

SENATE, No. 1515

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED NOVEMBER 23, 1998

Sponsored by:

Senator ROBERT J. MARTIN

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

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

9
10 5. a. The application for a viatical settlement shall contain a
11 notice, prominently displayed, to read as follows:

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

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

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

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

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

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

37 (5) The policy owner's right, pursuant to subsection b. of section
38 4 of this act, to rescind a viatical settlement contract within 15 days of
39 the receipt of the viatical settlement proceeds, by the viator;

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

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

45
46 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.

28
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.

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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.