

A bill for an act

relating to insurance; regulating life settlements; providing enforcement;
prescribing criminal penalties and civil remedies; proposing coding for new law
in Minnesota Statutes, chapter 60A; repealing Minnesota Statutes 2006, sections
60A.961; 60A.962; 60A.963; 60A.964; 60A.965; 60A.966; 60A.967; 60A.968;
60A.969; 60A.970; 60A.971; 60A.972; 60A.973; 60A.974.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[60A.957] SHORT TITLE.**

Sections 60A.957 to 60A.9587 may be cited as the "Life Settlements Act."

Sec. 2. **[60A.9572] DEFINITIONS.**

Subdivision 1. **Terms.** For the purpose of sections 60A.957 to 60A.9587, the terms
in subdivision 2 to 27 have the meanings given them.

Subd. 2. **Advertisement.** "Advertisement" 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 purchase or sell, assign, devise, bequest, or transfer the death benefit
or ownership of a life insurance policy or an interest in a life insurance policy pursuant to
a life settlement contract.

Subd. 3. **Broker.** "Broker" means a person who, on behalf of an owner and for a fee,
commission, or other valuable consideration, offers or attempts to negotiate life settlement
contracts between an owner and providers. A broker represents only the owner and owes a
fiduciary duty to the owner to act according to the owner's instructions, and in the best

interest of the owner, notwithstanding the manner in which the broker is compensated.
A broker does not include an attorney, certified public accountant, or financial planner
retained in the type of practice customarily performed in that person's professional
capacity to represent the owner whose compensation is not paid directly or indirectly by
the provider or any other person except the owner.

Subd. 4. **Business of life settlements.** "Business of life settlements" means an
activity involved in, but not limited to, offering to enter into, soliciting, negotiating,
procuring, effectuating, monitoring, or tracking of life settlement contracts.

Subd. 5. **Chronically ill.** "Chronically ill" means:

(1) being unable to perform at least two activities of daily living including, but not
limited to, eating, toileting, transferring, bathing, dressing or continence;

(2) requiring substantial supervision to protect the individual from threats to health
and safety due to severe cognitive impairment; or

(3) having a level of disability similar to that described in clause (1) as determined
by the United States secretary of health and human services.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 7. **Financing entity.** "Financing entity" means an underwriter, placement
agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider,
credit enhancer, or any entity that has a direct ownership in a policy or certificate that is
the subject of a life settlement contract, but:

(1) whose principal activity related to the transaction is providing funds to effect the
life settlement contract or purchase of one or more policies; and

(2) who has an agreement in writing with one or more providers to finance the
acquisition of life settlement contracts.

Financing entity does not include a nonaccredited investor or purchaser.

Subd. 8. **Financing transaction.** "Financing transaction" means a transaction in
which a licensed provider obtains financing from a financing entity including, without
limitation, any secured or unsecured financing, any securitization transaction, or any
securities offering which either is registered or exempt from registration under federal
and state securities law.

Subd. 9. **Fraudulent life settlement act.** "Fraudulent life settlement act" includes:

(a) acts or omissions committed by any person who, knowingly and with intent to
defraud, for the purpose of depriving another of property or for pecuniary gain, commits
or permits the person's employees or the person's agents to engage in acts including,
but not limited to:

(1) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(i) an application for the issuance of a life settlement contract or insurance policy;

(ii) the underwriting of a life settlement contract or insurance policy;

(iii) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(iv) premiums paid on an insurance policy;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;

(vi) the reinstatement or conversion of an insurance policy;

(vii) in the solicitation, offer to enter into, or effectuation of a life settlement contract or insurance policy;

(viii) the issuance of written evidence of life settlement contracts or insurance;

(ix) any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or

(x) stranger-originated life insurance;

(2) employing any device, scheme, or artifice to defraud in the business of life settlements; or

(3) in the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws; and

(b) in the furtherance of a fraud or to prevent the detection of a fraud, acts by any person which commit or permit the person's employees or the person's agents to:

(1) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;

(2) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(3) transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;

(4) file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;

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(5) engage in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance policy owner, or any other person engaged in the business of life settlements or insurance;

(6) knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy where the owner or the owner's agent intended to defraud the policy's issuer;

(7) attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subdivision; or

(8) misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to sections 60A.957 to 60A.9587 for the purpose of evading or avoiding the provisions of sections 60A.957 to 60A.9587.

