a bank or other licensed financial institution, provided neither default on such loan or the transfer of the policy, in connection with such default, is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this part;

(iii) A collateral assignment of a life insurance policy by an owner;

(iv) A loan made by a lender that does not violate sections 38a-162 to 38a-170, inclusive, provided such loan is not described in subparagraph (A) of this subdivision and is not otherwise within the definition of life settlement contract;

(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 one 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 one 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 one 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, that performs significant services for the service recipient's trade or business; or

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

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

(13) “Owner” means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For the purposes of this part, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition, except where specifically addressed. “Owner” does not include: (A) Any provider or other licensee under this part; (B) a qualified institutional buyer, as defined in Rule 144A of the federal Securities Act of 1933, [FN2] as amended from time to time; (C) a financing entity; (D) a special purpose entity; or (E) a related provider trust.

(14) “Patient identifying information” means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number or any other information that is likely to lead to the identification of the insured.

(15) “Person” means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust or corporation.

(16) “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.

(17) “Premium finance loan” means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

(18) “Provider” means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. “Provider” does not include:

(A) Any bank, savings bank, savings and loan association or credit union;

(B) A licensed lending institution, creditor or secured party pursuant to a premium finance loan agreement that takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan;

(C) The insurer of a life insurance policy or rider providing accelerated death benefits or riders pursuant to section 38a-457 or cash surrender value;

(D) A natural person who enters into or effectuates no more than one agreement in a calendar

year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or any value less than the expected death benefit payable under the policy;

(E) A purchaser;

(F) An authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity or related provider trust;

(G) A financing entity;

(H) A special purpose entity;

(I) A related provider trust;

(J) A broker; or

(K) An accredited investor or a qualified institutional buyer, as defined in Rule 501 of Regulation D or Rule 144A, respectively, of the federal Securities Act of 1933, as amended from time to time, who purchases a life settlement policy from a provider.

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

(20) “Purchaser” means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust that is vested with, or for the assignment, transfer or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy that is the subject of a life settlement contract.

(21) “Related provider trust” means a titling trust or other trust established by a licensed 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.

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

(23) “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 provider, (B) in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a qualified institutional buyer, as defined in Rule 144A of the federal Securities Act of 1933, as

amended from time to time, or (C) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(24) “Stranger-originated life insurance” means an act, practice or arrangement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. Such practices include, but are not limited to, 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 or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third-party. Trusts created to give the appearance of insurable interest and used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subparagraph (B) of subdivision (11) of this section.

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

### **§ 38a-465a. Licensing of life settlement providers and brokers**

(a) Except as otherwise provided in this part, no person shall act as a provider or broker until the person is licensed by the commissioner pursuant to this section.

(b) Any applicant for a license as a provider or broker shall submit written application to the commissioner. Such applicants shall provide such information as the commissioner requires. All initial applications shall be accompanied by a filing fee specified in section 38a-11.

(c) A life insurance producer, who has been duly licensed as a resident insurance producer with a life line of authority in this state or in said producer's home state for not less than one year and is licensed as a nonresident producer pursuant to section 38a-702g, shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.

(d) Not later than thirty days from the first day of operating as a broker, a life insurance producer shall notify the commissioner that said producer is acting as a broker on a form prescribed by the commissioner, and shall pay a filing fee as specified in section 38a-11. Such notification shall include an acknowledgement by the life insurance producer that said producer shall operate as a broker in accordance with this part.

(e) The insurer that issued the policy that is the subject of a life settlement contract shall not be

responsible for any act or omission of a broker, provider or purchaser 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 broker, provider or purchaser in connection with such life settlement contract.

(f) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without being required to obtain a license as a broker.

(g) Any license issued for a provider or broker shall be in force only until the last day of March in each year, but may be renewed by the commissioner without formality other than proper application. The fees for such licenses shall be assessed annually, as provided in section 38a-11. If such provider or broker fails to timely pay the renewal fee, such license shall be automatically revoked if the license fee is not received by the commissioner not later than the fifth day after the commissioner sends, by first class mail, a written notice of nonrenewal to the principal office of the provider or broker, provided such notice shall only be mailed after said last day of March.

