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HOUSE BILL NO. 1864

Offered January 14, 2009

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A BILL to amend and reenact §§ 38.2-6000 through 38.2-6005 and 38.2-6007 through 38.2-6011 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-6009.1, relating to the Viatical Settlements Act.

Patron—Janis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-6000 through 38.2-6005 and 38.2-6007 through 38.2-6011 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 38.2-6009.1 as follows:

§ 38.2-6000. Definitions.

As used in this chapter:

"Advertising" 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 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 pursuant to a viatical settlement contract.

"Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating, or in any other manner, acquiring an interest in a life insurance policy by means of viatical settlement contracts or purchase agreements.

"Chronically ill" means (i) being unable to perform at least two activities of daily living, which shall include eating, toileting, transferring, bathing, dressing or continence, (ii) requiring substantial supervision by another person to protect the individual from threats to health and safety due to severe cognitive impairment, or (iii) having a level of disability similar to that described in clause (i) as determined by the federal Secretary of Health and Human Resources.

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. Financing entity does not include a non-accredited investor or viatical settlement purchaser.

"Fraudulent viatical settlement act" includes:

1. Acts or omissions committed by any person who, knowingly or 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:

a. Presenting presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, viatical settlement investment agent, financing entity, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following: (i) an application for the issuance of a viatical settlement contract or insurance policy; (ii) the underwriting of a viatical settlement contract or insurance policy; (iii) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy; (iv) premiums paid on an insurance policy or as a result of a viatical settlement purchase agreement; (v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy; (vi) the reinstatement or conversion of an insurance policy; (vii) in the solicitation, offer, effectuation or sale of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy; (viii) the issuance of written evidence of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy; or (ix) a financing transaction;

b 2. Failing to disclose to the insurer when requested by the insurer that the prospective insured has

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59 *undergone a life expectancy evaluation by any person or entity other than the insured or its authorized*  
 60 *representatives in connection with the issuance of the policy;*

61 3. *In the solicitation, application or issuance of a life insurance policy, employing any device,*  
 62 *scheme or artifice in violation of § 38.2-301;*

63 4. *Employing any device, scheme, or artifice to defraud related to viaticated policies;*

64 2 5. *In the furtherance of a fraud or to prevent the detection of a fraud any person commits or*  
 65 *permits its employees or its agents to: (i) remove, conceal, alter, destroy, or sequester from the*  
 66 *Commission the assets or records of a licensee or other person engaged in the business of viatical*  
 67 *settlements; (ii) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or*  
 68 *other person; (iii) transact the business of viatical settlements in violation of laws requiring a license,*  
 69 *certificate of authority, or other legal authority for the transaction of the business of viatical settlements;*  
 70 *or (iv) file with the Commission or the chief insurance regulatory official of another jurisdiction a*  
 71 *document containing false information or otherwise conceals information about a material fact from the*  
 72 *Commission;*

73 3 6. *Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits, or*  
 74 *other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any*  
 75 *other person engaged in the business of viatical settlements or insurance;*

76 4 7. *Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement*  
 77 *contract, the subject of which is a life insurance policy that was obtained by presenting false information*  
 78 *concerning any fact material to the policy or by concealing, for the purpose of misleading another,*  
 79 *information concerning any fact material to the policy, where the viator or the viator's agent person*  
 80 *intended to defraud the policy's issuer, the viatical settlement provider, or the viator. "Recklessly" means*  
 81 *engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the*  
 82 *existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable*  
 83 *standards of conduct; or*

84 8. *Entering into any practice or plan that involves stranger-originated life insurance;*

85 9. *Facilitating the change of state of ownership of a policy or certificate or the state of residency of*  
 86 *a viator to a state or jurisdiction that does not have a law similar to this chapter for the express*  
 87 *purposes of evading or avoiding the provisions of this chapter; or*

88 5 10. *Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to*  
 89 *commit the acts or omissions specified in this subsection.*

90 "Licensee under this chapter" means a person licensed by the Commission as a viatical settlement  
 91 provider or viatical settlement broker.

92 "NAIC" means National Association of Insurance Commissioners.

93 "Policy" means an individual or group policy, group certificate, contract or arrangement of life  
 94 insurance affecting the rights of a resident of this Commonwealth or bearing a reasonable relation to this  
 95 Commonwealth, regardless of whether delivered or issued for delivery in this Commonwealth.

96 "Related provider trust" means a titling trust or other trust established by a licensed viatical  
 97 settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial  
 98 interest in purchased policies in connection with a financing transaction. The trust shall have a written  
 99 agreement with the licensed viatical settlement provider under which the licensed viatical settlement  
 100 provider is responsible for ensuring compliance with all statutory and regulatory requirements and under  
 101 which the trust agrees to make all records and files related to viatical settlement transactions available to  
 102 the Commission as if those records and files were maintained directly by the licensed viatical settlement  
 103 provider.

104 "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other  
 105 similar entity formed solely to provide either directly or indirectly access to institutional capital markets:  
 106 (i) for a financing entity or licensed viatical settlement provider; or (ii) in connection with a transaction  
 107 in which the securities in the special purposes entity are acquired by the viator or by "qualified  
 108 institutional buyers" as defined in Rule 144 promulgated under the Federal Securities Act of 1933, as  
 109 amended, or where the securities pay a fixed rate of return commensurate with established asset-backed  
 110 institutional capital markets.

111 "Stranger-originated life insurance" or "STOLI" means a practice or a plan to initiate a life  
 112 insurance policy for the benefit of a third party investor who, at the time of policy origination, has no  
 113 insurable interest in the insured. STOLI practices include but are not limited to cases in which life  
 114 insurance is purchased with resources or guarantees from or through a person or entity who, at the  
 115 time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of  
 116 policy inception, there is an arrangement or agreement, whether verbal or written, to directly or  
 117 indirectly transfer the ownership of the policy and/or the policy benefits to a third party. STOLI  
 118 practices or plans do not include:

119 1. *A policy loan by a life insurance company pursuant to the terms of the life insurance policy or*  
 120 *accelerated death provisions contained in the life insurance policy, whether issued with the original*

121 policy or as a rider;

122 2. A premium finance loan, or any loan made by a bank or other licensed financial institution,  
123 provided that neither default on such loan nor the transfer of the policy in connection with such default  
124 is pursuant to an agreement or understanding with any other person for the purpose of evading  
125 regulation under this chapter;

126 3. A collateral assignment of a life insurance policy by an owner;

127 4. A loan made by a lender that does not violate Chapter 47 (§ 38.2-4700 et seq.);

128 5. An agreement where all the parties (i) are closely related to the insured by blood or law or (ii)  
129 have a lawful substantial economic interest in the continued life, health and bodily safety of the person  
130 insured, or are trusts established primarily for the benefit of such parties;

131 6. Any designation, consent or agreement by an insured who is an employee of an employer in  
132 connection with the purchase by the employer, or trust established by the employer, of life insurance on  
133 the life of the employee;

134 7. A bona fide business succession planning arrangement: (i) between one or more shareholders in a  
135 corporation or between a corporation and one or more of its shareholders or one or more trusts  
136 established by its shareholders; (ii) between one or more partners in a partnership or between a  
137 partnership and one or more of its partners or one or more trusts established by its partners; or (iii)  
138 between one or more members in a limited liability company or between a limited liability company and  
139 one or more of its members or one or more trust established by its members; or

140 8. An agreement entered into by a service recipient, or a trust established by the service recipient,  
141 and a service provider, or a trust established by the service provider, who performs significant services  
142 for the service recipient's trade or business.

