

# **ASSEMBLY, No. 2712**

## **STATE OF NEW JERSEY**

### **208th LEGISLATURE**

INTRODUCED DECEMBER 10, 1998

**Sponsored by:**

**Assemblywoman CAROL J. MURPHY**

**District 26 (Essex, Morris and Passaic)**

**SYNOPSIS**

Regulates viatical agreements and the business of providing life insurance viatical settlements.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning life insurance viatical settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

5

6 1. As used in this act:

7 "Commissioner" means the Commissioner of Banking and  
8 Insurance.

9 "Viatical settlement" or "settlement" means an agreement entered  
10 into between a viatical settlement company and a viator. The  
11 agreement shall establish the terms under which the viatical  
12 settlement company will pay compensation or anything of value,  
13 which compensation or value is less than the expected death benefit  
14 of the insurance policy, in return for the viator's assignment, transfer,  
15 sale, devise or bequest of the death benefit or ownership of the  
16 insurance policy to the viatical settlement company.

17 "Viatical settlement broker" or "broker" means an individual,  
18 partnership, corporation or other entity who or which for another and  
19 for a fee, commission, or other valuable consideration, offers or  
20 advertises the availability of viatical settlements, introduces viators  
21 to viatical settlement companies, or offers or attempts to  
22 negotiate viatical settlements between a viator and one or more  
23 viatical settlement companies. "Viatical settlement broker" does not  
24 include an attorney, accountant or a person acting under a power of  
25 attorney from the viator, retained to represent the viator whose  
26 compensation is paid solely by the viator and without regard to  
27 whether a viatical settlement is effected.

28 "Viatical settlement company" or "company" means an individual,  
29 partnership, corporation or other entity that enters into an agreement  
30 with a person owning a life insurance policy insuring the life of  
31 a person who has a catastrophic or life threatening illness or  
32 condition, under the terms of which the viatical settlement company  
33 pays compensation or anything of value, which compensation or value  
34 is less than the expected death benefit of the insurance policy, in  
35 return for the policyowner's assignment, transfer, sale, devise or  
36 bequest of the death benefit or ownership of the insurance policy  
37 to the viatical settlement company. "Viatical settlement company"  
38 does not include:

39 (1) any bank, savings bank, savings and loan association, credit  
40 union or other licensed lending institution which takes an assignment  
41 of a life insurance policy as collateral for a loan; or

42 (2) the issuer of a life insurance policy which makes a policy loan,  
43 permits surrender of the policy or pays other policy benefits, including  
44 accelerated benefits pursuant to N.J.A.C.11:4-30.1 et seq., in  
45 accordance with the terms of the policy; or

46 (3) a friend or family member of the policyowner or of the insured

1 who enters into three or fewer agreements for the transfer of life  
2 insurance policies for any value less than the expected death benefit.

3 "Viator" means the owner of a life insurance policy insuring the  
4 life of a person who has a catastrophic or life threatening illness or  
5 condition, who enters into an agreement under which the viatical  
6 settlement company will pay compensation or anything of value,  
7 which compensation or value is less than the expected death benefit  
8 of the insurance policy, in return for the viator's assignment, transfer,  
9 sale, devise or bequest of the death benefit or ownership of the  
10 insurance policy to the viatical settlement company. "Viator" may  
11 also include a person insured under a group life insurance policy who  
12 is not prohibited from assigning his or her rights or benefits and  
13 who assigns those rights or benefits by a viatical settlement.

14

15 2. a. No individual, partnership, corporation or other entity may  
16 act as a viatical settlement company or broker or enter into or  
17 solicit a viatical settlement without first having obtained a license from  
18 the commissioner, in accordance with procedures established by  
19 regulation.

20 b. Application for a viatical settlement company or broker license  
21 shall be made to the commissioner by the applicant on a form  
22 prescribed by the commissioner, and the application shall be  
23 accompanied by a fee, the amount of which shall be set by the  
24 commissioner by regulation.

25 c. Licenses may be renewed from year to year upon payment of  
26 of the annual renewal fee in an amount set by the commissioner by  
27 regulation. Failure to pay the fee within the terms prescribed shall  
28 result in the automatic revocation of the license.

29 d. The applicant shall provide the information the commissioner  
30 requires on forms prescribed by the commissioner. The  
31 commissioner may, at any time, require the applicant to disclose  
32 fully the identity of all stockholders, partners, officers, employees,  
33 agents and brokers, except the applicant shall not have to disclose the  
34 identity of stockholders owning fewer than five percent of the shares  
35 of a viatical settlement company whose shares are publicly traded.  
36 The commissioner may, in the exercise of discretion, refuse to issue a  
37 license in the name of any firm, partnership or corporation if not  
38 satisfied that any officer, employee, stockholder, partner, agent or  
39 broker thereof who may materially influence the applicant's conduct  
40 meets the standards of this act.

41 e. A license issued to a partnership, corporation or other entity  
42 authorizes all members, officers and designated employees to act  
43 on behalf of viatical settlement companies or brokers under the  
44 license, and all those persons shall be named in the application  
45 and any supplements to the application.

