

PROJECT HISTORY - 2007

VIATICAL SETTLEMENTS MODEL ACT (#697)

1. Description of the project, issues addressed, etc.

The revisions propose a number of significant changes to the Viatical Settlements Model Act to address the issue of stranger-originated life insurance and regulatory issues in the life settlement industry, including the following:

▶ *Enhanced Disclosure Requirements for Viatical Settlement Brokers and Providers*

Viatical settlement brokers must disclose to sellers all offers, counteroffers, acceptances and rejections relating to a proposed viatical settlement contract. Brokers must also disclose any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed viatical settlement contract. In addition, brokers must disclose the total amount of a viatical settlement contract offer and the percentage of the offer comprised by the broker's compensation in the situation where any portion of the broker's compensation is taken from the proposed viatical settlement contract offer. Viatical settlement brokers must also clearly disclose to policy owners that the broker represents the policy owner, not the viatical settlement provider. Brokers must clearly disclose that they owe a fiduciary duty to the policy owner and must act in the policy owner's best interest.

Viatical settlement providers must also disclose any affiliations or contractual arrangements between the provider and the viatical settlement purchaser.

▶ *New Bonding Requirements for Viatical Settlement Brokers and Providers*

In order to receive and maintain a license, the proposed revisions require a viatical settlement provider or broker to demonstrate evidence of financial responsibility through either a surety bond or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000. The surety bond must be issued in the favor of the state and must specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. The revisions make clear that a provider or broker that is licensed in more than one state is not required to file multiple bonds in each state.

▶ *New Continuing Education Requirements for Viatical Settlement Brokers*

The proposed revisions require an individual licensed as a viatical settlement broker to complete on a biennial basis 15 hours of training related to viatical settlements and viatical settlement transactions. A life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.

▶ *Longer Time Frame for Rescinding Viatical Settlement Contract*

The proposed revisions extend the time within which a viator has the right to rescind a viatical settlement contract from 15 calendar days to the earlier of: (1) 60 calendar days after the date on which the viatical settlement contract was executed; or (2) 30 days after the viatical settlement proceeds have been paid to the viator.

▶ *Five-Year Ban on Life Settlements*

Under the proposed revisions, a life insurance policy may not be sold within 5 years after its date of issuance unless one of the exceptions below is met:

- The policy was issued upon the viator's exercise of conversion rights;
- The viator or the insured is terminally or chronically ill;
- The viator's spouse dies;
- The viator divorces his or her spouse;
- The viator retires from full-time employment;
- The viator becomes physically or mentally disabled; or
- The viator enters into a viatical settlement contract more than 2 years after the date of the policy is issued and, with respect to the policy, at all times prior to the date that is 2 years after policy issuance, the following conditions are met:

- Policy premiums have been funded exclusively with unencumbered assets, including an interest in the policy that is financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by the insured or a person described in Section 2N(3)(d) of the Act;
- There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
- Neither the insured nor the policy has been evaluated for settlement.

▶ **Key Definition Revisions**

- *“Fraudulent viatical settlement act”* – the proposed revisions expand the scope of this definition to include facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this Act for the express purpose of evading or avoiding the provisions of this Act.
- *“Viatical settlement contract”* – the proposed revisions expand this definition to include premium finance loans made for a life insurance policy by a lender to a viator on, before or after the date of policy issuance where: (a) the viator or the insured receives on the date of the loan a guarantee of a future viatical settlement value of the policy; or (b) the viator or the insured agrees on the date of the loan to sell the policy or any portion of its death benefit on any date following the date of policy issuance. The proposed revisions, however, carve out specific exceptions under the definition, including: (a) loan proceeds that are used solely to pay: (i) premiums for the policy; and (ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers; (b) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on such loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act; further assignment of such policy by the lender; or (c) an agreement where all of the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties.

2. Name of group responsible for draft the model:

Life Insurance and Annuities (A) Committee

States Participating:

North Dakota, Chair	Kansas
Kentucky, Vice Chair	Louisiana
Alabama	Nebraska
Arkansas	New York
California	Ohio
Florida	Pennsylvania
Iowa	

3. Project authorized by what charge and date first given to the group:

The following charge was given to the Life Insurance and Annuities (A) Committee in 2006:
Consider changes to Viatical Settlements Model Act in response to concerns about investor initiated life insurance.

4. A general description of the drafting process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The amendments to the model act were drafted by the Committee.

5. A general description of the due process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited).

Beginning with the NAIC 2006 Summer National Meeting, drafts of the proposed revisions were reviewed and discussed at each National Meeting and during Committee conference calls. Comments were requested and were received and considered throughout the drafting process. In addition, all of the drafts of the proposed revisions and comments received on those drafts were posted on the NAIC web site and distributed by email to over 200 interested parties. Comments were received by numerous groups, including industry groups such as the American Council of Life Insurance (ACLI), National Association of Insurance and Financial Advisors (NAIFA), Association for Advanced Life Underwriting (AALU); National Association of Independent Life Brokerage Agencies (NAILBA); Life Settlement Institute (LSI), Life Insurance Finance Association (LIFA), Life Insurance Settlement Association (LISA), and American Bankers Insurance Association (ABIA); and consumer groups, such as Center for Economic Justice (CEJ) and University of Georgia.

6. A discussion of the significant issues (items of some controversy) raised during the drafting process and the group's response.

The most significant controversial issue raised during the drafting process was the proposed 5-year ban on life settlements. Those opposed to this proposal asserted that the 5-year prohibition was overly onerous, would hurt consumers, and was not well designed to address the STOLI issue. It also would not protect the consumer; it would not prevent STOLI arrangements; and would deprive consumers of a legal property right. Some of those interested parties not directly opposed to the 5-year ban expressed a belief that the proposed 5-year ban could make STOLI arrangements less appealing. They also countered the argument that the 5-year ban adversely impacted a consumer's legal property right by stating that there is no inherent property right in STOLI arrangements. These were contrived transactions that attempt to circumvent state insurable interest laws. As a matter of public policy, the Committee voted to adopt the revisions related to the 5-year ban as a means to address STOLI.

7. Any other important information (e.g., amending an accreditation standard).

None.