143 "Terminally ill" means having an illness or sickness that can reasonably be expected to result in  
144 death in 24 months or less.

145 "Viatical settlement broker" means a person that on behalf of another and for a fee, commission or  
146 other valuable consideration introduces viators to viatical settlement providers, or offers or attempts to  
147 negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or  
148 one or more viatical settlement brokers. A viatical settlement broker may act as agent for a viatical  
149 settlement provider or on behalf of the viator, provided that a viatical settlement broker shall not be  
150 deemed to act exclusively for the viator unless, pursuant to written agreement between the parties, the  
151 broker agrees (i) to disclose fully all interests in the viatical settlement contract and relationships with  
152 the viatical settlement provider, including its affiliates and appointed or contracted agents, and (ii) that  
153 compensation for services as a viatical settlement broker shall be paid directly and only by the viator.  
154 The term does not include an attorney, certified public accountant, or a financial planner accredited by a  
155 nationally recognized accreditation agency, who is retained to represent the viator and whose  
156 compensation is not paid directly or indirectly by the viatical settlement provider or viatical settlement  
157 purchaser.

158 "Viatical settlement contract" means a written agreement between a viator and a viatical settlement  
159 provider or any affiliate of the viatical settlement provider establishing the terms under which  
160 compensation or anything of value will be paid, which compensation or value is less than the expected  
161 death benefit of the insurance policy or certificate, in return for the viator's present or future assignment,  
162 transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy  
163 or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other  
164 financing transaction with a viator secured primarily by an individual or group life insurance policy,  
165 other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a  
166 loan secured by the cash value of a policy: (i) the transfer for compensation or value of ownership or  
167 beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed  
168 or availed of for the principal purpose of acquiring one or more life insurance contracts, which life  
169 insurance contract insures the life of a resident of the Commonwealth; and (ii) a premium finance loan  
170 made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the  
171 policy where the viator or the insured receives on the date of the premium finance loan a guarantee of  
172 a future viatical settlement value of the policy or where the viator or the insured agrees on the date of  
173 the premium finance loan to sell the policy or any portion of its death benefit on any date following the  
174 issuance of the policy. A viatical settlement contract includes an agreement with a viator to transfer  
175 ownership or change the beneficiary designation at a later date regardless of the date that compensation  
176 is paid to the viator. "Viatical settlement contracts" do not include: (a) policy loan provisions contained  
177 in life insurance policies; (b) accelerated benefits provisions contained in life insurance policies, whether  
178 issued with the original policy or as a rider, according to the regulations promulgated by the  
179 Commission; (c) loan proceeds that are used solely to pay premiums for the policy or the costs of the  
180 loan including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing  
181 costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and

182 expenses, including fees payable to letter of credit issuers; (d) a loan made by a bank or other licensed  
 183 financial institution in which the lender takes an interest in a life insurance policy solely to secure  
 184 repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of  
 185 such a policy by the lender, provided that neither the default itself nor the transfer of the policy in  
 186 connection with such default is not pursuant to an agreement or understanding with any other person  
 187 for the purpose of evading regulation under this chapter; (e) a loan made by a lender that does not  
 188 violate Chapter 47 (§ 38.2-4700 et seq.), provided that the premium finance loan is not described in the  
 189 subdivision (ii) of the definition of a viatical settlement contract; (f) an agreement where all the parties  
 190 are closely related to the insured by blood or law or have a substantial economic interest in the  
 191 continued life, health, and bodily safety of the person insured, or are trusts established primarily for the  
 192 benefit of such parties; (g) any designation, consent or agreement by an insured who is an employee of  
 193 an employer in connection with the purchase by the employer, or trust established by the employer, or  
 194 life insurance on the life of the employee; (h) a bona fide business succession planning arrangement  
 195 between one or more shareholders in a corporation or between a corporation and one or more of its  
 196 shareholders or one or more trusts established by its shareholders, or between one or more partners in  
 197 a partnership or between a partnership and one or more of its partners or one or more trusts  
 198 established by its partners, or between one or more members in a limited liability company or between  
 199 a limited liability company and one or more of its members or one or more trusts established by its  
 200 members; or (i) an agreement entered into by a service recipient, or a trust established by the service  
 201 recipient, and a service provider, or a trust established by the service provider, who performs significant  
 202 services for the service recipient's trade or business.

203 "Viatical settlement investment agent" means a person who, in addition to holding any requisite  
 204 license as a securities broker issued by the Commission, is an appointed or contracted agent of a  
 205 licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical  
 206 settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement  
 207 provider. A viatical settlement investment agent shall not have any contact directly or indirectly with the  
 208 viator or insured or have knowledge of the identity of the viator or insured. A viatical settlement  
 209 investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement  
 210 investment agent is an appointed or contracted agent.

211 "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a  
 212 viatical settlement contract. Viatical settlement provider does not include: (i) a bank, savings bank,  
 213 savings and loan association, credit union, or other licensed lending institution that takes an assignment  
 214 of a life insurance policy as collateral for a loan; (ii) a premium finance company making premium  
 215 finance loans that takes an assignment of a life insurance policy solely as collateral for a loan; (iii) the  
 216 issuer of a life insurance policy providing accelerated benefits under § 38.2-3115.1 and pursuant to the  
 217 contract; ~~(iii)~~ (iv) an authorized or eligible insurer that provides stop loss coverage to a viatical  
 218 settlement provider, viatical settlement purchaser, financing entity, special purpose entity or related  
 219 provider trust; ~~(iv)~~ (v) a natural person who enters into or effectuates no more than one agreement in a  
 220 calendar year for the transfer of life insurance policies for any value less than the expected death  
 221 benefit; ~~(v)~~ (vi) a financing entity; ~~(vi)~~ (vii) a special purpose entity; ~~(vii)~~ (viii) a related provider trust;  
 222 ~~(viii)~~ (ix) a viatical settlement purchaser; or ~~(ix)~~ (x) an accredited investor or qualified institutional buyer  
 223 as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933,  
 224 as amended, and who purchases a viaticated policy from a viatical settlement provider and does not  
 225 communicate with the viator or insured who is a resident of this Commonwealth except through a  
 226 licensee under this chapter.

227 "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical  
 228 settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an  
 229 interest in a life insurance policy, that it entered into for the purpose of deriving an economic benefit.

230 "Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life  
 231 insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or  
 232 acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the  
 233 beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement  
 234 contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include  
 235 (i) a licensee under this chapter; (ii) an accredited investor or qualified institutional buyer as defined  
 236 respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;  
 237 (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

238 "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical  
 239 settlement provider pursuant to a viatical settlement contract.

240 "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who  
 241 enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter and the  
 242 application of Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title, a viator shall not be limited  
 243 to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an

244 individual with a terminal or chronic illness except where specifically addressed. Viator does not include  
 245 (i) a licensee under this chapter; (ii) an accredited investor or qualified institutional buyer as defined  
 246 respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;  
 247 (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

248 § 38.2-6001. Viatical settlement brokers.