(h) The term of a provider license shall be equal to that of a domestic stock life insurance company and the term of a broker license shall be equal to that of an insurance producer license. Licenses requiring periodic renewal shall be renewed on their anniversary date upon payment of the renewal fee, as specified in subsection (b) of this section. Failure to pay the fees on or before the renewal date shall result in expiration of the license.

(i) Upon the filing of an application and full payment of the license fee, the commissioner shall investigate the applicant and shall issue a license if the commissioner determines that:

(1) The applicant, if a provider, has provided a detailed plan of operation;

(2) The applicant is competent and trustworthy, and intends to act in good faith pursuant to the license applied for;

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

(4) If the applicant is a corporation, partnership, limited liability company or other legal entity, the applicant is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to do business in this state, or provides a certificate of good standing from its state of domicile; and

(5) The applicant has provided to the commissioner an antifraud plan that meets the requirements of subsection (i) of section 38a-465j and includes:

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

(B) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

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

(D) A written description or chart outlining the arrangement of the antifraud personnel responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(j) The applicant shall provide to the commissioner such information as the commissioner may require, on forms approved by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of its stockholders, except stockholders owning less than ten per cent of the shares of an applicant whose shares are publicly traded, partners, officers and employees, and the commissioner may deny any application for a license if the commissioner determines that any partner, officer, employee or stockholder thereof who may materially influence the applicant's conduct fails to meet any of the standards set forth in sections 38a-465 to 38a-465q, inclusive.

(k) A license issued to a corporation, partnership, limited liability company or other legal entity authorizes all of such legal entity's members, officers and designated employees named in the application for such license, and any supplements to the application, to act as a licensee under such license.

(l) The commissioner shall not issue any license to any nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless 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 commissioner.

(m) Each licensee shall file with the commissioner on or before the first day of March of each year an annual statement containing such information as the commissioner may prescribe by regulation.

(n) A provider shall not use any person to perform the functions of a broker, as defined in this part, unless such person holds a current, valid license as a broker and as provided in this section.

(o) A broker shall not use any person to perform the functions of a provider, as defined in this part, unless such person holds a current, valid license as a provider and as provided in this section.

(p) A provider or broker shall provide to the commissioner new or revised information about officers, stockholders holding ten per cent or more of the company's stock, partners, directors, members or designated employees not later than thirty days after the change in information.

(q) An individual licensed as a broker shall complete, on a biennial basis, fifteen hours of training related to life settlements and life settlement transactions, except that a life insurance producer operating as a broker pursuant to this section shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

#### **§ 38a-465b. Denial, suspension or revocation of license. Refusal to renew license. Appeals**

(a) The commissioner may deny a license application, or suspend, revoke or refuse to renew the license of any licensee if the commissioner determines that:

(1) There was a material misrepresentation in the license application or in other information submitted to the commissioner;

(2) The licensee or any partner, member, director or officer of the licensee has been convicted of a felony or of any misdemeanor of which criminal fraud is an element, has been found guilty of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(3) The licensee, or any partner, member, officer or key management personnel has violated any of the provisions of this part;

(4) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;

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

- (6) The provider has entered into any life settlement contract using a form that has not been approved pursuant to sections 38a-465 to 38a-465q, inclusive;
- (7) The provider has failed to honor contractual obligations set out in a life settlement contract;
- (8) The licensee no longer meets the requirements for initial licensure; or
- (9) The provider has assigned, transferred or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or a qualified institutional buyer, as defined in Rule 501 of Regulation D or Rule 144A, respectively, of the federal Securities Act of 1933, [FN1] as amended from time to time, a financing entity, special purpose entity or related provider trust.

(b) If the commissioner denies a license application, or suspends, revokes or refuses to renew the license of a licensee, the applicant or licensee aggrieved by such denial, suspension, revocation or refusal to renew a license may appeal such action in accordance with chapter 54. [FN2] Hearings may be held by the commissioner or by any person designated by the commissioner. Whenever an individual other than the commissioner acts as the hearing officer, the individual shall submit to the commissioner a memorandum of findings and recommendations upon which the commissioner may base a decision.

