

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9934 HOUSE LABOR & COMMERCE

1 pooled interest in a viatical settlement, the term "issuer" means the person
2 effecting the transaction with the investor in the contract, but does not
3 include a broker-dealer or agent;

4 * Sec. 6. AS 45.55.990(32) is amended to read:

5 (32) "security" means a note; stock; treasury stock; bond; debenture;
6 evidence of indebtedness; certificate of interest or participation in any profit-sharing
7 agreement; limited liability company interest under AS 10.50, notwithstanding the
8 limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate
9 or subscription; transferable share; investment contract; voting-trust certificate;
10 certificate of deposit for a security; viatical settlement contract; certificate of interest
11 or participation in an oil, gas, or mining title or lease or in payments out of production
12 under the title or lease or in any sale of or indenture or bond or contract for the
13 conveyance of land or any interest in land; an option on a contract for the future
14 delivery of agricultural or mineral commodities or any other commodity offered or sold
15 to the public and not regulated by the Commodity Futures Trading Commission;
16 however, the contract or option is not subject to the provisions of AS 45.55.070 if it
17 is sold or purchased on the floor of a bona fide exchange or board of trade and offered
18 or sold to the public by a broker-dealer or agent registered under this chapter;
19 investment of money or money's worth including goods furnished or services
20 performed in the risk capital of a venture with the expectation of some benefit to the
21 investor where the investor has no direct control over the investment or policy decision
22 of the venture or, in general, any interest or instrument commonly known as a
23 "security," or any certificate of interest or participation in, temporary or interim
24 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase,
25 any of the foregoing; "security" does not include an insurance or endowment policy
26 or annuity contract under which an insurance company promises to pay a fixed or
27 variable sum of money either in a lump sum or periodically for life or for some other
28 specified period;

29 * Sec. 7. AS 45.55.990 is amended by adding new paragraphs to read:

30 (37) "viatical settlement contract" means an agreement for the purchase,
31 sale, assignment, transfer, devise, or bequest of all or a portion of the death benefit or

1 ownership of a life insurance policy or certificate if the consideration is less than the
2 expected death benefit of the policy or certificate and if the viator has a catastrophic
3 or life-threatening chronic illness or condition; "viatical settlement contract" includes
4 a fractional or pooled interest in a viatical settlement contract, but does not include

5 (A) the assignment, transfer, sale, devise, or bequest of a death
6 benefit, life insurance policy, or certificate of insurance by a viator, including
7 an assignment of a life insurance policy to a bank, savings bank, savings and
8 loan association, credit union, or other licensed lending institution as collateral
9 for a loan;

10 (B) the exercise by the viator of an accelerated benefits
11 provision under the terms of the life insurance policy; or

12 (C) the purchase of a life insurance policy or certificate if the
13 insurer of the policy or certificate purchases the policy or certificate from a
14 person who is not the viator;

15 (38) "viator" means the person whose life is insured by the insurance
16 policy or certificate that is the subject of a viatical settlement contract.

17 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



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MEMORANDUM

TO: Terry Bannister, Legal Counsel

FROM: Rep. Norman Rokeberg *Norman Rokeberg/jps*
Chairman, House Labor & Commerce Committee

DATE: November 5, 1999

RE: HB 190, LS0576\G
Banniser, 4/14/99

Please prepare another work draft committee substitute, using the G version as a base, incorporating the following provisions:

Viaticals are securities when offered as investments and are regulated through the Division of Banking, Securities, and Corporations.

Direct buyback of an insurance policy by the insurer from a third party is not a viatical/security and is to be regulated under the Division of Insurance. That is, Banking and Securities will regulate the sales to the buying consumer and Insurance the rest.

Please feel free to contact Terry Elder or Vince Usera of Banking and Securities and/or Bob Lohr of Insurance if you have any questions.

The following changes are also requested:

- Page 1, line 2, change "(g)" to "(i)"
- Page 2, line 4, change "h" to "j"
- Page 2, line 7, delete from "at least" through "are made"
- Page 2, line 8, after "transactions" insert "at least 20 business days before any offers or sales are made"
- Page 2, line 19, change "i" to "k"
- Page 3, line 5, change "h" to "j", and "g" to "j"

Page 1 of 2

Terry Bannister, Legal Counsel
November 5, 1999
Page Two

Page 3, line 29, change "i" to "k"

Page 4, line 3, change "g" to "i"

Page 4, line 11, delete "three" insert "fifteen"

Page 6, lines 25 and 26: DELETE. Replace with following:

"viator" means the person who enters or seeks to enter into a viatical settlement contract with a viatical settlement provider and who is the owner of a life insurance policy or a certificate holder under a group policy insuring the life of a natural person who may have a catastrophic, life-threatening or chronic illness or condition.

ADD: Immediate effective date.

Page 2 of 2

I-LS0576G
Bannister
4/14/99

4/14/99 adopted as working document

CS FOR HOUSE BILL NO. 190(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to viatical settlement contracts."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 45.55.900(d) is amended to read:**

4 (d) The administrator may by order deny or revoke an exemption specified in
5 (a)(5), (7), or (11) of this section or in (b) or (g) of this section with respect to a
6 specific security or transaction. The order may not be entered without appropriate
7 prior notice to all interested parties, opportunity for hearing, and written findings of
8 fact and conclusions of law, except that the administrator may by order summarily
9 deny or revoke any of the specified exemptions pending final determination of a
10 proceeding under this subsection. Upon the entry of a summary order, the
11 administrator shall promptly notify all interested parties that it has been entered and
12 of the reasons for it and that within 15 days of the receipt of a written request the
13 matter will be set [DOWN] for hearing. If no hearing is requested and none is ordered
14 by the administrator, the order remains in effect until it is modified or vacated by the
15 administrator. If a hearing is requested or ordered, the administrator, after notice of

1 and opportunity for hearing to all interested persons, may modify or vacate the order
2 or extend it until final determination.

3 * Sec. 2. AS 45.55.900 is amended by adding new subsections to read:

4 (g) Except as provided by (h) of this section, an offer or sale of a viatical
5 settlement contract or a security that represents or is secured by a viatical settlement
6 contract is exempt from the registration requirement of AS 45.55.070 if

7 (1) at least 10 days before any offers or sales are made, the issuer files
8 with the administrator a notice of the transaction, the fee established by regulation for
9 exemption filings, and the consent to service of process required by AS 45.55.980(g);
10 the notice required in this paragraph must contain

11 (A) the name, address, and telephone number of the issuer and
12 a brief description of the general character and location of the issuer's business;

13 (B) a statement demonstrating eligibility for notice filing under
14 the exemption in this subsection;

15 (C) a description of the security being offered or sold;

16 (D) a description of the kind and amount of commissions,
17 finders' fees, or other remuneration paid directly or indirectly in connection
18 with soliciting a prospective buyer in this state; and

19 (E) the information and documents required under (i) of this
20 section by the administrator by regulation or order;

21 (2) the offer or sale is made by, and commissions or other remuneration
22 in connection with making the sale are made only to, persons registered or required
23 to be registered under AS 45.55.030(a) or (c) and 45.55.040;

24 (3) before a sale, each prospective buyer is furnished written
25 information that is sufficient to make an informed investment decision; this
26 information shall be furnished to the administrator on request if not otherwise required
27 to be filed; in this paragraph, "information that is sufficient to make an informed
28 investment decision" includes the issuer's most recent audited income and expense
29 statement and balance sheet, a statement of risks, and a disclosure of any significant
30 negative factor that may affect the outcome of the investment; and

31 (4) the issuer and the issuer's predecessors have been in continuous

1 operation for at least three years and there has been no default during the current fiscal
2 year or within the two preceding fiscal years in the payment of principal, interest,
3 dividends, or other obligation on a security of the issuer or a predecessor of the issuer
4 with a fixed maturity or a fixed interest, dividend, or other provision.

5 (h) The exemption in (g) of this section is not available to an issuer if the
6 issuer, a predecessor of the issuer, an affiliated issuer, a director of the issuer, an
7 officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent
8 or more of a class of the issuer's equity securities, a promoter of the issuer presently
9 connected with the issuer in any capacity, an underwriter of the securities to be
10 offered, a partner of an underwriter of the securities to be offered, a director of an
11 underwriter of the securities to be offered, or an officer of the underwriter of the
12 securities to be offered

13 (1) has filed within the last five years a registration statement that is
14 the subject of a currently effective registration stop order entered by a state securities
15 administrator or the United States Securities and Exchange Commission;

16 (2) within the last five years has been convicted of

17 (A) a felony;

18 (B) a criminal offense involving fraud or deceit; or

19 (C) a criminal offense in connection with the offer, purchase,
20 or sale of a security;

21 (3) is currently subject to a state or federal administrative enforcement
22 order or judgment entered within the last five years finding fraud or deceit in
23 connection with the purchase or sale of a security; or

24 (4) is currently subject to an order, judgment, or decree of a court of
25 competent jurisdiction entered within the last five years, temporarily, preliminarily, or
26 permanently restraining or enjoining the person subject to the order from engaging in
27 or continuing to engage in conduct or a practice involving fraud or deceit in
28 connection with the purchase or sale of a security.

29 (i) Notwithstanding AS 45.55.150, the administrator may by regulation or order
30 establish requirements for, and require the filing of, a prospectus, pamphlet, circular,
31 form letter, advertisement, or other sales literature used or intended to be used in

1 connection with the offer or sale of a security, whether a viatical settlement contract
2 or a security that represents or is secured by a viatical settlement contract, that is
3 exempt under (g) of this section.

4 * Sec. 3. AS 45.55 is amended by adding a new section to read:

5 **Sec. 45.55.933. Right of rescission applicable to sales of viatical settlement**
6 **contracts.** (a) In addition to any other rights provided for under this chapter or

7 otherwise, a person who purchases a viatical settlement contract or a security that
8 represents or is secured by a viatical settlement contract may rescind the purchase.

9 The person may rescind the purchase by giving written notice of rescission to the
10 entity designated for the notice in the disclosure documents by ordinary mail, postage
11 prepaid, within three business days following the later of the day on which the person

12 (1) received the final disclosure document required under this chapter
13 relating to the transaction; or

14 (2) paid the required consideration for the purchase of the viatical
15 settlement contract or a security that represents or is secured by a viatical settlement
16 contract.

17 (b) The notice required under (a) of this section is sufficient if addressed to
18 the entity designated for the notice at the address given in the disclosure statement
19 relating to the transaction. The notice is effective when deposited in the United States
20 mail. The notice is not required to be in a particular form and is sufficient if it
21 expresses the intention of the purchaser to rescind the transaction.

22 * Sec. 4. AS 45.55.990(7) is amended to read:

23 (7) "issuer" means a person who issues or proposes to issue any
24 security, except that with respect to

25 (A) certificates of deposit, voting-trust certificates, or collateral-
26 trust certificates, or with respect to certificates of interest or shares in an
27 unincorporated investment trust not having a board of directors, or persons
28 performing similar functions or of the fixed, restricted management, or unit
29 type, the term "issuer" means the person or persons performing the acts and
30 assuming the duties of depositor or manager under the provisions of the trust
31 or other agreement or instrument under which the security is issued;

1 (B) a fractional or pooled interest in a viatical settlement
2 contract, the term "issuer" means the person who creates, for the purpose
3 of sale, the fractional, or pooled interest;

4 (C) a viatical settlement contract that is not a fractional or
5 pooled interest in a viatical settlement, the term "issuer" means the person
6 effecting the transaction with the investor in the contract, but does not
7 include a broker-dealer or agent;

8 * Sec. 5. AS 45.55.990(12) is amended to read:

9 (12) "security" means a note; stock; treasury stock; bond; debenture;
10 evidence of indebtedness; certificate of interest or participation in any profit-sharing
11 agreement; [A] limited liability company interest under AS '0.50; collateral-trust
12 certificate [CERTIFICATES]; preorganization certificate or subscription; transferable
13 share; investment contract; voting-trust certificate; certificate of deposit for a security;
14 viatical settlement contract; [A] certificate of interest or participation in an oil, gas,
15 or mining title or lease or in payments out of production under the title or lease or in
16 any sale of or indenture or bond or contract for the conveyance of land or any interest
17 in land; an option on a contract for the future delivery of agricultural or mineral
18 commodities or any other commodity offered or sold to the public and not regulated
19 by the Commodity Futures Trading Commission; however, the contract or option is not
20 subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a
21 bona fide exchange or board of trade and offered or sold to the public by a broker-
22 dealer or agent registered under this chapter; investment of money or money's worth
23 including goods furnished or services performed in the risk capital of a venture with
24 the expectation of some benefit to the investor where the investor has no direct control
25 over the investment or policy decision of the venture; or, in general, any interest or
26 instrument commonly known as a "security," or any certificate of interest or
27 participation in, temporary or interim certificate for, receipt for, guarantee of, or
28 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not
29 include an insurance or endowment policy or annuity contract under which an
30 insurance company promises to pay a fixed or variable sum of money either in a lump
31 sum or periodically for life or for some other specified period;

1 * Sec. 6. AS 45.55.990 is amended by adding new paragraphs to read:

2 (14) "viatical settlement contract" means an agreement for the purchase,
3 sale, assignment, transfer, devise, or bequest of all or a portion of the death benefit or
4 ownership of a life insurance policy or certificate for consideration that is less than the
5 expected death benefit of the life insurance policy or certificate; "viatical settlement
6 contract" includes a fractional or pooled interest in a viatical settlement contract, but
7 does not include

8 (A) the assignment, transfer, sale, devise, or bequest of a death
9 benefit, life insurance policy, or certificate of insurance by a viator to the
10 viatical settlement provider;

11 (B) the assignment, transfer, sale, devise, or bequest of a life
12 insurance policy, for less than the expected death benefit, by the viator to a
13 friend or family member if the friend or family member does not enter into
14 more than one agreement described in this paragraph in a calendar year;

15 (C) an assignment of a life insurance policy to a bank, savings
16 bank, savings and loan association, credit union, or other licensed lending
17 institution as collateral for a loan; or

18 (D) the exercise by the viator of an accelerated benefits
19 provision under the terms of the life insurance policy.

