



SPONSOR: Sen. Blevins & Rep. B. Short

DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 145

AN ACT TO AMEND CHAPTER 75 OF TITLE 18 OF THE DELAWARE CODE RELATING TO VIATICAL AND LIFE SETTLEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend Title 18 of the Delaware Code by deleting the existing Chapter 75 in its entirety and  
2 substituting a new "Chapter 75" in lieu thereof as follows:

3 "Chapter 75. Delaware Life Settlements Act.

4 §7501. Short title.

5 This chapter may be cited as the 'Delaware Life Settlements Act.'

6 §7502. Definitions.

7 (1) 'Advertisement' means any written, electronic or printed communication or any communication by means of  
8 recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including  
9 film strips, motion pictures and videos, published, disseminated, circulated or placed before an Owner directly or indirectly,  
10 for the purpose of creating an interest in or inducing an Owner to purchase or sell, assign, devise, bequest or transfer the  
11 death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a Life Settlement  
12 Contract.

13 (2) 'Broker' means a Person who, on behalf of an Owner and for a fee, commission or other valuable  
14 consideration, offers or attempts to negotiate Life Settlement Contracts between an Owner and Providers. A Broker  
15 represents only the Owner and owes a fiduciary duty to the Owner to act according to the Owner's instructions, and in the  
16 best interest of the Owner, notwithstanding the manner in which the Broker is compensated. A Broker does not include an  
17 attorney, certified public accountant or financial planner retained in the type of practice customarily performed in their  
18 professional capacity to represent the Owner whose compensation is not paid directly or indirectly by the Provider or any  
19 other person, except the Owner.

20 (3) 'Business of life settlements' means an activity involved in, but not limited to, offering to enter into, soliciting,  
21 negotiating, procuring, effectuating, monitoring, or tracking, of Life Settlement Contracts.

22 (4) 'Chronically ill' means:

23 a. being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring,  
24 bathing, dressing or continence);

25 b. requiring substantial supervision to protect the individual from threats to health and safety due to  
26 severe cognitive impairment; or

27 c. having a level of disability similar to that described in paragraph a. above as determined by the United  
28 States Secretary of Health and Human Services.

29 (5) 'Commissioner' means the Insurance Commissioner of this State.

30 (6) 'Financing Entity' means an underwriter, placement agent, lender, purchaser of securities, purchaser of a  
31 policy or certificate from a Provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that  
32 is the subject of a Life Settlement Contract, but:

33 a. whose principal activity related to the transaction is providing funds to effect the Life Settlement  
34 Contract or purchase of one or more policies; and

35 b. who has an agreement in writing with one or more Providers to finance the acquisition of Life  
36 Settlement Contracts. The term 'Financing Entity' does not include a non-accredited investor or Purchaser.

37 (7) 'Financing Transaction' means a transaction in which a licensed Provider obtains financing from a Financing  
38 Entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities  
39 offering which either is registered or exempt from registration under federal and state securities law.

40 (8) 'Fraudulent Life Settlement Act' includes:

41 a. Acts or omissions committed by any person who, knowingly and with intent to defraud, for the  
42 purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to  
43 engage in acts including, but not limited to:

44 1. Presenting, causing to be presented or preparing with knowledge and belief that it will be  
45 presented to or by a Provider, Premium Finance lender, Broker, insurer, insurance producer or any other  
46 person, false material information, or concealing material information, as part of, in support of, or  
47 concerning a fact material to one or more of the following:

48 i. An application for the issuance of a Life Settlement Contract or insurance policy;

49 ii. The underwriting of a Life Settlement Contract or insurance policy;

50 iii. A claim for payment or benefit pursuant to a Life Settlement Contract or insurance  
51 policy;

52 iv. Premiums paid on an insurance policy;

53 v. Payments and changes in ownership or beneficiary made in accordance with the  
54 terms of a Life Settlement Contract or insurance policy;

- 55 vi. The reinstatement or conversion of an insurance policy;
- 56 vii. In the solicitation, offer to enter into, or effectuation of a Life Settlement Contract,
- 57 or insurance policy;
- 58 viii. The issuance of written evidence of Life Settlement Contracts or insurance;
- 59 ix. Any application for or the existence of or any payments related to a loan secured
- 60 directly or indirectly by any interest in a life insurance policy; or
- 61 x. Stranger-Originated Life Insurance.
- 62 2. Employing any device, scheme, or artifice to defraud in the business of life settlements.
- 63 b. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its
- 64 employees or its agents to;
- 65 1. Remove, conceal, alter, destroy or sequester from the Commissioner the assets or records of a
- 66 licensee or other person engaged in the business of life settlements;
- 67 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other
- 68 person;
- 69 3. Transact the business of life settlements in violation of laws requiring a license, certificate of
- 70 authority or other legal authority for the transaction of the business of life settlements;
- 71 4. File with the Commissioner or the chief insurance regulatory official of another jurisdiction a
- 72 document containing false information or otherwise concealing information about a material fact from the
- 73 Commissioner;
- 74 5. Engage in embezzlement, theft, misappropriation or conversion of monies, funds, premiums,
- 75 credits or other property of a Provider, insurer, insured, owner, insurance, policy owner or any other
- 76 person engaged in the business of life settlements or insurance;
- 77 6. Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a Life
- 78 Settlement Contract, the subject of which is a life insurance policy that was obtained by presenting false
- 79 information concerning any fact material to the policy or by concealing, for the purpose of misleading
- 80 another, information concerning any fact material to the policy, where the owner or the owner's agent
- 81 intended to defraud the policy's issuer;
- 82 7. Attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts
- 83 or omissions specified in this subsection; or
- 84 8. Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have
- 85 a law substantially similar to this Chapter for the purpose of evading or avoiding the provisions of this
- 86 Chapter.

87 (9) 'Insured' means the person covered under the policy being considered for sale in a Life Settlement Contract.

88 (10) 'Life expectancy' means the arithmetic mean of the number of months the Insured under the life insurance  
89 policy to be settled can be expected to live considering medical records and appropriate experiential data.

90 (11) 'Life insurance producer' means any resident or nonresident person licensed in this state as an insurance  
91 producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to  
92 Chapter 17 of this Title.

93 (12) 'Life Settlement Contract' means a written agreement entered into between a Provider and an Owner,  
94 establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is  
95 less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer,  
96 sale, devise or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for  
97 compensation, provided, however, that the minimum value for a Life Settlement Contract shall be greater than a cash  
98 surrender value or accelerated death benefit available at the time of an application for a Life Settlement Contract. "Life  
99 Settlement Contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or  
100 other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring  
101 one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State.

102 a. A 'Life Settlement Contract' also includes a premium finance loan made for a policy on or before the  
103 date of issuance of the policy where:

104 1. The loan proceeds are not used solely to pay premiums for the policy and any costs or  
105 expenses incurred by the lender or the borrower in connection with the financing; or

106 2. The Owner receives on the date of the premium finance loan a guarantee of the future life  
107 settlement value of the policy; or

108 3. The Owner agrees on the date of the premium finance loan to sell the policy or any portion of  
109 its death benefit on any date following the issuance of the policy.

