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HOUSE BILL NO. 2613

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 38.2-1800 and 38.2-1865.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 60, consisting of sections numbered 38.2-6000 through 38.2-6016, and to repeal Chapter 57 (§§ 38.2-5700 through 38.2-5707) of Title 38.2 of the Code of Virginia, relating to viatical settlements.

Patron—Bryant

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1800 and 38.2-1865.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 60, consisting of sections numbered 38.2-6000 through 38.2-6016, as follows:

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Appointed agent," "appointed insurance agent," "appointed producer," or "appointed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in this Commonwealth to sell, solicit, or negotiate on its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Automobile club authority" means the authority in this Commonwealth to sell, solicit, or negotiate automobile club contracts on behalf of automobile clubs licensed under Chapter 3.1 (§ 13.1-400.1 et seq.) of Title 13.1.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Dental services authority" means the authority in this Commonwealth to sell, solicit, or negotiate dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Filed" means received by the Commission.

"Health agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-108 and 38.2-109, and including contracts issued by insurers, health services plans, health maintenance organizations, dental services plans, and optometric services plans licensed in this Commonwealth.

"Home protection insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in this Commonwealth.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which an insurance producer maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Legal services insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in this Commonwealth.

"Legal services plan authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services plan contracts on behalf of legal services plans licensed under Chapter 44 (§ 38.2-4400 et seq.) of this title.

"License" means a document issued by the Commission authorizing an individual or business entity to act as an insurance producer for the lines of authority specified in the document. Except as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to represent, commit, or bind an insurer.

"Licensed agent," "licensed insurance agent," "licensed producer," or "licensed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth

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59 to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope
60 of such license.

61 "Life and annuities insurance agent" means an agent licensed in this Commonwealth to sell, solicit,
62 or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104,
63 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, on behalf of insurers licensed in this Commonwealth.

64 "Limited burial insurance authority" means the authority in this Commonwealth to sell, solicit, or
65 negotiate burial insurance society membership where the certificates of membership will not exceed
66 \$5,000 on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this
67 title; or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that
68 association for burial association group life insurance certificates in amounts of \$5,000 or less.

69 "Limited lines credit insurance agent" means an agent licensed in this Commonwealth whose
70 authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in this
71 Commonwealth, one or more of the following coverages to individuals through a master, corporate,
72 group or individual policy: (i) credit life insurance and credit accident and sickness insurance, but only
73 to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title; (ii) credit involuntary
74 unemployment insurance as defined in § 38.2-122.1; (iii) credit property insurance, as defined in
75 § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v) mortgage redemption insurance; (vi)
76 mortgage guaranty insurance; and (vii) any other form of insurance offered in connection with an
77 extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the
78 Commission specifically determines may be sold, solicited, or negotiated by those holding a limited lines
79 credit insurance agent license. Each insurer that sells, solicits or negotiates any of the coverages set forth
80 in this definition shall provide to each individual whose duties will include selling, soliciting or
81 negotiating such coverages a program of instruction that may, at the discretion of the Commission, be
82 submitted for approval by the Commission or reviewed by the Commission subsequent to its
83 implementation.

84 "Limited lines life and health agent" means an individual or business entity authorized by the
85 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
86 type of authority that the Commission may deem it necessary to recognize for the purposes of
87 complying with § 38.2-1836: dental services authority; legal services plan authority; limited burial
88 insurance authority; mutual assessment life and health insurance authority; optometric services authority;
89 and travel accident insurance authority. Limited lines life and health insurance shall not include life
90 insurance, health insurance, property insurance, casualty insurance, and title insurance.

91 "Limited lines property and casualty agent" means an individual or business entity authorized by the
92 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
93 type of authority that the Commission may deem it necessary to recognize for the purposes of
94 complying with § 38.2-1836: automobile club authority; home protection insurance authority; legal
95 services insurance authority; mutual assessment property and casualty insurance authority; ocean marine
96 insurance authority; pet accident, sickness and hospitalization insurance authority; and travel baggage
97 insurance authority. Limited lines property and casualty insurance shall not include life insurance, health
98 insurance, property insurance, casualty insurance, and title insurance.

99 "Mortgage accident and sickness insurance authority" means the authority in this Commonwealth to
100 sell, solicit, or negotiate mortgage accident and sickness insurance on behalf of insurers licensed in this
101 Commonwealth.

102 "Mortgage guaranty insurance authority" means the authority in this Commonwealth to sell, solicit, or
103 negotiate mortgage guaranty insurance on behalf of insurers licensed in this Commonwealth.