20 (15) "viatical settlement provider" means a person who is an issuer, has
21 satisfied all requirements of this state to allow the person to do business in this state,
22 and enters into multiple viatical settlement contracts with viators each year for the
23 purpose of selling viatical settlement contracts or pooled or fractional interests in
24 viatical contracts to one or more investors;

25 (16) "viator" means the person whose life is insured by the insurance
26 policy or certificate that is the subject of a viatical settlement contract.

Alaska

Department of Community and Economic Development

Division of Insurance

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October 15, 1999

Honorable Norman Rokeberg
Chairman
House Labor & Commerce Committee
Alaska State House
716 West 4th Avenue, Suite 640
Anchorage, AK 99501

OCT 19 1999

Dear Mr. Chairman:

Thank you for notifying me of your hearing on HB 190 concerning viatical settlements, scheduled for October 21. I plan to attend in Anchorage. There is a legitimate market for these transactions, but there are also, unfortunately, some shady deals occurring. Some degree of regulation of viaticals seems essential.

I understand that in the past the Division of Insurance has questioned whether or not viatical settlement regulation belongs in the Division, because it can be argued that the sales transaction between a viatical settlement provider and a viator is not the "business of insurance". One way to understand this perspective is to consider the transaction as the viator having a property right, the insurance contract, that they s/he is choosing to sell to a viatical settlement provider.

If the legislature, following your lead, wishes to pursue a cross-jurisdictional approach and to place some measure of responsibility for regulating viatical transactions in the Division, I believe that would be your policy call. I am certain that language could be drafted to accomplish this and I would request the assistance of the Department of Law toward this end, if that would be helpful.

As you know, the National Association of Insurance Commissioners (NAIC) has prepared model legislation covering a variety of insurance topics. They have model legislation proposed to regulate viatical sales. A revised model act was adopted by the NAIC early this year. In brief, the model act:

- Requires that a viatical settlement provider be licensed with the insurance division before operating in the state and sets forth requirements for obtaining

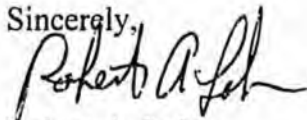
such a license and circumstances under which the license may be revoked or denied.

- Requires that viatical settlement contracts and any disclosure forms be filed with and approved by the division of insurance and sets forth the circumstances under which the contract or disclosure form may be disapproved.
- Requires an annual statement with information prescribed by the director
- Prohibits disclosure of a viator's identify except in certain specified situations
- Gives authority to the director to examine the records of the viatical settlement provider
- Establishes some protections to the viator by requiring the viatical settlement provider to disclosure important information to the viator about viaticating a policy

The question of how the cross-jurisdictional regulatory approach is accomplished strikes me even more clearly as a legislative, not administrative call. In general I see the role of the Division on this issue as being available to your Committee as a technical resource. We are ready to take on any assignment required of us by statute.

Thank you as well for your kind words and congratulations on my new responsibilities. I am excited to be here and look forward to working with you in this new capacity.

Sincerely,



Robert A. Lohr

Director

Jeff Bush, Deputy Commissioner
Department of Community & Economic Development

Terry Elder, Director
Banking, Securities, and Corporation

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

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House Bill 190 - Viatical Settlements Additional Committee Information October 21, 1999 - 1:30 p.m. hearing

1. You should have your packet from the previous meeting.
2. Committee adopted LS0576\G as working document on April 19th.
3. Information from Division of Banking, Securities and Corporations:
 - a. September 17th letter to Terry Elder and Bob Lohr from Rep. Rokeberg and Sept 20th response of Terry Elder
 - b. September 16th letter with proposed regulations, policy statement, and proposed disclosure form
 - c. September 1st letter from Terry Elder
 - d. June 3rd letter with copy of article in Juneau Empire
4. Information from/on Viatical Association of America ("VAA")
 - a. VAA description and Code of Ethics and Standards of Business Practice.
 - b. Model Act [sent by VAA) and others] with letter from William E. Kelley of VAA
 - c. "Texas is first state to regulate 'life settlements'", VAA, June 1999
5. Texas House Bill 792 as signed by Governor
6. Articles:
 - a. "Rolling the Dice on Death", MONEY September 1999
 - b. "Insurance cheating alleged", Anchorage Daily News, August 5, 1999
 - c. "Fraud Alleged for 'Death' Investors", News from the AP Web Site, August 4, 1999
 - d. "Life-insurance payoff not always sure thing", Anchorage Daily News, May 25, 1999
 - e. "State Securities Cops Release New List of 'Top 10 Investment Scams'", NASSA Web site, May 24, 1999
7. Letters
 - a. May 18, 1999, Marg Walker

Tony Knowles, Governor

**Department of Community
and Economic Development**

Division of Banking, Securities, and Corporations

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September 20, 1999

The Honorable Norman Rokeberg
Chairman, Labor & Commerce Committee
Alaska House of Representatives
716 W. 4th Avenue, Suite 640
Anchorage, AK 99501-2133

Dear Representative Rokeberg:

RE: Your letter dated September 17, 1999

We received your letter, and will be pleased to participate in the hearings on HB 190 on October 21, 1999, at 1:30 PM. Will the committee be in Anchorage? If so, will there be provision for us to participate telephonically from a room in the Capitol Building?

You state that "many states have regulated viatical settlements through insurance laws." By this we take that to refer to the twenty-six or so states that have adopted the NAIC model rules that cover the relationship between viators and viatical settlement providers, but do not cover the sales of viatical settlement contracts to investors. It is our understanding that at least Iowa, Maine, North Dakota, and South Dakota have amended their statutes to include viaticals in the definition of a security, and that most, if not all, other jurisdictions also consider viaticals to be securities under investment contract theory, and regulated by their securities agencies. As far as we are aware, only Florida has adopted the NAIC "wrap around" legislation, and even its securities division continues to claim jurisdiction under its securities laws.

You indicate a "leaning" toward a cross-jurisdictional regulatory scheme. As we understand it, that would place the regulation of viatical settlement providers and their dealings with viators, who are often brought to the viatical settlement providers by viatical brokers, with the division of insurance. The division of banking, securities and corporations would continue to be responsible for regulating the sales of viaticals by viatical settlement providers to investors. This division has no problem with that approach. We do not speak for the division of insurance, of course, and therefore we will defer to that division to comment on that part of your proposal that would affect that division. We would suggest strongly, however, that if you proceed in that direction, you handle the division of insurance responsibilities in a separate piece of legislation.

We suggest that for a couple of reasons. First, HB 190 currently deals with the regulation of viaticals by this division and can stand alone as legislation. Since we currently regulate these as

investment contracts, we have submitted a zero fiscal note. If the legislature decides to pass the other bill as well, that is fine. We do not expect that this bill would conflict with that one. But, if the division of insurance submits a fiscal note and the legislature decides not to pass that part of the regulatory scheme, we would not want to jeopardize HB 190. It might be necessary to tweak the definitions a little so that there are not two definitions, but even that is not fatal, since we can have one definition for securities laws and one for insurance laws. They do not have to be the same.

You ask if HB 190 accomplishes the disconnection you are striving for in the legislation. We believe it does, since it does not encroach in any way on the insurance regulation that would be the responsibility of the division of insurance.

You ask if there are changes needed to the current version of HB 190. As you may recall, there were some small corrections needed that Legislative Legal did not incorporate before the bill was introduced. We believe we've given the committee these changes in the past, but, in case we did not, we have attached a list of amendments needed to HB 190. As you can see, most are technical in nature. By adding the new Section 1 that adds a reference to the viatical exemption at AS 45.55.900(i), we no longer need the current Section 3. Most of the other changes are simple technical corrections that Legislative Legal did not incorporate before submission, and a few reference changes needed as a result of the passage of HB 83. I added a new definition of "viator" based on Florida's new law, since there was testimony in the April 1999 hearing that the viator owns the policy and is not necessarily the insured. Also, Change #15 proposes to change the rescission rights of the buyer from 3 business days to 15 business days. As you know, we patterned that originally on the Maine proposed law. When they enacted that law in Maine, its legislature changed the 3 to 30. We believe that 15 business days are sufficient, and provide more investor protection than the current 3. In fact, some viatical settlement providers currently provide for rescission rights beyond 3 business days.

Finally, you ask if this legislation "would have covered the Future First situation." Since we are involved in a current lawsuit, we believe it prudent to refrain from direct comments about specific cases. We would say, however, that we have always considered viaticals to be investment contracts under the current statute, but we also support HB 190 in its explicit inclusion of viatical settlement contracts as securities. We believe that will help everyone involved understand that these are securities, and that they may only be offered and sold in compliance with the Alaska Securities Act. In that regard, HB 190 is consistent with our past policy regarding viaticals.

If there is anything else you need before the hearing in October, do not hesitate to ask. We look forward to working with you and the committee on this important legislation.

Yours truly,

A handwritten signature in black ink, appearing to read "Franklin T. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Franklin T. Elder
Director

Enclosure (1)

cc: Jeff Bush, Deputy Commissioner
Bob Lohr, Director of Insurance

Needed Amendments to HB 190

1. At page 1, line 3, renumber existing Section 1 as Section 2 and existing Section 2 as Section 3 and insert a new Section 1 to read as follows:

Section 1. AS 45.55.900(d) is amended to read:

(d) The administrator may by order deny or revoke an exemption specified in (a)(5), (7) or (11) of this section or in (b) or (i) of this section with respect to a specific security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

2. At page 1, line 3, change existing Section 1 to Section 2.
3. At page 1, line 4, change the letter of the paragraph from (g) to (i) since HB 83 passed last session causing the paragraphs now to go through (h). Other paragraph lettering changes described below need to be made also to reflect the passage of HB 83.
4. At page 1, line 4, change the paragraph reference in the line (h) to (j) because of HB 83.
5. At page 1, line 6, delete "at least 10 business days before any offers or sales are made".
6. At page 1, line 8, after the word "transaction" insert "at least 10 business days before any offers or sales are made".
7. At page 2, line 5, change the paragraph reference in the line from (i) to (k) because of HB 83.
8. At page 2, line 10, after the word "furnished" insert "written".
9. At page 2, line 22, change the paragraph letter from (h) to (j) because of HB 83.
10. At page 2, line 22, change the paragraph reference in the line from (g) to (i) because of HB 83.
11. At page 3, line 15, change the paragraph letter from (i) to (k) because of HB 83.
12. At page 3, line 20, change the paragraph reference in the line from (g) to (i) because of HB 83.
13. At page 3, line 21, renumber existing Section 2 as Section 3.
14. At page 3, line 24, after the word "that" insert "represents or".
15. At page 3, line 27, at end of line, delete "three" and insert "fifteen".

16. At page 4, line 7, delete existing Section 3, since it is no longer needed with the insertion of the new Section 1 above.
17. At page 4, line 1, after the word "that" insert "represents or".
18. At page 6, line 2, after the word "consideration" insert "that is less than the expected death benefit of the life insurance policy or certificate".
19. At page 6, line 22, delete the current definition of "viator" and replace it with "means the person who enters or seeks to enter into a viatical settlement contract with a viatical settlement provider and who is the owner of a life insurance policy or a certificate holder under a group policy insuring the life of a natural person who may have a catastrophic, life-threatening or chronic illness or condition."

Alaska Department of Community
and Economic Development

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/bsc.htm

September 16, 1999

SEP 21 1999

Representative Norman Rokeberg
716 W 4th Avenue, Suite 640
Anchorage, AK 99501-2133

Dear Representative Rokeberg:

Enclosed you will find a copy of the Notice of Proposed Changes to Regulations from the Alaska Department of Community and Economic Development, Division of Banking, Securities, and Corporations. Under the authority of AS 45.55.950, the division proposes to adopt regulations in Title 3 of the Alaska Administrative Code dealing with Viatical Settlements (more fully explained in the policy statement accompanying the regulations). These proposed regulations track very closely proposed legislation HB 190 which is still in committee. The division finds there is a need for regulation quickly and this should not conflict with the eventual passage of HB 190.