249 No person shall act as a viatical settlement broker *or a viatical settlement investment agent* with a  
 250 resident of this Commonwealth without first obtaining a license from the Commission in accordance  
 251 with Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title. If there is more than one viator on a  
 252 single policy, and the viators are residents of different states, the viatical settlement broker *or viatical*  
 253 *settlement investment agent* shall be required to hold a license in the state in which the viator having the  
 254 largest percentage resides or, if the viators hold equal ownership, the viatical settlement broker *or*  
 255 *viatical settlement investment agent* shall be required to hold a license in the state of residence of one  
 256 viator agreed upon in writing by all the viators. *The licensure of a viatical settlement investment agent*  
 257 *by the Commission pursuant to this section shall not abrogate provision of the Securities Act*  
 258 *(§ 13.1-501 et seq.) applicable to viatical settlement investment agents.*

259 § 38.2-6002. Viatical settlement providers, license requirements.

260 A. No person shall act as a viatical settlement provider with a resident of this Commonwealth  
 261 without first obtaining a license from the Commission.

262 1. A person seeking to be licensed as a viatical settlement provider in this Commonwealth shall  
 263 apply for such license in a form acceptable to the Commission and shall pay to the Commission a  
 264 nonrefundable application fee in an amount prescribed by the Commission. On and after July 1, 2003,  
 265 such fee shall be not less than \$300 and not more than \$1,500. The application fee required by this  
 266 subdivision shall be collected by the Commission, paid directly into the state treasury, and credited to  
 267 the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the  
 268 Bureau of Insurance as provided in subsection B of § 38.2-400.

269 2. A license issued anytime prior to July 1, 2004, shall expire on June 30, 2004, unless renewed as  
 270 set forth herein.

271 3. On or before March 1 of each year commencing March 1, 2004, a licensed viatical settlement  
 272 provider shall remit a renewal application form and nonrefundable renewal fee in the form and amount  
 273 prescribed by the Commission. Such fee shall be not less than \$300 and not more than \$1,500. The  
 274 renewal fee required by this subdivision shall be collected by the Commission and paid directly into the  
 275 state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission"  
 276 for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

277 4. A viatical settlement provider's license expiring on June 30 may be renewed on July 1 for a  
 278 one-year period ending on June 30 of the following year if the required renewal application and a  
 279 nonrefundable renewal fee have been received and the license is not terminated, suspended, or revoked  
 280 at the time of renewal. The renewal fee required by this subdivision shall be collected by the  
 281 Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special  
 282 Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in  
 283 subsection B of § 38.2-400.

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

290 C. A license issued to a legal entity authorizes all partners, officers, members, and designated  
 291 employees to act as the viatical settlement provider under the license, and all those persons shall be  
 292 named in the application and any application supplements.

293 D. Upon the filing of an application and the payment of the nonrefundable application fee, the  
 294 Commission shall make such investigation of each applicant as the Commission may determine to be  
 295 appropriate and issue a license if it finds that the applicant: (i) has provided a detailed plan of operation;  
 296 (ii) is competent and trustworthy; (iii) indicates its intention to act in good faith within the confines of  
 297 the license; (iv) has a good business reputation; (v) if an individual, has had experience, training or  
 298 education that qualifies him for licensure; (vi) if a resident partnership, limited liability company, or  
 299 corporation, has recorded the existence of the partnership, limited liability company, or corporation  
 300 pursuant to law; (vii) if a corporation, has specific authority to act as a viatical settlement provider in its  
 301 charter; (viii) if a nonresident partnership, limited liability company, or corporation, has furnished proof  
 302 of its authority to transact business in Virginia; and (ix) has provided an anti-fraud plan that meets the  
 303 requirements of subdivision E G 2 of § 38.2-6011.

304 E. If the applicant for a viatical settlement provider license is a nonresident, such applicant, as a

305 condition precedent to receiving or holding a license, shall designate a resident of this Commonwealth  
306 as the person upon whom any process, notices, or order required or permitted by law to be served upon  
307 such nonresident viatical settlement provider may be served; and such licensee shall promptly notify the  
308 clerk of the Commission in writing of every change in its designated agent for service of process, and  
309 such change shall not become effective until acknowledged by the Commission. Whenever a nonresident  
310 viatical settlement provider transacting business in this Commonwealth fails to appoint or maintain a  
311 registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable  
312 diligence be found at the registered office, the clerk of the Commission shall be an agent of the  
313 nonresident upon whom service may be made in accordance with § 12.1-19.1.

314 F. A licensed insurer shall be prohibited from transacting the business of a viatical settlement  
315 provider.

316 G. The Commission may suspend, revoke, refuse to issue, or refuse to renew the license of a viatical  
317 settlement provider if the Commission finds that the applicant or licensee has (i) made any material  
318 misrepresentation in the application; (ii) been guilty of fraudulent or dishonest practices; (iii) been  
319 subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent  
320 to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to viators;  
321 (v) been convicted of a felony or any misdemeanor involving fraud or moral turpitude; (vi) entered into  
322 any viatical settlement contract that has not been approved pursuant to this chapter; (vii) failed to honor  
323 contractual obligations set out in a viatical settlement contract; (viii) demonstrated or represented that it  
324 no longer meets the requirements for initial licensure; (ix) has assigned, transferred, or pledged a  
325 viaticated policy to a person other than a viatical settlement provider licensed in this Commonwealth,  
326 viatical settlement purchaser, an accredited investor, or qualified institutional buyer as defined  
327 respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended,  
328 financing entity, special purpose entity, or related provider trust; (x) violated any provisions of this  
329 chapter or other applicable provisions of this title or has in its employ or organization any officer,  
330 partner, member, or key management personnel who has violated any provision of this chapter or other  
331 applicable provisions of this title; or (xi) has renewed or requested renewal of its license before  
332 implementing the anti-fraud initiatives required by subsection E G of § 38.2-6011.

333 H. No applicant to whom a license is refused after a hearing, nor any licensee whose license is  
334 revoked, shall apply again for a license under this chapter until after the expiration of a period of five  
335 years from the date of the Commission's order, or such other period of time as the Commission  
336 prescribes in its order.

337 I. A viatical settlement provider shall be bonded as required by the Commission. Rules issued  
338 pursuant to § 38.2-6014 may identify other mechanisms for financial accountability.

339 § 38.2-6003. Approval of viatical settlement contracts and disclosure statements.

340 A. A person shall not use a viatical settlement contract or, provide to a viator a disclosure statement  
341 form, or utilize any form as a condition of responding to a request for verification of coverage or  
342 effecting the transfer of a policy pursuant to a viatical settlement contract in this Commonwealth unless  
343 filed with and approved by the Commission in accordance with procedures set forth in § 38.2-316. In  
344 the absence of more specific regulation or rules promulgated by the Commission for the business of  
345 viatical settlements, standards and requirements of general application set forth in § 38.2-316 and rules  
346 promulgated thereunder shall be deemed applicable to viatical settlement contracts and disclosure  
347 statement forms, required by this chapter.

348 B. At the Commission's discretion, the Commission may require the submission of advertising  
349 material used or intended for use in this Commonwealth.

350 § 38.2-6004. Reporting requirements.