46 f. Upon the filing of an application and the payment of the license

1 fee, the commissioner shall make an investigation of each applicant  
2 and shall issue a license if he finds that the applicant:

3 (1) Has provided a detailed plan of operation;

4 (2) Is competent and trustworthy and intends to act in good faith  
5 in the capacity involved by the license applied for;

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

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

12 g. The commissioner shall not issue any license to any nonresident  
13 applicant, unless a written designation of a resident agent for service  
14 of process is filed and maintained with the commissioner or the  
15 applicant has filed with the commissioner such applicant's written  
16 irrevocable consent that any action against the applicant may be  
17 commenced against the applicant by service of process on the  
18 commissioner.

19  
20 3. The commissioner may, after a hearing, suspend, revoke or  
21 refuse to issue or renew the license of any viatical settlement  
22 company or broker if the commissioner finds that:

23 (1) There was any misrepresentation in the application for the  
24 license;

25 (2) The holder of the license has been guilty of fraudulent or  
26 dishonest practices, is subject to a final administrative action or is  
27 otherwise shown to be untrustworthy or incompetent to act as a  
28 viatical settlement provider;

29 (3) The licensee demonstrates a pattern of unreasonable payments  
30 to policy owners;

31 (4) The licensee has been convicted of a crime in which criminal  
32 fraud is an element; or

33 (5) The licensee has violated any provision of this act.  
34

35 4. a. No viatical settlement company shall use any agreement for  
36 a viatical settlement in this State unless it is in writing and has been  
37 filed with, and approved by, the commissioner. The commissioner shall  
38 disapprove a viatical settlement form if, in the commissioner's  
39 discretion, the contract or provisions contained therein are contrary  
40 to the interests of the public, or otherwise misleading or unfair to  
41 the viator.

42 b. The commissioner shall not approve any viatical settlement form  
43 unless it contains the following provisions:

44 (1) the viator may rescind the viatical settlement within fifteen days  
45 of the receipt of viatical settlement proceeds; and

46 (2) immediately upon receipt from the viator of documents to

effect the transfer of the insurance policy, the viatical settlement company shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a State or federally chartered bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer by the insurer.

5. a. The application for a viatical settlement shall contain a notice, prominently displayed, to read as follows:

"Receipt of payment pursuant to a viatical settlement may affect eligibility for public assistance programs such as medical assistance (Medicaid), family assistance, supplementary Social Security income and AIDS drug assistance programs and may be taxable. Prior to applying for a viatical settlement, policyowners should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and the recipient's spouse or dependents, and with a qualified tax adviser."

b. Upon receipt of an application for a viatical settlement and prior to the date the viatical settlement contract is signed by all parties, the viatical settlement company shall disclose the following information to the viator:

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

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

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

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

(5) The policy owner's right, pursuant to subsection b. of section 4 of this act, to rescind a viatical settlement contract within 15 days of the receipt of the viatical settlement proceeds, by the viator;

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

(7) the identity of any person who will receive any fee or compensation from the viatical settlement company with respect to the viatical settlement and the amount and terms of that compensation.

6. a. A viatical settlement company entering into a viatical

1 settlement with any viator shall first obtain:

2 (1) a written statement from a licensed attending physician that the  
3 person subject to the viatical settlement is of sound mind and under no  
4 constraint or undue influence; and

5 (2) a witnessed document in which the person subject to the  
6 viatical settlement consents to the viatical settlement agreement,  
7 acknowledges the catastrophic or life threatening illness, represents  
8 that he has a full and complete understanding of the viatical settlement  
9 contract, that he has a full and complete understanding of the benefits  
10 of the life insurance policy, releases his medical records, and  
11 acknowledges that he has entered into the viatical settlement contract  
12 freely and voluntarily.

13 b. All medical information solicited or obtained by any licensee  
14 shall be kept confidential.

15 c. Viatical settlement companies and brokers licensed hereunder  
16 shall not:

17 (1) discriminate in the availability of viatical settlements on the  
18 basis of race, age, sex, national origin, creed, religion, occupation,  
19 marital or family status, or discriminate between viators with  
20 dependents and those without;

21 (2) pay or offer to pay any finder's fee, commission or other  
22 compensation to any viator's physician, attorney, accountant or other  
23 person providing medical, legal or financial planning services to the  
24 viator, or to any other person acting as an agent of the viator with  
25 respect to the viatical settlement;

26 (3) enter into any viatical settlement in which payments of  
27 proceeds are made in installments, unless the viatical settlement  
28 company has been licensed to act in this State as an insurance  
29 company or bank, or unless it effects the purchase through an annuity  
30 or similar financial instrument issued by an insurance company  
31 licensed to do business in this State or a bank;

32 (4) disclose medical, financial or other personal information  
33 obtained from the viator to any other person or entity without the  
34 viator's specific written consent;

35 (5) condition the consideration of applications on any exclusive  
36 dealing between the viator and the viatical settlement company or  
37 broker;

38 (6) engage in any other acts determined by the commissioner to  
39 be unfair and deceptive acts or practices.