Should you have comments, concerns, or questions, please contact us at (907) 465-2521.

Sincerely,



Vincent L. Usera
Senior Securities Examiner

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Enclosures: Notice of Proposed Regulations, Proposed Regulations,
Disclosure Form, and Policy Statement

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NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT

Notice given that the Department of Community and Economic Development, under the authority of AS 45.55.950, proposes to adopt regulations for the Division of Banking, Securities, and Corporations in Title 3 of the Alaska Administrative Code dealing with viatical settlements which are securities under AS 45.55.990(12). Viatical settlements entail the purchase by an investor of the right to receive the face amount of the life insurance policy of a person diagnosed with a terminal illness. Typically, policies are purchased at a discount so that the insured receives a portion of the insurance benefits at a time when they can be put to use for medical bills or other family needs.

These regulations are intended to provide for the registration of viatical settlements and their exemption under certain circumstances. These regulations adopt general policies and requirements related to viatical settlements and the application of securities laws, and any technical conforming amendments related to other parts of the securities regulations. The regulations mandate the use by viatical settlement companies of a disclosure statement and also provide for a right of rescission for the investor. The regulations provide for the collection of fee for registration or exemption, for the consent to service of process by the viatical settlement company, the right of the securities administrator to revoke or deny registration or exemption upon a finding of cause.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to

Division of Banking, Securities & Corps.
Attn: Vincent Usera, Senior Securities Examiner
P.O. Box 110807
Juneau, AK 99811-0807

so that they are received no later than October 29, 1999. Copies of the proposed regulations, the policy statement, and the disclosure statement may be obtained from the division at the following locations:

Division of Banking, Securities & Corps.
Attn: Janet Mitchell
3601 C Street, Suite 724
Anchorage, AK 99503
907-269-8140

Division of Banking, Securities & Corps.
Attn: Mary McMahon
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811
907-465-2521

If you are a person with a disability who may need a special accommodation in order to participate in making comments on the proposed regulations, please contact

Division of Banking, Securities & Corps.
Attn: Vincent Usera, Senior Securities Examiner
P.O. Box 110807
Juneau, AK 99811-0807

no later than October 22, 1999 to ensure that any necessary accommodations can be provided.

It is estimated that this action will not require an increased appropriation.

After the close of the public comment period, the Department of Community and Economic Development will either adopt these or other proposals dealing with the same subject without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment within the time allowed if your interests could be affected.

Dated: August 31, 1999

Franklin Terry Elder, Director
Division of Banking, Securities, and Corporations

CHAPTER SECURITIES 08

Chapter 08 is amended by adopting a new article to read:

DRAFT

Article 07. VIATICAL SETTLEMENTS

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.701. FINDING. The administrator finds, in the policy statement adopted concurrently with and incorporated by reference in these regulations, that investment contracts known as viatical settlements are securities and subject to the provisions of the Act and these special regulations. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.710. EXEMPTIONS FROM REGISTRATION. (a) Except as provided by (b) of this section, an offer or sale of a viatical settlement contract or a security that represents or is secured by a viatical settlement contract is exempt from the registration requirement of AS 45.55.070 if

(1) at least 10 business days before any offers or sales are made the issuer files with the administrator an application to engage in the transaction, the fee established by 3 AAC 08.920 for exemption filings, and the consent to service of process required by AS 45.55.980(g); the application required in this paragraph must contain

(A) the name, address, and telephone number of the issuer and a brief description of the general character and location of the issuer's business;

(B) a statement demonstrating eligibility for notice filing under the exemption in this subsection;

(C) a description of the security being offered or sold;

(D) a description of the kind and amount of commissions, finders' fees, or other remuneration paid directly or indirectly in connection with soliciting a prospective buyer in this state; and

(E) notwithstanding AS 45.55.150, the following must be filed with the application: a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a security, and such other information or documents as the administrator may by regulation or order establish;

(2) the offer or sale is made by, and commissions or other remuneration in connection with making the sale are made only to, persons registered or required to be registered under AS 45.55.030(a) or (c) and 45.55.040;

(3) before a sale, each prospective buyer is furnished written information that is sufficient to make an informed investment decision; this information shall be furnished to the administrator at the time of application; in this paragraph, "information that is sufficient to make an informed investment decision" includes the issuer's most recent audited income and expense statement and balance sheet, and the state-mandated viatical disclosure document, Form 08-114; and

(4) the issuer and the issuer's predecessors have been in continuous operation for at least three years and there has been no default during the current fiscal year or within the two preceding fiscal years in the payment of principal, interest, dividends, or other obligation on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.

(b) The exemption in (a) of this section is not available to an issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a director of the issuer, an officer of the issuer, a

general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered

(1) has filed within the last five years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;

(2) within the last five years has been convicted of

(A) a felony;

(B) a criminal offense involving fraud or deceit; or

(C) a criminal offense in connection with the offer, purchase, or sale of a security;

(3) is currently subject to a state or federal administrative enforcement order or judgment entered within the last five years finding fraud or deceit in connection with the purchase or sale of a security; or

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security. (Eff. / / ; Register)

Authority: AS 45.55.070 AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.720. REVOCATION OR DENIAL OF EXEMPTION. The administrator may by order deny or revoke an exemption specified in 3 AAC 08.710(a) with respect to a

specific viatical settlement security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing to be held in accordance with AS 45.55.935. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after giving notice and opportunity to be heard to all interested persons, may modify or vacate the order or extend it until final determination. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.730. RIGHT OF RESCISSION APPLICABLE TO SALES OF VIATICAL SETTLEMENT CONTRACTS. (a) In addition to any other rights provided for under this chapter or otherwise, a person who purchases a viatical settlement contract or a security that represents or is secured by a viatical settlement contract may rescind the purchase. The person may rescind the purchase by giving written notice of rescission to the entity designated for the notice in the disclosure documents by ordinary mail, postage prepaid, within 15 business days following the later of the day on which the person

(1) received the final disclosure document required under this chapter relating to the transaction; or

(2) paid the required consideration for the purchase of the viatical settlement contract or a security that is secured by a viatical settlement contract.

(b) The notice required under (a) of this section is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement relating to the transaction. The notice is effective when deposited in the United States mail. The notice is not required to be in a particular form and is sufficient if it expresses the intention of the purchaser to rescind the transaction.

(c) The issuer shall give to the purchaser at some time before the purchaser receives the final disclosure a clear notice of the right to rescind, the address to which a rescission notice is to be sent, and the time within which the notice must be sent. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.740. DEFINITIONS. As used in the article, unless the context clearly means otherwise

(1) "issuer" means a person who, in addition to the terms of AS 45.55.990(7), with respect to the creation of a fractional or pooled interest in a viatical settlement contract, is the person who for the purpose of sales, creates the fractional or pooled interest;

(A) with respect to the creation of a viatical settlement contract that is not a fractional or pooled interest in a viatical settlement, is the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent ;

(2) "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or a portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life

**ALASKA DIVISION OF BANKING, SECURITIES, AND CORPORATIONS
POLICY STATEMENT ON VIATICAL SETTLEMENT CONTRACTS**

There have been some inquiries and questions from investors and the industry generally regarding viatical settlement contracts and their treatment under the Alaska Securities Act (AS 45.55). Briefly, a viatical settlement involves the purchase by an investor of an insurance policy covering the life of an individual diagnosed with a terminal illness. The purchase is usually for a fraction of the face value of the policy, thus the terminally ill person receives money now to cover expenses and other considerations while the investor receives the right to the face amount of the policy on the viator's death. The social value of this arrangement is not at issue; as an investment vehicle, it is. We are aware of instances in which viatical settlements have been advertised to the public as 100% secure with rates of "guaranteed return" as high as 40% and more. These investments have not been registered with the Alaska securities division as required, and those selling them have not been registered as broker-dealers, agents, investment advisers, or their representatives.

The securities division has the statutory mandate to safeguard the investing public by enforcing the Alaska Securities Act. This statute governs the issuance, sale, and other transactions involving securities and requires that securities and those who sell them register with the securities division. Our mission is to warn Alaskan investors of any security that might run afoul of our Act's prohibition against engaging in "an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person." Toward that end, following careful consideration of the applicable provisions of the Act, the regulations adopted under the Act, and

relevant legal authority, the division has concluded, for the reasons laid out in this statement, that viatical settlements are investment contracts and subject to the provisions of the Act.

VIATICAL SETTLEMENTS ARE INVESTMENT CONTRACTS

The viatical settlement is governed by a written agreement between a company facilitating the transaction, an investor, and the terminally ill person covered by an insurance contract. The insured agrees to sell the ownership interest in the insurance policy and the right to name a beneficiary and receive the face amount of the policy on the insured's death. The premise behind viatical settlements is to give those faced with a terminal illness the monetary means to live and to pay medical expenses when, in all likelihood, the person is at a stage when continued employment may not be possible. The policy is sold at a discount based on life expectancy of the insured, current interest rates, the premium terms due, and profit requirements of the investor and the viatical settlement company. Typically, the viatical company is named irrevocable owner of the policy and may or may not take on the obligation to make any necessary premium payments. Alternatively, the viatical company may simply match an insured with an investor who then takes over as direct owner and beneficiary, though this scenario is not usual. The point to remember is that the investor always ends up making the premium payments. The premiums can be collected up front and paid out over the life of the insured; they can be deducted from the investor's share of the profits; or some mix of the two.

The usual situation calls for the viatical company to own the policy and intervene in the activities surrounding the transaction, thus giving the insured some measure of privacy. Upon the death of the insured, the company would be notified

and would collect the proceeds of insurance and pass them on to the investor, first deducting administrative costs and expenses, including premiums paid, if any, and a commission to the viatical company.

The question of whether or not this arrangement is characterized as a security is answered by referring to long-standing principles of statutory interpretation. The statutory definition of "security" is found at AS 45.55.990(12). A very comprehensive Alaska definition is virtually identical to that used in most states and the federal Securities Act of 1933, and it includes the term "investment contract." The United States Supreme Court first undertook to define an investment contract in the seminal case of *Securities & Exch. Comm'n v. W. J. Howey Co.*, 328 U.S. 293, 299, 66 S.Ct. 1100, 1103 (1946). The Court laid out a simple, tripartite test for determining the presence of an investment contract:

a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party[.]

This definition has been articulated many times since as controlling, in Alaska, e.g., in *Hentzner v. State*, 613 P.2d 821, 823 (Alaska 1980), and in federal court in *Securities & Exch. Comm'n v. Life Partners, Inc.*, 898 F.Supp. 14, 19 (D.D.C. 1995). The United States Supreme Court said

This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By profits, the Court has meant either capital appreciation resulting from the development of the original investment . . . or a *participation in earnings resulting from the use of investors' funds* In such cases the investor is "attracted solely by the prospect of a return" on his investment.

United Housing Found., Inc. v. Forman, 421 U.S. 837, 852, 95 S.Ct. 2051, 2060 (1975) (emphasis added) (citations omitted) (quoted in *Hentzner, supra* at 824).

**THE DIVISION'S INTERPRETATION IS
NOTWITHSTANDING *LIFE PARTNERS***

The division is mindful of the decision in *Life Partners*, in which the D.C. Circuit held that the viatical settlement contract at issue in the case was not an investment contract. *Securities & Exch. Comm'n v. Life Partners, Inc.*, 87 F.3d 536, 543 (D.C. Cir. 1996). While the SEC won at the district court level, the Court of Appeals found that not every element of the *Howey* test was met. The appeals court concluded that the investors' return depended not on the efforts of the viatical company, but rather from the length of time the insurance remained alive, saying

In this case it is the length of the insured's life that is the overwhelming importance to the value of the viatical settlements[.]

87 F.3d at 548. The decision in that case is almost universally viewed by state securities administrators as flawed. The court seems to have been influenced by its perception of the social utility of the viatical settlement and the court's sympathetic view of terminal AIDS patients, who make up the vast majority of viators. Alaska does not agree with the D.C. Circuit in either outcome or rationale. We believe every part of the *Howey* test is met and that social utility alone should not be the motive driving a court's decision. Furthermore, we believe there is little support for drawing the bright-line distinction between "pre-investment " and "post-investment" managerial efforts which the *Life Partners* court attempted to draw.

HOWEY TEST MUST BE APPLIED FLEXIBLY

The *Hentzner* court indicated that the *Howey* test should not be applied rigidly or inflexibly, but that substance must take primacy over form. In other words, when one considers applying the elements of the investment contract decisions to a viatical settlement, they cannot be applied mechanically, but must be applied with common sense. The Ninth Circuit found that the securities acts of the various states, and federal legislation as well, were meant to be broadly interpreted. The protections afforded by these laws were aimed at curbing the abuses that had crept into the field prior to the Great Depression and those curbs could best be effected by liberal interpretations of the term "securities." *Securities & Exch. Comm'n v. Glenn W. Turner Enter., Inc.*, 474 F.2d 476, 481 (9th Cir. 1973).

