

054 Insurance Department
00 General
069 Rule and Regulation 69: Viatical Settlement Regulation

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§ 1. Purpose

The purpose of this rule is to implement Ark. Code Ann. § 23-81-501, et seq, known as "The Viatical Settlements Act," as enacted by Act 490 of 1997. This rule sets forth requirements pertaining to the licensing of viatical settlement providers, viatical settlement agents, and viatical settlement brokers, as well as promulgates standards for minimum payments, reporting, advertising and disclosure applicable to those persons and organizations selling or facilitating viatical settlement transactions in this state.

§ 2. Authority

This rule is issued pursuant to the authority vested in the Commissioner by Ark. Code Ann. § 23-81-510 and Ark. Code. Ann. § 23-61-108, and any other applicable provisions of Arkansas law.

§ 3. Applicability and scope

This rule shall apply to all new viatical settlement contracts solicited, sold, issued, issued for delivery, or to be performed in this state on and after March 1, 1998.

§ 4. Effective date

The effective date of this Rule is March 1, 1998.

§ 5. Definitions

(A) A "viatical settlement provider" means that person or organization defined in Ark. Code Ann. § 23-81-5020);

(B) A "viatical settlement broker" means that person or organization defined in Ark. Code Ann. § 23-81-502(h);

(C) A "viatical settlement agent" means that person who is an authorized agent of a licensed viatical settlement provider or viatical settlement broker who acts or aids in any manner in the solicitation of a viatical settlement. A viatical settlement agent shall not include:

(1) An attorney, an accountant, a financial planner or any person exercising a power of attorney granted by a viator or;

(2) Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator regardless of whether the viatical settlement is consummated.

§ 6. License requirements for viatical settlement providers

A viatical settlement provider, as defined in Ark. Code Ann. § 23-81-5020), shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Commissioner.

(A) The application shall be on a form required by the Commissioner.

(B) Only those individuals named in the application may act as viatical settlement providers.

(C) The Commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of Ark. Code Ann. § 23-81-5020) and Ark. Code Ann. § 23-81-503.

(D) A viatical settlement provider shall have ninety (90) days from the date of this regulation or sixty (60) days from the time the insurance department prepares an application form, whichever is later, to file for a license and still be considered in compliance with this regulation.

§ 7. License requirements for viatical settlement brokers and agents

A viatical settlement broker or agent, who is not already licensed by the Department to sell life or disability policies in this state, shall not solicit a viatical settlement contract without first obtaining a license from the Commissioner.

(A) A viatical settlement broker or agent shall make application on a form required by the Commissioner.

(B) The application shall be accompanied by a fee of \$ 100.00. The license may be renewed yearly by payment of a fee of \$ 100.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.

(C) The license shall be a limited license which allows solicitation only of viatical settlements.

(D) A viatical settlement broker or agent shall have ninety (90) days from the date of this regulation or sixty (60) days from the time the insurance department prepares an application form, whichever is later, to file for a license and still be considered in compliance with this regulation

(E) Prelicensing education and continuing education required of other agents and brokers shall not apply to viatical settlement brokers or agents.

(F) The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker or agent if the Commissioner finds that:

(1) There was any misrepresentation in the application for a license:

(2) The broker or agent has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(3) the licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or

(4) The viatical settlement agent or broker has violated any of the provisions of Ark. Code Ann. § 23-81-501, the Viatical Settlements Act, or this Rule.

(G) Before the Commissioner shall deny a license application or suspend, revoke or fail to renew the license of a viatical settlement broker or agent, the Commissioner shall conduct a hearing in accordance with the Arkansas Administrative Procedure Act, in Ark. Code Ann. § 25-15-201 et seq.

§ 8. Other requirements for brokers and agents

Viatical settlement brokers or agents shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

§ 9. Standards for evaluation of reasonable payments

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts: Minimum Percentage

Of Face Value Less

Outstanding Loan

Insured's Life Expectancy Received by Viator

Less than 6 months 80%

At least 6 but less than 12 months 70%

At least 12 but less than 18 months 65%

At least 18 but less than 24 months 60%

At least 24 but less than 30 months 50%

Thirty months or more No minimum

This percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest 4 categories by A.M. Best. or comparable rating by another rating agency.

§ 10. Reporting requirements

Beginning on March 1, 1999, for the calendar year of 1998, each viatical settlement provider licensed in this state shall make a report containing the following information for the previous calendar year:

(A) For each policy viaticated:

(1) Date viatical settlement entered into;

(2) Life expectancy of viator at time of contract;

(3) Face amount of policy;

(4) Amount paid by the viatical settlement provider to viaticate the policy; and

(5) If the viator has died:

(a) Date of death; and

(b) Total insurance premiums paid by the viatical settlement provider to maintain the policy in force;

(B) Breakdown of applications received, accepted and rejected, by disease category;

(C) Breakdown of policies viaticated by issuer and policy type;

(D) Number of secondary market vs. primary market transactions;

(E) Portfolio size; and

(F) Amount of outside borrowings.

§ 11. Disclosure

The following items supplement the disclosures required by Ark. Code Ann. § 23-81-508:

(A) A viatical settlement provider, viatical settlement agent or viatical settlement broker shall disclose the following information to the viator no later than the time of the application:

(1) Funds will be sent to the viator within two (2) business days after the viatical settlement 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 pursuant to the viatical settlement contract; and

(2) Entering into a viatical 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 viator and assistance should be sought from a financial adviser.

(B) A viatical settlement provider shall disclose the following information to the viator prior to the date the viatical settlement contract is signed by all parties:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated;

(2) If an insurance policy to be viaticated 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 viaticated, the viator must be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication; and

(3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. The viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.

§ 12. General Rules

(A) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement agreement, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator.

(B) Payment of the proceeds of a viatical settlement pursuant to Ark. Code Ann. § 23-81-501, et seq, the Viatical Settlements Act, shall be by means of wire transfer to the account of the viator or by certified check.

(C) Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Installment payments shall not be made unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.

(D) A viatical settlement provider, broker, and agent shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators; with dependents and without.

(E) A viatical settlement provider, broker, and agent shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

(F) Contacts for the purpose of determining the health status of the viator by the viatical settlement provider, broker, or agent after the viatical settlement has occurred should be limited

to once every three (3) months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

(G) Viatical settlement providers, brokers and agents shall not solicit investors who could influence the treatment of the illness of the insureds whose coverage would be the subject of the investment.

(H) Advertising standards:

(1) Advertising should be truthful and not misleading by fact or implication.

(2) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(3) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six (6) months.

(I) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

§ 13. Severability

If any provision of this Rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Rule and the application of such provision to other persons or circumstances shall not be affected thereby.