**§ 38a-465c. Contract form and disclosure statements. Filing and approval requirements. Disclosure of life settlement contract availability and lawful assignment not to be prohibited**

(a) No person shall use any form of life settlement contract or disclosure statement in this state unless such form has been filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if the commissioner finds any provision in said form is unreasonable, contrary to the interests of the public, fails to comply with the provisions of sections 38a-465f, 38a-465g, 38a-465n and subsection (b) of section 38a-465k, or is otherwise misleading or unfair to the owner. The commissioner may require the submission of advertising materials.

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

(c) No insurer shall (1) prohibit a life insurance producer or broker from disclosing to a client the availability of a life settlement contract, or (2) include any provision in a life insurance policy that prohibits the lawful assignment of such policy

**38a-465d. Annual statements. Penalty. Confidentiality of insured's information. Reasons for disclosure of insured's identity**

(a) On or before March first of each year, each provider shall file with the commissioner an annual statement containing such information as the commissioner may prescribe. The commissioner shall adopt regulations, in accordance with chapter 54, [FN1] to prescribe the contents of such annual statement, which shall include, but not be limited to, for any policy settled within five years of policy issuance, the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, a breakdown of the information by policy issue year, the names of the insurance companies whose policies have been settled and the brokers that have settled said policies. Such information shall be limited to only those transactions where the insured is a resident of this state and shall not include individual transaction data regarding the business of life settlements or information where there is a reasonable basis to conclude such data or information could be used to identify the owner or the insured.

(b) Each provider that wilfully fails to file an annual statement as required in this section or wilfully fails to reply not later than thirty days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this part, be subject upon due notice and opportunity to be heard to a penalty of up to two hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.

(c) Except as otherwise required or permitted by law, no person, including, but not limited to, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall disclose such identity or information where there is a reasonable basis to conclude such information could be used to identify the insured or the insured's financial or medical information to any other person unless such disclosure: (1) Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to such disclosure; (2) is provided in response to an investigation or examination by the commissioner or any other governmental office or agency or pursuant to the requirements of section 38a-465i; (3) is necessary to effectuate the sale of life settlement contracts or interests therein as investments, provided the sale is conducted in accordance with applicable state and federal securities laws, and provided further the owner and the insured have both provided prior written consent to the disclosure; (4) is a term of or condition to the transfer of a policy by one provider to another

provider, in which case the provider receiving such information shall comply with the confidentiality requirements specified in this subsection; (5) is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For the purpose of this section, “authorized representative” does not include any person who has or may have a financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust or special purpose entity. Each provider or broker shall require its authorized representative to agree in writing to comply with the privacy provisions of this part; or (6) is required to purchase stop loss coverage.

(d) Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley Act of 1999, [FN2]P.L. 106-102, as amended from time to time, and all other applicable state and federal laws relating to confidentiality of nonpublic personal information.

**§ 38a-465e. Examination of licensees and applicants. Commissioner's access to records. Retention of records. Expenses of examination. Confidentiality of examination workpapers and reports**

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

(b) Providers shall maintain records of each consummated transaction and life settlement contracts and, subject to the provisions of section 38a-465d, such records shall be available, during reasonable business hours, to the commissioner for inspection for the three-year period following the insured's death.

(c) In lieu of an examination under this part of any foreign or alien licensee licensed in this state, the commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(d) Names and individual identification data of owners and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

(e) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform said examination and instructing them as to its scope. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and shall use guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

(2) Each licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal by a licensee or its officers, directors, employees or agents to submit to an examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension, refusal or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to sections 38a-17 to 38a-19, inclusive.

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

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

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

(6) All final or preliminary examination reports, examiner or licensee work papers or other documents, or any other information discovered or developed during the course of an examination shall be kept confidential, pursuant to section 38a-69a.

(f) (1) Examination reports shall be comprised of only facts appearing upon the books, from the testimony of the licensee, its officers or agents or other persons examined concerning its affairs,

and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) Not later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report, or to request a hearing on any matter in dispute.

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

(g) Except as otherwise provided in this section, 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 made under this section, 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 and shall not be subject to section 1-210, subject to subpoena, or subject to discovery or be admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined shall have access to all documents used to make the report.

