

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 11

*An Act to amend and reenact §§ 38.2-5701 and 38.2-5702 of the Code of Virginia, relating to insurance; viatical settlements.*

[H 567]

Approved March 8, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-5701 and 38.2-5702 of the Code of Virginia are amended and reenacted as follows:**

§ 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. *The application fee required by this subdivision 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.*

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. *The renewal fee required by this subdivision shall be collected by the Commission and 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.*

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 as the person upon whom any process, notices or order, orders of the Commission or process affecting required or permitted by law to be served upon~~ such nonresident viatical settlement provider may be served.; and 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. *Whenever a nonresident viatical settlement provider transacting business in this Commonwealth fails to*

*appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, the clerk of the Commission shall be an agent of the nonresident upon whom service may be made in accordance with § 12.1-19.1.*

G. The Commission may deny an application for a license or may suspend or revoke a license 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. *The license processing fee required by this subdivision 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.*

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. *The renewal fee required by this subdivision 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.*

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 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~~ broker; (iv) ~~demonstrated a~~

~~pattern of unreasonable payments to viators placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this Commonwealth;~~ (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.