351 A. Each licensee under this chapter shall file with the Commission on or before March 1 of each  
352 year the certification required by subsection E G of § 38.2-6011 and an annual report containing such  
353 information as the Commission may prescribe by rule or regulation; however, such information shall be  
354 limited to only those transactions where the viator is a resident of this Commonwealth. *In addition to*  
355 *any other requirements, for any policy settled within five years of such policy's date of issuance, the*  
356 *annual statement shall specify the total number, aggregate face amount and life settlement proceeds of*  
357 *policies settled during the immediately preceding calendar year, together with a breakdown of the*  
358 *information by policy issue year.*

359 B. A viatical settlement provider shall report in writing to the Commission the following:

360 1. New or revised information about its officers, stockholders owning 10 percent or greater interest in  
361 the licensee or an affiliate of the licensee, partners, directors, members, or designated employees within  
362 30 calendar days of the change;

363 2. Any change in business or residence address or name within 30 calendar days of the change.

364 C. A licensed viatical settlement provider convicted of a felony shall report within 30 calendar days  
365 to the Commission the facts and circumstances regarding the criminal conviction.

366 § 38.2-6005. Privacy.

367 Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement  
 368 broker, insurance company, insurance producer, information bureau, rating agency or company, or any  
 369 other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured,  
 370 or the insured's financial or medical information to any other person unless the disclosure:

371 1. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider  
 372 and the viator and insured have provided prior written consent to the disclosure;

373 2. *Is necessary to effect a viatical settlement purchase agreement between the viatical settlement*  
 374 *purchaser and a viatical settlement provider and the viator and insured have provided prior written*  
 375 *consent to the disclosure;*

376 3. Is provided in response to an investigation or examination by the Commission or another  
 377 governmental agency or officer or pursuant to the requirements of subsection C of § 38.2-6011;

378 3 4. Is a term of or condition to the transfer of a policy by one viatical settlement provider to  
 379 another viatical settlement provider;

380 4 5. Is necessary to permit a financing entity, related provider trust, or special purpose entity to  
 381 finance the purchase of policies by a viatical settlement provider and the viator and insured have  
 382 provided prior written consent to the disclosure;

383 5 6. Is necessary to allow the viatical settlement provider or viatical settlement broker or their  
 384 authorized representatives to make contacts for the purpose of determining health status; or

385 6 7. Is required to purchase stop loss coverage.

386 § 38.2-6007. Disclosure.

387 A. Before asking a viator or insured to sign any document, a licensee under this chapter shall  
 388 provide the respective viator or insured, or both, with a copy of the disclosure document described in  
 389 this subsection. The viatical settlement provider or viatical settlement broker shall provide the viator  
 390 with an additional copy of the disclosures, with the application, no later than the time the application for  
 391 the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate  
 392 document that is signed by the viator and the viatical settlement provider or viatical settlement broker,  
 393 and shall provide the following information:

394 1. There are possible alternatives to viatical settlement contracts including any accelerated death  
 395 benefits or policy loans offered under the viator's life insurance policy.

396 2. *If the viatical settlement broker represents exclusively the viator, and not the insurer or the*  
 397 *viatical settlement provider, the viatical settlement broker owes a fiduciary duty to the viator, including*  
 398 *a duty to act according to the viator's instructions and in the best interest of the viator.*

399 3. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and  
 400 state franchise and income taxes, and assistance should be sought from a professional tax advisor.

401 34. Proceeds of the viatical settlement could be subject to the claims of creditors.

402 4 5. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for  
 403 Medicaid or other government benefits or entitlements, and advice should be obtained from the  
 404 appropriate government agencies.

405 56. The viator has the right to rescind a viatical settlement contract ~~for 15~~ *before the earlier of 60*  
 406 *calendar days after the date upon which the viatical settlement contract is executed by all parties or 30*  
 407 *calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in*  
 408 *subsection C of § 38.2-6008. Rescission, if exercised by the viator, is effective only if both notice of the*  
 409 *rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid*  
 410 *on account of the viatical settlement within the rescission period. If the insured dies during the*  
 411 *rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment,*  
 412 *within 60 days of the insured's death, of all viatical settlement proceeds and any premiums, loans, and*  
 413 *loan interest to the viatical settlement provider or viatical settlement purchaser.*

414 67. Funds will be sent to the viator within three business days after the viatical settlement provider  
 415 has received the insurer's or group administrator's acknowledgment that ownership of the policy or  
 416 interest in the certificate has been transferred and the beneficiary has been designated.

417 78. Entering into a viatical settlement contract may cause other rights or benefits, including  
 418 conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be  
 419 forfeited by the viator. Assistance should be sought from a financial adviser.

420 89. Disclosure to a viator shall include distribution of a brochure describing the process of viatical  
 421 settlements. The NAIC's form for the brochure shall be used unless one is developed by the  
 422 Commission.

423 910. The disclosure document shall contain the following language: "All medical, financial, or  
 424 personal information solicited or obtained by a viatical settlement provider or viatical settlement broker  
 425 about an insured, including the insured's identity or the identity of family members, a spouse, or a  
 426 significant other may be disclosed as necessary to effect the viatical settlement between the viator and  
 427 the viatical settlement provider. If you are asked to provide this information, you will be asked to

428 consent to the disclosure. The information may be provided to someone who buys the policy or provides  
429 funds for the purchase. You may be asked to renew your permission to share information every two  
430 years."

431 ~~1011.~~ The insured may be contacted by either the viatical settlement provider or broker or its  
432 authorized representative for the purpose of determining the insured's health status. This contact is  
433 limited to once every three months if the insured has a life expectancy of more than one year, and no  
434 more than once per month if the insured has a life expectancy of one year or less.

435 B. A viatical settlement provider shall provide the viator with at least the following disclosures no  
436 later than the date the viatical settlement contract is signed by all parties. The disclosures shall be  
437 conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator  
438 and the viatical settlement provider or viatical settlement broker, and provide the following information:

439 1. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance  
440 policy to be viaticated;

441 2. The name, address, and telephone number of the viatical settlement provider;

442 3. *Any affiliations or contractual arrangements between the viatical settlement provider and the*  
443 *viatical settlement purchaser;*

444 4. The dollar amount of the current death benefit payable to the viatical settlement provider under the  
445 policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any  
446 additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment  
447 benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits;

448 4 5. State the name, business address, and telephone number of the independent third party escrow  
449 agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust  
450 agreements or documents; and

451 56. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders  
452 or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be  
453 informed of the possible loss of coverage on the other lives under the policy and shall be advised to  
454 consult with his insurance producer or the insurer issuing the policy for advice on the proposed viatical  
455 settlement.

456 C. A viatical settlement broker shall provide the viator with at least the following disclosures no  
457 later than the date the viatical settlement contract is signed by all parties. The disclosures shall be  
458 conspicuously displayed in the viatical settlement contract or in a separate document signed by the  
459 viator and provide the following information:

460 1. The name, business address, and telephone number of the viatical settlement broker;

461 2. A full, complete and accurate description of all offers, counter-offers, acceptances, and rejections  
462 relating to the proposed viatical settlement contract;

463 3. A written disclosure of any affiliations or contractual arrangements between the viatical settlement  
464 broker and any person making an offer in connection with the proposed viatical settlement contracts;

465 4. The amount and method of calculating the broker's compensation, which term "compensation"  
466 includes anything of value paid or given to a viatical settlement broker for the placement of a policy;  
467 and

468 5. Where any portion of the viatical settlement broker's compensation, as defined in subdivision C 4,  
469 is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the  
470 viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical  
471 settlement broker's compensation.