104 "Mortgage redemption insurance authority" means the authority in this Commonwealth to sell, solicit,
105 or negotiate mortgage redemption insurance on behalf of insurers licensed in this Commonwealth. As
106 used in this chapter, "mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing
107 term life insurance policy written in connection with a mortgage transaction for a period of time
108 coinciding with the term of the mortgage. The initial sum shall not exceed the amount of the
109 indebtedness outstanding at the time the insurance becomes effective, rounded up to the next \$1,000.

110 "Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a motor
111 vehicle rental company that is in the business of providing primarily private motor vehicles to the public
112 under a rental agreement for a period of less than six months, and receives no direct or indirect
113 commission from the insurer, the renter or the vehicle rental company.

114 "Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor
115 vehicle rental company that is in the business of providing primarily private passenger motor vehicles to
116 the public under a rental agreement for a period of less than six months and (ii) whose license in this
117 Commonwealth is restricted to selling, soliciting, or negotiating only the following insurance coverages,
118 and solely in connection with and incidental to the rental contract:

119 1. Personal accident insurance which provides benefits in the event of accidental death or injury
120 occurring during the rental period;

2. Liability coverage sold to the renter in excess of the rental company's obligations under §§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

3. Personal effects insurance which provides coverages for the loss of or damage to the personal effects of the renter and other vehicle occupants while such personal effects are in or upon the rental vehicle during the rental period;

4. Roadside assistance and emergency sickness protection programs; and

5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company offers in connection with and incidental to the rental of vehicles.

The term "motor vehicle rental contract insurance agent" does not include motor vehicle rental contract enrollers.

"Mutual assessment life and health insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment life and accident and sickness insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.) of this title, but only to the extent permitted under § 38.2-3919.

"Mutual assessment property and casualty insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment property and casualty insurance on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.) of this title, but only to the extent permitted under § 38.2-2525.

"NAIC" means the National Association of Insurance Commissioners.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Ocean marine insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate those classes of insurance classified in § 38.2-126, except those classes specifically classified as inland marine insurance, on behalf of insurers licensed in this Commonwealth.

"Optometric services authority" means the authority in this Commonwealth to sell, solicit, or negotiate optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Personal lines agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124, 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal, family, or household needs rather than for business or professional needs.

"Pet accident, sickness and hospitalization insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate pet accident, sickness and hospitalization insurance on behalf of insurers licensed in this Commonwealth.

"Property and casualty insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate both personal and commercial lines of insurance as defined in §§ 38.2-110 through 38.2-122.2, and §§ 38.2-124 through 38.2-134 on behalf of insurers licensed in this Commonwealth.

"Resident" means (i) an individual residing in Virginia; (ii) an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable; (iii) a partnership duly formed and recorded in Virginia; (iv) a corporation incorporated and existing under the laws of Virginia; (v) a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign business entity that is not licensed as a resident agent in any other jurisdiction, and that demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

"Restricted nonresident health agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a health agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident life and annuities agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a life and annuities agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident personal lines agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a personal lines agent license in

182 Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in
183 Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which
184 the agent is authorized in his home state.

185 "Restricted nonresident property and casualty agent" means a nonresident agent whose license
186 authority in his home state does not include all of the authority granted under a property and casualty
187 agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or
188 negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance
189 for which the agent is authorized in his home state.

190 "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on
191 behalf of an insurer.

192 "Settlement agent" means a person licensed as a title insurance agent and registered with the Virginia
193 State Bar pursuant to Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

194 "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
195 class of insurance from one or more insurers.

196 "Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of this
197 chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et
198 seq.) of this title.

199 "Terminate" means the cancellation of the relationship between an insurance producer and the
200 insurer, or the termination of an insurance producer's authority to transact insurance.

201 "Title insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
202 title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf of title insurance
203 companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of this title.

204 "Travel accident insurance authority" means the authority in this Commonwealth to sell, solicit, or
205 negotiate travel accident insurance to individuals on behalf of insurers licensed in this Commonwealth.

206 "Travel baggage insurance authority" means the authority in this Commonwealth to sell, solicit, or
207 negotiate travel baggage insurance to individuals on behalf of insurers licensed in this Commonwealth.

208 "Variable contract agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
209 variable life insurance and variable annuity contracts on behalf of insurers licensed in this
210 Commonwealth.

211 "Viatical settlement broker" means a person licensed pursuant to *Chapter 60* (§ 38.2-6000 et seq.) of
212 *this title, in accordance with* Article 6.1 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby
213 authorized to engage in the activities set forth in Chapter ~~57~~ (~~§ 38.2-5700 et seq.~~) *60* of this title.

214 "Uniform Business Entity Application" means the current version of the NAIC Uniform Business
215 Entity Application for resident and nonresident business entities.