(h) (1) An examiner shall not be appointed by the commissioner if the examiner, directly or indirectly, has a conflict of interest, is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being (A) an owner, (B) an insured in a life settlement contract or insurance policy, or (C) a beneficiary in an insurance policy that is proposed for a life settlement contract.

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

(i) (1) No cause of action shall arise or any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this section.

(2) No cause of action shall arise or any liability be imposed against any person for communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this section, if such communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision shall not abrogate or modify any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

(3) A person identified in subdivision (1) or (2) of this subsection shall be entitled to an award of attorney's fees and costs if such person 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 section and the party bringing the action was not substantially justified in doing so. For the purpose of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(j) The commissioner may investigate suspected fraudulent life settlement acts, as specified in section 38a-465j, and persons engaged in the business of life settlements

### **§ 38a-465f. Required disclosures**

(a) The provider or broker shall provide, in writing, in a separate document that is signed by the owner and provider, the following disclosures to the owner not later than the date the life settlement contract is signed by all parties. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and the 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. You may be asked to renew your permission to share information every two years." The written disclosures shall be provided in a separate document that is signed by the owner and the provider and shall provide at least the following disclosures:

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

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

- (3) That receipt of the life settlement contract proceeds may adversely affect the recipient's eligibility for public assistance or other government benefits or entitlements, and advice should be obtained from the appropriate agencies;
- (4) That the owner has the right to rescind a life settlement contract for fifteen calendar days after the date such contract is executed by all parties and the owner has received the disclosures specified herein. Such rescission exercised by the owner shall be effective only if both notice of rescission is given to the provider and the owner repays all proceeds and any premiums, loans and loan interest paid by the provider within the rescission period. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the provider;
- (5) That proceeds from the life settlement contract may be subject to the claims of creditors;
- (6) That proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;
- (7) That 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 owner, and assistance should be sought from a financial advisor;
- (8) That the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less;
- (9) The amount and method of calculating the compensation paid or to be paid to the broker or to any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given;
- (10) The date by which the funds will be available to the owner and the transmitter of the funds;
- (11) That the commissioner shall require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;
- (12) That the commissioner shall require providers and brokers to print separate, signed fraud

warnings on their applications and on their life settlement contracts as follows: “Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”;

(13) The affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(14) That a broker represents the owner exclusively, and not the insurer, the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(15) The name, address and telephone number of the provider;

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

(17) That a change of ownership could limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(b) The written disclosures shall be conspicuously displayed in any life settlement contract furnished to an owner by a provider, including any affiliations or contractual arrangements between the provider and the broker. Failure to provide the disclosures or rights set forth in this section shall be deemed an unfair practice pursuant to section 38a-816.

(c) A broker shall provide the owner and the provider with at least the following disclosures not later than 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 owner and provide the following information:

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

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

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

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

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

(6) That the failure to provide the disclosures or rights described in this section shall be deemed an unfair practice in violation of section 38a-815.

**§ 38a-465g. Prerequisites to a life settlement contract wherein insured is terminally or chronically ill. Medical release and confidentiality of medical information. Verification of coverage. Notice to insurer. Change of ownership or beneficiary. Rescission. Escrow agent or trustee. Broker fee calculation and disclosure of compensation. Prohibitions.**

**Exemptions**

(a) Before entering into a life settlement contract with any owner of a policy wherein the insured is terminally ill or chronically ill, a provider shall obtain:

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

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

(b) The insurer shall respond to a request for verification of coverage submitted by a provider, broker or life insurance producer on a form approved by the commissioner not later than thirty calendar days after the date the request was received. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the policy.

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

insurance policy was issued.

(d) If a broker or life insurance producer performs any of the activities required of the provider under this section, the provider shall be deemed to have fulfilled the requirements of this section.

(e) If a broker performs the verification of coverage activities required of the provider, the provider shall be deemed to have fulfilled the requirements of subsection (a) of section 38a-465f.

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

(g) Not later than twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued the policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents set forth in subsection (c) of section 38a-465h.

