

NOTICE OF INTENT

Department of Insurance Commissioner of Insurance

Regulation 58—Viatical Settlements

Under the authority of Revised Statutes Title 22, Section 3 and 210, the Department of Insurance gives notice that the following proposed regulation, is to become effective May 20, 1996. This intended action complies with the statutory law administered by the Department of Insurance.

Proposed Regulation 58 Viatical Settlements

Section 1. Purposes

The purpose of this regulation is to provide for the implementation of licensure of viatical settlement providers, brokers or any person soliciting a viatical settlement contract and to provide for related matters.

Section 2. Authority

This regulation is promulgated by the Department of Insurance under the authority granted by R.S. Title 22, Sections 3 and 210 and the Administrative Procedure Act, R.S. Title 49, Section 950 et seq.

Section 3. Applicability and Scope

These regulations shall apply to any person soliciting a viatical settlement contract.

Section 4. Definitions

For purposes of this regulation:

A. *Person*—any natural or artificial entity including but not limited to individuals, partnerships, associations, trusts, or corporations.

B. *Viatical Settlement Broker*—a person who, for themselves or for another, 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 for a fee, commission, or other valuable consideration. *Viatical settlement broker* does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

C. *Viatical Settlement Contract*—a written agreement entered into between a viatical settlement provider and a viator in this state. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

D. *Viatical Settlement Provider*—a person who enters into a viatical settlement contract with a viator owning a life insurance policy or a viator 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. *Viatical settlement provider* shall not include:

1. any bank, savings bank, savings and loan association, credit union, or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan;
2. the issuer of a life insurance policy providing accelerated benefits under R.S. 22:644 and Regulation 44 promulgated by the Department of Insurance;
3. any natural person who enters into only one viatical contract in a calendar year.

E. *Viator*—the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificate holder 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.

Section 5. License Requirements for Viatical Settlement Providers

A. A viatical settlement provider shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Department of Insurance (department).

B. The application shall be on a form required by the department and accompanied by a fee of \$1,000.

C. All members, officers, and designated employees of a partnership, corporation or other entity issued a license may act as a viatical settlement provider under the contract.

D. The license may be renewed yearly by payment of a fee of \$500 on or before May 1 of each year. Failure to pay the fee within the terms prescribed by the department shall result in the automatic cancellation of the license.

E. The applicant shall provide such information as required on forms prescribed by the department.

F. A viatical settlement provider may operate pursuant to the provisions in this law pending licensure by

the department, but in no case shall a provider be allowed to operate without a license following June 1, 1996.

G. The department shall establish minimum capital requirements in the amount of \$500,000.

H. The department shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement provider as provided by law.

I. The Department of Insurance shall not deny a license application or suspend, revoke, or refuse to renew the license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider without first conducting a hearing in accordance with the Administrative Procedure Act.

Section 6. License Requirements for Viatical Settlement Brokers

A. A viatical settlement broker shall not enter into or solicit a viatical settlement contract without first obtaining a license from the department.

B. The application shall be on a form required by the department and accompanied by a fee of \$50.

C. The license may be renewed yearly by payment of a fee of \$50. Failure to pay the renewal fee within the time prescribed shall result in automatic cancellation of the license.

D. The license shall be a limited license which allows solicitation only of viatical settlement contracts.

E. Viatical brokers operating in this state shall be licensed by the department as a Louisiana life insurance agent, and appointed by a licensed viatical provider.

F. The applicant shall provide such information as required on forms prescribed by the department.

G. A viatical settlement broker may operate pursuant to the provisions in Part V-B of Chapter 1 of Title 22 of the R.S. of 1950 pending licensure by the department, but in no case shall a broker be allowed to operate without a license following June 1, 1996.

H. The department shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker as provided by law.

I. The Department of Insurance shall not deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider without first conducting a hearing in accordance with the Administrative Procedure Act.