216 "Uniform Application" means the current version of the NAIC Uniform Application for resident and
217 nonresident producer licensing.

218 § 38.2-1865.1. (Effective September 1, 2002) License required for viatical settlement brokers;
219 Commission's authority; conditions.

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

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

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

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

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

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

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

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

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

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

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

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

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.*

K. 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.

L. 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.

CHAPTER 60. VIATICAL SETTLEMENTS ACT.

§ 38.2-6000. Definitions.

As used in this chapter:

"Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

"Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating in any other manner, of viatical settlement contracts or purchase agreements.

"Chronically ill" means (i) being unable to perform at least two activities of daily living, which shall include eating, toileting, transferring, bathing, dressing or continence, (ii) requiring substantial supervision by another person to protect the individual from threats to health and safety due to severe cognitive impairment, or (iii) having a level of disability similar to that described in clause (i) as determined by the federal Secretary of Health and Human Resources.

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. Financing entity does not include a non-accredited investor or viatical settlement purchaser.

"Fraudulent viatical settlement act" includes:

1. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:

305 a. Presenting, causing to be presented or preparing with knowledge or belief that it will be presented
306 to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing
307 entity, insurer, insurance producer, or any other person, false material information, or concealing
308 material information, as part of, in support of, or concerning a fact material to one or more of the
309 following: (i) an application for the issuance of a viatical settlement contract or insurance policy; (ii)
310 the underwriting of a viatical settlement contract or insurance policy; (iii) a claim for payment or
311 benefit pursuant to a viatical settlement contract or insurance policy; (iv) premiums paid on an
312 insurance policy; (v) payments and changes in ownership or beneficiary made in accordance with the
313 terms of a viatical settlement contract, or insurance policy; (vi) the reinstatement or conversion of an
314 insurance policy; (vii) in the solicitation, offer, effectuation or sale of a viatical settlement contract or
315 insurance policy; (viii) the issuance of written evidence of a viatical settlement contract or insurance
316 policy; or (ix) a financing transaction;

317 b. Employing any device, scheme, or artifice to defraud related to viaticated policies;

318 2. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits
319 its employees or its agents to: (i) remove, conceal, alter, destroy, or sequester from the Commission the
320 assets or records of a licensee or other person engaged in the business of viatical settlements; (ii)
321 misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
322 (iii) transact the business of viatical settlements in violation of laws requiring a license, certificate of
323 authority, or other legal authority for the transaction of the business of viatical settlements; or (iv) file
324 with the Commission or the chief insurance regulatory official of another jurisdiction a document
325 containing false information or otherwise conceals information about a material fact from the
326 Commission;

327 3. Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits, or other
328 property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other
329 person engaged in the business of viatical settlements or insurance;

330 4. Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the
331 subject of which is a life insurance policy that was obtained by presenting false information concerning
332 any fact material to the policy or by concealing, for the purpose of misleading another, information
333 concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the
334 policy's issuer. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable
335 disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard
336 involving a gross deviation from acceptable standards of conduct; or

337 5. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit
338 the acts or omissions specified in this subsection.

339 "Licensee under this chapter" means a person licensed by the Commission as a viatical settlement
340 provider or viatical settlement broker.

341 "NAIC" means National Association of Insurance Commissioners.

342 "Policy" means an individual or group policy, group certificate, contract or arrangement of life
343 insurance affecting the rights of a resident of this Commonwealth or bearing a reasonable relation to
344 this Commonwealth, regardless of whether delivered or issued for delivery in this Commonwealth.

345 "Related provider trust" means a titling trust or other trust established by a licensed viatical
346 settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial
347 interest in purchased policies in connection with a financing transaction. The trust shall have a written
348 agreement with the licensed viatical settlement provider under which the licensed viatical settlement
349 provider is responsible for ensuring compliance with all statutory and regulatory requirements and
350 under which the trust agrees to make all records and files related to viatical settlement transactions
351 available to the Commission as if those records and files were maintained directly by the licensed
352 viatical settlement provider.

353 "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other
354 similar entity formed solely to provide either directly or indirectly access to institutional capital markets
355 for a financing entity or licensed viatical settlement provider.

356 "Terminally ill" means having an illness or sickness that can reasonably be expected to result in
357 death in 24 months or less.

358 "Viatical settlement broker" means a person that on behalf of another and for a fee, commission or
359 other valuable consideration introduces viators to viatical settlement providers, or offers or attempts to
360 negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. A
361 viatical settlement broker may act as agent for a viatical settlement provider or on behalf of the viator,
362 provided that a viatical settlement broker shall not be deemed to act exclusively for the viator unless,
363 pursuant to written agreement between the parties, the broker agrees (i) to disclose fully all interests in
364 the viatical settlement contract and relationships with the viatical settlement provider, including its
365 affiliates and appointed or contracted agents, and (ii) that compensation for services as a viatical
366 settlement broker shall be paid directly and only by the viator. The term does not include an attorney,

certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or viatical settlement purchaser.

"Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value 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 any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. "Viatical settlement contracts" do not include accelerated benefits 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, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include: (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy providing accelerated benefits under § 38.2-3115.1 and pursuant to the contract; (iii) an authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, viatical settlement purchaser, financing entity, special purpose entity or related provider trust; (iv) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; (v) a financing entity; (iv) a special purpose entity; (vii) a related provider trust; (viii) a viatical settlement purchaser; or (ix) an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider and does not communicate with the viator or insured who is a resident of this Commonwealth except through a licensee under this chapter.

"Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include (i) a licensee under this chapter; (ii) an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended; (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

"Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter and the application of Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness except where specifically addressed. Viator does not include (i) a licensee under this chapter; (ii) an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended; (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

§ 38.2-6001. Viatical settlement brokers.

No person shall act as a viatical settlement broker with a resident of this Commonwealth without first obtaining a license from the Commission in accordance with Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title.

§ 38.2-6002. Viatical settlement providers, license requirements.

A. No person shall act as a viatical settlement provider with a resident of this Commonwealth without first obtaining a license from the Commission.

1. A 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. On and after July 1, 2003, such fee shall be not less than \$300 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.

428 2. A license issued anytime prior to July 1, 2004, shall expire on June 30, 2004, unless renewed as
429 set forth herein.

430 3. On or before March 1 of each year commencing March 1, 2004, a licensed viatical settlement
431 provider shall remit a renewal application form and nonrefundable renewal fee in the form and amount
432 prescribed by the Commission. Such fee shall be not less than \$300 and not more than \$1,500. The
433 renewal fee required by this subdivision shall be collected by the Commission and paid directly into the
434 state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission"
435 for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

436 4. A viatical settlement provider's license expiring on June 30 may be renewed on July 1 for a
437 one-year period ending on June 30 of the following year if the required renewal application and a
438 nonrefundable renewal fee have been received and the license is not terminated, suspended, or revoked
439 at the time of renewal. The renewal fee required by this subdivision shall be collected by the
440 Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special
441 Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in
442 subsection B of § 38.2-400.

443 B. The applicant shall provide information on forms required by the Commission. The Commission
444 shall have authority, at any time, to require the applicant to disclose fully the identity of all
445 stockholders, partners, officers, members, and employees, and the Commission may, in the exercise of
446 the Commission's discretion, refuse to issue a license in the name of a legal entity if not satisfied that
447 any officer, employee, stockholder, partner, or member thereof who may materially influence the
448 applicant's conduct meets the standards of this chapter.

449 C. A license issued to a legal entity authorizes all partners, officers, members, and designated
450 employees to act as the viatical settlement provider under the license, and all those persons shall be
451 named in the application and any application supplements.

452 D. Upon the filing of an application and the payment of the nonrefundable application fee, the
453 Commission shall make such investigation of each applicant as the Commission may determine to be
454 appropriate and issue a license if it finds that the applicant: (i) has provided a detailed plan of
455 operation; (ii) is competent and trustworthy; (iii) indicates its intention to act in good faith within the
456 confines of the license; (iv) has a good business reputation; (v) if an individual, has had experience,
457 training or education that qualifies him for licensure; (vi) if a resident partnership, limited liability
458 company, or corporation, has recorded the existence of the partnership, limited liability company, or
459 corporation pursuant to law; (vii) if a corporation, has specific authority to act as a viatical settlement
460 provider in its charter; (viii) if a nonresident partnership, limited liability company, or corporation, has
461 furnished proof of its authority to transact business in Virginia; and (ix) has provided an anti-fraud
462 plan that meets the requirements of subdivision E 2 of § 38.2-6011.

463 E. If the applicant for a viatical settlement provider license is a nonresident, such applicant, as a
464 condition precedent to receiving or holding a license, shall designate a resident of this Commonwealth
465 as the person upon whom any process, notices, or order required or permitted by law to be served upon
466 such nonresident viatical settlement provider may be served; and such licensee shall promptly notify the
467 clerk of the Commission in writing of every change in its designated agent for service of process, and
468 such change shall not become effective until acknowledged by the Commission. Whenever a nonresident
469 viatical settlement provider transacting business in this Commonwealth fails to appoint or maintain a
470 registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable
471 diligence be found at the registered office, the clerk of the Commission shall be an agent of the
472 nonresident upon whom service may be made in accordance with § 12.1-19.1.