110 b. A 'Life Settlement Contract' does not include:

111 1. A policy loan by a life insurance company pursuant to the terms of the life insurance policy  
112 or accelerated death provisions contained in the life insurance policy, whether issued with the original  
113 policy or as a rider;

114 2. A premium finance loan, as defined herein, or any loan made by a bank or other licensed  
115 financial institution, provided that neither default on such loan nor the transfer of the policy in connection  
116 with such default is pursuant to an agreement or understanding with any other person for the purpose of  
117 evading regulation under this Act;

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

119 4. A loan made by a lender that does not violate any provision of Chapter 48 of this Title  
120 relating to insurance premium financing, provided such loan is not described in Paragraph a. above, and is  
121 not otherwise within the definition of Life Settlement Contract;

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

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

128 7. A bona fide business succession planning arrangement:

129 i. Between one or more shareholders in a corporation or between a corporation and one  
130 or more of its shareholders or one or more trust established by its shareholders;

131 ii. Between one or more partners in a partnership or between a partnership and one or  
132 more of its partners or one or more trust established by its partners; or

133 iii. Between one or more members in a limited liability company or between a limited  
134 liability company and one or more of its members or one or more trust established by its  
135 members;

136 8. An agreement entered into by a service recipient, or a trust established by the service  
137 recipient, and a service provider, or a trust established by the service provider, who performs significant  
138 services for the service recipient's trade or business; or

139 9. Any other contract, transaction or arrangement from the definition of Life Settlement  
140 Contract that the Commissioner determines is not of the type intended to be regulated by this Act.

141 (13) 'Net death benefit' means the amount of the life insurance policy or certificate to be settled less any  
142 outstanding debts or liens.

143 (14). 'Owner' means the owner of a life insurance policy or a certificate holder under a group policy, with or  
144 without a terminal illness, who enters or seeks to enter into a Life Settlement Contract. For the purposes of this article, an  
145 Owner shall not be limited to an Owner of a life insurance policy or a certificate holder under a group policy that insures  
146 the life of an individual with a terminal or chronic illness or condition except where specifically addressed. The term  
147 'Owner' does not include:

148 a. any Provider or other licensee under this Act;

149 b. a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as  
150 amended;

- 151 c. a financing entity;
- 152 d. a special purpose entity; or
- 153 e. a related provider trust.

154 (15) 'Patient identifying information' means an insured's address, telephone number, facsimile number, electronic  
155 mail address, photograph or likeness, employer, employment status, social security number, or any other information that is  
156 likely to lead to the identification of the insured.

157 (16) 'Policy' means an individual or group policy, group certificate, contract or arrangement of life insurance  
158 owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

159 (17) 'Premium Finance Loan' is a loan made primarily for the purposes of making premium payments on a life  
160 insurance policy, which loan is secured by an interest in such life insurance policy.

161 (18) 'Person' means any natural person or legal entity, including but not limited to, a partnership, Limited  
162 Liability Company, association, trust or corporation.

163 (19) 'Provider' means a Person, other than an Owner, who enters into or effectuates a Life Settlement Contract  
164 with an Owner. A 'Provider' does not include:

- 165 a. any bank, savings bank, savings and loan association, credit union;
- 166 b. a licensed lending institution or creditor or secured party pursuant to a Premium Finance Loan  
167 agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life  
168 insurance policy as collateral for a loan;
- 169 c. the insurer of a life insurance policy or rider to the extent of providing accelerated death benefits or  
170 cash surrender value;
- 171 d. any natural Person who enters into or effectuates no more than one agreement in a calendar year for  
172 the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for  
173 compensation or anything of value less than the expected death benefit payable under the policy;
- 174 e. a Purchaser;
- 175 f. any authorized or eligible insurer that provides stop loss coverage to a provider; purchaser, financing  
176 entity, special purpose entity, or related provider trust;
- 177 g. a Financing Entity;
- 178 h. a Special Purpose Entity;
- 179 i. a Related Provider Trust;
- 180 j. a Broker; or

181 k. an accredited investor or qualified institutional buyer as defined in respectively in regulation D, rule  
182 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a life settlement policy from a  
183 Provider.

184 (20) 'Purchased Policy' means a policy or group certificate that has been acquired by a Provider pursuant to a Life  
185 Settlement Contract.

186 (21) 'Purchaser' means a Person who pays compensation or anything of value as consideration for a beneficial  
187 interest in a trust which is vested with, or for the assignment, transfer or sale of, an ownership or other interest in a life  
188 insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a Life  
189 Settlement Contract.

190 (22) 'Related Provider Trust' means a titling trust or other trust established by a licensed Provider or a Financing  
191 Entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a  
192 Financing Transaction. In order to qualify as a Related Provider Trust, the trust must have a written agreement with the  
193 licensed Provider under which the licensed Provider is responsible for ensuring compliance with all statutory and regulatory  
194 requirements and under which the trust agrees to make all records and files relating to life settlement transactions available  
195 to the Department of Insurance as if those records and files were maintained directly by the licensed Provider.

196 (23) 'Settled policy' means a life insurance policy or certificate that has been acquired by a Provider pursuant to a  
197 Life Settlement Contract.

198 (24) 'Special Purpose Entity' means a corporation, partnership, trust, limited liability company, or other legal  
199 entity formed solely to provide, either directly or indirectly, access to institutional capital markets:

200 a. for a financing entity or provider; or

201 b. in connection with a transaction in which the securities in the special purpose entity are acquired by the  
202 owner or by a "qualified institutional buyer" as defined in Rule 144 promulgated under The Securities Act of  
203 1933, as amended; or

204 c. the securities pay a fixed rate of return commensurate with established asset-backed institutional capital  
205 markets.

206 (25) 'Stranger-Originated Life Insurance' or 'STOLI' is an act, practice, or arrangement to initiate the issuance of  
207 a life insurance policy in this State for the benefit of a third-party investor who, at the time of policy origination, has no  
208 insurable interest, under the laws of this State, in the life of the insured. STOLI practices include, but are not limited to,  
209 cases in which life insurance is purchased with resources or guarantees from or through a person or entity, that, at the time  
210 of policy inception, could not lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there  
211 is an arrangement or agreement, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third  
212 party. Trusts that are created to give the appearance of insurable interest and that are used to initiate policies for investors

213 violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include lawful life  
214 settlement contracts as permitted by this Chapter.

215 (26) 'Terminally Ill' means having an illness or sickness that can reasonably be expected to result in death in  
216 twenty-four (24) months or less.

217 §7503. Licensing Requirements.

218 (a) No person, wherever located, shall act as a Provider or, except as provided for in subsections (c) and (d) of this  
219 section, Broker with an Owner (or multiple Owners) who is a resident of this State, without first having obtained a license  
220 from the Commissioner. If there is more than one owner on a single policy and the owners are residents of different states,  
221 the Life Settlement Contract shall be governed by the law of the state in which the owner having the largest percentage  
222 ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all  
223 owners.

224 (b) Application for a Provider, or Broker, license shall be made to the Commissioner by the applicant on a form  
225 prescribed by the Commissioner, and the application shall be accompanied by a fee in an amount established by the  
226 Commissioner; provided, however, that the license and renewal fees for a Provider license shall be reasonable and that the  
227 license and renewal fees for a Broker license shall not exceed those established for an insurance producer, as such fees are  
228 otherwise provided for in this chapter.

229 (c) A life insurance producer who has been duly licensed in this State as a resident or non-resident insurance  
230 producer with a life line of authority shall be permitted to operate as a Broker.

231 (d) Not later than thirty (30) days from the first day of operating as a Broker, the life insurance producer shall  
232 notify the Commissioner that he or she is acting as a Broker on a form prescribed by the Commissioner, and shall pay any  
233 applicable fee to be determined by the Commissioner. Notification shall include an acknowledgement by the life insurance  
234 producer that he or she will operate as a Broker in accordance with this Act.

235 (e) The insurer that issued the policy that is the subject of a Life Settlement Contract shall not be responsible for  
236 any act or omission of a Broker or Provider or Purchaser arising out of or in connection with the life settlement transaction,  
237 unless the insurer receives compensation for the placement of a Life Settlement Contract from the Provider or Purchaser or  
238 Broker in connection with the Life Settlement Contract.

239 (f) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally  
240 recognized accreditation agency, who is retained to represent the Owner, whose compensation is not paid directly or  
241 indirectly by the Provider or Purchaser, may negotiate Life Settlement Contracts on behalf of the Owner without having to  
242 obtain a license as a Broker.