472 D. If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider  
473 shall communicate the change in ownership or beneficiary to the insured within 20 days after the  
474 change.

475 E. In addition to any disclosures required pursuant to the Securities Act (§ 13.1-501 et seq.), a  
476 viatical settlement provider or its viatical settlement investment agent shall provide the viatical  
477 settlement purchaser with at least the following disclosures prior to the date the viatical settlement  
478 purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any  
479 viatical purchase contract or in a separate document signed by the viatical settlement purchaser and  
480 viatical settlement provider or viatical settlement investment agent, and shall make the following  
481 disclosures to the viatical settlement purchaser:

482 1. The viatical settlement purchaser will receive no returns, such as dividends or interest, until the  
483 insured dies and a death claim payment is made;

484 2. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate  
485 projection of the insured's life expectancy, and the actual date of the insured's death, and that an  
486 annual "guaranteed" rate of return is not determinable;

487 3. The viaticated life insurance contract should not be considered a liquid purchase since it is  
488 impossible to predict the exact timing of its maturity and the funds probably are not available until the  
489 death of the insured, and that there is no established secondary market for resale of these products by

490 *the viatical settlement purchaser;*

491 *4. The viatical settlement purchaser may lose all benefits or may receive substantially reduced*  
 492 *benefits if the insurer goes out of business during the term of the viatical investment;*

493 *5. The viatical settlement purchaser is responsible for payment of the insurance premium or other*  
 494 *costs related to the policy, if required by the terms of the viatical purchase agreement, and that these*  
 495 *payments may reduce the viatical settlement purchaser's return;*

496 *6. If a party other than the viatical settlement purchaser is responsible for the payment, the name*  
 497 *and address of that party;*

498 *7. The viatical settlement purchaser is responsible for payment of the insurance premiums or other*  
 499 *costs related to the policy if the insured returns to health;*

500 *8. The amount of any insurance premiums or other costs related to the policy if the insured returns*  
 501 *to health described in subdivision 7, if applicable;*

502 *9. The name, business address and telephone number of the independent third party providing*  
 503 *escrow services and the relationship to the broker;*

504 *10. The amount of any trust fees or other expenses to be charged to the viatical settlement*  
 505 *purchaser;*

506 *11. Whether the viatical settlement purchaser is entitled to a refund of all or part of his investment*  
 507 *under the settlement contract if the policy is later determined to be null and void;*

508 *12. That group policies may contain limitations or caps in the conversion rights, additional*  
 509 *premiums may have to be paid if the policy is converted, name the party responsible for the payment of*  
 510 *the additional premiums and, if a group policy is terminated and replaced by another group policy, that*  
 511 *there may be no right to convert the original coverage;*

512 *13. The risks associated with policy contestability including, but not limited to, the risk that the*  
 513 *viatical settlement purchaser will have no claim or only a partial claim to death benefits should the*  
 514 *insurer rescind the policy within the contestability period;*

515 *14. Whether the viatical settlement purchaser will be the owner of the policy in addition to being the*  
 516 *beneficiary, and if the viatical settlement purchaser is the beneficiary only and not also the owner, the*  
 517 *special risks associated with that status, including, but not limited to, the risk that the beneficiary may*  
 518 *be changed or the premium may not be paid;*

519 *15. A description of the experience and qualifications of the person who determines the life*  
 520 *expectancy of the insured, including, for example, in-house staff, independent physicians and specialty*  
 521 *firms that weigh medical and actuarial data; the information this projection is based on; and the*  
 522 *relationship of the projection maker to the viatical settlement provider, if any; and*

523 *16. A disclosure to a viatical settlement purchaser shall include distribution of a brochure describing*  
 524 *the process of investment in viatical settlements. The NAIC's form of such brochure shall be used unless*  
 525 *one is developed by the Commission.*

526 *F. In addition to any disclosures required pursuant to the Securities Act (§ 13.1-501 et seq.), a*  
 527 *viatical settlement provider or its viatical settlement investment agent shall provide the viatical*  
 528 *settlement purchaser with at least the following disclosures no later than at the time of the assignment,*  
 529 *transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a*  
 530 *document signed by the viatical settlement purchaser and viatical settlement provider or viatical*  
 531 *settlement investment agent, and shall make the following disclosures to the viatical settlement*  
 532 *purchaser:*

533 *1. All the life expectancy certifications obtained by the provider in the process of determining the*  
 534 *price paid to the viator;*

535 *2. Whether premium payments or other costs related to the policy have been escrowed and, if*  
 536 *escrowed, the date upon which the escrowed funds will be depleted and whether the viatical settlement*  
 537 *purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the*  
 538 *premiums;*

539 *3. Whether premium payments or other costs related to the policy have been waived, and if waived,*  
 540 *whether the viatical settlement purchaser will be responsible for payment of the premiums if the insurer*  
 541 *that wrote the policy terminates the waiver after purchase and the amount of those premiums;*

542 *4. The type of policy offered or sold, such as whole life, term life, universal life or a group policy*  
 543 *certificate, any additional benefits contained in the policy, and the current status of the policy;*

544 *5. If the policy is term insurance, the special risks associated with term insurance including, but not*  
 545 *limited to, the viatical settlement purchaser's responsibility for additional premiums if the viator*  
 546 *continues the term policy at the end of the current term;*

547 *6. Whether the policy is contestable;*

548 *7. Whether the insurer that wrote the policy has any additional rights that could negatively affect or*  
 549 *extinguish the viatical settlement purchaser's rights under the viatical settlement contract, what these*  
 550 *rights are, and under what conditions these rights are activated; and*

551 8. *The name and address of the person responsible for monitoring the insured's condition, including*  
 552 *a disclosure of how often the monitoring of the insured's condition is done, how the date of death is*  
 553 *determined, and how and when this information will be transmitted to the viatical settlement purchaser.*

554 *G. The viatical settlement purchase agreement is voidable by the viatical settlement purchaser at any*  
 555 *time within three days after the disclosures mandated by subsections E and F are received by the*  
 556 *viatical settlement purchaser.*

557 *H. Prior to the initiation of a plan, transaction or series of transactions, a viatical settlement broker*  
 558 *or viatical settlement provider shall disclose fully to an insurer the existence of any plan, transaction, or*  
 559 *series of transactions, to which the viatical settlement broker or viatical settlement provider is a party,*  
 560 *that provides for the origination, renewal, continuation, or financing of a life insurance policy with the*  
 561 *insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during*  
 562 *the first five years after, issuance of the policy.*

563 § 38.2-6008. General rules.

564 A. A viatical settlement provider entering into a viatical settlement contract shall:

565 1. First obtain:

566 a. If the viator is the insured, a written statement from a licensed attending physician that the viator  
 567 is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;  
 568 and

569 b. A document in which the insured consents to the release of his medical records to a viatical  
 570 settlement provider, viatical settlement broker, and the insurance company that issued the life insurance  
 571 policy covering the life of the insured. The consent for the release of medical records shall only be  
 572 obtained for the insurance company if the life insurance policy covering the insured was issued within  
 573 48 months of the date of the viator's application for the viatical settlement contract.

574 2. Within 20 days after a viator executes documents necessary to transfer any rights under an  
 575 insurance policy or within 20 days of entering any agreement, option, promise or any other form of  
 576 understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give  
 577 written notice to the insurer that issued that insurance policy that the policy has or will become a  
 578 viaticated policy. The notice shall be accompanied by the documents required by subdivision 3.

