

Illinois

Chapter 215. Insurance Act 158. Viatical Settlements Act

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158/1. Short title

§ 1. Short title. This Act may be cited as the Viatical Settlements Act.

158/5. Definitions

§ 5. Definitions. As used in this Act, the following definitions apply:

“Director” means the Director of Insurance.

“Person” means any natural or artificial entity including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

“Viatical settlement agent” means an individual, partnership, corporation, or other entity who through appointment by at least one viatical settlement provider and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. “Viatical settlement agent” does not include an attorney licensed to practice law, a public accountant as defined in the Illinois Public Accounting Act, [FN1] or a person licensed under the Debt Management Service Act [FN2] retained to represent the viator whose compensation is not paid by the viatical

settlement provider.

“Viatical settlement contract” means a written agreement entered into between a viatical settlement provider and a person who owns a life insurance policy or who owns or is covered under a group policy, insuring the life of a person who has a catastrophic or life threatening illness or condition. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

“Viatical settlement provider” means an individual, partnership, corporation, or other entity that enters into an agreement with a person who owns a life insurance policy, or who owns or is covered under a group policy, insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. “Viatical settlement provider” does not include:

- (1) a licensed insurance company, bank, savings bank, savings and loan association, credit union, commercial finance company or other licensed lending institution, investment company registered under the Investment Company Act of 1940, [FN3] pension plan qualified under Section 401(a) of the Internal Revenue Code of 1986, [FN4] or trust funding such a pension plan that takes an assignment of a life insurance policy only as collateral for a loan;
- (2) sophisticated investors meeting the standards of subsection H of Section 4 of the Illinois Securities Law of 1953 [FN5] who invest in or lend to a licensed viatical settlement provider or other persons who so invest pursuant to a registered security offering; or
- (3) the issuer of a life insurance policy providing accelerated benefits under the Illinois Insurance Code. [FN6]

“Viaticated policy” means a life insurance policy held by a viatical settlement provider, directly or indirectly, through a viatical settlement contract.

“Viator” means a person who owns a life insurance policy, or who owns or is covered under a group policy, insuring the life of a person with a catastrophic or life threatening illness or condition who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

158/10. License requirements

§ 10. License requirements.

(a) No individual, partnership, corporation, or other entity may act as a viatical settlement provider without first having obtained a license from the Director.

(b) Application for a viatical settlement provider license shall be made to the Director by the applicant on a form prescribed by the Director. The application shall be accompanied by a fee of \$3,000, which shall be deposited into the Insurance Producer Administration Fund.

(c) Viatical settlement providers' licenses may be renewed from year to year on the anniversary date upon (1) submission of renewal forms prescribed by the Director and (2) payment of the annual renewal fee of \$1,500, which shall be deposited into the Insurance Producer Administration Fund. Failure to pay the fee within the terms prescribed by the Director shall result in the expiration of the license.

(d) Applicants for a viatical settlement provider's license shall provide such information as the Director may require. The Director shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees. The Director may, in the exercise of discretion, refuse to issue a license in the name of any firm, partnership, or corporation if not satisfied that an officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this Act.

(e) A viatical settlement provider's license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as viatical settlement providers under the license. All those persons must be named in the application and any supplements thereto.

(f) Upon the filing of an application for a viatical settlement provider's license and the payment of the license fee, the Director shall make an investigation of the applicant and may issue a license if the Director finds that the applicant:

(1) has provided a detailed plan of operation;

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

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

(4) if a corporation, is a corporation incorporated under the laws of this State or a foreign corporation authorized to transact business in this State.

(g) The Director may not issue a license to a nonresident applicant, unless a written designation

of an agent for service of process is filed and maintained with the Director or the applicant has filed with the Director the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Director.

(h) A viatical settlement provider must assume responsibility for all actions of its appointed viatical settlement agents associated with a viatical settlement.

158/15. License revocation

§ 15. License revocation.

(a) The Director has the right to suspend, revoke, or refuse to renew the license of any viatical settlement provider if the Director finds that:

- (1) there was any misrepresentation in the application for the license;
- (2) the holder of the license has been 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 viatical settlement provider;
- (3) the licensee demonstrates a pattern of unreasonable or untimely payments to policyowners or their designees;
- (4) the licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or
- (5) the licensee has violated any of the provision of this Act.

(b) Before the Director denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider, the Director shall conduct a hearing in accordance with the Illinois Administrative Procedure Act. [FN1]

158/20. Approval of viatical settlements contracts

§ 20. Approval of viatical settlements contracts. No viatical settlement provider may use a viatical settlement contract in this State unless it has been filed with and approved by the Director. A viatical settlement contract form filed with the Director shall be deemed approved if it has not been disapproved within 60 days of the filing. The Director shall disapprove a viatical settlement contract form if, in the Director's opinion, the contract or provisions contained therein are unreasonable, contrary, to the interests of the public, or otherwise misleading or unfair to the policyowner.

158/25. Reporting requirements

§ 25. Reporting requirements.

- (a) A licensee shall file with the Director on or before March 1 of each year an annual statement containing such information as the Director may prescribe by rule.
- (b) A viatical settlement provider shall inform the Director in writing of a change in its business address within 30 days of such change.