243 (g) Licenses issued pursuant to this Chapter shall remain in effect unless revoked or suspended as long as any  
244 applicable licensing fee is paid and education requirements for resident individual producers are met by the due date.  
245 Failure to pay the fee within the terms prescribed shall result in the automatic revocation of said license.

246 (h) An applicant for licensure shall provide such information as the Commissioner may require on forms prepared  
247 by the Commissioner. The Commissioner shall have authority, at any time, to require such applicant to fully disclose the  
248 identity of its stockholders (except stockholders owning fewer than ten percent of the shares of an applicant whose shares  
249 are publicly traded), partners, officers and employees, and the Commissioner may, in the exercise of the Commissioner's  
250 sole discretion, refuse to issue such a license in the name of any Person if not satisfied that any officer, employee,  
251 stockholder or partner thereof who may materially influence the applicant's conduct meets the standards of this Chapter.

252 (i). A license issued to a partnership, corporation or other entity authorizes all members, officers and designated  
253 employees thereof to act as a licensee under the license, provided such persons are named in the application and any  
254 supplements to the application.

255 (j) Upon the filing of an application and the payment of the license fee, the Commissioner shall make an  
256 investigation of each applicant and may issue a license if the Commissioner finds that the applicant:

- 257 1. if a Provider, has provided a detailed plan of operation;
- 258 2. is competent and trustworthy and intends to transact its business in good faith;
- 259 3. has a good business reputation and has had experience, training or education so as to be qualified in  
260 the business for which the license is applied;
- 261 4. if the applicant is a legal entity, is formed or organized pursuant to the laws of this state or is a foreign  
262 legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of  
263 its domicile; and
- 264 5. has provided to the Commissioner an anti-fraud plan that meets the requirements of this Chapter and  
265 includes:
  - 266 i. a description of the procedures for detecting and investigating possible fraudulent acts and  
267 procedures for resolving material inconsistencies between medical records and insurance applications;
  - 268 ii. a description of the procedures for reporting fraudulent insurance acts to the Commissioner;
  - 269 iii. a description of the plan for anti-fraud education and training of its underwriters and other  
270 personnel; and
  - 271 iv. a written description or chart outlining the arrangement of the anti-fraud personnel who are  
272 responsible for the investigation and reporting of possible fraudulent insurance acts and investigating  
273 unresolved material inconsistencies between medical records and insurance applications.

274 (k) The Commissioner shall not issue any license to any nonresident applicant, unless a written designation of an  
275 agent for service of process is filed and maintained with the Commissioner or unless the applicant has filed with the  
276 Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against  
277 the applicant by service of process on the Commissioner.

278 (l) A Provider may not use any Person to perform the functions of a Broker as defined in this Act unless the  
279 Person holds a current, valid license as a Broker, and as provided in this Section.

280 (m) A Broker may not use any Person to perform the functions of a Provider as defined in this Act unless such  
281 Person holds a current, valid license as a Provider, and as provided in this Section.

282 (n) A Provider, or Broker shall provide to the Commissioner new or revised information about officers, ten percent  
283 or more stockholders, partners, directors, members or designated employees within thirty days of the change.

284 (o) An individual licensed as a Broker shall complete on a biennial basis fifteen (15) hours of training related to  
285 life settlements and life settlement transactions, as required by the Commissioner; provided, however, that a life insurance  
286 producer who is operating as a Broker pursuant to this Section shall not be subject to the requirements of this subsection.  
287 Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the  
288 Commissioner.

289 §7504. License Denial, Suspension, Revocation or Refusal to Renew.

290 (a) The Commissioner may place on probation, suspend, revoke or refuse to issue or renew the license of any  
291 licensee if the Commissioner finds that:

- 292 1. there was any material misrepresentation in the application for the license;
- 293 2. the licensee or any officer, partner, member or director has been guilty of fraudulent or dishonest  
294 practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act  
295 as a licensee;
- 296 3. the Provider demonstrates a pattern of unreasonably withholding payments to policy Owners;
- 297 4. the licensee no longer meets the requirements for initial licensure;
- 298 5. the licensee or any officer, partner, member or director has been convicted of a felony, or of any  
299 misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with  
300 respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless  
301 whether a judgment of conviction has been entered by the court;
- 302 6. the Provider has entered into any Life Settlement Contract using a form that has not been approved  
303 pursuant to the Act;
- 304 7. the Provider has failed to honor contractual obligations set out in a Life Settlement Contract;

305                   8. the Provider has assigned, transferred or pledged a settled policy to a person other than a Provider  
306 licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in  
307 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special  
308 purpose entity, or related provider trust; or

309                   9. the licensee or any officer, partner, member or key management personnel has violated any of the  
310 provisions of this Act.

311                   (b) In the event that the action by the Insurance Commissioner is to nonrenew or to deny an application for a  
312 license, the Insurance Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of  
313 the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written  
314 demand upon the Insurance Commissioner within 10 days for a hearing before the Insurance Commissioner to determine  
315 the reasonableness of the Insurance Commissioner's action. The hearing shall be held within 20 days and shall be held  
316 pursuant to the Administrative Procedures Act, Chapter 101 of Title 29, and such additional implemented regulations as  
317 may be published by the Commissioner.

318                   §7505. Contract Requirements.

319                   (a) No Person may use any form of Life Settlement Contract in this State unless it has been filed with and  
320 approved by the Commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming  
321 provisions, if any, for life insurance forms, policies and contracts.

322                   (b) No insurer may, as a condition of responding to a request for verification of coverage or in connection with  
323 the transfer of a policy pursuant to a Life Settlement Contract, require that the Owner, Insured, Provider or Broker sign any  
324 form, disclosure, consent, waiver or acknowledgment that has not been expressly approved by the Commissioner for use in  
325 connection with Life Settlement Contracts in this state.

326                   (c) A Person shall not use a Life Settlement Contract form or provide to an Owner a disclosure statement form in  
327 this state unless first filed with and approved by the Commissioner. The Commissioner shall disapprove a Life Settlement  
328 Contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein  
329 fail to meet the requirements set forth in this Chapter or are unreasonable, contrary to the interests of the public, or  
330 otherwise misleading or unfair to the Owner. At the Commissioner's discretion, the Commissioner may require the  
331 submission of advertising material.

332                   §7506. Reporting Requirements and Privacy.

333                   (a) For any policy settled within five (5) years of policy issuance, each Provider shall file with the Commissioner  
334 on or before March 1 of each year an annual statement containing such information as the Commissioner may prescribe by  
335 regulation. In addition to any other requirements, the annual statement shall specify the total number, aggregate face

336 amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a  
337 breakdown of the information by policy issue year for each carrier.

338 1. Such information shall be limited to only those transactions where the Owner is a resident of this State  
339 and shall not include individual transaction data regarding the business of life settlements or information that there  
340 is a reasonable basis to believe could be used to identify the Owner or the Insured.

341 2. Every Provider that willfully fails to file an annual statement as required in this section, or willfully  
342 fails to reply within thirty days to a written inquiry by the Commissioner in connection therewith, shall, in addition  
343 to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of  
344 up to two hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for  
345 each such failure.