579 3. The viatical settlement provider shall deliver a copy of the medical release required under  
 580 subdivision 1 b of this subsection, a copy of the viator's application for the viatical settlement contract,  
 581 the notice required under subdivision 2, and a request for verification of coverage to the insurer that  
 582 issued the life policy that is the subject of the viatical transaction. The verification form adopted by the  
 583 NAIC shall be used unless standards for verification are developed by the Commission.

584 4. The insurer shall respond to a request for verification of coverage submitted on an approved form  
 585 by a viatical settlement provider not later than 30 calendar days after the date the request is received.  
 586 The insurer shall complete and issue the verification of coverage to the viatical settlement provider or, in  
 587 its response, the insurer shall indicate whether, based on the medical evidence and documents provided,  
 588 the insurer intends to pursue an investigation regarding possible fraud or the validity of the insurance  
 589 contract. *The insurer shall accept a request for verification of coverage made on an NAIC form or any*  
 590 *other form approved by the Commission. The insurer shall accept an original or facsimile or electronic*  
 591 *copy of such request and any accompanying authorization signed by the viator.*

592 5. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement  
 593 provider shall obtain a witnessed document in which the viator consents to the viatical settlement  
 594 contract, represents that the viator has a full and complete understanding of the viatical settlement  
 595 contract, that he has a full and complete understanding of the benefits of the life insurance policy,  
 596 acknowledges that he is entering into the viatical settlement contract freely and voluntarily and, for  
 597 persons who are chronically or terminally ill, acknowledges that the insured has a terminal or chronic  
 598 illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy  
 599 was issued.

600 6. If a viatical settlement broker performs any of these activities required of the viatical settlement  
 601 provider, the provider is deemed to have fulfilled the requirements of this section.

602 B. All medical information solicited or obtained by any licensee shall be subject to the applicable  
 603 provisions of state law relating to privacy or confidentiality of medical information.

604 C. All viatical settlement contracts entered into in this Commonwealth shall provide the viator with  
 605 an unconditional right to rescind the contract ~~for at least 15~~ *before the earlier of 60* calendar days ~~from~~  
 606 ~~the receipt of the viatical settlement proceeds~~ *after the date upon which the viatical settlement contract*  
 607 *is executed by all parties or 30 calendar days after the viatical settlement proceeds have been sent to*  
 608 *the viator. Rescission by the viator may be conditioned upon the viator both giving notice and repaying*  
 609 *to the viatical settlement provider within the rescission period all proceeds of the settlement and any*  
 610 *premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection*  
 611 *with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the*  
 612 *viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical*

613 settlement provider or *viatical settlement* purchaser of all viatical settlement proceeds, and any  
 614 premiums, loans, and loan interest that have been paid by the viatical settlement provider or *viatical*  
 615 *settlement* purchaser, *which shall be paid within 60 calendar days of the death of the insured. In the*  
 616 *event of any rescission, if the viatical settlement provider has paid commissions or other compensation*  
 617 *to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement*  
 618 *broker shall refund all such commissions and compensation to the viatical settlement provider within 5*  
 619 *business days following receipt of written demand from the viatical settlement provider, which demand*  
 620 *shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator,*  
 621 *or notice of the death of the insured if rescinded by reason of the death of the insured within the*  
 622 *applicable rescission period.*

623 D. The viatical settlement provider shall instruct the viator to send the executed documents required  
 624 to effect the change in ownership, assignment or change in beneficiary directly to the independent  
 625 escrow agent. Within three business days after the date the escrow agent receives the documents, or  
 626 from the date the viatical settlement provider receives the documents, if the viator erroneously provides  
 627 the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical  
 628 settlement into an escrow or trust account maintained in a state or federally-chartered financial  
 629 institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of  
 630 the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in  
 631 ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related  
 632 provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed  
 633 transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow  
 634 agent shall pay the settlement proceeds to the viator.

635 E. Failure to tender consideration to the viator for the viatical settlement contract within the time  
 636 disclosed pursuant to subdivision A 6 7 of § 38.2-6007 renders the viatical settlement contract voidable  
 637 by the viator for lack of consideration until the time consideration is tendered to and accepted by the  
 638 viator.

639 F. Contacts with the insured for the purpose of determining the health status of the insured by the  
 640 viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall  
 641 only be made by the viatical settlement provider or broker licensed in this Commonwealth or its  
 642 authorized representatives and shall be limited to once every three months for insureds with a life  
 643 expectancy of more than one year, and to no more than once per month for insureds with a life  
 644 expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at  
 645 the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall  
 646 not apply to any contacts with an insured for reasons other than determining the insured's health status.  
 647 Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their  
 648 authorized representatives.

649 § 38.2-6009. Prohibited practices.

650 A. It is a violation of this chapter for any person to enter into a viatical settlement contract within a  
 651 ~~two-year~~ *five-year* period commencing with the date of issuance of the insurance policy or certificate  
 652 unless the viator certifies to the viatical settlement provider that one or more of the following conditions  
 653 have been met within the ~~two-year~~ *five-year* period:

654 1. The policy was issued upon the viator's exercise of conversion rights arising out of a group or  
 655 individual policy, provided the total of the time covered under the conversion policy plus the time  
 656 covered under the prior policy is at least ~~24~~ *60* months. The time covered under a group policy shall be  
 657 calculated without regard to any change in insurance carriers, provided the coverage has been continuous  
 658 and under the same group sponsorship;

659 2. The viator submits independent evidence to the viatical settlement provider that one or more of the  
 660 following conditions have been met within the ~~two-year~~ *five-year* period:

661 a. The *viator* or insured is terminally or chronically ill; ~~or~~;

662 b. *The viator's spouse dies*;

663 c. *The viator divorces his spouse*;

664 d. *The viator retires from full-time employment*;

665 e. *The viator becomes physically or mentally disabled and a physician determines that the disability*  
 666 *prevents the viator from maintaining full-time employment*;

667 f. *A final order, judgment or decree is entered by a court of competent jurisdiction, on the*  
 668 *application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a*  
 669 *petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a*  
 670 *substantial part of the viator's assets; or*

671 g. The viator or insured disposes of his ownership interests in a closely held corporation pursuant to  
 672 terms of a buyout or other similar agreement in effect at the time the insurance policy was initially  
 673 issued; *and*

674 3. *The viator enters into a viatical settlement contract more than two years after the date of issuance*  
 675 *of a policy and, with respect to the policy, at all times prior to the date that is two years after policy*  
 676 *issuance, the following conditions are met:*

677 a. *Policy premiums have been funded exclusively with unencumbered assets, including an interest in*  
 678 *the life insurance policy being financed only to the extent of its net cash surrender value, provided by,*  
 679 *or fully recourse liability incurred by, the insured or a person described with an insurable interest in*  
 680 *the life of the insured;*

681 b. *There is no agreement or understanding with any other person to guarantee any such liability or*  
 682 *to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of*  
 683 *the loan; and*

684 c. *Neither the insured nor the policy has been evaluated for settlement.*

685 B. *Copies of the certifications and independent evidence required by this subsection and documents*  
 686 *required by subsection A of § 38.2-6008 shall be submitted to the insurer when the viatical settlement*  
 687 *provider submits a request to the insurer for verification of coverage. The copies shall be accompanied*  
 688 *by a letter of attestation from the viatical settlement provider that the copies are true and correct copies*  
 689 *of the documents received by the viatical settlement provider.*