INVESTMENT OF MONEY

There is little dispute that money is invested, thereby satisfying element one of the *Howey* definition for the viatical settlement situation.¹ Even Life Partners did not dispute that money was being invested. "The parties . . . do not contest that the buyers of viatical settlements are investing money." *Securities & Exch. Comm'n v. Life Partners, Inc.*, 898 F. Supp. 14, 19 (D.D.C. 1995). Moreover, the sales literature of almost all viatical companies speaks in terms of "investment" and "investors."

EXPECTATION OF A PROFIT

The third element of the *Howey* test, the expectation of a profit from the investment in a viatical settlement, is also easily disposed of. The buyer of a viatical settlement does so with the expectation of a profit, regardless of the motives of any

¹ Money may not always be the medium of consideration. "Free stock" and other things having value also constitute "valuable consideration."

other person involved in the transaction. In *Life Partners*, the Court of Appeals concluded:

The asset acquired by an LPI investor is a claim on future death benefits. The buyer is obviously purchasing not for consumption—unmatured claims cannot be currently consumed—but rather for the prospect of a return on his investment. As we read the *Forman* gloss on *Howey*, that is enough to satisfy the requirement that the investment be made in the expectation of profits.

Securities & Exch. Comm'n v. Life Partners, Inc., 87 F.3d 536, 543 (D.C. Cir. 1996).

COMMON ENTERPRISE

There are two forms of common enterprise, horizontal and vertical. In most viatical settlement situations, there are a number of investors pooling resources to buy fractional interests in the insurance policy. There is difficulty in finding persons to invest the full amount needed to purchase a policy, and most often smaller investors put out \$5,000 or more to purchase a share in the policy. This meets the horizontal test. This test requires that the funds of a number of investors be pooled and the profits and losses from the pooled investments be shared. The sale of fractional interests in life insurance policies necessarily means that the profits and losses are shared with other investors. The viatical settlement marketing materials the division has reviewed lead to the conclusion that fractional interests are being sold. Even if certain viatical companies, however, deal only in one-on-one investments in viaticals, this is not true of all viatical settlement companies and the vertical form of common enterprise is present. Moreover, only one form of common enterprise test need be met to find an investment contract. See JOSEPH C. LONG, BLUE SKY LAW § 2A.02[2][c] (1998).

The vertical test requires that the marketer joins with the investor to make the profit. If the viatical company is acting as an agent for purchasers, the test is fulfilled. Regardless of whether they actually are agents of the purchasers or not, the broad vertical test is met. The common enterprise is created by the viatical company in first finding and evaluating the insurance policies that it will market. The investor is entirely passive; the viatical company must exercise skill and care in selecting the contracts it will purchase and market. Albeit that many companies have third parties that afford the necessary post-purchase services, the venture is still initiated and put together by the viatical company. Thus, there is a passive investor and an active enterprise, exactly the sort of thing the securities laws were enacted to protect.

POST-PURCHASE EFFORTS

Some viatical companies have advanced the rather disingenuous argument that the company itself performs no significant post-purchase activities. This because they arrange for third parties to render such services as taking ownership of the insurance policy in trust and keeping tabs on the viator and notifying investors when the viator dies. This argument seems to ignore that, in most cases, the investor *needs* those services and cannot perform them for him- or herself. The standard is *someone* must perform those post-purchase functions. Following this logic, a viatical company would argue that, since the broker who procured stock in AT&T for a customer performs no post-purchase services, has no control over AT&T, nor has any effect on the value of the stock, no security was the subject of the broker's efforts. This is patently specious. That others perform the service does not negate an investment contract.

Without the viatical company selecting the policies, arranging for post-purchase services, and bringing the investor into the mix, there would be no investment. There is definitely a situation where profits are made through the efforts of another.

**ALASKA'S POSITION IS CONSISTENT
WITH OTHER JURISDICTIONS**

The position that the Alaska securities division has taken is consistent with that taken by any number of other state securities administrators. Alabama, Ohio, Washington, Wyoming, and Kansas are among those who have announced policies in keeping with Alaska's policy. The division looks with disfavor on viatical settlements because so much fraud has been associated with their sale. The division will not blanket deny these investment vehicles to Alaska residents, however, companies that market these investment contracts will have to register themselves and their product with the division at a minimum.

Adopted at Juneau, Alaska this 24th day of August, 1999.



Franklin T. Elder
Administrator of Securities

THIS DISCLOSURE IS MANDATED BY THE STATE OF ALASKA

Viatical Disclosure Document

SEP 27 1999

READ IMMEDIATELY UPON RECEIPT AND BEFORE YOU PURCHASE

We are offering to sell you an investment called a **viatical settlement contract**. A **viatical settlement contract** is an agreement for the purchase of the death benefit of a life insurance policy. The individual whose life insurance policy is being sold is called the **viator**.

When the viator dies the investor receives a specific dollar amount that will be greater than the amount paid for the contract.

Some companies sell entire policies to investors, and others sell partial interests in policies. If you purchase a partial interest, the remaining interests in the policy will be sold to other investors.

INVESTING IN A VIATICAL SETTLEMENT CONTRACT IS RISKY. BE AWARE THAT THIS TYPE OF INVESTMENT MAY INVOLVE RISKS IN ADDITION TO THOSE EXPLAINED BELOW.

RISKS

1. **The rate of return on your investment cannot be calculated before the viator dies.** The longer the viator lives, the lower the rate of return on your investment will be.
2. **No one can accurately predict the actual life expectancy of a viator.** Some factors that may affect the accuracy of a prediction are:
 - The experience and qualifications of the medical personnel making the life expectancy prediction.
 - The nature of the viator's illness.
 - Future breakthrough treatments and cures.
 - If the viator has AIDS, the definition of AIDS used by the viatical company.
3. **You may have to pay money in addition to your initial investment.**

The insurance company will cancel the policy in which you have invested if periodic premium payments are not made to keep the policy in force. The insurance company **will not pay the death benefit** if the policy is not in force.

Some of the money you invest probably will be set aside to pay premiums. However, if the viator lives longer than expected, you may be required to pay **additional** premiums to keep the policy in force.

4. **Being a beneficiary of a policy and not also an owner carries special risks.**

A person who buys life insurance is the owner of the policy and decides who the beneficiaries of the policy will be – that is, who will receive the death benefit when the owner dies. When the policy is sold as a viatical settlement contract, investors become the new beneficiaries and therefore are entitled to receive the death benefit when the owner (usually the viator) dies.

The new **owner** of the policy may be either the investors themselves or the viatical company. Only an **owner** of a policy, **not a beneficiary**, has the right to make premium payments directly to the insurance company so that the policy will remain in force.

If the funds that have been set aside to pay premiums run out, you will be dependent on the viatical company to collect additional premium money from investors and to pay premiums promptly. If that company goes out of business or otherwise fails to collect premiums from investors, you may not be able to pay the premiums yourself if you are only a beneficiary.

5. **Term insurance policies carry special risks.**

A term policy is issued for a specific time period. The insurance company will not pay the death benefit if the viator outlives that time period. If you purchase a term policy, you will be dependent on the viatical company to renew the policy when the term expires.

6. **Contestable policies carry special risks.**

The insurance company may "**contest**" a policy for a two-year period after its issuance if the company finds a reason to cancel the policy.

The insurance company **will not pay the death benefit if:**

- the viator dies within the contestability period, and
- the insurance company has a reason to cancel the policy.

One example of a reason that an insurance company might cancel a policy is that the viator did not truthfully answer a question on the policy application.

The policy may also be cancelled if the viator commits suicide within the two-year contestability period.

7. Group policies carry special risks.

A group policy insures the members of a specific group of people, usually the employees of an employer. The biggest risk for someone who invests in a group policy is that the policy can be terminated by the employer or the insurance company. Although the policy will contain a provision allowing your interest to be converted to an individual policy, there may be limits or restrictions on the right to convert.

Also, the insurance company may charge additional premiums once the policy is converted.

8. Investing IRA money in a viatical settlement contract carries special risks.

Internal Revenue Code section 408(a)(3) requires that "no part of trust [IRA] funds will be invested in life insurance contracts." This means that the Internal Revenue Service may not allow you the tax benefits of an IRA if you invest in a viatical settlement contract.

Even if such an investment is allowed, you should carefully consider your age, the life expectancy of the viator, and the difficulty in predicting life expectancy before investing IRA funds in a viatical settlement contract. Since death benefits are not paid until the viator dies, **you may encounter a problem taking annual distributions from your IRA that are mandatory beginning at age 70½.** If the funds are not available to take the mandatory distribution, you will be penalized by the IRS.

9. An investment in a viatical settlement contract is not a liquid investment.

The death benefit on a viatical settlement contract will not be paid until the viator dies, and there is no established secondary market for viatical settlement contracts. This means that you will probably not be able to sell your contract in an emergency to raise money for your immediate needs.

10. Check any promises of guarantees carefully.

The viatical company from which you purchase your viatical settlement contract may provide a performance or fidelity bond, or another similar instrument with your purchase. The purpose of these instruments is to "guarantee," or "insure," your investment. Ask exactly what is being guaranteed. Also ask the salesperson for a copy of the instrument.

If the company issuing the "guarantee" does not have the necessary financial resources to make payments under the "guarantee," you will not receive any benefit from the "guarantee."

You should do a background check on the company issuing the guarantee instrument. Contact the appropriate regulator to verify that the company exists

and is in good standing. Obtain a copy of the company's most recent financial statements.

The terms of the contract between the company issuing the "guarantee" and the viatical company may also affect how valuable, or useful, the "guarantee" is to you. Ask for a copy of this agreement.

11. **You could lose some of the death benefit you have purchased if the insurance company that issued the life insurance policy goes out of business.**

Insurance companies are rated based on their financial safety and soundness. A lower rating means that the company is more likely to go out of business.

Each State maintains an insurance guarantee fund for the benefit of policyholders of insurance companies that have gone out of business. The guarantee fund may impose a limit on the amount that can be recovered on each policy.

Also, the payment on your viatical settlement contract would be delayed if you needed to seek funds from this guarantee fund or from the receivership of the insurance company. This delay would reduce the rate of return on your investment.

12. **You should seek legal advice to help you understand the nature of this investment, the terms and conditions of any contract you are asked to sign, and the tax consequences of your decision to invest.**

Right to Rescind

Under Alaska law, you have the right to rescind—that is, **cancel**—the purchase of this investment by giving written notice of your intention to rescind. To be effective, your written notice of rescission must be postmarked no later than **15 business days** following the later of:

- a. the date on which you paid for your investment; or
- b. the date on which you received this disclosure document.

IF YOU DECIDE TO RESCIND—CANCEL YOUR PURCHASE—NOTICE MUST BE MAILED, POSTAGE PREPAID, TO:

Name
Address

What you are purchasing

You are investing \$ _____ and will receive, subject to certain possible deductions for premiums (see above), on the death of the **viator**.

The life expectancy of the **viator** in whose policy you are investing is estimated to be _____.

You are purchasing (check one):

- _____ % (percent) ownership of a life insurance policy with a \$ _____ death benefit
- the entire ownership of a life insurance policy with a \$ _____ death benefit
- _____ % (percent) of the death benefit of a life insurance policy with a \$ _____ death benefit
- the entire death benefit of a life insurance policy with a \$ _____ death benefit

The insurance policy

The life insurance policy was issued by:

Company:
Address:

Telephone Number:

The policy number is _____. It was issued on _____.

The policy is (check all that apply):

- A term policy
The term of the policy is: _____.
- A group policy
Name of the Group
Address

Contestable (See above)
The policy is contestable until (date)_____.

Ownership

After you make your purchase, you will be (check one):

an owner and beneficiary of a life insurance policy.

Other owners of the policy will be:

(attach list of names and addresses of other investors)

a beneficiary **only** of a life insurance policy.

The owner(s) of the policy will be:

(attach list of names, addresses, and telephone numbers)

Other beneficiaries of the policy will be:

(attach list of names and addresses of other investors)

Premiums

Premiums on the policy are (check one):

Paid up and no additional premium payments will ever be required.

Required to be paid periodically.

Premiums are:

\$ _____ annually

Payments of \$ _____ are due to be paid:

Monthly Quarterly Semi-annually Annually

Term of premium payments (check one)

If premium payments are made as required the policy will be fully paid up on (date) _____.

Premium payments must be made until the death of the viator.

Funding of premium payments (check all that apply)

A portion of your investment has been set aside to pay premiums. This amount will fund the payment of premiums until (date) _____.

These funds have been placed in an escrow account.

Name of Escrow Agent
Address

Telephone Number
Bank Name, address, and Account Number

You will be obligated to pay additional money to fund premium payments after (date) _____. Payments of \$ _____ will be due to be paid:

Monthly Quarterly Semi-annually Annually

Before these additional payments are due, you will be notified of when and to whom to make your premium payments.