346 (b) Except as otherwise allowed or required by law, a Provider, Broker, insurance company, insurance producer,  
347 information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not  
348 disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the  
349 insured or the insured's financial or medical information to any other person unless the disclosure:

350 1. is necessary to effect a Life Settlement Contract between the owner and a Provider and the Owner and  
351 insured have provided prior written consent to the disclosure;

352 2. is necessary to effectuate the sale of Life Settlement Contracts, or interests therein, as investments,  
353 provided the sale is conducted in accordance with applicable state and federal securities law and provided further  
354 that the Owner and the insured have both provided prior written consent to the disclosure;

355 3. is provided in response to an investigation or examination by the Commissioner or any other  
356 governmental officer or agency or pursuant to the requirements of this Chapter;

357 4. is a term or condition to the transfer of a policy by one Provider to another Provider, in which case the  
358 receiving Provider shall be required to comply with the confidentiality requirements of this section;

359 5. is necessary to allow the Provider or Broker or their authorized representatives to make contacts for  
360 the purpose of determining health status. For the purposes of this section, the term "authorized representative"  
361 shall not include any person who has or may have any financial interest in the settlement contract other than a  
362 Provider, licensed Broker, financing entity, related provider trust or special purpose entity; further, a Provider or  
363 Broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this  
364 section; or

365 6. is required to purchase stop loss coverage.

366 (c) Non-public personal information solicited or obtained in connection with a proposed or actual life settlement  
367 contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley Act,  
368 P.L. 106-102 (1999), and all other state and federal laws relating to confidentiality of non-public personal information.

369 §7507. Examination.

370 (a) The Commissioner may, when the Commissioner deems it reasonably necessary to protect the interests of the  
371 public, examine the business and affairs of any licensee or applicant for a license. The Commissioner may order any  
372 licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether  
373 such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public.  
374 The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

375 (b) In lieu of an examination under this Act of any foreign or alien licensee licensed in this state, the  
376 Commissioner may, at the Commissioner's discretion, accept an examination report on the licensee as prepared by the  
377 Commissioner for the licensee's state of domicile or port-of-entry state.

378 (c) Names of and individual identification data, or for all Owners and insureds shall be considered private and  
379 confidential information and shall not be disclosed by the Commissioner unless required by law.

380 (d) Records of all consummated transactions and Life Settlement Contracts shall be maintained by the Provider for  
381 three years after the death of the insured and shall be available to the Commissioner for inspection during reasonable  
382 business hours.

383 (e) Conduct of Examinations

384 1. Upon determining that an examination should be conducted, the Commissioner shall issue an  
385 examination warrant appointing one or more examiners to perform the examination and instructing them as to the  
386 scope of the examination. In conducting the examination, the examiner shall use methods common to the  
387 examination of any life settlement licensee and should use those guidelines and procedures set forth in an  
388 examiners' handbook adopted by a national organization.

389 2. Every licensee or person from whom information is sought, its officers, directors and agents shall  
390 provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books,  
391 records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets,  
392 business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee  
393 or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The  
394 refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with  
395 any reasonable written request of the Commissioner shall be grounds for suspension or refusal of, or nonrenewal  
396 of any license or authority held by the licensee to engage in the life settlement business or other business subject to

397 the Commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority  
398 shall be conducted pursuant to §7504 of this Chapter.

399 3. The Commissioner shall have the power to issue subpoenas, to administer oaths and to examine under  
400 oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a  
401 subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court  
402 may enter an order compelling the witness to appear and testify or produce documentary evidence.

403 4. When making an examination under this Chapter, the Commissioner may retain attorneys, appraisers,  
404 independent actuaries, independent certified public accountants or other professionals and specialists as examiners,  
405 the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

406 5. Nothing contained in this section shall be construed to limit the Commissioner's authority to terminate  
407 or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this  
408 State. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any  
409 legal or regulatory action.

410 6. Nothing contained in this section shall be construed to limit the Commissioner's authority to use and,  
411 if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers  
412 or other documents, or any other information discovered or developed during the course of any examination in the  
413 furtherance of any legal or regulatory action which the Commissioner may, in his or her sole discretion, deem  
414 appropriate.

415 (f) Examination Reports

416 1. Examination reports shall be comprised of only facts appearing upon the licensee's books, from the  
417 testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and  
418 recommendations as the examiners find reasonably warranted from the facts.

419 2. No later than sixty (60) days following completion of the examination, the examiner in charge shall  
420 file with the Commissioner a verified written report of examination under oath. Upon receipt of the verified report,  
421 the Commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the  
422 licensee examined a reasonable opportunity of not more than thirty (30) days to make a written submission or  
423 rebuttal with respect to any matters contained in the examination report and which shall become part of the report  
424 or to request a hearing on any matter in dispute.

425 3. In the event the Commissioner determines that regulatory action is appropriate as a result of an  
426 examination, the Commissioner may initiate any proceedings or actions provided by law.

427 (g) Confidentiality of Examination Information --

428 1. Names and individual identification data for all owners, purchasers, and insureds shall be considered  
429 private and confidential information and shall not be disclosed by the Commissioner, unless the disclosure is to  
430 another regulator or is required by law.

431 2. Except as otherwise provided in this Act, all examination reports, working papers, recorded  
432 information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any  
433 other person in the course of an examination made under this Chapter, or in the course of analysis or investigation  
434 by the Commissioner of the financial condition or market conduct of a licensee shall be confidential by law and  
435 privileged, shall not be subject to disclosure pursuant to Chapter 100 of Title 29 of this Code, shall not be subject  
436 to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The  
437 Commissioner is authorized to use the documents, materials or other information in the furtherance of any  
438 regulatory or legal action brought as part of the Commissioner's official duties. The licensee being examined may  
439 have access to all documents used to make the report.

440 (h) Conflict of Interest

441 1. An examiner may not be appointed by the Commissioner if the examiner, either directly or  
442 indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary  
443 interest in any person subject to examination under this Act. This section shall not be construed to  
444 automatically preclude an examiner from being:

- 445 i. an Owner;
- 446 ii. an insured in a Life Settlement Contract or insurance policy; or
- 447 iii. a beneficiary in an insurance policy that is proposed for a Life Settlement Contract.

448 2. Notwithstanding the requirements of this subsection, the Commissioner may retain from time to  
449 time, on an individual basis, qualified actuaries, certified public accountants, or other similar  
450 individuals who are independently practicing their professions, even though these persons may from  
451 time to time be similarly employed or retained by licensees subject to examination under this  
452 Chapter.

- 453 i. Immunity from Liability
- 454 ii. No cause of action shall arise nor shall any liability be imposed against the Commissioner, the  
455 Commissioner's authorized representatives or any examiner appointed by the Commissioner for any  
456 statements made or conduct performed in good faith while carrying out the provisions of this Chapter.

457 3. No cause of action shall arise, nor shall any liability be imposed against any person for the act of  
458 communicating or delivering information or data to the Commissioner or the Commissioner's  
459 authorized representative or examiner pursuant to an examination made under this Chapter, if the act

460 of communication or delivery was performed in good faith and without fraudulent intent or the intent  
461 to deceive. This paragraph does not abrogate or modify in any way any common law or statutory  
462 privilege or immunity heretofore enjoyed by any person identified in Paragraph 1.

463 4. A person identified in Paragraph 1 or 2 shall be entitled to an award of attorney's fees and costs if he  
464 or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort  
465 arising out of activities in carrying out the provisions of this Chapter and the party bringing the  
466 action was not substantially justified in doing so. For purposes of this section a proceeding is  
467 "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

468 (j) Investigative Authority of the Commissioner

469 1. The Commissioner may investigate suspected Fraudulent Life Settlement Acts and persons engaged in  
470 the business of life settlements.

471 §7508. Advertising.

472 (a) A broker, or provider licensed pursuant to this act may conduct or participate in advertisements within this  
473 state. Such advertisements shall comply with all advertising and marketing laws or rules and regulations promulgated by  
474 the Commissioner that are applicable to life insurers or to brokers, and providers licensed pursuant to this Title.

475 (b) Advertisements shall be accurate, truthful and not misleading in fact or by implication.

476 (c) No person or trust shall:

477 1. directly or indirectly, market, advertise or solicit the purchase of a new policy for the sole purpose of  
478 settling the policy; or

479 2. use the words "free", "no cost" or words of similar import in the marketing, advertising, soliciting or  
480 otherwise promoting of the purchase of a policy.

