

Chapter 120 Comptroller General
Chapter 120-2 Rules of Comptroller General Office of Commissioner of Insurance
Chapter 120-2-93 Life Settlements Regulation

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120-2-93-.01 Authority.

This regulation is promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. §§ 33-59-1 et seq., hereinafter referred to as the "Life Settlements Act" or "Act."

120-2-93-.02 Scope and Purpose.

- (1) This regulation applies to any Life Settlements Provider as defined in O.C.G.A. § 33-59-2.
- (2) The purposes of this regulation include:
 - (a) Providing disclosure of life insurance policy or certificate between policy owner and provider;
 - (b) Providing licensure of life settlements providers as defined in O.C.G.A. § 33-59-2;
 - (c) Regulating life settlements providers' practices in conformity with the general purposes of the Georgia Insurance Code.

120-2-93-.03 Definitions.

- (1) All terms defined in the Life Settlements Act which are used in this Regulation shall have the same meaning as in the Act.
- (2) The term "insured" means the owner of a life insurance policy or a certificate holder under a group policy.

120-2-93-.04 License; Application and Issuance.

- (1) It is unlawful for any person to act or hold out to be a life settlements provider in this state without a valid license issued by the Commissioner of Insurance. To qualify for and hold a license as a life settlements provider in this state, a life settlements provider must otherwise be in compliance with Article 2 of Chapter 59 of Title 33 of the Official Code of Georgia Annotated and this Regulation.



(2) The life settlements provider shall file with Commissioner of Insurance an application for a license upon a form to be furnished by the Commissioner of Insurance, which application should include or have attached the following information and documents:

(a) All basic organizational documents of the provider, the articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents, and all amendments to those documents.

(b) The bylaws, rules and regulations or similar documents regulating the conduct or the internal affairs of the provider.

(c) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of the affairs of the provider, including all stockholders, partners, officers, members, and employees, with exception of those owning less than five percent (5%) of the provider.

(d) Financial statements certified by the President, Chief Financial Officer or Treasurer or audited reports for the two most recent years, or such other information as the Commissioner may require in order, to review the current financial condition of the applicant.

(e) An application for a life settlements provider's license shall be accompanied by fees as provided in O.C.G.A. §§ 33-59-3(b)(4) and 33-8-1.

(3) The Commissioner shall not issue a license if he or she determines that the provider or any principal thereof is not competent, trustworthy, financially responsible; has had an insurance license refused, revoked or suspended by any state; or has any other issues impacting the provider's business that are stipulated at O.C.G.A. § 33-59-4(a).

(4) To ensure the faithful performance of its obligations to Georgia policy owners in the event of insolvency or the loss of its license, a life settlements provider applicant and subsequent licensee must deposit a minimum of \$100,000 in eligible securities, outlined in O.C.G.A. § 33-12-3, with the Commissioner. The Commissioner may, in his or her discretion, require an additional deposit as he or she deems appropriate.

(5) Non-Resident applicants for licenses under this chapter shall execute in a form acceptable to the Commissioner an agreement to consent to the jurisdiction of the Georgia Commissioner of Insurance and courts of this state on any matter related to their insurance activities in Georgia, on the basis of service of process under Title 33 or other service authorized in the Georgia Rules of Civil Procedures.

(6) Each provider must provide a copy of its antifraud plan which includes the provisions outlined at O.C.G.A. § 33-59-12(5)(g).

(7) Each provider must provide a copy of its life settlements contract and disclosure statement for the Commissioner's review and approval in accordance with O.C.G.A. § 33-59-5. The disclosure statement must contain the provisions stipulated at O.C.G.A. § 33-59-8.

(8) Each provider must provide a statement that stipulates that all advertising is in accordance

with O.C.G.A § 33-59-11.

(9) Any other materials the Commissioner of Insurance deems necessary to adequately assess the merits of the application.

(10) A life settlements provider lawfully transacting business in this state may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the Commissioner not later than 30 days after publication by the Commissioner of an application form for licensure of these life settlements providers.

120-2-93-.05 Annual Statement and Renewal.

Each provider shall file with the Commissioner an annual renewal by March 1st of every year. The annual statement should include all of the following information and documents and any other materials the Commissioner deems necessary to adequately assess the renewal:

(1) Report the life settlements transactions of Georgia resident sellers, including the age of the insured and estimated life expectancy;

(2) Report of the individual mortality of Georgia resident sellers, including the total net death benefit and the amount paid to the seller;

(3) Provide an audited financial statement as of the current year;

(4) Provide verification of the security deposit with the required specifications noted in 120-2-93.04(g);

(5) Provide a statement that the provider's advertising is in accordance with O.C.G.A. § 33-59-11.