Use of your investment funds

Of the amount you are investing:

\$ _____ will be used to purchase the policy from the viator.

\$ _____ will be set aside to pay premiums on the policy.

\$ _____ will be used to pay a commission to the seller.

\$ _____ will be used to pay administrative expenses and other transaction costs.

The Alaska Securities Division is the agency of state government responsible for the licensing of brokerage firms, investment advisers and their employees, the registration of investment products, and enforcement of the State's securities laws. Anyone with questions or concerns about viaticals or other investments may call the **Alaska Securities Division** at (907) 465-2521. We may be reached by mail at **Alaska Securities Division, P.O. Box 110807, Juneau, Alaska 99811-0807**, and E-Mail at **dbsc@dced.state.ak.us**

You can also visit our website at **www.dced.state.ak.us/bsc.htm**.

Tony Knowles, Governor

Alaska Department of Community
and Economic Development

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/bsc.htm

September 1, 1999

The Honorable Norman Rokeberg
Chair, Labor & Commerce Committee
Alaska House of Representatives
716 W. 4th Avenue, Suite 640
Anchorage, AK 99501-2133

SEP 02 1999

Dear Chairman Rokeberg:

RE: Viaticals

The purpose of this letter is to keep you informed of what the division is doing regarding regulation of viaticals in Alaska. As you know, we have testified in your committee about our long-standing position that viaticals are securities (investment contracts), and about the need to make it more clear to the industry and the public that they are covered by the Alaska Securities Act. For that reason, we support HB 190 that would put procedures into statute.

While we continue to support HB 190, we believe the public interest requires us to adopt regulations appropriate to these securities. The Department of Law concurs that AS 45.55.950(a) provides the authority for these regulations. We have enclosed a draft copy of the proposed regulations that we are sending out for public comment. As you can see, the proposed regulations are based on the procedures developed for HB 190. Without these regulations, issuers of viaticals would have to meet the registration requirements of the Alaska Securities Act (or be able to use one of the existing exemptions), that are more onerous than the procedures we feel we need for investor protection.

On another matter, you will recall that we have been discussing the registration requirements with Future First Financial Group (FFFG) of Florida for several months. They had voluntarily stopped selling securities in Alaska, and had asked for and received several extensions of timelines we had established. When the last timeline was due, we received notice that they have filed suit against the State alleging that viaticals are not securities and we lack jurisdiction. We take this to indicate that they are no longer interested in working toward a consent agreement on the issue, and we will take appropriate administrative enforcement steps. In a similar situation, a different viatical settlement provider that had sold an investment contract in Alaska without registration provided the investor with a rescission offer that the investor accepted.

"Promoting a healthy economy and strong communities"

Thank you for your continued interest in this area. If you have any questions or comments, please feel free to contact us.

Yours truly,

A handwritten signature in black ink, appearing to read "Franklin T. Elder". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Franklin T. Elder
Director

Enclosure (1)

CHAPTER SECURITIES 08

Chapter 08 is amended by adopting a new article to read:

Article 07. VIATICAL SETTLEMENTS

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.701. FINDING. The administrator finds, in the policy statement adopted concurrently with and incorporated by reference in these regulations, that investment contracts known as viatical settlements are securities and subject to the provisions of the Act and these special regulations. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.710. EXEMPTIONS FROM REGISTRATION. (a) Except as provided by (b) of this section, an offer or sale of a viatical settlement contract or a security that represents or is secured by a viatical settlement contract is exempt from the registration requirement of AS 45.55.070 if

(1) at least 10 business days before any offers or sales are made the issuer files with the administrator an application to engage in the transaction, the fee established by 3 AAC 08.920 for exemption filings, and the consent to service of process required by AS 45.55.980(g); the application required in this paragraph must contain

(A) the name, address, and telephone number of the issuer and a brief description of the general character and location of the issuer's business;

(B) a statement demonstrating eligibility for notice filing under the exemption in this subsection;

(C) a description of the security being offered or sold;

(D) a description of the kind and amount of commissions, finders' fees, or other remuneration paid directly or indirectly in connection with soliciting a prospective buyer in this state; and

(E) notwithstanding AS 45.55.150, the following must be filed with the application: a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a security, and such other information or documents as the administrator may by regulation or order establish;

(2) the offer or sale is made by, and commissions or other remuneration in connection with making the sale are made only to, persons registered or required to be registered under AS 45.55.030(a) or (c) and 45.55.040;

(3) before a sale, each prospective buyer is furnished written information that is sufficient to make an informed investment decision; this information shall be furnished to the administrator at the time of application; in this paragraph, "information that is sufficient to make an informed investment decision" includes the issuer's most recent audited income and expense statement and balance sheet, and the state-mandated viatical disclosure document, Form 08-114; and

(4) the issuer and the issuer's predecessors have been in continuous operation for at least three years and there has been no default during the current fiscal year or within the two preceding fiscal years in the payment of principal, interest, dividends, or other obligation on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.

(b) The exemption in (a) of this section is not available to an issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a director of the issuer, an officer of the issuer, a

general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered

(1) has filed within the last five years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;

(2) within the last five years has been convicted of

(A) a felony;

(B) a criminal offense involving fraud or deceit; or

(C) a criminal offense in connection with the offer, purchase, or sale of a security;

(3) is currently subject to a state or federal administrative enforcement order or judgment entered within the last five years finding fraud or deceit in connection with the purchase or sale of a security; or

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security. (Eff. / / ; Register)

Authority: AS 45.55.070 AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.720. REVOCATION OR DENIAL OF EXEMPTION. The administrator may by order deny or revoke an exemption specified in 3 AAC 08.710(a) with respect to a

specific viatical settlement security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing to be held in accordance with AS 45.55.935. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after giving notice and opportunity to be heard to all interested persons, may modify or vacate the order or extend it until final determination. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.730. RIGHT OF RESCISSION APPLICABLE TO SALES OF VIATICAL SETTLEMENT CONTRACTS. (a) In addition to any other rights provided for under this chapter or otherwise, a person who purchases a viatical settlement contract or a security that represents or is secured by a viatical settlement contract may rescind the purchase. The person may rescind the purchase by giving written notice of rescission to the entity designated for the notice in the disclosure documents by ordinary mail, postage prepaid, within 15 business days following the later of the day on which the person

(1) received the final disclosure document required under this chapter relating to the transaction; or

(2) paid the required consideration for the purchase of the viatical settlement contract or a security that is secured by a viatical settlement contract.

(b) The notice required under (a) of this section is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement relating to the transaction. The notice is effective when deposited in the United States mail. The notice is not required to be in a particular form and is sufficient if it expresses the intention of the purchaser to rescind the transaction.

(c) The issuer shall give to the purchaser at some time before the purchaser receives the final disclosure a clear notice of the right to rescind, the address to which a rescission notice is to be sent, and the time within which the notice must be sent. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.740. DEFINITIONS. As used in the article, unless the context clearly means otherwise

(1) "issuer" means a person who, in addition to the terms of AS 45.55.990(7), with respect to the creation of a fractional or pooled interest in a viatical settlement contract, is the person who for the purpose of sales, creates the fractional or pooled interest;

(A) with respect to the creation of a viatical settlement contract that is not a fractional or pooled interest in a viatical settlement, is the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent ;

(2) "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or a portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life

insurance policy or certificate; "viatical settlement contract" includes a fractional or pooled interest in a viatical settlement contract, but does not include

(A) the assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by a viator to the viatical settlement provider;

(B) the assignment, transfer, sale, devise, or bequest of a life insurance policy, for less than the expected death benefit, by the viator to a friend or family member if the friend or family member does not enter into more than one agreement described in this paragraph in a calendar year;

(C) an assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

(D) the exercise by the viator of an accelerated benefits provision under the terms of the life insurance policy.

(15) "viatical settlement provider" means a person who is an issuer, has satisfied all requirements of this state to allow the person to do business in this state, and enters into multiple viatical settlement contracts with viators each year for the purpose of selling viatical settlement contracts or pooled or fractional interests in viatical contracts to one or more investors;

(16) "viator" means the person whose life is insured by the insurance policy or certificate that is the subject of a viatical settlement contract. (Eff. / / ; Register)

Authority: AS 45.55.950

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

TONY KNOWLES, GOVERNOR

333 Willoughby Avenue, 9th Floor
P.O. BOX 110807
JUNEAU, ALASKA 99811-0807
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2530

Facsimile (907) 465-2549

ANCHORAGE

Corporation Information (907) 269-8140
TDD: (907) 465-5437

June 3, 1999

Norman Rokeberg
The Honorable Norman Rokeberg
Alaska House of Representatives
716 W. 4th Avenue, Suite 640
Anchorage, AK 99501-2133

JUN 07 1999

Dear Representative Rokeberg:

RE: HB 190

We thought you would be interested in the enclosed Associated Press article that was printed in the Juneau Empire on May 25, 1999. Although the tone of the article is alarming in many respects, it reflects much of the discussion we had in your committee hearing on HB 190. Namely, there has been substantial abuse in the industry, but also the industry supports regulation. An officer of the National Viatical Association is mentioned in the article as supporting regulation by states' insurance commissioners.

Similar testimony was given in your committee. We would urge you to schedule hearings and action on this bill early in the next session to provide the time to get through the process. It does not appear that we have a basic difference with the industry. We both agree there is need for regulation. The only issue is by whom. The association wishes this to be done by the insurance division. It appears to me that most states are not going in that direction with the exception of Florida, and even there we get mixed signals. The bottom line is, the division of insurance and we agree that this division is the proper locus for regulation of the sales to investors. We can do that inexpensively since we currently view these as investment contracts. HB 190 would provide the industry with a major benefit by creating a securities registration exemption not currently available.

We believe you were correct in separating this issue in a separate bill, and correct in seeking a relatively easy program with which the industry could comply. The next step is to get the bill moving toward passage to meet the dual goals of ease of compliance and protection of investors.

HWR
renewed

To: The Honorable Norman Rokeberg -2-

June 3, 1999

We would be happy to work with you during the interim if you believe such work would be beneficial. We would appreciate any questions or comments you might have.

Yours truly,

A handwritten signature in cursive script, appearing to read "Franklin T. Elder".

Franklin T. Elder
Director

Enclosure (1)

Scam hits insurance investors

■ Policy is supposed to help the terminally ill; instead is one of 'top 10' rip-offs

By MARCY GORDON

THE ASSOCIATED PRESS

WASHINGTON - When Jerry Warner first heard the sales pitch for investing in life insurance policies of the terminally ill, he didn't think it was a morbid arrangement. In fact, he found it quite altruistic to help out sick people with an early payoff on their policies.

Warner, who is retired and lives in Independence, Mo., has fallen victim to what state securities regulators are calling one of the hottest new investment scams.

In the legal practice of viatical investing, investors buy the policies through a broker and a portion of the money is paid to the policyholder, who often has AIDS or cancer, to help with medical bills. The investor is supposed to get paid when the person dies, but in some cases, the policyholders aren't really dying. In other cases, the policyholders don't exist.

Viatical takes its name from the Latin "viaticum" - a purse given to a traveler in preparation for a journey.

Warner and his mother lost a combined \$16,000 on their \$45,000 investment made with a viatical company based in Michigan. The

company told them the policyholders were living longer than anticipated and their insurance premiums had to be paid, an issue Warner said had never been raised. He's not convinced the ill policyholders ever really existed.

State securities regulators added viatical investment scams to their annual list of the "top 10" investment frauds, issued Monday. Also added were high-priced seminars in "day trading," in which inexperienced investors are convinced they can get rich quick by rapid-fire buying and selling of stocks.

"Today we have an ideal climate for fraud," said Peter Hildreth, president of the North American Securities Administrators Association. "Millions of new investors, many of whom expect unrealistically high returns, are looking for places to put their money. At the same time, we're living through an Internet-driven technology revolution that is a boon to investors and con artists alike."

Investing in insurance policies of the terminally ill has been around for about a decade. Viatical companies arrange for the sales of the policies and take a share of the proceeds.

For example, a group of investors may pay a terminally ill person \$80,000 for the person's \$100,000 life insurance policy. When the person dies, the group

will make a \$20,000 profit, minus premiums and fees to the viatical broker.

While many brokers operate legally, the practice isn't regulated, which "creates a situation that could be ripe for fraud," said Scott Lane, assistant enforcement director of Pennsylvania's Securities Commission. Gloria Wolk, an expert cited by Lane, estimates that investors have lost more than \$400 million in viatical investments since the industry sprouted in the late 1980s.

State regulators have taken enforcement actions against several viatical companies.

One problem occurs when people who aren't really sick take out policies. In other cases, the viatical company promises big returns of 25 percent or more to investors, but doesn't have any insurance policies to back them up.

Even when someone is terminally ill, the state regulators caution, viatical investing is risky because of the uncertainty in predicting when the person will die.