481 §7509. Disclosures to Owners.

482 (a) The Provider or Broker shall provide in writing, in a separate document that is signed by the Owner, the  
483 following information to the Owner no later than the date of application for a life settlement contract:

484 1. the fact that possible alternatives to Life Settlement Contracts exist, including, but not limited to,  
485 accelerated benefits offered by the issuer of the life insurance policy;

486 2. the fact that some or all of the proceeds of a Life Settlement Contract may be taxable and that  
487 assistance should be sought from a professional tax advisor;

488 3. the fact that the proceeds from a Life Settlement Contract could be subject to the claims of creditors;

489 4. the fact that receipt of proceeds from a Life Settlement Contract may adversely affect the recipients'  
490 eligibility for public assistance or other government benefits or entitlements and that advice should  
491 be obtained from the appropriate agencies;



- 492 5. the fact that the Owner has a right to terminate a Life Settlement Contract within fifteen (15) days of  
493 the date it is executed by all parties and the Owner has received the disclosures contained herein.  
494 Rescission, if exercised by the Owner, is effective only if both notice of the rescission is given, and  
495 the Owner repays all proceeds and any premiums, loans, and loan interest paid on account of the  
496 Provider within the rescission period. If the insured dies during the rescission period, the Contract  
497 shall be deemed to have been rescinded subject to repayment by the Owner or the Owner's estate of  
498 all proceeds and any premiums, loans, and loan interest to the Provider;
- 499 6. the fact that proceeds will be sent to the Owner within three (3) business days after the Provider has  
500 received the insurer or group administrator's acknowledgement that ownership of the policy or  
501 interest in the certificate has been transferred and the beneficiary has been designated in accordance  
502 with the terms of the Life Settlement Contract;
- 503 7. the fact that entering into a Life Settlement Contract may cause other rights or benefits, including  
504 conversion rights and waiver of premium benefits that may exist under the policy or certificate of a  
505 group policy to be forfeited by the Owner and that assistance should be sought from a professional  
506 financial advisor;
- 507 8. the amount and method of calculating the compensation paid or to be paid to the Broker, or any other  
508 person acting for the Owner in connection with the transaction, wherein the term compensation  
509 includes anything of value paid or given;
- 510 9. the date by which the funds will be available to the Owner and the transmitter of the funds;
- 511 10. the fact that the Commissioner shall require delivery of a Buyer's Guide or a similar consumer  
512 advisory package in the form prescribed by the Commissioner to Owners during the solicitation  
513 process;
- 514 11. a disclosure document containing the following language:  
515 'All medical, financial or personal information solicited or obtained by a Provider or Broker about an  
516 insured, including the insured's identity or the identity of family members, a spouse or a significant other may be  
517 disclosed as necessary to effect the Life Settlement Contract between the owner and provider. If you are asked to  
518 provide this information, you will be asked to consent to the disclosure. This information may be provided to  
519 someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to  
520 share information every two years.';
- 521 12. the fact that the Commissioner shall require Providers and Brokers to print separate signed fraud  
522 warnings on their applications and on their Life Settlement Contracts is as follows:

523           “Any person who knowingly presents false information in an application for insurance or Life Settlement Contract  
524 is guilty of a crime and may be subject to fines and confinement in prison.”

525           13. the fact that the insured may be contacted by either the Provider or broker or its authorized  
526           representative for the purpose of determining the insured’s health status or to verify the insured's  
527           address. This contact is limited to once every three (3) months if the insured has a life expectancy of  
528           more than one year, and no more than once per month if the insured has a life expectancy of one year  
529           or less;

530           14. the affiliation, if any, between the Provider and the issuer of the insurance policy to be settled;

531           15. that a Broker represents exclusively the Owner, and not the insurer or the Provider or any other  
532           person, and owes a fiduciary duty to the Owner, including a duty to act according to the Owner’s  
533           instructions and in the best interest of the Owner;

534           16. documentation of the name, address and telephone number of the Provider;

535           17. the name, business address, and telephone number of the independent third party escrow agent, and  
536           the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or  
537           documents;

538           18. the fact that a change of ownership could in the future limit the insured’s ability to purchase future  
539           insurance on the insured’s life because there is a limit to how much coverage insurers will issue on  
540           one life;

541           (b) The written disclosures set forth in subsection (a) shall be conspicuously displayed in any Life Settlement  
542 Contract furnished to the Owner by a Provider including any affiliations or contractual arrangements between the Provider  
543 and the Broker.

544           (c) A Broker shall provide the Owner and the Provider with at least the following disclosures no later than the  
545 date the Life Settlement Contract is signed by all parties. The disclosures shall be conspicuously displayed in the Life  
546 Settlement Contract or in a separate document signed by the Owner and provide the following information:

547           1. The name, business address and telephone number of the Broker;

548           2. A full, complete and accurate description of all the offers, counter-offers, acceptances and rejections  
549 relating to the proposed Life Settlement Contract;

550           3. A written disclosure of any affiliations or contractual arrangements between the Broker and any  
551 person making an offer in connection with the proposed Life Settlement Contracts;

552           4. The name of each Broker who receives compensation and the amount of compensation received by  
553 that broker, which compensation includes anything of value paid or given to the Broker in connection  
554 with the life settlement contract;

555 5. A complete reconciliation of the gross offer or bid by the Provider to the net amount of proceeds or  
556 value to be received by the Owner. For the purpose of this section, gross offer or bid shall mean the total  
557 amount or value offered by the Provider for the purchase of one or more life insurance policies, inclusive  
558 of commissions and fees; and

559 (d) The failure to provide the disclosures or rights described in this section shall be deemed an Unfair Trade  
560 Practice in violation of Chapter 23 of this Title.

561 §7510. Disclosure by Insurer.

562 (a) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance  
563 carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the  
564 assistance of financing from a lender that will use the policy as collateral to support the financing.

565 1. If a premium finance loan provides funds which can be used for a purpose other than paying for the  
566 premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the  
567 application shall be rejected as a violation of §7513 of this Chapter.

568 2. If the financing does not violate §7513 in this manner the insurer may not reject the life insurance  
569 application solely because the premiums will be financed. The insurance carrier:

570 A. shall make disclosures, including but not limited to the following, to the applicant and the  
571 insured, either on the application or an amendment to the application to be completed no later than the  
572 delivery of the policy:

573 “If you have entered into a loan arrangement where the policy is used as collateral, and the policy does  
574 change ownership at some point in the future in satisfaction of the loan, the following may be true:

575 i. a change of ownership could lead to a stranger owning an interest in the insured’s life;

576 ii. a change of ownership could in the future limit your ability to purchase future insurance  
577 on the insured’s life because there is a limit to how much coverage insurers will issue on one life;

578 iii. should there be a change of ownership and you wish to obtain more insurance coverage  
579 on the insured’s life in the future, the insured’s higher issue age, a change in health status, and/or other  
580 factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

581 iv. you should consult a professional advisor, since a change in ownership in satisfaction of  
582 the loan may result in tax consequences to the owner, depending on the structure of the loan;” and

583 B. may require certifications, such as the following, from the applicant and/or the insured:

584 i. “I have not entered into any agreement or arrangement providing for the future sale of this life  
585 insurance policy;

586                   ii. My loan arrangement for this policy provides funds sufficient to pay for some or all of the  
587 premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I  
588 have not entered into any agreement by which I am to receive consideration in exchange for procuring  
589 this policy; and

590                   iii. I, as the borrower, have an insurable interest in the insured.”

591           (b) The commissioner shall develop a notice, promulgated by rule, to appraise the owner of a policy of life  
592 insurance in this state of his or her rights as an owner of a life insurance policy. The document shall be made available at no  
593 cost to insurance companies and life insurance producers and written in lay terms.