Section 7. Approval of Viatical Settlement Contract

A viatical settlement provider shall not use any viatical settlement contract in this state unless it has been filed with and approved by the department. Failure by the department to approve or disapprove a viatical settlement contract form within 60 days of the submission of the form shall constitute automatic approval for use of such form. The department shall disapprove a viatical settlement contract form if, in the department's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder. The department shall notify in writing the viatical settlement provider, specifying the reasons for his disapproval of the contract form; and it shall thereafter be unlawful for such viatical settlement provider to issue such form in this state. In such notice, the department shall state that a hearing will be granted within 60 days upon written request by the provider.

Section 8. Reporting Requirements

On March 1 of each calendar year, each licensed provider shall file with the department an annual statement in addition to the following information for the previous calendar year:

A. for each policy viaticated:

1. date viatical settlement contract entered into;
2. life expectancy of viator at time of contract;
3. names of insurance company and face amount of policy;
4. amount paid by the viatical settlement provider to viaticate the policy; and
5. if the viator has died:
 - (a). date of death; and
 - (b). total insurance premiums paid by viatical settlement provider to maintain the policy in force;

B. breakdown of applications received, accepted and rejected, by disease category;

C. breakdown of policies viaticated by issuer and policy type;

D. number of secondary market vs. primary market transactions;

E. portfolio size; and

F. source and amount of outside financing.

Section 9. Standards for Evaluation of Reasonable Payments

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

Less than 6 months	(80 percent)
At least 6 but less than 12 months	(70 percent)
At least 12 but less than 18 months	(65 percent)
At least 18 but less than 24 months	(60 percent)

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

The department shall have the discretion to permit a reduction to the minimum percentages set forth in this Section, by up to 10 percent, upon a determination by the department that economic conditions have changed

to such an extent that such variance is warranted. This reduction can be determined by subtracting 10 percent from the minimum statutory valuation interest rate for "single premium deferred annuities" as defined for a given calendar year subject to a maximum value of not greater than 10 percent and a minimum value of not less than zero.

The department shall have the discretion to permit variance from the minimum percentages set forth in this Section upon a determination by the department that a viator's insurance policy is within the contestability period permitted by R.S. 22:172.

The department may permit variance from the minimum percentages set forth if the expected premium to be paid by the viatical settlement provider exceeds 5 percent of the face value of the policy.

Section 10. General Rules

A. With respect to policies containing a provision for double or additional indemnity for accidental death or any other additional death benefits, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator, unless otherwise mutually agreed to in writing by the viator and viatical settlement provider.

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

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

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

E. Contacts for the purpose of determining the health status of the viator by the viatical provider or broker after the viatical settlement has occurred should be limited to once every three months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

F. Viatical settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject of the investment.

G. Advertising Standards

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

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

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

A public hearing on this proposed regulation will be held at 9 a.m., March 28, 1996 in the Plaza Hearing Room of the Insurance Building at 950 North Fifth Street, Baton Rouge, LA. All interested persons will be afforded an opportunity to make comments.

Interested persons may submit oral or written comments to Denise Cassano, Assistant Director, Louisiana Health Care Commission, Louisiana Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (504) 342-0819 or (504) 342-5075. Comments will be accepted through the close of business at 4:30 p.m. on March 28, 1996.

James H. "Jim" Brown
Commissioner of Insurance

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 58—Viatical Settlements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that the adoption of proposed Regulation 58 would result in any implementation costs (savings) to the Department of Insurance, however; should any costs result from the adoption of Regulation 58, such costs would be adsorbed by the Department of Insurance within its existing appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS

(Summary)

Adoption of proposed Regulation 58 will result in application fees and renewal fees paid to the Department of Insurance; however, there is insufficient data available at this time to determine the extent of those fees or the impact of such fees on state or local governmental units. If any additional revenue were collected by the Department of Insurance as a result of the adoption of Regulation 58, that revenue would be deposited in the department's self-generated revenue fund.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Viatical settlement providers would be required to pay initial licensing fee of \$1,000 with their applications and to pay \$500 renewal fee each year; they would also be required to meet minimum capital requirement of \$500,000. Brokers would be required to pay an initial licensing fee of \$50 with their applications and would be required to pay \$50 renewal fee each year. There is insufficient information available at this time to determine the impact of adoption of Regulation 58.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that adoption of Regulation 58 would have any effect on employment or competition.

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