690 C. *If the viatical settlement provider submits to the insurer a copy of the owner's or insured's*  
 691 *certification described in subdivision A 2 and the independent evidence required by subdivision A 2*  
 692 *when the provider submits a request to the insurer to effect the transfer of the policy or certificate to*  
 693 *the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical*  
 694 *settlement contract satisfies the requirements of this section and the insurer shall respond to the request*  
 695 *within 15 working days.*

696 D. *No insurer may, as a condition of responding to a request for verification of coverage or effecting*  
 697 *the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured,*  
 698 *viatical settlement provider, or viatical settlement broker sign any forms, disclosures, consent, or waiver*  
 699 *form that has not been expressly approved by the Commission pursuant to § 38.2-6003 for use in*  
 700 *connection with viatical settlement contracts in the Commonwealth.*

701 E. *Upon receipt of a properly completed request for change of ownership or beneficiary of a policy,*  
 702 *the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming*  
 703 *that the change has been effected or specifying the reasons why the requested change cannot be*  
 704 *processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and*  
 705 *shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in the*  
 706 *Commonwealth.*

707 F. *No person providing premium financing shall receive any proceeds, fees, or other consideration*  
 708 *from the policy or owner of the policy that are in addition to the amounts required to pay the principal,*  
 709 *interest and any other reasonable costs or expenses in type and amount incurred by the lender or*  
 710 *borrower in connection with the premium finance agreement. Except for the event of a default, unless*  
 711 *either the default on such loan or transfer of the policy in connection with such default occurs pursuant*  
 712 *to an agreement or understanding with any other person for the purpose of evading regulation under*  
 713 *this chapter, any payments, charges, fees or other amounts received by a person providing premium*  
 714 *financing in violation of this subsection shall be remitted to the original owner of the policy or to his*  
 715 *estate if he is not living at the time of the determination of overpayment.*

716 G. *No person shall issue, solicit, market or otherwise promote the purchase of an insurance policy*  
 717 *for the purpose of or with an emphasis on settling the policy.*

718 § 38.2-6009.1. *Prohibited practices and conflicts of interest.*

719 A. *With respect to any viatical settlement contract or insurance policy, no viatical settlement broker*  
 720 *knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical*  
 721 *settlement provider, viatical settlement purchaser, viatical settlement investment agent, financing entity,*  
 722 *or related provider trust that is controlling, controlled by, or under common control with such viatical*  
 723 *settlement broker.*

724 B. *With respect to any viatical settlement contract or insurance policy, no viatical settlement provider*  
 725 *knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical*  
 726 *settlement contract, anything of value will be paid to a viatical settlement broker that is controlling,*  
 727 *controlled by, or under common control with such viatical settlement provider or the viatical settlement*  
 728 *purchaser, viatical settlement investment agent, financing entity, or related provider trust that is involved*  
 729 *in such viatical settlement contract.*

730 C. *A violation of subsection A or B shall be deemed a fraudulent viatical settlement act in violation*  
 731 *of this chapter.*

732 D. *The commission of any fraudulent viatical settlement act shall constitute a violation of this*  
 733 *chapter.*

734 E. *In no event shall any marketing materials expressly reference that the insurance is "free" for any*  
 735 *period of time. The inclusion of any reference in the marketing materials that would cause a viator to*

736 *reasonably believe that the insurance is free for any period of time shall be a violation of this chapter.*  
 737 *F. No life insurance producer, insurance company, viatical settlement broker, viatical settlement*  
 738 *provider or viatical settlement investment agent shall make any statement or representation to the*  
 739 *applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect*  
 740 *that the insurance is free or without cost to the policyholder for any period of time unless provided in*  
 741 *the policy.*

742 § 38.2-6010. Advertising for viatical settlements and viatical settlement purchase agreements.

743 A. This section provides prospective viators and viatical settlement purchasers with clear and  
 744 unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful and  
 745 adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract  
 746 or viatical settlement purchase agreement bought or sold. The Commission shall establish guidelines and  
 747 standards of permissible and impermissible conduct in the advertising of viatical settlements to assure  
 748 that product descriptions are presented in a manner that prevents unfair, deceptive or misleading  
 749 advertising and is conducive to accurate presentation and description of viatical settlements through the  
 750 advertising media and material used by viatical settlement licensees. This section shall apply to any  
 751 advertising of viatical settlement contracts, or related products or services intended for dissemination in  
 752 this Commonwealth, including Internet advertising viewed by persons located in this Commonwealth.  
 753 Where disclosure requirements are established pursuant to federal regulation, this section shall be  
 754 interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

755 B. Each licensee under this chapter shall establish and at all times maintain a system of control over  
 756 the content, form and method of dissemination of all advertisements of its contracts, products, and  
 757 services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the  
 758 responsibility of the licensee, as well as the individual who created or presented the advertisement. A  
 759 system of control shall include regular routine notification, at least once a year, to agents and others  
 760 authorized by the licensee who disseminates advertisements of the requirements and procedures for  
 761 approval prior to the use of any advertisements not furnished by the licensee.

762 C. Advertisements shall be truthful and not misleading in fact or by implication. The form and  
 763 content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so  
 764 as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an  
 765 advertisement has the capacity or tendency to mislead or deceive shall be determined by the  
 766 Commission from the overall impression that the advertisement may be reasonably expected to create  
 767 upon a person of average education or intelligence within the segment of the public to which it is  
 768 directed.

769 D. *Certain viatical settlement advertisements are deemed false and misleading on their face and are*  
 770 *prohibited. False and misleading viatical settlement advertisements include, but are not limited to, the*  
 771 *following representations:*

772 1. "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by  
 773 rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds,"  
 774 or similar representations;

775 2. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar  
 776 representations;

777 3. "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans,  
 778 simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax  
 779 deferred," or similar representations;

780 4. Utilization of the word "guaranteed" to describe the fixed return, annual return, principal,  
 781 earnings, profits, investment, or similar representations;

782 5. "No sales charges or fees" or similar representations;

783 6. "High yield," "superior return," "excellent return," "high return," "quick profit," or similar  
 784 representations; and

785 7. Purported favorable representations or testimonials about the benefits of viatical settlement  
 786 contracts or viatical settlement purchase agreements as an investment, taken out of context from  
 787 newspapers, trade papers, journals, radio and television programs, and all other forms of print and  
 788 electronic media.

789 E. The information required to be disclosed under this section shall not be minimized, rendered  
 790 obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as  
 791 to be confusing or misleading.

792 1. An advertisement shall not omit material information or use words, phrases, statements, references,  
 793 or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving  
 794 viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax  
 795 consequence. The fact that the viatical settlement contract offered is made available for inspection prior  
 796 to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or

797 that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal  
798 requirements, does not remedy misleading statements.

799 2. An advertisement shall not use the name or title of a life insurance company or a life insurance  
800 policy unless the advertisement has been approved by the insurer.

801 3. *An advertisement shall not represent that premium payments will not be required to be paid on*  
802 *the life insurance policy that is the subject of a viatical settlement contract or viatical settlement*  
803 *purchase agreement in order to maintain that policy, unless that is the fact.*

804 4. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a  
805 policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

806 4 5. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of  
807 similar import shall not be used with respect to any benefit or service unless true. An advertisement may  
808 specify the charge for a benefit or a service or may state that a charge is included in the payment or use  
809 other appropriate language.