(h) All medical information solicited or obtained by any person licensed pursuant to this part shall be subject to applicable provisions of law relating to the confidentiality of medical information.

(i) Each life settlement contract entered into in this state shall provide that the owner may rescind the contract not later than fifteen days from the date it is executed by all parties thereto. Such rescission exercised by the owner shall be effective only if both notice of rescission is given to the provider and the owner repays all proceeds and any premiums, loans and loan interest paid by the provider within the rescission period. A failure to provide written notice of the right of rescission shall toll the period of such right until thirty days after the written notice of the right of rescission has been given. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the provider.

(j) Not later than three business days after the date the provider receives the documents from the owner to effect the transfer of the insurance policy, the provider shall pay or transfer the proceeds of the settlement into an escrow or trust account managed by a trustee or escrow agent in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Not later than three business days after receiving acknowledgment of the transfer of the insurance policy from the issuer of the policy, said trustee or escrow agent shall pay the settlement proceeds to the owner.

(k) Failure to tender the life settlement contract proceeds to the owner within the time set forth in section 38a-465f shall render the viatical settlement contract voidable by the owner for lack of consideration until the time such consideration is tendered to, and accepted by, the owner.

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

(m) Each broker shall disclose to the owner anything of value paid or given to such broker in connection with a life settlement contract concerning the owner.

(n) No person at anytime prior to, or at the time of, the application for or issuance of a policy, or during a two-year period commencing with the date of issuance of the policy, shall enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

(1) The policy was issued upon the 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 not less than twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

(2) The owner submits independent evidence to the provider that one or more of the following conditions have been met within said two-year period: (A) The owner or insured is terminally ill or chronically ill; (B) the owner or insured disposes of the owner or insured's ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued; (C) the owner's spouse dies; (D) the owner divorces his or her spouse; (E) the owner retires from full-time employment; (F) the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or (G) a final order, judgment or decree is entered by a court of competent jurisdiction on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all or a substantial part of the owner's assets.

(o) Copies of the independent evidence required by subdivision (2) of subsection (n) of this section shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy.

(p) If, at the time the provider submits a request to the insurer to effect the transfer of the policy to the provider, the provider submits a copy of independent evidence of subparagraph (A) of subdivision (2) of subsection (n) of this section, such copy shall be deemed to establish that the settlement contract satisfies the requirements of this section.

## **§ 38a-465h. Premium finance loans. Disclosures and certifications**

(a) Without limiting the ability of an insurer to assess the insurability of a policy applicant and in addition to other questions an insurance company may lawfully pose to a life insurance applicant, an insurance company may inquire in the application for life insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) If, as described in subdivision (11) of section 38a-465, the loan provides funds that can be used for a purpose other than paying for the premiums, costs and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of section 38a-465i.

(c) If the financing does not violate section 38a-465i in this manner, the insurance company:

(1) May make disclosures including, but not limited to, the following, to the applicant and the insured, in the application or an amendment to the application completed not later than the delivery of the policy: “If you have entered into a loan arrangement where the policy is used as collateral and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true: (A) A change of ownership could lead to a stranger owning an interest in the insured's life; (B) a change of ownership could limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life; (C) should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status or other factors may reduce the ability to obtain coverage or may result in significantly higher premiums; and (D) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.”; and

(2) May require the applicant or the insured to certify that:

(A) Such applicant or insured has not entered into any agreement or arrangement providing for the future sale of such life insurance policy;

(B) The loan arrangement for this policy provides funds sufficient to for partial or full payment of the premiums, costs and expenses associated with obtaining and maintaining such life insurance policy, and that such applicant or insured has not entered into any agreement by which such applicant or insured will receive consideration in exchange for procuring such policy; and

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

## **§ 38a-465i. Violations**

(a) It shall be a violation of this part for any person to:

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

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

(3) Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;

(4) Issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of or with the emphasis on settling the policy;

(5) Receive, if providing premium financing, any proceeds, fees or other consideration from the policy or policy owner that are in addition to the amounts required to pay principal, interest or any costs or expenses, which are reasonable in type and amount, incurred by the lender or borrower in connection with such premium finance agreement, except in the event of a default, provided neither default on such loan or the transfer of the policy, in connection with such default, is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this part. Any payments, charges, fees or other amounts received by a person or entity providing premium financing in violation of this subdivision shall be remitted to the original owner of the policy or to such owner's estate if said original owner is not living at the time of the determination of the overpayment;

