

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-1814.1, 38.2-6002, 38.2-6004, and 38.2-6011 of the Code of Virginia, relating to insurance agents; title insurance and viatical settlement.

[S 1131]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1814.1, 38.2-6002, 38.2-6004, and 38.2-6011 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1814.1. License required of resident title insurance agent.

A. No individual who is a resident of the Commonwealth shall obtain a license as a title insurance agent from the Commission unless he has passed an examination in a form and manner prescribed by the Commission. Before registering to take an examination for a license as a title insurance agent, each applicant shall have completed, within the period specified in subsection B, a pre-licensing education course of 16 hours of instruction. The pre-licensing education course may be comprised of or include any form of classroom education or distance education in accordance with an examination content outline approved by the Commission. The applicant shall submit proof of completion of the pre-licensing education course in a form acceptable to the Commission. The proof of completion of the pre-licensing education course shall be:

1. Signed by the applicant ~~and sworn to under oath before a notary public or other official before whom oaths may be taken, stating affirming~~ that the applicant completed a course for which the requisite number of classroom or distance education hours were completed. An applicant who is found to have submitted a materially false proof of course completion shall, ~~in addition to any applicable civil or criminal penalties for perjury,~~ be deemed to have committed a knowing and willful violation of this section and be subject to the penalties as set forth in § 38.2-218. Upon receipt of acceptable proof that an applicant submitted a materially false proof of course completion, the Commission may administratively terminate any license issued based upon such submission; and

2. Signed by the individual who acted as the instructor for the course, who shall certify that the requisite number of the classroom or distance education hours were completed by the applicant. An instructor who is found to have submitted a materially false certification that an applicant completed the requisite number of classroom or distance education hours shall be deemed to have committed a knowing and willful violation of this section and be subject to the penalties as set forth in § 38.2-218. If the instructor is also a licensed insurance agent or insurance consultant, the Commission may also impose on the instructor the penalties set forth in § 38.2-1831 or 38.2-1843, as applicable.

As used in this subsection:

"Classroom education" means actual hours in a classroom environment with an instructor. Instructors shall have the right to consider an applicant to have met the classroom hour requirement if the applicant was present for not less than 95 percent of the required hours.

"Distance education" means instruction delivered or presented by or under the general supervision of an instructor using a medium other than a classroom setting. "Distance education" shall not include self-study or correspondence courses.

B. An applicant's satisfaction of the education requirement established by subsection A shall be valid only for the one-year period following the date he satisfied the education requirement. However, the Commission may waive this time limit in individual circumstances in accordance with criteria prescribed by the Commission.

C. Officers or employees who are not agents of a title insurance company shall be exempt from the provisions of this section.

D. Agents who, as of January 1, 1987, were authorized agents of title insurance companies licensed to transact title insurance in this Commonwealth shall be exempt from the requirements of subsections A and B of this section.

§ 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.

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

3. On or before March 1 of each year commencing March 1, 2004, a licensed viatical settlement provider shall remit a renewal application form and nonrefundable renewal fee in the form and amount prescribed by the Commission. Such fee shall be not less than \$300 and not more than \$1,500. 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.

4. A viatical settlement provider's license expiring on June 30 may be renewed on July 1 for a one-year period ending on June 30 of the following year if the required renewal application and a nonrefundable renewal fee have been received and the license is not terminated, suspended, or revoked at the time of renewal. 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. The applicant shall provide information on forms required by the Commission. The Commission shall have authority, at any time, to require the applicant to disclose fully the identity of all stockholders, partners, officers, members, and employees, and the Commission may, in the exercise of the Commission's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

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

D. Upon the filing of an application and the payment of the nonrefundable application fee, the Commission shall make such investigation of each applicant as the Commission may determine to be appropriate and 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 that 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; (viii) if a nonresident partnership, limited liability company, or corporation, has furnished proof of its authority to transact business in Virginia; and (ix) has provided an anti-fraud plan that meets the requirements of subdivision E 2 3 b of § 38.2-6011.

E. 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 a resident of this Commonwealth as the person upon whom any process, notices, or order 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.

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

G. The Commission may suspend, revoke, refuse to issue, or refuse to renew the license of a viatical settlement provider if the Commission finds that the applicant or licensee has (i) made any material misrepresentation in 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 fraud or moral turpitude; (vi) entered into any viatical settlement contract that has not been approved pursuant to this chapter; (vii) failed to honor contractual obligations set out in a viatical settlement contract; (viii) demonstrated or represented that it no longer meets the requirements for initial licensure; (ix) has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this Commonwealth, viatical settlement purchaser, 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, financing entity, special purpose entity, or related provider trust; (x) violated any provisions of this chapter or other applicable provisions of this title or has in its employ or organization any 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 five 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.

§ 38.2-6004. Reporting requirements.

A. Each licensee under this chapter A viatical settlement provider 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; however, such information shall be limited to only those transactions where the viator is a resident of this Commonwealth.

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.

§ 38.2-6011. Fraud prevention and control.

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

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

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

D. This chapter shall not:

1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

2. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

3. Limit the powers granted elsewhere by the laws of this Commonwealth to the Commission or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

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

2. A viatical settlement broker shall within 60 days of licensure affirm to the Commission implementation of fraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. Upon renewal of such license, a viatical settlement broker shall affirm to the Commission that such fraud initiatives remain in place. A viatical settlement broker shall make its anti-fraud plan available to the Commission upon request.

3. Anti-fraud initiatives shall include:

a. Fraud investigators, who may be viatical settlement providers or viatical settlement broker

179 employees or independent contractors; and
180 ~~2. b.~~ An anti-fraud plan; ~~which shall include, but not be limited to that includes all of the following:~~
181 ~~a. (1)~~ A description of the procedures for detecting and investigating possible fraudulent viatical
182 settlement acts and procedures for resolving material inconsistencies between medical records and
183 insurance applications;
184 ~~b. (2)~~ A description of the procedures for reporting possible fraudulent viatical settlement acts to the
185 Commission;
186 ~~c. (3)~~ A description of the plan for anti-fraud education and training of underwriters and other
187 personnel; and
188 ~~d. (4)~~ A description or chart outlining the organizational arrangement of the anti-fraud personnel who
189 are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and
190 investigating unresolved material inconsistencies between medical records and insurance applications.
191 F. Anti-fraud plans submitted to or obtained by the Commission and in the control or possession of
192 the Commission shall be privileged and confidential, shall not be subject to inspection or review by the
193 general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
194 evidence in any private civil or criminal action. However, the Commission is authorized to use the
195 anti-fraud plans in the furtherance of any regulatory or legal action brought as a part of the
196 Commission's duties.