Deborah Rhoades, a vice president of the National Viatical Association, said fraud is not widespread in the \$1 billion-a-year industry, but the trade group believes it should be regulated and has been working to that end with the National Association of Insurance Commissioners.

Investment fraud

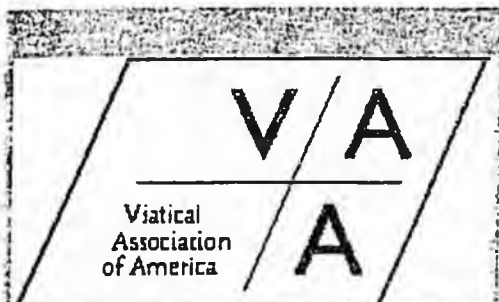
Here is a look at the ten most common investment scams, according to state securities regulators.

Not ranked in order of importance or other criteria

- 1 Investment fraud over the Internet.
- 2 Investment seminars, including the seminars promising to teach people how to become day traders of stocks, moving quickly in and out of trades to capitalize on price fluctuations.
- 3 Affinity group fraud, which targets religious, ethnic and professional groups. Perpetrated by members of the groups or people claiming to want to help them.
- 4 Abusive sales practices, such as aggressive, unsolicited telephone calls to consumers by people selling small-company stocks.
- 5 Telemarketing fraud promoting bogus investments.
- 6 So-called promissory notes, sold as insured investments with high interest rates.
- 7 Viatical investment scams, which take advantage of investors who thought they could earn money by helping the terminally ill get an early payoff on their life insurance.
- 8 Entertainment fraud, offering bogus investments in movies, cable TV shows, video games and other products.
- 9 Ponzi or pyramid schemes, classic frauds in which promoters promise high rates of return on investments.
- 10 Bogus business franchise offerings.

Source: North American Securities Administrators Association

A1



Viatical Association of America

Supporting the Viatical Settlement Industry and the People it Serves

Attention Investors: *If you are thinking of purchasing a viatical settlement as an investor, please read the newly posted document on disclosure of risks the VAA believes you should know before making such a purchase.*

Viatical Industry News

[Draft Viatical Settlements Model Act \(pdf format\)](#)

[Viatical Association members take "high road" stand to protect consumers, investors and insurers](#)

[About the Viatical Industry](#)

[SPECIAL BULLETIN: Many Viatical Settlements Exempt From Federal Tax](#)

[About the Viatical Association of America](#)

[Member Companies](#)

[Glossary of Terms](#)

[Questions and Answers](#)

[Why Viaticate?](#)

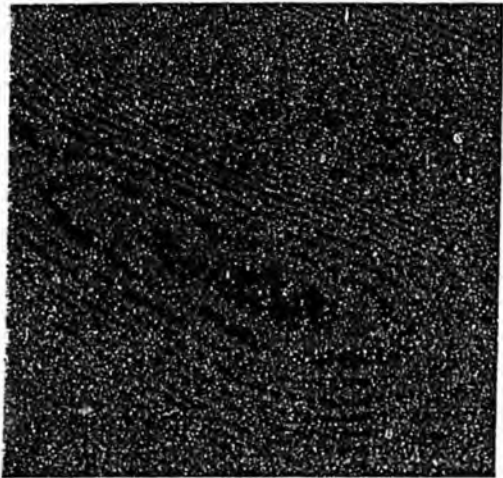
[Code of Ethics and Standards of Business Practice](#)

The Viatical Association of America is a tax exempt trade association composed of viatical settlement brokers and funding companies. A *viatical settlement* is a financial service for the terminally ill which enables qualified individuals to obtain immediate cash from all or part of their life insurance policies.

People living with a terminal illness are often faced with difficult financial choices. Viatical settlement companies purchase life insurance policies owned by and/or insuring individuals diagnosed with a terminal illness. A viatical settlement addresses the critical financial priorities of the terminally ill by providing an opportunity to *convert their existing life insurance into cash*, enabling them to receive a significant portion of their life insurance benefit at a time when they most need or want additional financial resources. This payment is made to the owner-insured in exchange for the benefit that would otherwise be paid to the beneficiary of the life insurance policy.

A viatical settlement *may not be for everyone*, but for many individuals coping with a terminal illness, a viatical settlement makes sense. The Viatical Association of America has developed this Website to help you learn more about the industry, our association, and the services our members provide. We encourage you to consult with one or more of our member companies for additional information.

The best source of information about viatical settlements is one of our member companies. Each will be pleased to provide you with a clear and concise explanation of this important financial option so that you and your loved ones can make the most informed decision. Our member companies will also advise you of other options you may have such as getting advance funds directly from your insurance company. You may find answers to some of the most commonly asked questions here.

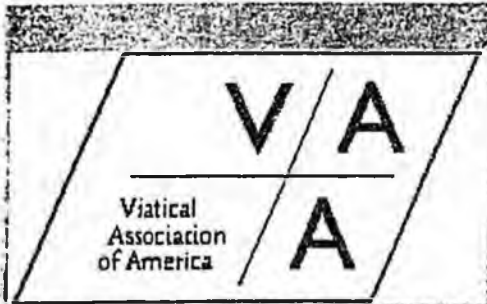


0023476 visitors since July 25, 1996.

Managed and approved by Mr. William Kelley, Executive Director. Written correspondence should be addressed to 1200 Nineteenth Street, N.W., Washington, DC, 20036-2412. You may reach us by telephone at (202) 429-5129; fax (202) 429-5113



*Produced by Sartori Associates and Athene, Inc.
Last updated August 31, 1999.*



Protecting the integrity of the Viatical Settlement Industry

Why should I do business with a VAA member company?

The Viatical Association of America *Supporting the Viatical Settlement Industry and the People it Serves* **About the Viatical Association**

The Viatical Association of America is headquartered in Washington, D.C. and is the national resource center for information about viatical settlements and related issues.

The VAA is a nonprofit national trade association established in 1994. Its creation responded to the growing need for a standard of excellence in a rapidly growing industry. The VAA is comprised of the most established firms within the industry. We are dedicated to maintaining high ethical standards, including absolute respect of viator privacy and confidentiality. We promote the highest level of professionalism by our members and full compliance with state laws.

Go with the leaders- Members of the Viatical Association of America represent the mainstream of the viatical settlement industry, companies that have pledged to comply with all state, local and federal laws as well as a stringent Code of Ethics. They have pledged to be honest and fair in all their business dealings- particularly with the persons from whom they are buying policies.

Do you live in a state that requires viatical settlement companies to be registered or licensed? A growing number of states (see Commonly Asked Questions) have passed laws and written regulations that require viatical settlement companies to be licensed. VAA member companies have pledged to not do business in a state that requires a license if the company does not have that state's license.

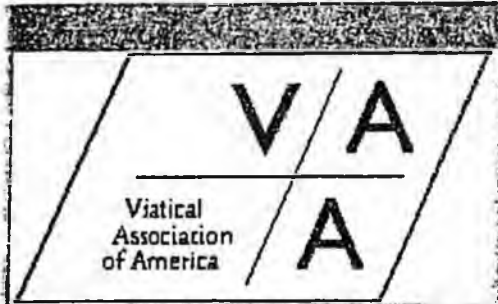
But what if my state does not require licensing? All the more reason to use a VAA member company. The National Association of Insurance Commissioners (NAIC)- based in Kansas City and composed of the insurance commissioners of each of the fifty states- has written a Viatical Settlements Model Act and Regulation - kind of like a road map for each of the fifty states to follow. The VAA has

endorsed the Model Act because it contains several reasonable and important provisions that serve to protect the viator. We are working with the NAIC in an on-going process to respond to the changing economics of the industry and to add provisions which will expand the availability of viatical settlements and expedite their processing. We stand ready to assist the various state commissioners as they address this issue. VAA member companies have pledged to comply with the disclosure requirements of the NAIC Model even in those states that do not have laws in place.

The VAA has lobbied for you- The VAA has been a staunch ally of people living with terminal illnesses in the lobbying effort that resulted in making many viatical settlements exempt from federal income tax. The Health Insurance Portability and P Act ("HIPPA") contains a provision that makes viatical settlements exempt from federal income tax for people whose life expectancy is certified by a doctor to be 24 months or less. (See Special Bulletin)

The VAA is the largest trade association in the industry and its members are committed to offering fair prices and world class service to viators. The VAA holds two industry meetings each year to address issues and resolve problems. You can deal with a VAA member company in confidence.

Managed and approved by Mr. William Kelley, Executive Director. Written correspondence should be addressed to 1200 Nineteenth Street, N.W., Washington, DC, 20036-2412. You may reach us by telephone at (202) 429-5129; fax (202) 429-5113. This page last updated March 22, 1999.



Viatical Association of America
Supporting the Viatical Settlement Industry and the People it Serves

Code of Ethics and Standards of Business Practice

Adopted as the Interim Code by Vote of the Board of Directors

Subject to Ratification by the Membership
 Rev 7/22/96

1. VAA members shall provide full disclosure to viators.

A. VAA members shall, in their dealings with viators, make full disclosure of all material facts which bear upon the viator's determination to viaticate a life insurance policy.

VAA members shall disclose all relevant information to the viator regarding his/her decision to sell a life insurance policy. For viators residing in states that have established legislation or regulations regarding viatical settlements, VAA members pledge to comply with those regulations in their entirety. For viators in states that have not implemented regulations, VAA members are encouraged to comply with the "Viatical Settlement Model Act and Regulations" adopted by the National Association of Insurance Commissioners (NAIC) including, among other provisions, disclosing to all viators alternatives to viatical settlements including accelerated benefit options (if present), increasing benefit amounts contained in their policy, possible tax consequences, rescission rights, possible effect on needs-based public benefits and bankrupt status, and escrow requirements. VAA members shall disclose to the viator the names of any parties who will be paid a fee as a result of the transaction. VAA members shall disclose to the viator the identity of all parties who will have either or both an ownership and beneficial interest in the viator's policy after settlement.

B. VAA members shall, in their communications, advise viators that the transaction will require (in confidence) full disclosure of the viator's medical condition and life insurance policy.

2. VAA members shall, in their business practices, abide by Federal and state statutes at all times.

A. VAA members will comply with the provisions of all state and federal statutes operative in the jurisdictions in which the VAA member transacts business.

VAA members shall specifically adhere to state statutes requiring the licensure of viatical settlement brokers or funding companies, prohibiting deceptive or unfair trade practices (consumer protection laws), and state and federal securities laws.

B. In states where no law or regulation has been established regarding viatical settlements, VAA members are encouraged to comply with the NAIC Model Act and Regulations in the conduct of their business.

C. Accepting an application whether solicited or unsolicited from a resident in a state where a member is not approved for licensing or does not have a license pending with approval to transact business is prohibited.

3. VAA members shall not engage in anti-competitive business practices and shall not utilize false, misleading, or deceptive advertising materials or tactics.

A. VAA members shall not engage in direct solicitation of potential viators unless contacted by the viator or his/her advisor first.

B. VAA members will not aid or abet potential conflicts of interest.

Under no circumstances shall a VAA member solicit or permit the participation in a viatical settlement by any person in a position to influence the medical or pharmacological treatment of the viator.

C. VAA members shall in all circumstances provide offers to viators only when funds equal to the proposed purchase price are immediately on hand, and shall not unreasonably delay funding.

D. VAA members shall, prior to the close of the transaction, advise the viator about the method that shall be used for monitoring his/her health after purchase of his/her policy.

E. VAA members shall not deny viatical settlements to any person for reasons of race, color, ethnicity, origin, sexual orientation, or religious preference.

4. VAA members pledge...

VAA members pledge that all information provided by or about the viator shall be considered confidential and maintained in that manner. All persons and/or entities that are required to review such information shall agree in writing to respect and maintain said confidentiality.

WARRANTY AND REPRESENTATION BY A PROSPECTIVE MEMBER OR A MEMBER COMPANY

Membership to The Viatical Association of America is subject to strict adherence to this Code.

Subject to due process which will include notification, an opportunity to review and refute charges and a hearing, membership in the VAA may be suspended, denied or rescinded should a member violate any portion of this Code of Ethics and Standards of Business Practice.

Managed and approved by Mr. William Kelley, Executive Director. Written correspondence should be addressed to 1200 Nineteenth Street, N.W., Washington, DC, 20036-2412. You may reach us by telephone at (202) 429-5129; fax (202) 429-5113. This page last updated March 10, 1999.

August 25, 1999

Senator Norman Rokberg
Labor & Commerce Committee
State Capitol Room 101
Juneau, AK 99811

SEP 02 1999

Dear Senator Rokberg:

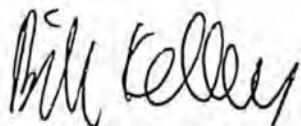
The Viatical Association of America (VAA) is committed to an ongoing effort to facilitate the exchange of information on viatical settlements and life settlements. This includes topics such as purchaser/investor issues. In keeping with this and with our commitment to cooperate with NCOIL and other industry organizations and government agencies, we have drafted a comprehensive model act which addresses all of the issues noted above. This document is attached, but also is available from the Association's web site or through Mr. Christopher Dyer at VAA headquarters, 202-429-5129 or Christopher_Dyer@dc.sba.com.