Subd. 10. **Insured.** "Insured" means the person covered under the policy being considered for sale in a life settlement contract.

Subd. 11. **Life expectancy.** "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

Subd. 12. **Life insurance producer.** "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to

Subd. 13. **Life settlement contract.** (a) "Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. Life settlement contract also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(b) Life settlement contract also includes a written agreement for a loan or other lending transaction, secured primarily by a policy or a premium finance loan made for a policy on or before the date of issuance of the policy where:

(i) the loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) the owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

(iii) the owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) Life settlement contract does not include:

(1) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;

(2) a premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under sections 60A.957 to 60A.9587;

(3) a collateral assignment of a life insurance policy by an owner;

(4) a loan made by a lender that does not violate chapter 59A, provided the loan is not described in clause (1), and is not otherwise within the definition of life settlement contract;

(5) an agreement where all the parties (i) are closely related to the insured by blood or law or (ii) 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 the parties;

(6) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(7) a bona fide business succession planning arrangement:

(i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts, established by its shareholders;

(ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts, established by its partners; or

(iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(8) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(9) any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by sections 60A.957 to 60A.9587.

Subd. 14. **Net death benefit.** "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

Subd. 15. **Owner.** "Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. An owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. Owner does not include:

(1) any provider or other licensee under sections 60A.957 to 60A.9587;

(2) a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as amended;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

Subd. 16. **Patient identifying information.** "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or any other information that is likely to lead to the identification of the insured.

Subd. 17. **Policy.** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

Subd. 18. **Premium finance loan.** "Premium finance loan" is a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

Subd. 19. **Person.** "Person" means any natural person or legal entity including, but not limited to, a partnership, limited liability company, association, trust, or corporation.

7.1 Subd. 20. **Provider.** "Provider" means a person, other than an owner, who enters
7.2 into or effectuates a life settlement contract with an owner. A provider does not include:

7.3 (1) any bank, savings bank, savings and loan association, or credit union;

7.4 (2) a licensed lending institution or creditor or secured party pursuant to a premium
7.5 finance loan agreement which takes an assignment of a life insurance policy or certificate
7.6 issued pursuant to a group life insurance policy as collateral for a loan;

7.7 (3) the insurer of a life insurance policy or rider to the extent of providing accelerated
7.8 death benefits or riders under section 61A.072 or cash surrender value;

7.9 (4) any natural person who enters into or effectuates no more than one agreement in
7.10 a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a
7.11 group life insurance policy for compensation or anything of value less than the expected
7.12 death benefit payable under the policy;

7.13 (5) a purchaser;

7.14 (6) any authorized or eligible insurer that provides stop-loss coverage to a provider,
7.15 purchaser, financing entity, special purpose entity, or related provider trust;

7.16 (7) a financing entity;

7.17 (8) a special purpose entity;

7.18 (9) a related provider trust;

7.19 (10) a broker; or

7.20 (11) an accredited investor or qualified institutional buyer as defined respectively in
7.21 Regulation D, Rule 501 or Rule 144A of the federal Securities Act of 1933, as amended,
7.22 who purchases a life settlement policy from a provider.

7.23 Subd. 21. **Purchased policy.** "Purchased policy" means a policy or group certificate
7.24 that has been acquired by a provider pursuant to a life settlement contract.