594                   1. The document shall advise the consumer:

595                   i. That life insurance is a critical part of a broader financial plan;

596                   ii. That alternatives to lapse or surrender of the policy exist;

597                   iii. A general description of life settlements and the life settlement transaction in this State; and

598                   iv. A general description of other common products and services that may be available to  
599 owners of life insurance prior to the time of the lapse or surrender of a policy.

600                   v. A statement that advises recipients of such notice that life insurance, life settlements or any of  
601 the products or services described in the notice may or may not be available depending on a number of  
602 circumstances, including the age and health status of the insured or the terms of a life insurance policy  
603 and that owners of life insurance are encouraged to contact their financial advisor, agent or broker to seek  
604 further advice and assistance.

605           (c) With respect to each policy issued by an insurance company, the insurance company shall provide the notice  
606 developed pursuant to subsection (a) of this section to an owner of an individual life insurance policy, when the insured  
607 person under such policy is age sixty or older, or is known to be terminally ill or chronically ill, at the time of each of the  
608 following:

609                   1. When a life insurance company receives from such an owner a request to surrender, in whole or in  
610 part, an individual policy;

611                   2. When a life insurance company receives from such an owner a request to receive an accelerated death  
612 benefit under an individual policy;

613                   3. When a life insurance company sends to such an owner all notices of lapse of an individual policy; or

614                   4. At any other time that the Commissioner may be prescribed by rule.

615           §7511. General Rules.

616           (a) A Provider entering into a Life Settlement Contract with any Owner of a policy, wherein the insured is  
617 terminally or chronically ill, shall first obtain:

618 1. If the Owner is the insured, a written statement from a licensed attending physician that the Owner is  
619 of sound mind and under no constraint or undue influence to enter into a settlement contract; and

620 2. A document in which the insured consents to the release of his medical records to a Provider,  
621 settlement broker, or insurance producer and, if the policy was issued less than two years from the date of  
622 application for a settlement contract, to the insurance company that issued the policy.

623 (b) The insurer shall respond to a request for verification of coverage submitted by a Provider, settlement broker,  
624 or life insurance producer not later than thirty (30) calendar days of the date the request is received. The request for  
625 verification of coverage must be made on a form approved by the Commissioner. The insurer shall complete and issue the  
626 verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate  
627 whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time  
628 regarding the validity of the insurance contract.

629 (c) Before or at the time of execution of the settlement contract, the Provider shall obtain a witnessed document in  
630 which the Owner consents to the settlement contract, represents that the Owner has a full and complete understanding of the  
631 settlement contract, that the Owner has a full and complete understanding of the benefits of the policy, acknowledges that  
632 the Owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness  
633 or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or  
634 condition was diagnosed after the policy was issued.

635 (d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any Life  
636 Settlement Contract lawfully entered into in this state or with a resident of this state.

637 (e) If a settlement broker or life insurance producer performs any of these activities required of the Provider, the  
638 Provider is deemed to have fulfilled the requirements of this section.

639 (f) If a Broker performs those verification of coverage activities required of the Provider, the provider is deemed  
640 to have fulfilled the requirements of section §7509(a).

641 (g) Within twenty (20) days after an owner executes the Life Settlement Contract, the Provider shall give written  
642 notice to the insurer that issued the insurance policy that the policy has become subject to a Life Settlement Contract. The  
643 notice shall be accompanied by the documents required by §7509 and §7510 of this Chapter.

644 (h) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of  
645 state law relating to confidentiality of medical information, if not otherwise provided for Chapter.

646 (i) All Life Settlement Contracts entered into in this state shall provide that the Owner may rescind the Contract  
647 on or before fifteen (15) days after the date it is executed by all parties thereto. Rescission, if exercised by the Owner, is  
648 effective only if both notice of the rescission is given, and the Owner repays all proceeds and any premiums, loans, and  
649 loan interest paid on account of the Provider within the rescission period. If the insured dies during the rescission period,

650 the Contract shall be deemed to have been rescinded subject to repayment by the Owner or the Owner's estate of all  
651 proceeds and any premiums, loans, and loan interest to the Provider.

652 (j) Within three business days after receipt from the Owner of documents to effect the transfer of the insurance  
653 policy, the Provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow  
654 agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the  
655 policy. The trustee or escrow agent shall be required to transfer the proceeds due to the Owner within three business days  
656 of acknowledgement of the transfer from the insurer.

657 (k) Failure to tender the Life Settlement Contract proceeds to the Owner by the date disclosed to the Owner  
658 renders the Contract voidable by the Owner for lack of consideration until such time as the proceeds are tendered to and  
659 accepted by the Owner. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission  
660 until thirty (30) days after the written notice of the right of rescission has been given.

661 (l) Any fee paid by a Provider, party, individual, or an Owner to a Broker in exchange for services provided to the  
662 Owner pertaining to a Life Settlement Contract shall be computed as a percentage of the offer obtained, not the face value  
663 of the policy. Nothing in this subsection shall be construed as prohibiting a Broker from reducing such Broker's fee below  
664 this percentage if the Broker so chooses.

665 (m) The Broker shall disclose to the Owner anything of value paid or given to a Broker, which relates to the Life  
666 Settlement Contract.

667 (n) No person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-  
668 year period commencing with the date of issuance of the policy, shall enter into a Life Settlement regardless of the date the  
669 compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the  
670 policy is to occur. This prohibition shall not apply if the Owner certifies to the Provider that:

671 1. the policy was issued upon the Owner's exercise of conversion rights arising out of a group or  
672 individual policy, provided the total of the time covered under the conversion policy plus the time covered under  
673 the prior policy is at least twenty four months. The time covered under a group policy must be calculated without  
674 regard to a change in insurance carriers, provided the coverage has been continuous and under the same group  
675 sponsorship; or

676 2. the Owner submits independent evidence to the Provider that one or more of the following conditions  
677 have been met within the two year period:

678 i. the Owner or insured is terminally or chronically ill;

679 ii. the Owner or insured disposes of his ownership interests in a closely held corporation,  
680 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was  
681 initially issued;

- 682                           iii. the Owner's spouse dies;
- 683                           iv. the Owner divorces his or her spouse;
- 684                           v. the Owner retires from full-time employment;
- 685                           vi. the Owner becomes physically or mentally disabled and a physician determines that the
- 686                           disability prevents the Owner from maintaining full-time employment; or
- 687                           vii. a final order, judgment or decree is entered by a court of competent jurisdiction, on the
- 688                           application of a creditor of the Owner, adjudicating the Owner bankrupt or insolvent, or approving a petition
- 689                           seeking reorganization of the Owner or appointing a receiver, trustee or liquidator to all or a substantial part of
- 690                           the Owner's assets;

691           (b) Copies of the independent evidence required by subsection (n) shall be submitted to the insurer when the

692   Provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of

693   attestation from the Provider that the copies are true and correct copies of the documents received by the Provider. Nothing

694   in this Section shall prohibit an insurer from exercising its right to contest the validity of any policy;

695           (c) If the Provider submits to the insurer a copy of independent evidence provided for in item subsection (n) when

696   the Provider submits a request to the insurer to effect the transfer of the policy to the Provider, the copy is deemed to

697   establish that the settlement contract satisfies the requirements of this section.

698           §7512. Authority to Promulgate Regulations; Conflict of Laws.

699           (a) The Commissioner may:

700                   1. promulgate regulations implementing the provisions of this Chapter and regulating the activities and

701                   relationships of Providers, Brokers, insurers and their agents, subject to statutory limitations on administrative rule

702                   making.

