

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 814

An Act to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 57, consisting of sections numbered 38.2-5700 through 38.2-5707, relating to viatical settlements; penalties.

[H 871]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 57, consisting of sections numbered 38.2-5700 through 38.2-5707, as follows:

CHAPTER 57.

VIATICAL SETTLEMENTS ACT.

§ 38.2-5700. *Definitions.*

As used in this chapter:

"Viatical settlement" means compensation or other valuable consideration paid to the viator in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of a life insurance policy or certificate to the viatical settlement provider which compensation or other valuable consideration is less than the expected death benefit of the life insurance policy or certificate.

"Viatical settlement broker" means any person who, for another and for a fee, commission or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers; however, "viatical settlement broker" does not include an attorney, accountant or financial planner who is not paid by the viatical settlement provider and who is retained to represent the viator.

"Viatical settlement contract" means a written agreement between a viatical settlement provider and a person who owns a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition; under the terms of the agreement, the viatical settlement provider will pay compensation or other valuable consideration, which is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viatical settlement contracts" do not include accelerated death benefit provisions contained in life insurance policies, whether issued with the original policy or as a rider, according to the regulations promulgated by the Commission.

"Viatical settlement provider" means a person that conducts the business of viatical settlements directly or indirectly as agent or attorney-in-fact for one or more persons entering into or attempting to enter into a viatical settlement contract. "Viatical settlement provider" does not include: (i) any bank, savings bank, savings institution, credit union or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy which makes a policy loan on a policy that it has issued, permits surrender of the policy or pays other policy benefits, including accelerated benefits according to regulations promulgated by the Commission; or (iii) any individual who enters into only one agreement in a calendar year for the transfer of the death benefit or ownership of the insurance policy or certificate for any value less than the expected death benefit.

"Viaticated policy" means a life insurance policy or a certificate of life insurance issued under a group life insurance policy that has been acquired or transferred pursuant to the terms of a viatical settlement contract.

"Viator" means the owner of a life insurance policy or the holder of a certificate issued under a group life insurance policy insuring the life of a person with a catastrophic or life threatening illness or condition who enters into an agreement under the terms of which the viatical settlement provider will pay compensation or other valuable consideration, which compensation or other valuable consideration is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viator" does not include a viatical settlement provider or any subsequent owner of a viaticated policy.

§ 38.2-5701. *License required for viatical settlement providers; Commission's authority; conditions; bonds; etc.*

A. On and after January 1, 1998, no person shall act as a viatical settlement provider or enter into or solicit a viatical settlement contract while acting as a viatical settlement provider without first obtaining a license from the Commission.

1. Any person seeking to be licensed as a viatical settlement provider in this Commonwealth shall

apply for such license in a form acceptable to the Commission and shall pay to the Commission a nonrefundable application fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,500.

2. Every licensed viatical settlement provider shall pay to the Commission a nonrefundable biennial renewal fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,500. Each license shall expire on June 30 of the appropriate year. Prior to April 1 of the renewal year, each licensed viatical settlement provider shall submit to the Commission a renewal application form and fee in the manner and form prescribed by the Commission.

B. A licensed insurer shall be prohibited from transacting the business of a viatical settlement provider.

C. The Commission may require the applicant to disclose fully the identities of all stockholders, partners, officers and employees, and may, in the exercise of its discretion, refuse to issue a license in the name of any firm, partnership, limited liability company or corporation if not satisfied that any officer, employee, stockholder or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

D. A license issued to any partnership, limited liability company or corporation authorizes all members, officers, and designated employees to transact or conduct the business of viatical settlement provider under the license, and all such persons shall be named in the application and any application supplements.