7.25 Subd. 22. **Purchaser.** "Purchaser" means a person who pays compensation or
7.26 anything of value as consideration for a beneficial interest in a trust which is vested with,
7.27 or for the assignment, transfer or sale of, an ownership or other interest in a life insurance
7.28 policy or a certificate issued pursuant to a group life insurance policy which has been
7.29 the subject of a life settlement contract.

7.30 Subd. 23. **Related provider trust.** "Related provider trust" means a titling trust or
7.31 other trust established by a licensed provider or a financing entity for the sole purpose
7.32 of holding the ownership or beneficial interest in purchased policies in connection with
7.33 a financing transaction. In order to qualify as a related provider trust, the trust must
7.34 have a written agreement with the licensed provider under which the licensed provider
7.35 is responsible for ensuring compliance with all statutory and regulatory requirements
7.36 and under which the trust agrees to make all records and files relating to life settlement

transactions available to the Department of Commerce as if those records and files were maintained directly by the licensed provider.

Subd. 24. **Settled policy.** "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

Subd. 25. **Special purpose entity.** "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a qualified institutional buyer as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

Subd. 26. **Stranger-originated life insurance; STOLI.** "Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life.

Subd. 27. **Terminally ill.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

Sec. 3. [60A.9573] LICENSING.

Subdivision 1. **Requirements.** No person, wherever located, shall act as a provider or broker with an owner or multiple owners who is a resident of this state, without first having obtained a license from the commissioner. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

Subd. 2. **Application.** Application for a provider or broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee in an amount established by the commissioner, provided, however, that the license and renewal fees for a provider license shall be reasonable and that the license and renewal fees for a broker license shall not exceed

those established for an insurance producer, as such fees are otherwise provided for in this chapter.

Subd. 3. **Nonresident producer.** A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the producer's home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.

Subd. 4. **Brokers.** Not later than 30 days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that the producer is acting as a broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgment by the life insurance producer that the producer will operate as a broker in accordance with sections 60A.957 to 60A.9587.

Subd. 5. **Life settlement contracts.** The insurer that issued the policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the broker, provider, or purchaser in connection with the life settlement contract.

Subd. 6. **Exception.** A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

Subd. 7. **Renewals.** Licenses may be renewed every 24 months on the anniversary date upon payment of the periodic renewal fee. As specified in subdivision 2 the renewal fee for a provider shall not exceed a reasonable fee. Failure to pay the fee within the terms prescribed shall result in the automatic revocation of the license requiring periodic renewal.

Subd. 8. **Term.** The term of a provider license shall be equal to that of a domestic stock life insurance company and the term of a broker license shall be equal to that of an insurance producer license. A license requiring periodic renewal may be renewed on its anniversary date upon payment of the periodic renewal fee as specified in subdivision 2. Failure to pay the fees on or before the renewal date shall result in expiration of the license.

Subd. 9. **Disclosure of identity of stockholders.** The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully

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disclose the identity of the applicant's stockholders, except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue such a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of sections 60A.957 to 60A.9584.

Subd. 10. **Entity licenses.** A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license if those persons are named in the application and any supplements to the application.

Subd. 11. **Issuance.** Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(1) if a provider, has provided a detailed plan of operation;

(2) is competent and trustworthy and intends to transact its business in good faith;

(3) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;

(4) if the applicant is a legal entity, is formed or organized pursuant to the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(5) has provided to the commissioner an antifraud plan that meets the requirements of section 60A.9583 and includes:

(i) a description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) a description of the procedures for reporting fraudulent insurance acts to the commissioner;

(iii) a description of the plan for antifraud education and training of its underwriters and other personnel; and

(iv) a written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

Subd. 12. **Designation of agent for service of process.** The commissioner shall not issue any license to any nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless the

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applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

Subd. 13. **Annual statement.** Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing the information the commissioner prescribes by rule.

Subd. 14. **Use of brokers.** A provider may not use any person to perform the functions of a broker as defined in sections 60A.957 to 60A.9587 unless the person holds a current, valid license as a broker, and as provided in this section.

