

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 213

An Act to amend and reenact §§ 38.2-1820, 38.2-1822, 38.2-1836, 38.2-1838, 38.2-1845, 38.2-1857.2, 38.2-1857.5, 38.2-1857.9, 38.2-1865.1, and 38.2-1865.4 of the Code of Virginia, relating to insurance licensing; requirement or certificate of authority.

[H 349]

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1820, 38.2-1822, 38.2-1836, 38.2-1838, 38.2-1845, 38.2-1857.2, 38.2-1857.5, 38.2-1857.9, 38.2-1865.1, and 38.2-1865.4 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1820. Issuance of license.

A. Each applicant who is at least eighteen years of age and who has satisfied the Commission that he is of good character, has a good reputation for honesty, and has complied with the other requirements of this article is entitled to and shall receive a license in the form the Commission prescribes.

B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application, or such other application acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fees set forth in § 38.2-1819; *and*

2. ~~The business entity has filed the appropriate documents, as follows:~~

a. ~~A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;~~

b. ~~A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;~~

c. ~~A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;~~

d. ~~A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and~~

e. ~~A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1836.~~

3. ~~The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.~~

C. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1822. License required of individual and business entity agents; individual acting for business entity licensee.

A. No person shall act, and no insurer or licensed agent shall knowingly permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission. As used in this section, "act as an agent" means selling, soliciting, or negotiating contracts of insurance or annuity on behalf of an insurer licensed in this Commonwealth or receiving or sharing, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation, or negotiation of any such contract, or both. No person shall submit business to any joint underwriting association or any plan established under this title for the equitable distribution of risks among insurers unless the person holds a valid license to transact the class of insurance involved.

B. No individual shall act as an agent on behalf of a business entity in the transaction of insurance unless he is licensed as an agent and appointed, if appointment is required by statute.

C. No business entity may act as an agent in this Commonwealth unless licensed and appointed, if appointment is required by statute. The existence of the business entity shall be recorded pursuant to law. The Commission may require proof of the foregoing before issuing a license to the business entity.

D. For a nonresident business entity, a certification by the insurance department of the business entity's home state satisfying the requirements of subsection A of § 38.2-1836 shall be deemed to satisfy the foregoing requirements; ~~however, if the nonresident business entity is a corporation it shall obtain a certificate of authority to transact business in the Commonwealth, or if it is a limited liability company or limited partnership it shall obtain a certificate of registration to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as applicable, before the Commission issues a license to such business entity.~~

E. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity

conducting the business of insurance in this Commonwealth under an assumed or fictitious name shall notify the Bureau of Insurance either at the time the application for a license to do business is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which such business is to be conducted.

F. When the business of insurance is no longer conducted under an assumed or fictitious name, notification to the Bureau of Insurance is required within thirty calendar days from the date of cessation of use of such assumed or fictitious name.

G. Notwithstanding any other provision in this chapter, no license shall be required of a person whose employment responsibilities include enrolling individuals under a group insurance policy, provided that such person receives no commission or other valuable consideration for such enrollments, and that such compensation is in no manner contingent upon the number of individuals enrolled or the amount of premium generated by such enrollments. As used in this subsection "enrolling individuals" means the process of informing individuals of the availability of coverages, calculating the insurance charge, assisting with completion of the enrollment application, preparing and delivering the certificate of insurance, answering questions regarding the coverages, and assisting the individual in making an informed decision whether or not enrollment under the group insurance plan is to be elected.

§ 38.2-1836. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state or territory of the United States or a province of Canada shall receive a nonresident agent license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed as a resident and in good standing in his home state;
2. The applicant has submitted the proper request for licensure and has paid the fees required by § 38.2-1819;
3. The applicant has submitted or transmitted to the Commission the application for licensure that the person submitted to his home state, or in lieu of the same, a completed Uniform Application; *and*
4. The person's home state issues nonresident agent licenses to residents of this Commonwealth on the same basis; *and*

~~5. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.~~

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state, territory or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state, territory or province. No applicant for a nonresident agent license shall be permitted to obtain such a license unless such agent's home state will grant a similar license to a resident of this Commonwealth.