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

475 G. The Commission may suspend, revoke, refuse to issue, or refuse to renew the license of a viatical
476 settlement provider if the Commission finds that the applicant or licensee has (i) made any material
477 misrepresentation in the application; (ii) been guilty of fraudulent or dishonest practices; (iii) been
478 subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent
479 to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to
480 viators; (v) been convicted of a felony or any misdemeanor involving fraud or moral turpitude; (vi)
481 entered into any viatical settlement contract that has not been approved pursuant to this chapter; (vii)
482 failed to honor contractual obligations set out in a viatical settlement contract; (viii) demonstrated or
483 represented that it no longer meets the requirements for initial licensure; (ix) has assigned, transferred,
484 or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this
485 Commonwealth, viatical settlement purchaser, an accredited investor, or qualified institutional buyer as
486 defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as
487 amended, financing entity, special purpose entity, or related provider trust; (x) violated any provisions
488 of this chapter or other applicable provisions of this title or has in its employ or organization any
489 officer, partner, member, or key management personnel who has violated any provision of this chapter

or other applicable provisions of this title; or (xi) has renewed or requested renewal of its license before implementing the anti-fraud initiatives required by subsection E of § 38.2-6011.

H. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall apply again for a license under this chapter until after the expiration of a period of 5 years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

I. A viatical settlement provider shall be bonded as required by the Commission. Rules issued pursuant to § 38.2-6014 may identify other mechanisms for financial accountability.

§ 38.2-6003. Approval of viatical settlement contracts and disclosure statements.

A. A person shall not use a viatical settlement contract or provide to a viator a disclosure statement form in this Commonwealth unless filed with and approved by the Commission in accordance with procedures set forth in § 38.2-316. In the absence of more specific regulation or rules promulgated by the Commission for the business of viatical settlements, standards and requirements of general application set forth in § 38.2-316 and rules promulgated thereunder shall be deemed applicable to viatical settlement contracts and disclosure statement forms, required by this chapter.

B. At the Commission's discretion, the Commission may require the submission of advertising material.

§ 38.2-6004. Reporting requirements.

A. Each licensee under this chapter shall file with the Commission on or before March 1 of each year the certification required by subsection E of § 38.2-6011 and an annual report containing such information as the Commission may prescribe by rule or regulation.

B. A viatical settlement provider shall report in writing to the Commission the following:

1. New or revised information about its officers, stockholders owning 10 percent or greater interest in the licensee or an affiliate of the licensee, partners, directors, members, or designated employees within 30 calendar days of the change;

2. Any change in business or residence address or name within 30 calendar days of the change.

C. A licensed viatical settlement provider convicted of a felony shall report within 30 calendar days to the Commission the facts and circumstances regarding the criminal conviction.

§ 38.2-6005. Privacy.

Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:

1. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

2. Is provided in response to an investigation or examination by the Commission or another governmental agency or officer or pursuant to the requirements of subsection C of § 38.2-6011;

3. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

4. Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

5. Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or

6. Is required to purchase stop loss coverage.

§ 38.2-6006. Examinations; record retention; investigations.

A. Viatical settlement providers, viatical settlement brokers, and persons seeking a license under this title to transact the business of viatical settlements in this Commonwealth shall be subject to examination by the Commission pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of this title. For purposes of completing such examination, the Commission may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the Commission, necessary or material to the examination of a licensee.

B. A person required to be licensed by this chapter shall for 5 years retain copies of (i) all proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later; (ii) all checks, drafts or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and (iii) all other records and documents related to the requirements of this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title. This section does not relieve a person of the obligation to produce these documents to the Commission after the retention period has expired if the person has retained the documents. Records required to be retained by this section must be legible and complete and may be

551 retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any
552 process that accurately reproduces or forms a durable medium for the reproduction of a record.

553 C. The Commission may investigate suspected fraudulent viatical settlement acts and persons
554 engaged or alleged to be engaged in the business of viatical settlements.

555 § 38.2-6007. Disclosure.

556 A. Before asking a viator or insured to sign any document, a licensee under this chapter shall
557 provide the respective viator or insured, or both, with a copy of the disclosure document described in
558 this subsection. The viatical settlement provider or viatical settlement broker shall provide the viator
559 with an additional copy of the disclosures, with the application, no later than the time the application
560 for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a
561 separate document that is signed by the viator and the viatical settlement provider or viatical settlement
562 broker, and shall provide the following information:

563 1. There are possible alternatives to viatical settlement contracts including any accelerated death
564 benefits or policy loans offered under the viator's life insurance policy.

565 2. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax
566 and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

567 3. Proceeds of the viatical settlement could be subject to the claims of creditors.