Subd. 15. **Use of providers.** A broker may not use any person to perform the functions of a provider as defined in sections 60A.957 to 60A.9587 unless such person holds a current, valid license as a provider, and as provided in this section.

Subd. 16. **Providers and brokers; revised information.** A provider or broker shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members, or designated employees within 30 days of the change.

Subd. 17. **Broker training.** An individual licensed as a broker shall complete on a biennial basis 15 hours of training related to life settlements and life settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a broker pursuant to this section shall not be subject to the requirements of this subdivision. Any person failing to meet the requirements of this subdivision shall be subject to the penalties imposed by the commissioner.

Sec. 4. [60A.9574] LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW.

Subdivision 1. **Generally.** The commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:

(1) there was any material misrepresentation in the application for the license;

(2) the licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(3) the provider demonstrates a pattern of unreasonably withholding payments to policy owners;

(4) the licensee no longer meets the requirements for initial licensure;

(5) the licensee or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element, or the licensee

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12.1 has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of
12.2 which criminal fraud or moral turpitude is an element, regardless of whether a judgment
12.3 of conviction has been entered by the court;

12.4 (6) the provider has entered into any life settlement contract using a form that has
12.5 not been approved pursuant to sections 60A.957 to 60A.9587;

12.6 (7) the provider has failed to honor contractual obligations set out in a life settlement
12.7 contract;

12.8 (8) the provider has assigned, transferred, or pledged a settled policy to a person
12.9 other than a provider licensed in this state, a purchaser, an accredited investor, or qualified
12.10 institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the
12.11 federal Securities Act of 1933, as amended, financing entity, special purpose entity, or
12.12 related provider trust; or

12.13 (9) the licensee or any officer, partner, member, or key management personnel has
12.14 violated any of the provisions of sections 60A.957 to 60A.9587.

12.15 Subd. 2. **Hearing required.** Before the commissioner denies a license application
12.16 or suspends, revokes, or refuses to renew the license of any licensee under sections
12.17 60A.957 to 60A.9587, the commissioner shall conduct a hearing in accordance with this
12.18 state's laws governing administrative hearings.

12.19 **Sec. 5. [60A.9575] CONTRACT REQUIREMENTS.**

12.20 Subdivision 1. **Filing and approval.** No person may use any form of life
12.21 settlement contract in this state unless it has been filed with and approved, if required,
12.22 by the commissioner in a manner that conforms with the filing procedures and any time
12.23 restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

12.24 Subd. 2. **Disclosures, consents, waivers, or acknowledgments.** No insurer may, as
12.25 a condition of responding to a request for verification of coverage or in connection with the
12.26 transfer of a policy pursuant to a life settlement contract, require that the owner, insured,
12.27 provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that
12.28 has not been expressly approved by the commissioner for use in connection with life
12.29 settlement contracts in this state.

12.30 Subd. 3. **Disclosure statement; filing and approval.** A person shall not use a
12.31 life settlement contract form or provide to an owner a disclosure statement form in
12.32 this state unless first filed with and approved by the commissioner. The commissioner
12.33 shall disapprove a life settlement contract form or disclosure statement form if, in the
12.34 commissioner's opinion, the contract or provisions contained therein fail to meet the
12.35 requirements of sections 60A.9578, 60A.9579, 60A.9581, and 60A.9585, subdivision 2,

13.1 or are unreasonable, contrary to the interests of the public, or otherwise misleading or
13.2 unfair to the owner. At the commissioner's discretion, the commissioner may require the
13.3 submission of advertising material.