810 56. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current  
811 opinion of the author; be applicable to the viatical settlement contract, product, or service advertised, if  
812 any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving  
813 prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In  
814 using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the  
815 statements contained therein, and the statements are subject to all the provisions of this section.

816 a. If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial  
817 interest in the viatical settlement provider, viatical settlement broker, or related entity as a stockholder,  
818 director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required  
819 union scale wages, that fact shall be prominently disclosed in the advertisement.

820 b. An advertisement shall not state or imply that a viatical settlement contract benefit or service has  
821 been approved or endorsed by a group of individuals, society, association, or other organization unless  
822 that is the fact and unless any relationship between an organization and the viatical settlement licensee is  
823 disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the  
824 viatical settlement licensee, or receives any payment or other consideration from the viatical settlement  
825 licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

826 c. When an endorsement refers to benefits received under a viatical settlement contract all pertinent  
827 information shall be retained for a period of five years after its use.

828 EF. An advertisement shall not contain statistical information unless it accurately reflects recent and  
829 relevant facts. The source of all statistics used in an advertisement shall be identified.

830 FG. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement  
831 brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of  
832 marketing.

833 GH. The name of the viatical settlement licensee shall be clearly identified in all advertisements  
834 about the licensee or its viatical settlement contracts *or viatical settlement purchase agreements*,  
835 products, or services, and if any specific viatical settlement contract *or viatical settlement purchase*  
836 *agreement* is advertised, the viatical settlement contract *or viatical settlement purchase agreement* shall  
837 be identified either by form number or some other appropriate description. If an application is part of  
838 the advertisement, the name of the viatical settlement provider shall be shown on the application.

839 HI. An advertisement shall not use a trade name, group designation, name of the parent company of  
840 a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service  
841 mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement  
842 licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true  
843 identity of the viatical settlement licensee, or to create the impression that a company other than the  
844 viatical settlement licensee would have any responsibility for the financial obligation under a viatical  
845 settlement contract.

846 IJ. An advertisement shall not use any combination of words, symbols, or physical materials that by  
847 their content, phraseology, shape, color, or other characteristics are so similar to a combination of words,  
848 symbols, or physical materials used by a government program or agency or otherwise appear to be of  
849 such a nature that they tend to mislead prospective viators into believing that the solicitation is in some  
850 manner connected with a government program or agency.

851 JK. An advertisement may state that a viatical settlement licensee is licensed in the state where the  
852 advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing  
853 viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult  
854 the licensee's website or contact the Bureau of Insurance to find out if this Commonwealth requires  
855 licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

856 KL. An advertisement shall not create the impression that the viatical settlement provider, its  
857 financial condition or status, the payment of its claims or the merits, desirability, or advisability of its  
858 viatical settlement contracts are recommended or endorsed by any government entity.

859 *LM.* The name of the actual licensee shall be stated in all of its advertisements. An advertisement  
 860 shall not use a trade name, any group designation, name of any affiliate, or controlling entity of the  
 861 licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or  
 862 tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression  
 863 that an affiliate or controlling entity would have any responsibility for the financial obligation of the  
 864 licensee.

865 *MN.* An advertisement shall not directly or indirectly create the impression that any division or  
 866 agency of the state or of the U.S. government endorses, approves, or favors:

- 867 1. Any viatical settlement licensee or its business practices or methods of operation;
- 868 2. The merits, desirability, or advisability of any viatical settlement contract;
- 869 3. Any viatical settlement contract; or
- 870 4. Any life insurance policy or life insurance company.

871 *NO.* If the advertiser emphasizes the speed with which the viatication will occur, the advertising  
 872 must disclose the average time frame from completed application to the date of offer and from  
 873 acceptance of the offer to receipt of the funds by the viator.

874 *OP.* If the advertising emphasizes the dollar amounts available to viators, the advertising shall  
 875 disclose the average purchase price as a percent of face value obtained by viators contracting with the  
 876 licensee during the past six months.

877 § 38.2-6011. Fraud prevention and control.

878 A. A person shall not commit a fraudulent viatical settlement act. A person shall not knowingly or  
 879 intentionally interfere with the enforcement of the provisions of this chapter or Article 6.1  
 880 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title or investigations of suspected or actual violations of  
 881 this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title. A person in the business of  
 882 viatical settlements shall not knowingly or intentionally permit any person convicted of a felony  
 883 involving dishonesty or breach of trust to participate in the business of viatical settlements.

884 B. Viatical settlement contracts and applications for viatical settlements, regardless of the form of  
 885 transmission, shall contain the following statement or a substantially similar statement: "Any person who  
 886 knowingly presents false information in an application for insurance or viatical settlement contract, or  
 887 *viatical settlement purchase agreement* may be guilty of a crime and subject to prosecution." The lack  
 888 of the required statement does not constitute a defense in any prosecution for a fraudulent viatical  
 889 settlement act.

890 C. Any person engaged in the business of viatical settlements having knowledge or a reasonable  
 891 belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to  
 892 the Commission the information required by, and in a manner prescribed by, the Commission. Any other  
 893 person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be,  
 894 or has been committed may provide to the Commission the information required by, and in a manner  
 895 prescribed by, the Commission.

896 D. This chapter shall not:

- 897 1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to  
 898 investigate, examine, and prosecute suspected violations of law;
- 899 2. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement  
 900 fraud to a law enforcement or regulatory agency other than the insurance department; or
- 901 3. Limit the powers granted elsewhere by the laws of this Commonwealth to the Commission or an  
 902 insurance fraud unit to investigate and examine possible violations of law and to take appropriate action  
 903 against wrongdoers.

904 E. A licensee under this chapter shall within 60 days of licensure and annually thereafter by March 1  
 905 of each year certify to the Commission implementation of anti-fraud initiatives reasonably calculated to  
 906 detect, prosecute, and prevent fraudulent viatical settlement acts. Anti-fraud initiatives shall include:

- 907 1. Fraud investigators, who may be viatical settlement providers or viatical settlement broker  
 908 employees or independent contractors; and
- 909 2. An anti-fraud plan, which shall include, but not be limited to:
  - 910 a. A description of the procedures for detecting and investigating possible fraudulent viatical  
 911 settlement acts and procedures for resolving material inconsistencies between medical records and  
 912 insurance applications;
  - 913 b. A description of the procedures for reporting possible fraudulent viatical settlement acts to the  
 914 Commission;
  - 915 c. A description of the plan for anti-fraud education and training of underwriters and other personnel;  
 916 and
  - 917 d. A description or chart outlining the organizational arrangement of the anti-fraud personnel who are  
 918 responsible for the investigation and reporting of possible fraudulent viatical settlement acts and  
 919 investigating unresolved material inconsistencies between medical records and insurance applications.

920 F. Anti-fraud plans submitted to or obtained by the Commission and in the control or possession of  
921 the Commission shall be privileged and confidential, shall not be subject to inspection or review by the  
922 general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in  
923 evidence in any private civil or criminal action. However, the Commission is authorized to use the  
924 anti-fraud plans in the furtherance of any regulatory or legal action brought as a part of the  
925 Commission's duties.  
926 **2. That the provisions of this act shall become effective on January 1, 2010.**