120-2-93-.06 Standards for Evaluation and Examination.

(1) In order to assure the Georgia residents receive a reasonable return for settlements of an insurance policy, the contract shall not provide a payment to the seller for a terminally or chronically ill insured that is unreasonable or unjust. In determining whether a payment is unreasonable or unjust, the Commissioner's consideration shall include, but not to be limited to, the following factors:

(a) The face amount being purchased;

(b) Any policy loan in effect on the policy being purchased;

(c) The life expectancy of the insured at the time of purchase;

(d) The age of the insured at the time of purchase;

(e) The future premiums that must be paid to minimally keep this policy in force;

(f) The cash surrender value or accelerated death benefit available from the policy;

- (g) An allocation of internal costs relating directly to the acquisition of this policy;
 - (h) The payment of any commission, fee and any other expense paid to a provider or any other external party;
 - (i) Any future interest payments for any borrowing of the funds needed to this policy;
 - (j) The applicable rating at the time of purchase of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups;
 - (k) Whether the policy is within the contestable period.
- (2) The Commissioner may conduct an examination under this chapter of a provider or applicant as often as the Commissioner in his or her sole discretion deems appropriate with all expenses incurred to be paid by the provider or applicant.
- (3) Nothing in this rule shall limit or abridge any other investigatory powers of the Commissioner vested in him or her by Title 33 of the Official Code of Georgia Annotated, also referred to as the Georgia Insurance Code.

120-2-93-.07 General Rules.

- (1) 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 insured prior to entering into the life settlements contract, or to such other beneficiary, other than the life settlements provider, as the insured may thereafter designate, or in the absence of a beneficiary, to the estate of the insured.
- (2) Payment of the proceeds of a life settlement contract pursuant to O.C.G.A. § 33-59-9 shall be by means of wire transfer to an account designated by the seller or by certified check or cashier's check.
- (3) Payment of the proceeds to the seller pursuant to a life settlement contract shall be made in a lump sum except where the life settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds not disclosed or described in the life settlement contract by the life settlement provider or escrow agent is not permissible without written consent of the seller.
- (4) A life settlement provider or life insurance producer shall not discriminate in the making or soliciting of life settlements in violation of state law, or discriminate between sellers with dependents and without.
- (5) A life settlement provider or life insurance producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the seller, or to any other person acting as an agent of the seller, other than a life insurance producer, with respect

to the life settlement contract.

(6) If a life settlement provider enters into a life settlement contract that allows the seller to retain an interest in the policy, the life settlement contract shall contain the following provisions;

(a) A provision that the life settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount subject to the life settlement contract. Benefits in excess of the amount subject to the life settlement contract shall be paid directly to the seller's beneficiary by the insurance company;

(b) A provision that the life settlement provider will, upon acknowledgment of the perfection of the transfer, either;

1. Advise the insured, in writing, that the insurance company has confirmed the seller's interest in the policy; or

2. Send a copy of the instrument sent from the insurance company to the life settlement provider that acknowledges the seller's interest in the policy; and

(c) A provision that apportions the premiums to be paid by the life settlements provider and the seller, provided that the contract provides premium payment terms and non-forfeiture options no less favorable, on a proportional basis, than those included in the policy.

(d) In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of the Life Settlements Act and this regulation.

120-2-93-.08 Insurance Company Practices.

(1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a life settlements provider within 30 days of the date a request is received. The verification of coverage must be on a form prescribed by the Commissioner's office. A current authorization consistent with applicable law, signed by the policy owner or certificate holder, must accompany the request.

(2) Nothing in this section shall prohibit a life insurance company and a provider from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request as long as the form is substantially similar in content to the form prescribed by the Commissioner.

(3) A life insurance company may not charge a fee for responding to a request for information from a provider in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

(4) The life insurance company may send an acknowledgement of receipt of the request for verification of coverage to the policy owner or certificate holder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgement may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(5) A life insurance company shall not require the insured to sign any request for change in a policy or a group certificate from a provider that is the owner or assignee of the insured's insurance coverage, unless the provider or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such a situation, the provider shall provide timely notice to the insured that a settlements transaction on the policy has occurred. Timely notice shall be provided within 15 calendar days of the change in a policy or group certificate.

120-2-93-.09 Penalties.

Any provider failing to comply with the requirements of this Regulation Chapter shall be subject to such penalties as may be appropriate under the insurance laws of this State.

120-2-93-.10 Severability.

If any provision of this Regulation Chapter or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the Regulation Chapter or the applicability of such provision to other person or circumstances shall not be affected.