703           (b) Conflict of Laws

704                   1. If there is more than one Owner on a single policy, and the Owners are residents of different states, the

705                   Life Settlement Contract shall be governed by the law of the state in which the Owner having the largest

706                   percentage ownership resides or, if the Owners hold equal ownership, the state of residence of one Owner agreed

707                   upon in writing by all of the Owners. The law of the state of the Insured shall govern in the event that equal

708                   Owners fail to agree in writing upon a state of residence for jurisdictional purposes.

709                   2. A Provider from this state who enters into a Life Settlement Contract with an Owner who is a resident

710                   of another state that has enacted statutes or adopted regulations governing Life Settlement Contracts, shall be

711                   governed in the effectuation of that Life Settlement Contract by the statutes and regulations of the Owner's state of

712                   residence. If the state in which the Owner is a resident has not enacted statutes or regulations governing Life

713                   Settlement Contracts, the Provider shall give the Owner notice that neither state regulates the transaction upon

714 which he or she is entering. For transactions in those states, however, the Provider is to maintain all records  
715 required if the transactions were executed in the state of residence. The forms used in those states need not be  
716 approved by the Department.

717 3. If there is a conflict in the laws that apply to an Owner and a Purchaser in any individual transaction,  
718 the laws of the state that apply to the Owner shall take precedence and the Provider shall comply with those laws.

719 §7513. Prohibited Practices.

720 (a) It shall be an unfair trade practice and a violation of Chapter 23 of this Title for any person to:

721 1. enter into a Life Settlement Contract if such Person knows or reasonably should have known that the life  
722 insurance policy was obtained by means of a false, deceptive or misleading application for such policy;

723 2. engage in any transaction, practice or course of business if such Person knows or reasonably should have  
724 known that the intent was to avoid the notice requirements of this Chapter;

725 3. engage in any fraudulent act or practice in connection with any transaction relating to any settlement  
726 involving an Owner who is a resident of this state;

727 4. issue, solicit or market the purchase of a new policy for the sole purpose of settling the policy;

728 5. if providing premium financing, receive any proceeds, fees, or other consideration from the policy or  
729 owner of the policy that are in addition to the amounts required to pay principal, interest, and any reasonable costs or  
730 expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a  
731 default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with  
732 any other person for the purpose of evading regulation under this act.; with respect to any settlement contract or insurance  
733 policy and a Broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any  
734 Provider, financing entity or related provider trust that is controlling, controlled by, or under common control with such  
735 Broker unless such relationship is disclosed to the owner;

736 6. with respect to any Life Settlement Contract or insurance policy and a Provider, knowingly enter into a  
737 Life Settlement Contract with an Owner, if, in connection with such Life Settlement Contract, anything of value will be  
738 paid to a Broker that is controlling, controlled by, or under common control with such Provider or the financing entity or  
739 related Provider trust that is involved in such settlement contract unless such relationship is disclosed to the owner;

740 7. with respect to a Provider, enter into a Life Settlement Contract unless the life settlement promotional,  
741 advertising and marketing materials, as may be prescribed by regulation, have been filed with the Commissioner. In no  
742 event shall any marketing materials expressly reference that the insurance is “free” for any period of time. The inclusion of  
743 any reference in the marketing materials that would cause an Owner to reasonably believe that the insurance is free for any  
744 period of time shall be considered a violation of this Act; or

745 8. with respect to any life insurance producer, insurance company, Broker, or Provider make any statement



746 or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the  
747 effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

748 9. if an insurer, to (a) prohibit, restrict, limit or impair a life insurance producer from lawfully negotiating a  
749 life settlement contract on behalf of an owner, aiding and assisting an owner with a life settlement contract, or otherwise  
750 participating in a life settlement transaction under this Act, (b) engage in or permit any discrimination between individuals  
751 of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or  
752 annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled  
753 policy, (c) make any false or misleading statement as to the business of life settlements or financing premiums due for a  
754 policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a  
755 life settlement contract, or (d) engage in any transaction, act, practice or course of business or dealing which restricts, limits  
756 or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

757 (b). A violation of any provision of subsection (a) shall be deemed a Fraudulent Life Settlement Act.

758 §7514. Fraud Prevention and Control.

759 (a) Fraudulent Life Settlement Acts, Interference and Participation of Convicted Felons Prohibited

760 1. A person shall not commit a Fraudulent Life Settlement Act.

761 2. A person shall not knowingly and intentionally interfere with the enforcement of the provisions of this  
762 Chapter or investigations of suspected or actual violations of this Chapter.

763 3. A person in the business of life settlements shall not knowingly or intentionally permit any person  
764 convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

765 (b) Fraud Warning Required

766 1. Life Settlement Contracts and applications for Life Settlement Contracts, regardless of the form of  
767 transmission, shall contain the following statement or a substantially similar statement:

768 “Any person who knowingly presents false information in an application for insurance or Life Settlement  
769 Contract is guilty of a crime and may be subject to fines and confinement in prison.”

770 2. The absence of the statement required in Paragraph 1 shall not constitute a defense in any prosecution  
771 for a Fraudulent Life Settlement Act.

772 (c) Mandatory Reporting of Fraudulent Life Settlement Acts

773 1. Any person engaged in the business of life settlements having knowledge or a reasonable belief that a  
774 Fraudulent Life Settlement Act is being, will be or has been committed shall provide to the Commissioner the  
775 information required by, and in a manner prescribed by, the Commissioner.

776                   2. Any other person having knowledge or a reasonable belief that a Fraudulent Life Settlement Act is  
777 being, will be or has been committed may provide to the Commissioner the information required by, and in a  
778 manner prescribed by, the Commissioner.

779 (d) Immunity from Liability

780                   1. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing  
781 information concerning suspected, anticipated or completed Fraudulent Life Settlement Acts or suspected or  
782 completed fraudulent insurance acts, if the information is provided to or received from:

- 783                   i. the Commissioner or the Commissioner's employees, agents or representatives;
- 784                   ii. federal, state or local law enforcement or regulatory officials or their employees, agents or  
785 representatives;
- 786                   iii. a person involved in the prevention and detection of Fraudulent Life Settlement Acts or that  
787 person's agents, employees or representatives;
- 788                   iv. any regulatory body or their employees, agents or representatives, overseeing life insurance,  
789 life settlements, securities or investment fraud;
- 790                   v. the life insurer that issued the life insurance policy covering the life of the insured; or
- 791                   vi. the licensee and any agents, employees or representatives.

792                   2. Paragraph 1 of this subsection shall not apply to statements made with actual malice. In an action  
793 brought against a person for filing a report or furnishing other information concerning a Fraudulent Life  
794 Settlement Act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation  
795 that Paragraph 1 does not apply because the person filing the report or furnishing the information did so with  
796 actual malice.

797                   3. A person identified in Paragraph 1 shall be entitled to an award of attorney's fees and costs if he or she  
798 is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities  
799 in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing  
800 so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at  
801 the time that it was initiated.

802                   4. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed  
803 by a person described in Paragraph 1.

804 (e) Confidentiality

805                   1. The documents and evidence provided pursuant to subsection (d) of this section or obtained by the  
806 Commissioner in an investigation of suspected or actual Fraudulent Life Settlement Acts shall be privileged and

807 confidential and not subject to disclosure pursuant to Chapter 100 of Title 29 of this Code, shall not be subject to  
808 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

809 2. Paragraph 1 of this subsection does not prohibit release by the Commissioner of documents and  
810 evidence obtained in an investigation of suspected or actual Fraudulent Life Settlement Acts:

- 811 i. in administrative or judicial proceedings to enforce laws administered by the Commissioner;
- 812 ii. to federal, state or local law enforcement or regulatory agencies, to an organization  
813 established for the purpose of detecting and preventing Fraudulent Life Settlement Acts or to the NAIC;
- 814 or
- 815 iii. at the discretion of the Commissioner, to a person in the business of life settlements that is  
816 aggrieved by a Fraudulent Life Settlement Act.