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

(7) With respect to any life settlement contract or insurance policy and a provider, to knowingly enter into a life settlement contract with an owner if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by or under common control with such provider, financing entity or related provider trust that is involved in such settlement contract, unless such relationship is disclosed to the owner;

(8) With respect to a provider, to 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 an owner to reasonably believe the insurance is free for any period of time shall be considered a violation of this part; or

(9) With respect to any life insurance producer, insurance company, broker or provider, to 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 so provided in the policy.

(b) A violation of this section shall be deemed a fraudulent life settlement act, as specified in section 38a-465j.

**§ 38a-465j. Fraudulent life settlement acts prohibited. Confidentiality of documents and evidence. Antifraud plans**

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

(2) “Fraudulent life settlement act” includes, but is not limited to:

(A) Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including, but not limited to:

(i) Presenting, causing to be presented or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to 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) in the solicitation, offer to enter into, or effectuation of a life settlement contract or insurance policy; (VIII) the issuance of written evidence of a life settlement contract or insurance policy; (IX) any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or (X) enter into any practice or plan that involves stranger-originated life insurance;

(ii) Where the request for disclosure has been asked for by the insurer, failing to disclose to the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representative in connection with the issuance of the policy;

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

(iv) In the solicitation, application or issuance of a policy, employing any device, scheme or artifice in violation of state insurable interest laws;

(B) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits 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;

(iv) File with the commissioner a document containing false information or otherwise concealing information about a material fact from the commissioner;

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

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

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

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

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this part or investigations or suspected or actual violations of this part.

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

(d) (1) Life settlement contracts and applications for life settlement contracts shall contain the following statement or a substantially similar statement, regardless of the form of transmission: "Any person who knowingly presents false information in an application for insurance or life settlement contract is 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 shall not constitute a defense in any prosecution for a fraudulent life settlement act.

(e) (1) Any person engaged in the business of life settlements having knowledge or a reasonable

belief that a fraudulent life settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

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

(f) (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 life settlement acts or that person's agents, employees or representatives; (D) any regulatory body or their employees, agents or representatives, overseeing life insurance, life settlements, securities or investment fraud; (E) the life insurer that issued the life insurance policy covering the life of the insured; or (F) the licensee or its agents, employees or representatives.

(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 or a fraudulent insurance 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 identified in subdivision (1) of this subsection shall be entitled to an award of attorney's fees and costs if such person 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 part and the party bringing the action was not substantially justified in doing so. For the purpose 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.

(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.

(g) (1) The documents and evidence provided pursuant to subsection (f) of this section 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 or subject to discovery or subpoena in a civil or criminal action.

(2) Subdivision (1) 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: (A) In administrative or judicial proceedings to enforce laws administered by the commissioner; (B) to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts or to the National Association of Insurance Commissioners; or (C) at the discretion of the

commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(3) Release of documents and evidence under subdivision (2) of this subsection does not abrogate or modify the privilege granted in subdivision (1) of this subsection.

(h) Nothing in this part shall be construed to:

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

(2) Preempt, supersede, or limit any provision of any state securities law or any rule, order or notice issued thereunder;

(3) Prevent or prohibit a person from voluntarily disclosing information concerning life settlement fraud to a law enforcement or regulatory agency other than the Insurance Department; or

(4) 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.

(i) (1) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. The commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives as long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include: (A) Fraud investigators, who may be provider or broker employees or independent contractors; and (B) an antifraud plan that shall be submitted to the commissioner.

(2) The antifraud plan specified in subparagraph (B) of subdivision (1) of this subsection shall include, but not be limited to:

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

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

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

(D) A description or chart outlining the organizational arrangement of the antifraud personnel responsible for the investigation and reporting of possible fraudulent life settlement acts and

investigating unresolved material inconsistencies between medical records and insurance applications.