568 4. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for
569 Medicaid or other government benefits or entitlements, and advice should be obtained from the
570 appropriate government agencies.

571 5. The viator has the right to rescind a viatical settlement contract for 15 calendar days after the
572 receipt of the viatical settlement proceeds by the viator, as provided in subsection C of § 38.2-6008. If
573 the insured dies during the rescission period, the settlement contract shall be deemed to have been
574 rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan
575 interest to the viatical settlement provider or viatical settlement purchaser.

576 6. Funds will be sent to the viator within 3 business days after the viatical settlement provider has
577 received the insurer's or group administrator's acknowledgment that ownership of the policy or interest
578 in the certificate has been transferred and the beneficiary has been designated.

579 7. Entering into a viatical settlement contract may cause other rights or benefits, including
580 conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be
581 forfeited by the viator. Assistance should be sought from a financial adviser.

582 8. Disclosure to a viator shall include distribution of a brochure describing the process of viatical
583 settlements. The NAIC's form for the brochure shall be used unless one is developed by the Commission.

584 9. The disclosure document shall contain the following language: "All medical, financial, or personal
585 information solicited or obtained by a viatical settlement provider or viatical settlement broker about an
586 insured, including the insured's identity or the identity of family members, a spouse, or a significant
587 other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical
588 settlement provider. If you are asked to provide this information, you will be asked to consent to the
589 disclosure. The information may be provided to someone who buys the policy or provides funds for the
590 purchase. You may be asked to renew your permission to share information every two years."

591 10. The insured may be contacted by either the viatical settlement provider or broker or its
592 authorized representative for the purpose of determining the insured's health status. This contact is
593 limited to once every three months if the insured has a life expectancy of more than one year, and no
594 more than once per month if the insured has a life expectancy of one year or less.

595 B. A viatical settlement provider shall provide the viator with at least the following disclosures no
596 later than the date the viatical settlement contract is signed by all parties. The disclosures shall be
597 conspicuously displayed in the viatical settlement contract or in a separate document signed by the
598 viator and the viatical settlement provider or viatical settlement broker, and provide the following
599 information:

600 1. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance
601 policy to be viaticated;

602 2. The name, address, and telephone number of the viatical settlement provider;

603 3. The dollar amount of the current death benefit payable to the viatical settlement provider under
604 the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of
605 any additional guaranteed insurance benefits, the dollar amount of any accidental death and
606 dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in
607 those benefits;

608 4. State the name, business address, and telephone number of the independent third party escrow
609 agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or
610 trust agreements or documents; and

611 5. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders
612 or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be

informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

C. A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

D. If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

§ 38.2-6008. General rules.

A. A viatical settlement provider entering into a viatical settlement contract shall:

1. First obtain:

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

b. A document in which the insured consents to the release of his medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

2. Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subdivision 3.

3. The viatical settlement provider shall deliver a copy of the medical release required under subdivision 1 b of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision 2, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The verification form adopted by the NAIC shall be used unless standards for verification are developed by the Commission.

4. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

5. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically or terminally ill, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

6. If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

B. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to privacy or confidentiality of medical information.

C. All viatical settlement contracts entered into in this Commonwealth shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.

D. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow

674 agent shall pay the settlement proceeds to the viator.

675 E. Failure to tender consideration to the viator for the viatical settlement contract within the time
676 disclosed pursuant to subdivision A 6 of § 38.2-6007 renders the viatical settlement contract voidable by
677 the viator for lack of consideration until the time consideration is tendered to and accepted by the
678 viator.

679 F. Contacts with the insured for the purpose of determining the health status of the insured by the
680 viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall
681 only be made by the viatical settlement provider or broker licensed in this Commonwealth or its
682 authorized representatives and shall be limited to once every 3 months for insureds with a life
683 expectancy of more than one year, and to no more than once per month for insureds with a life
684 expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at
685 the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall
686 not apply to any contacts with an insured for reasons other than determining the insured's health status.
687 Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their
688 authorized representatives.

689 § 38.2-6009. Prohibited practices.

690 A. It is a violation of this chapter for any person to enter into a viatical settlement contract within a
691 two-year period commencing with the date of issuance of the insurance policy or certificate unless the
692 viator certifies to the viatical settlement provider that one or more of the following conditions have been
693 met within the two-year period:

694 1. The policy was issued upon the viator's exercise of conversion rights arising out of a group or
695 individual policy, provided the total of the time covered under the conversion policy plus the time
696 covered under the prior policy is at least 24 months. The time covered under a group policy shall be
697 calculated without regard to any change in insurance carriers, provided the coverage has been
698 continuous and under the same group sponsorship;

699 2. The viator submits independent evidence to the viatical settlement provider that one or more of the
700 following conditions have been met within the two-year period:

701 a. The insured is terminally or chronically ill or

702 b. The viator or insured disposes of his ownership interests in a closely held corporation pursuant to
703 terms of a buyout or other similar agreement in effect at the time the insurance policy was initially
704 issued.