817 3. Release of documents and evidence under Paragraph 2 of this subsection does not abrogate or modify  
818 the privilege granted in Paragraph 1.

819 (f) Other Law Enforcement or Regulatory Authority

820 This Act shall not:

- 821 1. preempt the authority or relieve the duty of other law enforcement or regulatory agencies to  
822 investigate, examine and prosecute suspected violations of law;
- 823 2. preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice  
824 issued thereunder;
- 825 3. prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud  
826 to a law enforcement or regulatory agency other than the insurance department; or
- 827 4. limit the powers granted elsewhere by the laws of this state to the Commissioner or an insurance  
828 fraud unit to
- 829 5. investigate and examine possible violations of law and to take appropriate action against wrongdoers.

830 (g) Life Settlement Antifraud Initiatives

831 1. Providers and Brokers shall have in place antifraud initiatives reasonably calculated to detect,  
832 prosecute and prevent Fraudulent Life Settlement Acts. At the discretion of the Commissioner, the Commissioner  
833 may order, or a licensee may request and the Commissioner may grant, such modifications of the following  
834 required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less  
835 restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the  
836 purpose of this section. Antifraud initiatives shall include:

- 837 i. Fraud investigators, who may be Provider or Broker employees or independent contractors; and

838                   ii. An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan shall  
839 include, but not be limited to:

840                   (a) a description of the procedures for detecting and investigating possible Fraudulent Life  
841                   Settlement Acts and

842 procedures for resolving material inconsistencies between medical records and insurance applications;

843                   (b) a description of the procedures for reporting possible Fraudulent Life Settlement Acts to the  
844                   Commissioner

845                   (c) a description of the plan for antifraud education and training of underwriters and other  
846                   personnel; and

847                   (d) a description or chart outlining the organizational arrangement of the antifraud personnel  
848                   who are responsible for the investigation and reporting of possible Fraudulent Life  
849                   Settlement Acts and investigating unresolved material inconsistencies between medical  
850                   records and insurance applications.

851                   2. Antifraud plans submitted to the Commissioner shall be privileged and confidential and not subject to  
852 disclosure pursuant to Chapter 100 of Title 29 of this Code, shall not be subject to subpoena, and shall not be  
853 subject to discovery or admissible in evidence in any private civil action and shall not be a public record and shall  
854 not be subject to discovery or subpoena in a civil or criminal action.

855                   §7515. Injunctions; Civil Remedies; Cease and Desist.

856                   (a) In addition to the penalties and other enforcement provisions set forth in this Title, if any Person violates this  
857 Act or any rule implementing this Act, the Commissioner may seek an injunction in a court of competent jurisdiction in the  
858 county where the Person resides or has a principal place of business and may apply such temporary and permanent orders  
859 that the Commissioner determines necessary to restrain the Person from further committing the violation.

860                   (b) Any Person damaged by the acts of another Person in violation of this Act or any rule or regulation  
861 implementing this Act, may bring a civil action for damages against the Person committing the violation in a court of  
862 competent jurisdiction.

863                   (c) The Commissioner may issue a cease and desist order upon a Person who violates any provision of this part,  
864 any rule or order adopted by the Commissioner, or any written agreement entered into with the Commissioner, in  
865 accordance with Chapter 101 of Title 29, and such additional implemented regulations as may be published by the  
866 Commissioner.

867                   (d) When the Commissioner finds that such an action presents an immediate danger to the public and requires an  
868 immediate order, the Commissioner may issue an emergency cease and desist order reciting with particularity the facts  
869 underlying such findings. The emergency cease and desist order shall be effective immediately upon service of a copy of

870 the order on the respondent and shall remain in effect for a period not to exceed 90 days. If the department begins non-  
871 emergency cease and desist proceedings under subsection (a), the emergency cease and desist order remains effective,  
872 absent an order by a court of competent jurisdiction. In the event of a willful violation of this Chapter, a court may award  
873 statutory damages in addition to actual damages in an additional amount up to three times the actual damage award.

874 (e) The provisions of this Chapter may not be waived by agreement or contract and no choice of law provision  
875 may be utilized to prevent the application of this Chapter to any settlement in which a party to the settlement is a resident of  
876 this State.

877 §7516. Unfair Practices.

878 (a) It is a violation of this Act for any Person, Provider, Broker, or any other party related to the business of life  
879 settlements, to commit a Fraudulent Life Settlement Act. In addition to any penalty set forth in Chapter 23 or 24 of this  
880 Title, a person that commits a Fraudulent Life Settlement Act may be prosecuted criminally for a violation of §913 of Title  
881 11 or any other applicable criminal law of this State.

882 (b) The imposition of a fine or other sanction authorized in this Title shall not preclude prosecution for a violation  
883 of any of the criminal laws of this State.

884 (c) The license of a person licensed under this Chapter that commits a Fraudulent Life Settlement Act shall be  
885 revoked for a period of at least 1 year.

886 §7517. Unfair Practices.

887 A violation of any provision of this Chapter shall constitute an unfair practice pursuant to Chapter 23 of this Title  
888 subject to the penalties set forth therein.

889 §7518. Transition Provisions.

890 (a) A person licensed pursuant to Delaware's Viatical Settlements Act (72 Del. Laws c. 132, et. seq.) and lawfully  
891 transacting business in this State prior to the effective date of Chapter may continue to do so pending approval or  
892 disapproval of such person's application for a license, provided that such application is filed with the Commissioner not  
893 later than 30 days after publication by the Commissioner of an application form and instructions for licensure of Providers.  
894 If the publication of the application form and instructions is prior to the effective date of this chapter, then the filing of the  
895 application shall not be later than 30 days after the effective date of this Act. During the time that such an application is  
896 pending with the Commissioner, the applicant may use any form of Life Settlement Contract that has been filed with the  
897 Commissioner pending approval thereof, provided that such form is otherwise in compliance with the provisions of this  
898 Chapter. Any person transacting business in this State pursuant to this subsection shall comply with all other requirements  
899 of this Chapter.

900 (b) A person who has lawfully negotiated Life Settlement Contracts between any Owner residing in this state and  
901 one or more Providers for at least one year immediately prior to the effective date of this Act may continue to do so pending

902 approval or disapproval of that person's application for a license as long as the application is filed with the Commissioner  
903 not later than 30 days after publication by the Commissioner of an application form and instructions for licensure of  
904 Brokers. Any person transacting business in this State pursuant to this subsection shall comply with all other requirements  
905 of this Chapter.".

906 Section 2. The provisions of this Act shall take effect 90 days after enactment.

#### SYNOPSIS

In 1999, the General Assembly adopted the 'Delaware Viatical Settlements Acts', 72 Del. Laws, c. 132, to regulate viatical settlements (i.e. the payment of less than the death benefit of an insurance policy prior to the death of an insured who has a catastrophic or life threatening illness or condition) in this State. Since that time, the National Conference of Insurance Legislators ('NCOIL') has promulgated a comprehensive Life Settlements Model Act which has been adopted by 21 states with minor state-specific amendments. This Act repeals the earlier enacted viatical settlements act and adopts the more comprehensive NCOIL Model Act as Delaware law.

Pursuant to this Act, any person engaged in the business of life settlements must be licensed and regulated by the Insurance Commissioner. The Act defines conduct constituting fraudulent life settlement acts, sets forth detailed licensing requirements for providers and brokers of life settlements contracts, provides notice, disclosure, fraud prevention and rescission rights to protect policy owners and insured parties, and provides the Insurance Commissioner with authority to impose penalties, issue cease and desist orders, seek injunctive relief and otherwise remedy violations of the Act. The Act also provides a transition provision to allow individuals and entities licensed pursuant to the former Viatical Settlements Act to continue to engage in business in this State pending licensure pursuant to this Act.

Author: Senator Blevins