40 d. Viatical settlement brokers shall not, without the written  
41 agreement of the viator obtained prior to performing any services  
42 in connection with a viatical settlement, seek or obtain any  
43 compensation from a viator. In the absence of a written agreement  
44 making the broker the viator's agent, viatical settlement brokers shall  
45 be presumed to be agents of viatical settlement companies.

46 e. Viatical settlement companies shall not enter into any agreement

1 or communication with any other viatical settlement company with  
2 respect to the terms to be offered to a viator, except that a viatical  
3 settlement company may assign that settlement or insurance policy  
4 only to another viatical settlement company licensed pursuant to this  
5 act.

6  
7 7. No policy of group life insurance issued or delivered in this  
8 State which permits assignment of a covered person's rights shall  
9 restrict the covered person from making assignments other than by  
10 gift.

11  
12 8. a. When it is reasonably necessary to protect the interests of the  
13 public, the commissioner may examine the business and affairs of any  
14 licensee or applicant for a viatical settlement company or broker  
15 license. The commissioner shall have the authority to order any  
16 licensee or applicant to produce any records, books, files or other  
17 information reasonably necessary to ascertain whether or not the  
18 licensee or applicant is acting or has acted in violation of the law or  
19 otherwise contrary to the interests of the public. The expenses  
20 incurred in conducting any examination shall be paid by the licensee  
21 or applicant.

22 b. Names and individual identification data for all viators shall be  
23 considered private and confidential information and shall not be  
24 disclosed by the commissioner, unless required by law.

25 c. Records of all transactions of viatical settlement contracts shall  
26 be maintained by the licensee and shall be available to the  
27 commissioner for inspection during reasonable business hours.

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29 9. Each licensee shall file an annual statement with the  
30 commissioner on or before a date set by the commissioner and  
31 containing the information required by the commissioner by regulation.

32  
33 10. The commissioner shall have the authority to:

34 a. Promulgate regulations implementing the provisions of this act;  
35 and

36 b. Establish standards for evaluating reasonableness of payments  
37 under viatical settlement contracts. This authority includes, but is  
38 not limited to, regulation of discount rates used to determine the  
39 amount paid in exchange for assignment, transfer, sale, devise or  
40 bequest of a benefit under a life insurance policy.

41  
42 11. A violation of this act shall be considered an unfair trade  
43 practice under N.J.S.17B:30-1 et seq. and shall be subject to the  
44 penalties contained in that act.

45  
46 12. Section 10 of this act shall take effect immediately and the

1 remainder of this act shall take effect on the 180th day after  
2 enactment.

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STATEMENT

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6 This bill regulates viatical settlement agreements and the business  
7 of providing viatical settlements--the sale of life insurance policies by  
8 those who are dying and in need of money. The bill requires any  
9 person involved in more than three viatical settlements in the period of  
10 a year to be licensed by the Commissioner of Banking and Insurance  
11 and to renew the license on an annual basis. The bill sets forth the  
12 procedure for licensure and information to be supplied and requires the  
13 commissioner to investigate each applicant and issue a license if the  
14 applicant satisfies the requirements set forth in the bill. The bill  
15 prohibits the use of any viatical settlement contract that has not been  
16 filed with and approved by the commissioner.

17 Under the bill, a viatical settlement provider is required to make  
18 certain disclosures to the viator (policyholder), including, but not  
19 limited to the following: possible alternatives to a viatical settlement  
20 contract, such as accelerated benefits offered by the issuer of the life  
21 insurance policy; the tax implications of a viatical settlement; the fact  
22 that a viatical settlement could be subject to the claims of creditors;  
23 the implications of a viatical settlement with respect to eligibility for  
24 Medicaid or other government benefits or entitlements; the  
25 policyholder's right to rescind a viatical settlement contract within a  
26 certain number of days of receipt of the proceeds of a settlement; and  
27 the date by which funds from the settlement will be available to the  
28 viator and the source of those funds. In addition, if the viator is a  
29 person with a catastrophic or life threatening illness, the viatical  
30 settlement provider is required to obtain: a written statement from a  
31 licensed attending physician that the person (policyholder) is of sound  
32 mind and under no constraint or undue influence; and a witnessed  
33 document in which the person consents to the viatical settlement  
34 contract and makes certain other acknowledgments regarding the  
35 person's illness, awareness of the contract contents, and the voluntary  
36 nature of the person's entry into the viatical settlement contract.

37 The bill requires a viatical settlement provider, immediately upon  
38 receipt of documents from the viator to effect the transfer of the  
39 insurance policy, to pay the proceeds of the viatical settlement into an  
40 escrow or trust account managed by a trustee or escrow agent of a  
41 bank approved by the commissioner pending acknowledgment of the  
42 transfer by the issuer of the policy. Once the transfer of the policy has  
43 been acknowledged, the trustee or escrow agent is required to transfer  
44 the proceeds in the account to the viator immediately.

45 Any violation of the provisions of this act is considered an unfair  
46 trade practice under N.J.S.17B:30-1 et seq.