705 B. Copies of the certifications and independent evidence required by this subsection and documents
706 required by subsection A of § 38.2-6008 shall be submitted to the insurer when the viatical settlement
707 provider submits a request to the insurer for verification of coverage. The copies shall be accompanied
708 by a letter of attestation from the viatical settlement provider that the copies are true and correct copies
709 of the documents received by the viatical settlement provider.

710 § 38.2-6010. Advertising for viatical settlements.

711 A. This section shall apply to any advertising of viatical settlement contracts, or related products or
712 services intended for dissemination in this Commonwealth, including Internet advertising viewed by
713 persons located in this Commonwealth. Where disclosure requirements are established pursuant to
714 federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal
715 regulation wherever possible.

716 B. Each licensee under this chapter shall establish and at all times maintain a system of control over
717 the content, form and method of dissemination of all advertisements of its contracts, products, and
718 services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the
719 responsibility of the licensee, as well as the individual who created or presented the advertisement. A
720 system of control shall include regular routine notification, at least once a year, to agents and others
721 authorized by the licensee who disseminates advertisements of the requirements and procedures for
722 approval prior to the use of any advertisements not furnished by the licensee.

723 C. Advertisements shall be truthful and not misleading in fact or by implication. The form and
724 content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so
725 as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an
726 advertisement has the capacity or tendency to mislead or deceive shall be determined by the
727 Commission from the overall impression that the advertisement may be reasonably expected to create
728 upon a person of average education or intelligence within the segment of the public to which it is
729 directed.

730 D. The information required to be disclosed under this section shall not be minimized, rendered
731 obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as
732 to be confusing or misleading.

733 1. An advertisement shall not omit material information or use words, phrases, statements,
734 references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or
735 deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or

federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

2. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

3. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

4. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

5. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product, or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

a. If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the viatical settlement provider, viatical settlement broker, or related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

b. An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

c. When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of 5 years after its use.

E. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

F. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

G. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contracts, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

H. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

I. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

J. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's website or contact the Bureau of Insurance to find out if this Commonwealth requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

K. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

L. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall

797 not use a trade name, any group designation, name of any affiliate, or controlling entity of the licensee,
798 service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to
799 mislead or deceive as to the true identity of the actual licensee or create the false impression that an
800 affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

801 M. An advertisement shall not directly or indirectly create the impression that any division or agency
802 of the state or of the U.S. government endorses, approves, or favors:

- 803 1. Any viatical settlement licensee or its business practices or methods of operation;
- 804 2. The merits, desirability, or advisability of any viatical settlement contract;
- 805 3. Any viatical settlement contract; or
- 806 4. Any life insurance policy or life insurance company.

807 N. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must
808 disclose the average time frame from completed application to the date of offer and from acceptance of
809 the offer to receipt of the funds by the viator.

810 O. If the advertising emphasizes the dollar amounts available to viators, the advertising shall
811 disclose the average purchase price as a percent of face value obtained by viators contracting with the
812 licensee during the past 6 months.

813 § 38.2-6011. Fraud prevention and control.

814 A. A person shall not commit a fraudulent viatical settlement act. A person shall not knowingly or
815 intentionally interfere with the enforcement of the provisions of this chapter or Article 6.1 (§ 38.2-1865.1
816 et seq.) of Chapter 18 of this title or investigations of suspected or actual violations of this chapter or
817 Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title. A person in the business of viatical
818 settlements shall not knowingly or intentionally permit any person convicted of a felony involving
819 dishonesty or breach of trust to participate in the business of viatical settlements.

820 B. Viatical settlement contracts and applications for viatical settlements, regardless of the form of
821 transmission, shall contain the following statement or a substantially similar statement: "Any person
822 who knowingly presents false information in an application for insurance or viatical settlement contract
823 may be guilty of a crime and subject to prosecution." The lack of the required statement does not
824 constitute a defense in any prosecution for a fraudulent viatical settlement act.

825 C. Any person engaged in the business of viatical settlements having knowledge or a reasonable
826 belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to
827 the Commission the information required by, and in a manner prescribed by, the Commission. Any other
828 person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will
829 be, or has been committed may provide to the Commission the information required by, and in a
830 manner prescribed by, the Commission.