D. The Commission may verify the agent's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident agent who moves from one state or province to another state shall file a change of address and provide a certification from the new home state within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Notwithstanding any other provision of this chapter, a person licensed as a limited lines credit insurance or other type of limited lines agent in his home state shall receive a nonresident limited lines agent license, pursuant to subsection A of this section, granting the same scope of authority as is granted under the license issued by the agent's home state. A person holding an unrestricted license from his home state in which the authority of the license is less than the total authority prescribed in the associated major lines pursuant §§ 38.2-1814 through 38.2-1815.1 shall be issued a restricted nonresident license providing authority equivalent to that held by the agent in his home state.

G. Any licenses and appointments issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

§ 38.2-1838. License required of consultants.

A. No person, unless he holds an appropriate license shall:

1. Represent to members of the public that he provides planning or consulting services beyond those within the normal scope of activities of a licensed insurance agent; or
2. Except as provided in § 38.2-1812.2, charge or receive, directly or indirectly, a fee or other compensation for insurance advice, other than commissions received in such person's capacity as a licensed insurance agent or surplus lines broker resulting from selling, soliciting, or negotiating insurance or health care services as allowed by his license.

B. Each individual applying for an insurance consultant's license shall apply to the Commission in a

form acceptable to the Commission, and shall provide satisfactory evidence of having met the following requirements:

1. To be licensed as a property and casualty insurance consultant the applicant must pass, within 183 calendar days prior to the date of application for such license, the property and casualty examination as required in § 38.2-1817, except that an applicant who, at the time of such application holds an active property and casualty insurance agent license, shall be exempt from the examination requirements;

2. To be licensed as a life and health insurance consultant, the applicant must pass, within 183 calendar days prior to the date of application for such license, both the life and annuities and the health examinations as required in § 38.2-1817, except that an applicant who, at the time of such application holds both an active life and annuities license and an active health agent license, shall be exempt from the examination requirements; and

3. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

C. Any individual who acts as an insurance consultant as an officer, director, principal or employee of a business entity shall be required to hold an appropriate individual license as an insurance consultant.

D. A business entity acting as an insurance consultant is required to obtain an insurance consultant license. Application shall be made in a form and manner acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; *and*
2. The business entity has filed the appropriate documents, as follows:
 - a. A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;
 - b. A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;
 - c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;
 - d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and
 - e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1845; and

3. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

E. The Commission may require any documents reasonably necessary to verify the information contained in an application.

F. Each applicant for an insurance consultant's license shall submit a nonrefundable application processing fee of fifty dollars at the time of initial application for such license.

§ 38.2-1845. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state, territory, or province of Canada, shall receive a nonresident insurance consultant license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident insurance consultant and is in good standing in his home state;

2. The applicant has submitted the proper application for licensure or a copy of the application for licensure submitted to his home state, and has paid the fees required by § 38.2-1838; *and*

3. The applicant's home state issues nonresident insurance consultant licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a consultant in such state without requiring a license; *and*

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be

similarly licensed as a nonresident in that state or province.

D. The Commission may verify the insurance consultant's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident insurance consultant who moves from one state or province to another state or province shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

§ 38.2-1857.2. Applications for surplus lines brokers' licenses.

A. Every original applicant for a surplus lines broker's license shall apply for such license in a form and manner prescribed by the Commission, and containing any information the Commission requires.

B. Prior to issuance of a license, the applicant shall file with the Commission a certification or attestation that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of this Commonwealth in the amount of \$25,000 with corporate sureties licensed by the Commission. The bond shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least thirty calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed surplus lines broker fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the surplus lines broker license shall terminate and the licensee shall be required to apply for a new surplus lines broker license.

C. Notwithstanding any other provisions of this title, a person licensed as a surplus lines broker in his home state or province shall receive a nonresident surplus lines broker license subject to meeting the requirements set forth in § 38.2-1857.9.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

E. A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; *and*
2. ~~The business entity has filed the appropriate documents, as follows:~~
 - a. ~~A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;~~
 - b. ~~A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;~~
 - c. ~~A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;~~
 - d. ~~A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and~~
 - e. ~~A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1845; and~~
3. The business entity has designated a licensed Virginia Property and Casualty insurance agent to be responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

F. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1857.5. Requirement to report to Commission.