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

### **§ 38a-465k. Injunctions. Cease and desist orders. Damages**

(a) In addition to the penalties and other enforcement provisions of this part, if any person violates this part or any regulation implementing this part, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from further committing the violation.

(b) Any person damaged by the acts of a person in violation of this part or any regulation implementing this part may bring a civil action for damages in a court of competent jurisdiction against the person committing the violation.

(c) The commissioner may issue, in accordance with the provisions of chapter 54, [FN1] a cease and desist order upon a person that violates any provision of this part, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner.

(d) When the commissioner finds that an activity in violation of this part 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 shall remain effective for ninety days from the date of service. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order shall remain effective, absent an order by a court of competent jurisdiction.

(e) In the event of a wilful violation of this part, the trial court may award statutory damages in addition to actual damages in an amount up to three times the actual damage award.

(f) The provisions of this part shall not be waived by agreement.

(g) No choice of law provision shall be utilized to prevent the application of this part to any settlement in which a party to the settlement is a resident of this state.

### **§ 38a-465l. Penalties**

(a) It shall be a violation of this part for any person, provider, broker or any other party related to the business of life settlements to commit a fraudulent life settlement act.

(b) A person that commits a fraudulent life settlement act is guilty of committing insurance fraud and shall be subject to additional penalties under section 53a-215.

(c) The commissioner shall be authorized to levy a civil penalty not to exceed one hundred thousand dollars and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this part, found to have committed a fraudulent life settlement act or violated any other provision of this part.

(d) The license of a person licensed under this part who commits a fraudulent life settlement act shall be revoked for a period of not less than one year.

**§ 38a-465m. Regulations. Imposition of bond or other mechanism as proof of financial accountability. Conflict of laws**

(a) The commissioner may adopt regulations, in accordance with the provisions of chapter 54, [FN1] to implement the provisions of sections 38a-465 to 38a-465l, inclusive, and sections 38a-465n to 38a-465q, inclusive.

(b) Such regulations may establish standards for evaluating reasonableness of payments under life settlement contracts. Such regulations may include, but are not limited to, 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.

(c) Such regulations may establish appropriate licensing requirements and standards for continued licensure for providers and brokers.

(d) The commissioner may require a bond or other mechanism for financial accountability for providers and brokers.

(e) Such regulations may adopt rules governing the relationship and responsibilities of providers, brokers, insurers and their agents, pursuant to the requirements of this part.

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

(g) A provider in this state that enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts shall be governed in the effectuation of such life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall provide

notice to the owner that neither state regulates the transaction upon which the owner is entering, except that for transactions in such states, the provider shall maintain all records required if the transactions were executed in the owner's state of residence. The forms used in such states need not be approved by the commissioner.

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

### **§ 38a-465n. Life settlement advertisements**

(a) Each person licensed pursuant to this part may conduct or participate in advertisements within this state. Such advertisements shall be accurate, truthful and not misleading in fact or by implication.

(b) No person or trust shall:

(1) Directly or indirectly market, advertise, solicit or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

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

### **§ 38a-465o. Life settlement broker deemed to represent only the owner. Fiduciary duty to owner**

Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

### **§ 38a-465p. Provider or broker lawfully transacting business in the state or person lawfully negotiating life settlement contracts prior to October 1, 2008**

(a) Any provider or broker lawfully transacting business in this state prior to October 1, 2008, may continue to do so pending approval or disapproval of such provider or broker's application for a license, provided such application is filed with the commissioner not later than thirty days after October 1, 2008. During the time that such application is pending with the commissioner, the applicant may use any form of life settlement contract that has been filed with the commissioner pending approval thereof, provided that such form is otherwise in compliance with the provisions of this part. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this part.

(b) Any person who has lawfully negotiated life settlement contracts between any owner residing in this state and one or more providers for not less than one year immediately prior to October 1, 2008, may continue to do so pending approval or disapproval of that person's application for a license, provided such application is filed with the commissioner not later than thirty days after October 1, 2008. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this part.

**§ 38a-465q. Related provider trusts**

A related provider trust shall have a written agreement with the licensed provider under which the licensed 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 provider.

**§§ 38a-466 to 38a-468. Reserved for future use**