Whether or not the comprehensive model act document is of interest to you, we invite you to visit our web site at www.viatical.org to obtain other documents that further understanding of our industry, along with member information, news releases and pertinent contact information. Of particular interest are sections relating to mandatory member disclosures and key resolutions, most of which are intended as consumer protections.

We welcome any comments you may have on the model act document, on the web site or on specific items found on the site. Input from you is especially important in terms of helping us understand what information is most needed and most helpful to consumers.

Please don't hesitate to call on either of us, or on any VAA member. In particular, you may at some time have a need to speak with the head of our Government Affairs Committee, Ms. Stacy Braverman of Viaticus, Inc., 312-876-5710 or stacy.braverman@viaticus.com. We are all committed to an ongoing, productive dialogue dedicated to sound business practices and informed consumers who have solid viatical and life settlement options.

Sincerely,



William E. Kelley
Executive Director
Bill_Kelley@dc.sba.com



Doug Head
President, VAA
Democrat@sundial.net
(407) 898-4203

VIATICAL SETTLEMENTS MODEL ACT

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Section 1. Short Title

This Act may be cited as the Viatical Settlements Act.

Section 2. Definitions

- A. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, reinsurer or any person that may be a party to a viatical settlement contract and that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with a licensed viatical settlement provider to act as a participant in a financing transaction.
- B. "Financing transaction" means a transaction in which a licensed viatical settlement provider or a financing entity obtains financing for viatical settlement contracts, viaticated policies or interests therein including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any

direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and state securities law.

- C. "Person" means a legal entity, including but not limited to, an individual, partnership, limited liability company, association, trust, corporation or other legal entity.
- D. (1) "Viatical settlement representative" means a person who is an authorized agent of a licensed viatical settlement provider or viatical settlement broker, as applicable, who acts or aids in any manner in the solicitation of a viatical settlement. Viatical settlement representative shall not include:
- (a) An attorney, an accountant, a financial planner or any person exercising a power of attorney granted by a viator; or
 - (b) Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator regardless of whether the viatical settlement is consummated.
- (2) A viatical settlement representative is deemed to represent only the viatical settlement provider or viatical settlement broker.
- E. "Viatical settlement broker" means a person who ~~that~~ on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlements contracts between a viator and one or more viatical settlement providers. Notwithstanding ~~Irrespective of~~ the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, accountant or financial planner, who is retained to represent the viator and whose compensation is paid directly by or at the direction and on behalf of the viator.
- F. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other

than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

- G. "Viatical settlement provider" means a person, other than a viator, who effectuates that enters into a viatical settlement contract. Viatical settlement provider also means a person that obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated policies or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests therein. Viatical settlement provider does not include:
- (1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that 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 Section [refer to law or regulation implementing the Accelerated Benefits Model Regulation or similar provision] and pursuant to the contract; ~~or~~
 - (3) A natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; and
 - (4) Financing Entity.
- H. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a catastrophic, or life-threatening ~~or chronic~~ illness or condition who enters or seeks to enter into a viatical settlement contract. This term does not include a viatical settlement purchaser or viatical settlement provider or any person acquiring the policy or interest in a policy from a viatical settlement provider, nor does it include an independent third party trustee or escrow agent.
- I. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.
- J. "Viatical Settlement Purchaser" - means a person, other than a licensee under this part, an accredited investor as defined in Rule 501, Regulation D of the Securities Act Rules, a financing entity, or a qualified institutional buyer, or a special purpose entity which is created solely to act as a financing source for the viatical settlement provider, who gives a sum of money as consideration for a life insurance policy or

an interest in the death benefits of a life insurance policy which has been or will be the subject of a viatical settlement contract. for the purpose of deriving an economic benefit.

- K. "Viatical Settlement Purchase Agreement" - means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit.
- L. "Viatical Settlement Sales Agent" - means a person or entity other than a licensed viatical settlement provider who arranges the purchase through a viatical settlement purchase agreement of a life insurance policy or an interest in a life insurance policy.

Section 3. License Requirements

- A. A person shall not operate as a viatical settlement provider, viatical settlement representative, or viatical settlement broker without first having obtained a license from the commissioner.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- B. Application for a viatical settlement provider, viatical settlement representative or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in Section [insert appropriate section].
- C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in Section [insert appropriate section]. Failure to pay the fees by the renewal date results in expiration of the license.
- D. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this Act.
5. Viatical settlement sales agent shall obtain and maintain a licensure as a life insurance agent as set forth in [insert appropriate State Statute].

f.FE.. A license issued to a legal entity authorizes all members, officers and designated employees to act as viatical settlement providers, viatical settlement brokers, ~~or~~ viatical settlement representatives, or viatical settlement sales agents, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

F.G. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) Has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
- (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for; and
- (4) If a legal entity, provides a certificate of good standing from the state of its domicile.

G.H. The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

Section 4. License Revocation and Denial

A. The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement representative, ~~or~~ viatical settlement broker, or viatical sales agent if the commissioner finds that:

- (1) There was any material misrepresentation in the application for the license;
- (2) The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

- (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
- (4) The licensee has been found guilty of, or has pleaded guilty or *nolo contendere* to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
- (5) The viatical settlement provider has entered into any viatical settlement contract with a viator who is a resident of this State that has not been approved pursuant to this Act;
- (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
- (7) The licensee no longer meets the requirements for initial licensure; or
- (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state or a financing entity; or
- (9) The licensee has violated any provision of this Act.

B. Before the commissioner shall deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement broker, ~~or~~ viatical settlement representative, or viatical settlement sales agent, the commissioner shall conduct a hearing in accordance with [cite the state's administrative procedure act].

Section 5. Approval of Viatical Settlements Contracts, Viatical Settlement Purchase Agreements, and Disclosure Statements

A person shall not use a viatical settlement contract, viatical settlement purchase agreement, or provide to a viator a disclosure statement form in this state unless filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract, viatical settlement purchase agreement, or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator or purchaser. A viatical settlement contract, viatical settlement purchase agreement, or disclosure statement form shall be deemed approved by the commissioner if not disapproved within sixty (60) days from submission.

Section 6. Reporting Requirements and Confidentiality

- A. Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner by rule may prescribe.
- B. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement representative, viatical settlement broker, viatical settlement sales agent, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of a ~~viator's~~ insured's identity, shall not disclose that identity as a ~~viator~~ insured to any other person unless the disclosure:
- (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator has provided prior written consent to the disclosure;
 - (2) Is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the insured has provided prior written consent to the disclosure;
 - ~~(2)~~(3) Is provided in response to an investigation by the commissioner or any other governmental officer or agency; or
 - (3)(4) Is a term of or condition to the transfer of a viaticated policy by one viatical settlement provider to another viatical settlement provider.
 - (5) Is necessary to permit a financing entity to finance the purchase of policies by a viatical settlement provider or a viatical settlement purchaser.

Drafting Note: In implementing this section, states should keep in mind privacy considerations of ~~viators~~ insured. However, the language needs to be broad enough to allow licensed entities to notify commissioners of unlicensed activity and for insurers to make necessary disclosures to reinsurers and in similar situations.

Section 7. Examination

- A. The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order any licensee or applicant to produce any records, books, files or other information

reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

- B. Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- C. Records of all transactions of viatical settlement contracts and viatical settlement purchase agreements shall be maintained by the viatical settlement provider and shall be available to the commissioner for inspection during reasonable business hours. A viatical settlement provider shall maintain records of each viatical settlement contract and purchase until three (3) ~~five (5)~~ years after the death of the insured.

Section 8. Disclosure

- A. A viatical settlement provider, viatical settlement representative or viatical settlement broker shall disclose the following information to the viator no later than the time of application:
 - (1) Possible alternatives to viatical settlement contracts for individuals with catastrophic, life threatening or chronic illnesses, including, any accelerated death benefits offered under the viator's life insurance policy;
 - (2) Some or all of the proceeds of the viatical settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax advisor;
 - (3) Proceeds of the viatical settlement could be subject to the claims of creditors;
 - (4) Receipt of the proceeds of a viatical settlement may adversely effect the viator's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;
 - (5) The viator's right to rescind a viatical settlement contract fifteen (15) calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in Section 9C;

DRAFT: MAY 26, 1999
VAA Proposed changes
To NAIC Model Act

- (6) Funds will be sent to the viator within two (2) business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract; and
 - (7) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.
- B. A viatical settlement provider shall disclose the following information to the viator prior to the date the viatical settlement contract is signed by all parties:
- (1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated;
 - (2) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication; and
 - (3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.
- C. A viatical settlement provider or its viatical settlement sales agent shall disclose the following information to the viatical settlement purchaser prior to the date the viatical settlement purchase agreement is signed by all parties:
- (1) No person shall misrepresent or fail to clearly and affirmatively disclose the nature of the return or the duration of the time to obtain the return of any investment related to one or more viatical settlements sold by a viatical settlement provider.

- (2) The viatical settlement provider and the viatical settlement sales agent, itself or through another person, shall provide in writing the following disclosures to any viatical settlement purchaser or purchaser prospect:
- (a) That the return represented as being available under the viatical settlement purchase agreement is directly tied to the projected life span or date of death of one or more viators;
 - (b) If a return is represented, the disclosure shall indicate the projected life span of the insured or insureds whose life or lives are tied to the return.
 - (c) If required by the terms of the viatical settlement purchase agreement, that the viatical settlement purchaser may be responsible for the payment of insurance premiums on the life of the insured or late or surrender fees, or other costs related to the life insurance policy on the life of the insured or insureds which may reduce the return.
 - (d) The amount of any trust fees or other expenses, if any, to be charged to the viatical settlement purchaser.
 - (e) The name and address of the person responsible for tracking the viator.
 - (f) The group policies may contain limitations or caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, and that the party responsible for the payment of such additional premiums shall be identified.
 - (g) That the life expectancy and rate of return are only estimates and cannot be guaranteed. The person who determines the life expectancy of the viator, e.g., with in-house staff, independent physicians, specialty firms that weigh medical and actual data, etc.
 - (h) The purchase of the viatical settlement should not be considered a liquid purchase, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the insured.
 - (i) The name and address of the person with the responsibility for paying the premium until the death of the insured.

The written disclosures required under this subsection shall be conspicuously displayed in any viatical settlement contract or purchase agreement furnished to the viatical settlement purchaser by such viatical settlement provider.

Section 9. General Rules

- A. A viatical settlement provider entering into a viatical settlement contract shall first obtain:
- (1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;
 - (2) A witnessed document in which the viator consents to the viatical settlement contract, acknowledges that the insured has a catastrophic, life threatening or chronic illness or condition, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily; and
 - (3) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider or viatical settlement broker.
- B. All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- C. All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen (15) calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds, conditioned on the return of such proceeds.
- D. Immediately upon the viatical settlement provider's receipt of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or escrow agent shall

transfer the proceeds to the viator immediately upon the viatical settlement provider's receipt of acknowledgment of the transfer of the insurance policy.

- E. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to Section 8A(6) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.
- F. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider, viatical settlement broker or viatical settlement representative after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or their authorized representative and shall be limited to once every three (3) months for insureds with a life expectancy of more than one year, and to no more than one per month for insureds 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. The limitations set forth in this subsection shall not apply to any contacts with an insured under a viaticated policy for reasons other than determining the insured's health status.

Section 10. Authority to Promulgate Regulations.

The commissioner shall have the authority to:

- A. Promulgate regulations implementing this Act;
- B. Establish standards for evaluating reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;
- C. Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers, representatives, ~~and~~ brokers and sales agents;

Drafting Note: Fees need not be mentioned if the fee is set by statute.

- D. Require a bond or other mechanism for financial accountability for viatical settlement providers; and

- E. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, brokers, ~~and representatives~~ and sales agents during the viatication of a life insurance policy or certificate

Section 11. Unfair Trade Practices

A violation of this Act shall be considered an unfair trade practice under Sections [insert reference to state's Unfair Trade Practices Act] subject to the penalties contained in that Act.

Section 12. Effective Date

This Act shall take effect on [insert date]. A viatical settlement provider, viatical settlement representative, ~~or viatical settlement broker,~~ or viatical settlement sales agent transacting business in this state may continue to do so pending approval or disapproval of the provider, representative or broker's application for a license as long as the application is filed with the commissioner by [insert date].

PART B.
LIFE SETTLEMENTS MODEL ACT

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Section 1. Short Title

This act may be referred to as the "Life Settlement Act."

Section 2. Definitions

A. "Owner" means the individual or entity who is the original owner or subsequent assignee or transferee, who has had a bona fide insurable interest in a life insurance policy-insuring the life of an individual who does not have a catastrophic- or life threatening illness or condition who has the right to assign, transfer, sell, devise, or bequest the benefits of the life insurance policy, and enters or seeks to enter into a life settlement contract. The term does not include a life settlement purchaser or a life settlement provider or any person acquiring the policy or interest in a policy from a life settlement provider, nor does it include an independent third party trustee or escrow agent.