A. Each licensed surplus lines broker shall report within thirty calendar days to the Commission any change in his residence or name.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as a surplus lines broker in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for a surplus lines broker license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the surplus lines broker intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed surplus lines broker convicted of a felony shall report within thirty calendar days to

the Commission the facts and circumstances regarding the criminal conviction.

D. Each licensed surplus lines broker shall report to the Commission within thirty calendar days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in this Commonwealth. Such report shall include a copy of the order, consent to order or other relevant legal documents.

E. The license authority of any licensed resident surplus lines broker shall terminate immediately when such surplus lines broker has moved his residence from this Commonwealth, whether or not the Commission has been notified of such move.

F. The license authority of any business entity licensed as a surplus lines broker shall terminate immediately if the sole licensed responsible producer designated pursuant to subdivision E 3 2 of § 38.2-1857.2 for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth is removed for any reason, and a new responsible producer has not been appointed and the Commission notified within thirty calendar days of such removal and of the newly designated responsible producer.

§ 38.2-1857.9. Licensing nonresidents; clerk of the Commission to be appointed agent for service of process; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state, territory, or province of Canada, shall receive a nonresident surplus lines broker license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident surplus lines broker and is in good standing in his home state;

2. The applicant has submitted the proper application for licensure, or in lieu thereof has submitted a copy of the application for a Surplus Lines Broker license submitted to the home state, and has paid the fees required by § 38.2-1857.3; *and*

3. The applicant's home state issues nonresident surplus lines broker licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a surplus lines broker in such state without requiring a license; *and*

4. ~~The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.~~

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the surplus lines broker's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident surplus lines broker who moves from one state or province to another state or province shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

§ 38.2-1865.1. License required for viatical settlement brokers; Commission's authority; conditions.

A. No person shall act as a viatical settlement broker, or solicit a viatical settlement contract while acting as a viatical settlement broker, on or after January 1, 1998, without first obtaining a license from the Commission.

B. A resident or nonresident life and annuities insurance agent shall not be prohibited from obtaining a license, and subsequently acting as, a viatical settlement broker. Such licensed life and annuities agent applying for a license as a viatical settlement broker shall comply with all provisions of this chapter.

C. Application for a viatical settlement broker's license shall be made to the Commission in the manner, in the form, and accompanied by the nonrefundable license processing fee prescribed by the Commission.

D. A business entity acting as a viatical settlement broker is required to obtain a viatical settlement broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; *and*

2. ~~The business entity has filed the appropriate documents, as follows:~~

a. ~~A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;~~

b. ~~A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;~~

c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;

d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and

e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1865.4; and

3. The business entity has designated a licensed viatical settlement broker as the individual responsible for the business entity's compliance with the insurance and other laws of this title, and related rules and regulations of this Commonwealth.

E. The Commission may require any documents reasonably necessary to verify the information contained in an application.

F. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

G. The license processing fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

H. Before June 1 of each year, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal application prescribed by the Commission for the renewal of the license effective July 1 of that year.

I. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following June 30 if the required renewal application and renewal fee have been received by the Commission on or before June 1, and the license has not been terminated, suspended or revoked on or before June 30.

J. The renewal fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

K. Each applicant for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license pertaining to the business of viatical settlements or to the insurance or other financial services business.

L. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

M. A viatical settlement broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

§ 38.2-1865.4. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state or a province of Canada, shall receive a viatical settlement broker license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident viatical settlement broker and is in good standing in his home state or province;

2. The applicant has submitted the proper application for licensure and has paid the fees required by § 38.2-1865.1; and

3. The applicant's home state or province issues nonresident viatical settlement broker licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a viatical settlement broker in such state or province without requiring a license; and

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the viatical settlement broker's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident viatical settlement broker who moves from one state or province to another state shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state or province is terminated, suspended, or revoked.