831 D. This chapter shall not:

- 832 1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to
833 investigate, examine, and prosecute suspected violations of law;
- 834 2. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement
835 fraud to a law enforcement or regulatory agency other than the insurance department; or
- 836 3. Limit the powers granted elsewhere by the laws of this Commonwealth to the Commission or an
837 insurance fraud unit to investigate and examine possible violations of law and to take appropriate
838 action against wrongdoers.

839 E. A licensee under this chapter shall within 60 days of licensure and annually thereafter by March
840 1 of each year certify to the Commission implementation of anti-fraud initiatives reasonably calculated
841 to detect, prosecute, and prevent fraudulent viatical settlement acts. Anti-fraud initiatives shall include:

842 1. Fraud investigators, who may be viatical settlement providers or viatical settlement broker
843 employees or independent contractors; and

844 2. An anti-fraud plan, which shall include, but not be limited to:

845 a. A description of the procedures for detecting and investigating possible fraudulent viatical
846 settlement acts and procedures for resolving material inconsistencies between medical records and
847 insurance applications;

848 b. A description of the procedures for reporting possible fraudulent viatical settlement acts to the
849 Commission;

850 c. A description of the plan for anti-fraud education and training of underwriters and other
851 personnel; and

852 d. A description or chart outlining the organizational arrangement of the anti-fraud personnel who
853 are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and
854 investigating unresolved material inconsistencies between medical records and insurance applications.

855 F. Anti-fraud plans submitted to or obtained by the Commission and in the control or possession of
856 the Commission shall be privileged and confidential, shall not be subject to inspection or review by the
857 general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
858 evidence in any private civil or criminal action. However, the Commission is authorized to use the

anti-fraud plans in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

§ 38.2-6012. Civil remedies.

A. Any person damaged by the acts of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.

B. The Commission shall have no jurisdiction to adjudicate controversies between licensees, or between a licensee under this chapter and a viator or an insured.

C. If there is more than one viator on a single policy and the viators are residents of different states, contractual disputes arising from the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators, provided that the application of another state's laws shall not impair or limit the ability of the Commission to apply and enforce the provisions of this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title in its regulation of transactions with a resident of this Commonwealth.

§ 38.2-6013. Unfair trade practices.

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

§ 38.2-6014. Commission 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 for insureds who are terminally or chronically ill. 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;

2. Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and viatical settlement brokers;

3. Requiring and setting the amount of any bond or other mechanism for financial accountability for viatical settlement providers and viatical settlement brokers; and

4. Adopting rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.

§ 38.2-6015. Immunity from liability.

A. No cause of action shall arise nor shall any liability be imposed against the Commission, the Commissioner of Insurance, or any of the Commission's employees or agents, for any statements made or conduct performed in good faith while carrying out the provisions of this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title.

B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commission, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

C. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

1. The Commission, the Commissioner of Insurance, or any of the Commission's employees or agents;

2. Federal, state, or local law enforcement or regulatory officials or their employees, agents or representatives;

3. A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

4. The NAIC, National Association of Securities Dealers, the North American Securities Administrators Association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

5. The life insurer that issued the life insurance policy covering the life of the insured.

D. Immunity provided by subsection C shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subsection C does not apply because the person filing the report or furnishing the information did so with actual malice.

E. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsections A or C.

F. The documents and evidence provided pursuant to this section or obtained by the Commission in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and

920 *confidential and shall not be a public record and shall not be subject to discovery or subpoena in a*
921 *private civil or criminal action.*

922 *G. Subsection F does not prohibit release by the Commission of documents and evidence obtained in*
923 *an investigation of suspected or actual fraudulent viatical settlement acts:*

924 *1. In administrative or judicial proceedings to enforce laws administered by the Commission;*

925 *2. To federal, state, or local law enforcement or regulatory agencies, to an organization established*
926 *for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or*

927 *3. At the discretion of the Commission, to a person in the business of viatical settlements that is*
928 *aggrieved by a fraudulent viatical settlement act.*

929 *H. Release of documents and evidence under subsection G does not abrogate or modify the privilege*
930 *granted in subsection F.*

931 *§ 38.2-6016. Applicability of securities laws.*

932 *Nothing in this chapter shall preempt or otherwise limit the provisions of the Virginia Securities Act*
933 *(§ 13.1-501 et seq.), or any regulations, notices, bulletins or other interpretations issued by or through*
934 *the Commission acting pursuant to the Virginia Securities Act. Compliance with the provisions of this*
935 *chapter shall not constitute compliance with any applicable provision of the Virginia Securities Act and*
936 *any amendments thereto or any regulations, notices, bulletins, or other interpretations issued by or*
937 *through the Commission acting pursuant to the Virginia Securities Act.*

938 **2. That Chapter 57 (§§ 38.2-5700 through 38.2-5707) of Title 38.2 of the Code of Virginia is**
939 **repealed.**