E. Upon the filing of an application and the payment of the nonrefundable application processing fee, the Commission shall make such investigation of each applicant as the Commission may determine to be appropriate and may issue a license if it finds that the applicant: (i) has provided a detailed plan of operation; (ii) is competent and trustworthy; (iii) indicates its intention to act in good faith within the confines of the license; (iv) has a good business reputation; (v) if an individual, has had experience, training or education which qualifies him for licensure; (vi) if a resident partnership, limited liability company or corporation, has recorded the existence of the partnership, limited liability company or corporation pursuant to law; (vii) if a corporation, has specific authority to act as a viatical settlement provider in its charter; and (viii) if a nonresident partnership, limited liability company or corporation, has furnished proof of its authority to transact business in Virginia.

F. If the applicant for a viatical settlement provider license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the clerk of the Commission as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers; and also shall furnish the clerk of the Commission with the name and address of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such nonresident viatical settlement provider may be served. Such licensee shall promptly notify the clerk of the Commission in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commission.

G. The Commission may deny an application for a license or may suspend or revoke a license of or refuse to issue a new license to any viatical settlement provider if the Commission finds that the applicant or licensee has (i) made any material misrepresentation on the application; (ii) been guilty of fraudulent or dishonest practices; (iii) been subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to viators; (v) been convicted of a felony or any misdemeanor involving moral turpitude; or (vi) violated any provisions of this chapter or other applicable provisions of this title.

H. If the Commission is of the opinion that any applicant for a viatical settlement provider's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not suspend or revoke an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to suspend or revoke an existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed suspension or revocation as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-5703, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall apply again for a license until after the time, not exceeding two years, the Commission prescribes in its order.

I. All viatical settlement providers shall be bonded, and the bonds shall be filed with the Commission, as may be required by the Commission pursuant to § 38.2-5706.

§ 38.2-5702. License required for viatical settlement brokers; Commission's authority; conditions; etc.

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.

1. 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. A license issued at any time prior to August 1, 1998, will expire on July 31, 1999, unless renewed as set forth herein.

2. Before August 1 of each year commencing August 1, 1999, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal form prescribed by the Commission for the renewal of the license, unless the license has been terminated, suspended or revoked on or before July 31 of such year. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following July 31 if the required renewal form and renewal fee have been received by the Commission. Unless the required renewal form and fee are received by the Commission by July 31 of such year, the viatical settlement broker's license shall expire.

B. 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.

C. Applicants for a nonresident viatical settlement broker's license shall designate the clerk of the Commission as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers; and also shall furnish the clerk of the Commission with the name and address of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such nonresident viatical settlement broker may be served. Such licensee shall promptly notify the clerk of the Commission in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commission.

D. The Commission may deny an application for a license or may suspend or revoke a license of or refuse to issue a new license to any viatical settlement broker, if the Commission finds that the applicant or licensee has (i) made any material misrepresentation on the application; (ii) been guilty of fraudulent or dishonest practices; (iii) been subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to viators; (v) been convicted of a felony or any misdemeanor involving moral turpitude; or (vi) violated any provisions of this chapter or other applicable provisions of this title.

E. If the Commission is of the opinion that any applicant for a viatical settlement broker's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not suspend or revoke an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to suspend or revoke an existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed suspension or revocation as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-5703, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or her behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall apply again for a license until after the time, not exceeding two years, the Commission prescribes in its order.

F. 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.

G. 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.

§ 38.2-5703. Change of address or name.

Each licensed viatical settlement provider and viatical settlement broker shall report, in writing, any change in business or residence address or name within thirty days to the Commission.

§ 38.2-5704. Commission approval required for viatical settlement contract forms; examinations and inspections; etc.

A. No viatical settlement provider may, on or after January 1, 1998, use any viatical settlement contract in this Commonwealth unless such contract has been filed with and approved by the Commission in accordance with § 38.2-316, as well as all applicable regulations.