158/30. Examinations of applicants and licensees

§ 30. Examinations of applicants and licensees.

- (a) The Director may, when the Director deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The Director has the authority to order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting an examination shall be paid by the Licensee or applicant.
- (b) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Director, unless required by law.
- (c) Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the Director for inspection during reasonable business hours.
- (d) All licensees shall maintain a record of complaints received against the licensee and those viatical settlement agents representing the licensee. The Director may promulgate a rule to prescribe the minimum records that must be maintained by licensees.

158/35. Disclosure

§ 35. Disclosure.

- (a) Prior to the time a viatical settlement application is taken or the time an offer is made by a viatical settlement provider to a person considering a viatical settlement, whichever is later, the following information shall be provided by the viatical settlement provider or its agent:
 - (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 that insured under the policy to be viaticated, the viator must be informed of the possible loss of coverage on such other lives and advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication.

(b) A viatical settlement provider shall disclose all of the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

(1) Possible alternatives to viatical settlement contracts for persons with catastrophic or life threatening illnesses including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy.

(2) The fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor.

(3) The fact that the viatical settlement could be subject to the claims of creditors.

(4) The fact that receipt of a viatical settlement may adversely effect the recipients' eligibility for Medicaid or other government benefits or entitlements and that advice should be obtained from the appropriate agencies.

(5) The policyowner's right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties or within 15 days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in subsection (c) of Section 45.

(6) The date by which the funds will be available to the viator and the source of the funds.

(7) A description of any policy benefits other than death benefits and non-forfeiture values in the policy to be viaticated that may be of value, such as additional purchase benefits, waiver of premium benefits, accidental death benefits, or conversion features. The viatical settlement provider shall also disclose its interest in such benefits and any options available to the viator for additional compensation or contractual reservation to the viator of policy options or other rights.

(c) A viatical settlement agent shall disclose all of the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

(1) The identity of the viatical settlement agent.

(2) The identity of the viatical settlement provider.

(3) The nature of the relationship between the viatical settlement agent and viatical settlement provider.

(d) The Director may promulgate a rule to assure adequate disclosure is given to all potential viators.

158/40. Assignment or resale of viaticated policies

§ 40. Assignment or resale of viaticated policies. A viatical settlement provider may not sell, assign, transfer, or pledge a viaticated policy except to another licensed viatical settlement provider or a person not required to be licensed under Section 10. An insurance company licensed in this State shall not accept the assignment of a life insurance policy from a viatical settlement provider not licensed in this State and shall immediately notify the Director of any such attempted transaction.

158/45. General rules

§ 45. General rules.

(a) A viatical settlement provider entering into a viatical settlement contract with a person with a catastrophic or life threatening illness or condition shall first obtain:

(1) a written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) a witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.

(b) All medical information solicited or obtained by a licensee shall be subject to the applicable provision of State law relating to confidentiality of medical information.

(c) All viatical settlement contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract for at least 30 days from the date the contract is executed or 15 days from the receipt of the viatical settlement proceeds, whichever is less. If the insured dies during such rescission periods, the contract shall be deemed to have been rescinded subject, however, to repayment to the viatical settlement provider of any viatical settlement payments.

(d) Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the entire proceeds of the settlement into an escrow or trust account managed by an escrow agent or trustee in a state or federally chartered

financial institution that is a member of the Federal Reserve System pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

(e) Failure to tender the viatical settlement by the date disclosed to the viator renders the contract a nullity.

(f) A viatical settlement agent may not receive a fee, commission, or other valuable consideration for his or her services involving unlicensed viatical settlement providers with respect to (1) viatical settlements or (2) the assignment or resale of viaticated policies.

(g) A viatical settlement provider may not pay a person not appointed as an agent by that provider any fee, commission, or other valuable consideration for his or her services with respect to (1) viatical settlements or (2) the assignment or resale of viaticated policies.

(h) A viatical settlement provider or viatical settlement agent shall not pay or offer to pay any referral or finder's fee, commission, or other compensation to viator's physician, attorney, or accountant.

(i) A viatical settlement agent may not receive any compensation from a prospective viator or a viator.

(j) If the viator rescinds the viatical settlement contract, the viatical settlement provider shall notify the issuer of the insurance policy of the rescission. The notification shall be made by the viatical settlement provider to the issuer of the insurance policy within 20 days from the date the viatical settlement provider receives the rescission request from the viator.

158/50. Authority to promulgate standards

§ 50. Authority to promulgate standards.

The Director shall have the authority to do all the following:

(1) Issue rules implementing this Act.

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, 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.

(3) Establish licensing requirements and fees for viatical settlement providers and viatical settlement agents.

(4) Establish standards for solicitation and disclosure including, but not limited to, regulation of disclosure requirements and advertising.

(5) Establish standards for examination of viatical settlement providers and viatical settlement agents.

158/55. Application

§ 55. Application. No viatical settlement provider transacting business in this State may continue to do so after the effective date of this Act unless it is in compliance with this Act.

158/99. Effective date

§ 99. Effective date. This Act takes effect upon becoming law.