B. "Life settlement broker" means a person who, on behalf of a owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlements between a owner and one or more life settlement providers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is considered to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner. The term does not include an attorney, an accountant or financial planner retained to represent the owner whose compensation is paid directly by or at the direction of the owner.

C. "Life settlement contract" means a written agreement entered into between a life settlement provider and a owner. The agreement shall establish the terms under which the life 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 owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the life settlement provider. A life settlement contract also includes a contract for a loan or other financial transactions secured primarily by an individual or a group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

D. "Life settlement provider" means a person, other than a owner, who effectuates a life settlement contract. Life settlement provider also means a person that obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more life settlement contracts, life policies or interests therein, or otherwise sales, assigns, transfers, pledges hypothecates or otherwise disposes of one or more life settlement contracts, life policies or interests therein. Life settlement provider does not include:

- (1) Any bank, savings bank, savings and loan associations, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- (2) A life and health insurer that has lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificate holders;

(3) Any natural person who enters into no more than one life settlement contract with a owner in one calendar year, unless such natural person has previously been licensed under this act or is currently licensed under this act; or

(4) Financing Entity.

E. "Life settlement purchaser" means a person, other than a licensee under this part, an accredited investor as defined in Rule 501, Regulation D of the Securities Act Rules, or a qualified institutional buyer, financing entity or a special purpose entity which is created solely to act as a financing source for the life settlement provider who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy which has been or will be the subject of a life settlement contract for the purpose of deriving an economic benefit.

F. "Life settlement purchase agreement" - means a contract or agreement, entered into by a life settlement purchaser to which the owner is not a party, to purchase a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit.

G. "Life settlement sales agent" - means a person or entity, other than a licensed Life Settlement Provider, that arranges the purchase through a life settlement purchase agreement of a life insurance policy or an interest in a life insurance policy as between a life settlement provider and a life settlement purchaser.

H. "Life policy" - means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

1. (1) "Life settlement representative" means a person who is an authorized agent of a licensed life settlement provider or life settlement broker, as applicable, who acts or aids in any manner in the solicitation of a life settlement. Life settlement representative shall not include:

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

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

- J. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, reinsurer or any person that may be a party to a life settlement contract and that has a direct ownership in a policy or certificate that is the subject of a life settlement contract but whose sole activity related to the transaction is providing funds to effect the life settlement and who has an agreement in writing with a licensed life settlement provider to act as a participant in a financing transaction.
11. "Financing transaction" means a transaction in which a licensed life settlement provider or a financing entity obtains financing for life settlement contracts, or interests therein including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and state securities law.
12. "Person" means a legal entity, including but not limited to, an individual, partnership, limited liability company, association, trust, corporation or other legal entity.

Section 3. Life Settlement Provider License Required; Broker License Required; and Sales Agent License Required.

The requirements for obtaining and maintaining a life settlement provider license, broker license, or sales agent license shall be the same as those set forth in Section 3. License Requirements and Section 4. License Revocation and Denial of the Viatical Settlement Model Act. This Section, however, shall not be construed as requiring a person or entity which currently maintains a viatical settlement provider license, broker license, and/or sales agent license in accordance with Sections 3 and 4 of the Viatical Settlement Model Act to reapply.

Section 4. Notice of Change of Address or Name; Life Settlement Provider Licensees, Life Settlement Broker Licensees, and Life Settlement Sales Agent Licensees.

The requirements for this section shall be the same as those applied to viatical settlements set forth in Section 3. License Requirements of the Viatical Settlement Act.

Section 5. Filing of Form; Required Procedure; Approval.

The requirements for this section shall be the same as those applied to viatical settlements in Section 5. Approval of Viatical Settlement Contracts. Viatical Settlement Purchase Agreements. and Disclosure Statements of the Viatical Settlement Model Act.

Section 6. Reporting Requirements and Confidentiality.

The requirements for this section shall be the same as those for viatical settlements as set forth in Section 6. Reporting Requirements and Confidentiality.

Section 7. Examination

The requirements for this section shall be the same as those for viatical settlements as set forth in Section 7. Examination of the Viatical Settlement Model Act.

Section 8. Life Settlement Contracts; Required Disclosures.

A. A life settlement provider, life settlement representative or the life settlement broker in transactions in which no broker is used, shall disclose the following information to the owner no later than the time of application:

1. Possible alternatives to life settlement contracts for persons who do not have a catastrophic or life threatening illness, including, but not limited to, accelerated benefits offered by the issuer of a life insurance policy;

2. Some or all of the proceeds of the life settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax advisor;

3. Proceeds of the life settlement could be subject to the claims of creditors;

4. Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and that advise should be obtained from the appropriate agencies;

5. The owner's right to rescind a viatical settlement contract fifteen (15) calendar days after the receipt of the life settlement proceeds by the owner, as provided in Section 9B;

(6) Funds will be sent to the owner within two (2) business days after the life settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the life settlement contract:

(7) Entering into a life settlement contract may cause other rights or benefits including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner and that assistance should be sought from a financial adviser; and

(8) The name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

B. A life settlement provider shall disclose the following information to the owner prior to the date the life settlement contract is signed by all parties:

- (1) The affiliation, if any, between the life settlement provider and the issuer of an insurance policy to be effectuated;
- (2) If an insurance policy to be effectuated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be effectuated, the owner shall be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed policy for sale; and
- (3) The dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the life settlement provider's interest in those benefits.

C. A life settlement provider or its life settlement sales agent shall disclose the following information to the life settlement purchaser or purchaser prospect prior to the date the life settlement purchase agreement is signed by all parties:

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- (1) No person shall misrepresent or fail to clearly and affirmatively disclose the nature of the return or the duration of time to obtain the return of any investment related to one or more life settlements sold by a life settlement provider.
- (2) The life settlement provider and the life settlement sales agent, itself or through another person, shall provide in writing the following disclosures to any life settlement purchaser or purchaser prospect:
- (a) That the return represented as being available under the life settlement purchase agreement is directly tied to the life span or date of death of one or more owners;
 - (b) If a return is represented, the disclosure shall indicate the projected life span of insured or insureds whose life or lives are tied to the return.
 - (c) If required by the terms of the life settlement purchase agreement, that the life settlement purchaser may be responsible for the payment of insurance premiums on the life of the insured or late or surrender fees or other costs related to the life insurance policy on the life of the insured or insureds which may reduce the return.
 - (d) The amount of any trust, fees or other expenses, if any, to be charged to the life settlement purchaser.
 - (e) The name and address of the person responsible for tracking the insured.
 - (f) The group policies may contain limitations on caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, and that the party responsible for the payment of such additional premiums shall be identified.
 - (g) That the life expectancy and rate of return are only estimates and cannot be guaranteed.
 - (h) The purchase of a life settlement should not be considered a liquid purchase, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the insured.

(I) The name and address of the person with the responsibility for paying the premium until the death of the insured.

The written disclosure required under this subsection shall be conspicuously displayed in any life settlement contract or purchase agreement furnished to the owner or life settlement purchaser by such life settlement provider.

Section 9. Life Settlement Contract; Procedure; Rescission.

A. A life settlement provider entering into a life settlement contract with any owner must first obtain a witnessed document in which the owner consents to the life settlement contract, acknowledges that no catastrophic or life-threatening illness, exists, represents that he or she has a full and complete understanding of the life settlement contract and the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the life settlement contract freely and voluntarily.

B. All life settlement contracts subject to this act must contain an unconditional rescission provision which allows the owner to rescind the contract within 15 days after the owner receives the life settlement proceeds, conditioned on the return of such proceeds.

C. A life settlement transaction may be completed only through the use of an independent third-party trustee or escrow agent. Immediately upon receipt by the independent third-party trustee or escrow agent of documents from the owner to effect the transfer of the insurance policy, the life settlement provider must pay the proceeds of the settlement to an escrow or trust account managed by the independent third-party trustee or escrow agent in a financial institution licensed under [insert state] law or a federally chartered financial institution that is a member of the Federal Reserve System, pending acknowledgment of the transfer by the issuer of the policy. An advance or partial payment of the proceeds due under a life settlement contract may not be used to effect transfer of the subject policy; any such advance or partial payment is made at the sole discretion and risk of the life settlement provider.

D. Upon receipt of all life settlement contract proceeds, the independent third-party trustee or escrow agent must release to the life settlement provider all documents necessary to complete the transfer of the insurance policy or certificate of insurance so that the transfer, assignment, sale, bequest, or devise may be effected.

E. The independent third-party trustee or escrow agent must transfer all proceeds of the life settlement contract within 3 business days after receiving from the issuer of the subject policy acknowledgment of the transfer, assignment, bequest, sale, or devise. Failure to transfer proceeds

as required by this subsection renders the life settlement contract and the transfer, assignment, bequest, sale, or devise voidable.

Section 10. Rules

The requirements of this section shall be the same as those for viatical settlements as set forth in Section 10. Authority to Promulgate Regulations of the Viatical Settlement Model Act.

Section 11. Unfair Trade Practices; Cease and Desist; Injunction; Civil Remedy.

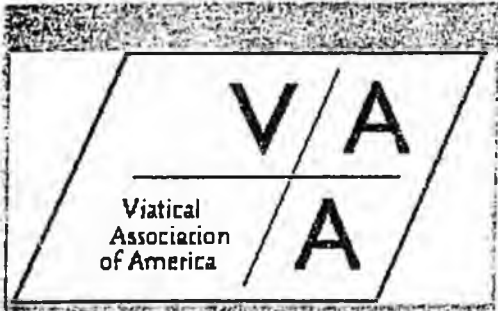
The requirements for this section shall be the same as those for viatical settlements as set forth in Section 11. Unfair Trade Practices of the Viatical Settlement Model Act.

Section 12. Effective Date.

The requirements for this section shall be the same as those for viatical settlements as set forth in Section 12. Effective Date.

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Viatical Association of America
Supporting the Viatical Settlement Industry and the People it Serves

Texas is first state to regulate 'life settlements'

**SPECIAL RELEASE
 FOR IMMEDIATE RELEASE**

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Washington, D.C., June 1999 -- Although the viatical settlement industry is just over 10 years old, a more recent outgrowth of the industry is taking hold more rapidly, as evidenced by recently passed legislation in Texas.

On June 19 Governor George W. Bush signed into law legislation that makes Texas the first state to require licensing and regulations for companies providing "life settlements." These regulations, which take effect September 1, are expected to spur other states to enact similar legislation.

A viatical settlement allows someone with a chronic or life-threatening illness to sell their insurance for a portion of its face value while they are still living. Such arrangements came into the mainstream at the end of the last decade largely due to the AIDS pandemic.

Life settlements – sometimes called senior settlements – offer a similar option for people over 70 who may or may not face diminished health. Life settlements also have been used as a financial-planning tool by high-net-worth individuals to divert potential estate proceeds or to divest themselves of unneeded or unwanted life insurance coverage.

"The active regulating stance that Texas has taken is welcomed and embraced by the Viatical Association of America," says William E. Kelley, executive director of the industry organization, adding that, "this Texas legislation provides consumer protection by registering persons or entities engaged in the business of life settlements, placing them under government regulation."

"Our members have been advocates for such

regulation," says Doug Head, who leads government relations efforts for a VAA member company and serves as president of the Association. "This legislation offers protection for the consumer and the companies who are in the industry, and discourages companies with less than stellar intentions."

His comments are especially timely in light of recent press reports that have focused on companies charged with fraud or "get-rich" schemes, many of which aren't even engaged in the viatical industry.

Head and his colleagues say the number of fair and forthright transactions that result in satisfied consumers and investors far outweigh the negative reports, but are rarely given mention. However, they are optimistic that this Texas legislation will have the intended positive affect: Assuring legitimate transactions.

Kelley says VAA members expressed hopes other states will follow Texas' lead, adopting regulatory requirements for both viatical and life settlement companies. "It's the best way to provide a safe marketplace for both consumers and our industry."

Although the evolution of the viatical industry began in the last decade, 28 states now regulate viatical settlement companies in some way. A number of other states are exploring various forms of viatical or life settlement regulation. Life or senior settlements entered the market more than a year ago, and Texas is the first state to require licensing procedures and regulations for companies dealing in life settlements.

The Viatical Association of America is a Washington, D.C.-based non-profit trade association founded in 1994 to serve as a national resource center, providing information about viatical and life settlements. For more information about the VAA and a list of member companies, please visit the Association's Web site at: www.viatical.org.

Managed and approved by Mr. William Kelley, Executive Director. Written correspondence should be addressed to 1200 Nineteenth Street, N.W., Washington, DC, 20036-2412. You may reach us by telephone at (202) 429-5129; fax (202) 429-5113. This page last updated March 10, 1999.