B. Each licensee shall file with the Commission by March 1 of each year an annual statement in the form required by the Commission. The Commission (i) may, when it deems it reasonably necessary to protect the public interest, examine and inspect the business and affairs of any licensee or applicant for a license; (ii) shall have the right to examine and investigate the business affairs of any licensee or applicant engaged or alleged to be engaged in the business of viatical settlements in this

Commonwealth, including all brokers, to determine whether the person has engaged or is engaging in any violation of this title; and (iii) shall have the right to examine all records relating to the writing or alleged writing of viatical settlement contracts by any such person in this Commonwealth to determine whether the person is now or has been violating any of the provisions of this title. Any licensed viatical settlement provider or broker or any person purporting to be a licensed viatical settlement provider or broker, or any person whose actions have led any other person to believe that he is a licensed viatical settlement provider or broker, who refuses to permit the Commission or any of its employees or agents, including employees of the Bureau of Insurance, to make an examination or who fails or refuses to comply with the provisions of this section may, after notice and an opportunity to be heard, be subject to any of the penalties relating to agents or companies licensed by the Commission provided in this title, including the suspension or revocation of his or its license. The expenses incurred in the examination and inspection shall be paid by the licensee or applicant. Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the Commission for inspection during reasonable business hours. The Commission shall hold the names and individual identifiers for all viators as confidential and shall not disclose these names and individual identifiers, unless otherwise required by law.

§ 38.2-5705. Disclosures required of viatical settlement providers; informed consent; unconditional refund.

A. Viatical settlement providers shall advise the viator in writing, at the time of solicitation for the viatical settlement, and again at the time the viatical settlement contract is signed by all parties, of the following:

1. That there are alternatives to viatical settlement contracts for persons with catastrophic or life-threatening illnesses offered by the issuer of the life insurance policy, and that the viator should communicate with the insurance company to review all possible alternatives;

2. That some or all of the compensation of the viatical settlement may be taxable, and that assistance from a personal tax advisor should be obtained;

3. That the viatical settlement may be subject to the claims of creditors;

4. That receipt of compensation through a viatical settlement may affect the insured's eligibility for medical assistance services or other government benefits or entitlements, and that advice from the appropriate agencies should be obtained;

5. That the viator has the right to rescind a viatical settlement contract within thirty days of the date the agreement was executed by the parties or within fifteen days of the receipt of the viatical settlement proceeds by the viator, whichever occurs sooner, as provided in subsection C; and

6. The date by which the viatical settlement funds will be available to the viator and the source of the funds.

The viatical settlement provider shall retain a signed disclosure form from the viator, acknowledging the viator's understanding of the information required by this subsection.

B. Prior to entering into any viatical settlement contract with any person with a catastrophic or life-threatening illness or condition, a viatical settlement provider shall obtain (i) a written statement from a licensed physician that the person is of sound mind and under no constraint or undue influence and (ii) a witnessed document in which the viator consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness, represents that he has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the life insurance policy, releases his medical records, and acknowledges that he has entered into the viatical settlement contract freely and voluntarily.

All medical information solicited or obtained by any licensee shall be confidential and shall only be released as provided by law.

C. All viatical settlement contracts executed in this Commonwealth shall contain an unconditional refund provision of at least thirty days from the date of the contract or fifteen days of the receipt of the viatical settlement proceeds, whichever occurs first. In the event of a refund, the amount refunded shall not be less than the value of the insurance contract as determined on the date the viatical settlement contract was signed. Immediately upon receipt from the viator of documents to effect the transfer of the death benefit or ownership of the life insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a qualified financial institution eligible, under the definition at § 38.2-1316.1, to act as a fiduciary of a trust, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer. Failure to tender the viatical settlement by the date disclosed to the viator shall render the contract null and void, unless the viator chooses to honor the contract on a later date when the viatical settlement is tendered.

§ 38.2-5706. Commission's authority.

Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to implement this chapter, including, but not limited to:

1. Establishing standards for evaluating reasonableness of payments under viatical settlement

contracts. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy; and

2. Setting the amount of any bond required for viatical settlement providers pursuant to § 38.2-5701. § 38.2-5707. Unfair trade practices.

A violation of this chapter shall be considered an unfair trade practice pursuant to Chapter 5 (§ 38.2-500 et seq.) of this title and shall be subject to the penalties contained in that chapter.

2. That the biennial licensure fees required by § 38.2-5701 for the initial licensure period ending June 30, 1999, shall not be prorated.