13.4 Sec. 6. **[60A.9576] REPORTING REQUIREMENTS AND PRIVACY.**

13.5 Subdivision 1. **Annual statement.** (a) For any policy settled within five years
13.6 of policy issuance, each provider shall file with the commissioner on or before March
13.7 1 of each year an annual statement containing such information as the commissioner
13.8 may prescribe by rule. In addition to any other requirements, the annual statement shall
13.9 specify the total number, aggregate face amount, and life settlement proceeds of policies
13.10 settled during the immediately preceding calendar year, together with a breakdown of the
13.11 information by policy issue year for each carrier.

13.12 (b) Such information shall be limited to only those transactions where the insured
13.13 is a resident of this state and shall not include individual transaction data regarding the
13.14 business of life settlements or information that there is a reasonable basis to believe could
13.15 be used to identify the owner or the insured.

13.16 (c) Every provider that willfully fails to file an annual statement as required in this
13.17 section, or willfully fails to reply within 30 days to a written inquiry by the commissioner
13.18 in connection therewith, shall, in addition to other penalties provided by this chapter, be
13.19 subject, upon due notice and opportunity to be heard, to a penalty of up to \$250 per day of
13.20 delay, not to exceed \$25,000 in the aggregate, for each such failure.

13.21 Subd. 2. **Nondisclosure of identity; exceptions.** Except as otherwise allowed or
13.22 required by law, a provider, broker, insurance company, insurance producer, information
13.23 bureau, rating agency or company, or any other person with actual knowledge of an
13.24 insured's identity, shall not disclose the identity of an insured or information that there is a
13.25 reasonable basis to believe could be used to identify the insured or the insured's financial
13.26 or medical information to any other person unless the disclosure:

13.27 (1) is necessary to effect a life settlement contract between the owner and a provider
13.28 and the owner and insured have provided prior written consent to the disclosure;

13.29 (2) is necessary to effectuate the sale of life settlement contracts, or interests therein,
13.30 as investments, provided the sale is conducted in accordance with applicable state and
13.31 federal securities law and provided further that the owner and the insured have both
13.32 provided prior written consent to the disclosure;

13.33 (3) is provided in response to an investigation or examination by the commissioner
13.34 or any other governmental officer or agency or pursuant to the requirements of section
13.35 60A.9583;

(4) is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of subdivision 2;

(5) is necessary to allow the provider, broker, or the provider's or broker's authorized representatives to make contacts for the purpose of determining health status. For the purposes of this section, the term authorized representative shall not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity; further, a provider or broker shall require the provider's or broker's authorized representative to agree in writing to adhere to the privacy provisions of sections 60A.957 to 60A.9587; or (6) is required to purchase stop-loss coverage.

Subd. 3. **Nonpublic personal information.** Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley Act, Public Law Number 106-102, and all other state and federal laws relating to confidentiality of nonpublic personal information.

Sec. 7. [60A.9577] EXAMINATION.

Subdivision 1. **Generally.** The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

Subd. 2. **Examination reports.** In lieu of an examination under sections 60A.957 to 60A.9587 of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

Subd. 3. **Classification of data.** Names of and individual identification data, or for all owners and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

Subd. 4. **Records retention.** Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours by the commissioner unless required by law.

15.1 Subd. 5. **Conduct of examinations.** (a) Upon determining that an examination
15.2 should be conducted, the commissioner shall issue an examination warrant appointing one
15.3 or more examiners to perform the examination and instructing them as to the scope of the
15.4 examination. In conducting the examination, the examiner shall use methods common
15.5 to the examination of any life settlement licensee and should use those guidelines and
15.6 procedures set forth in an examiners' handbook adopted by a national organization.

15.7 (b) Every licensee or person from whom information is sought, its officers, directors,
15.8 and agents shall provide to the examiners timely, convenient, and free access at all
15.9 reasonable hours at its offices to all books, records, accounts, papers, documents, assets,
15.10 and computers or other recordings relating to the property, assets, business, and affairs of
15.11 the licensee being examined. The officers, directors, employees, and agents of the licensee
15.12 or person shall facilitate the examination and aid in the examination so far as it is in
15.13 their power to do so. The refusal of a licensee, by its officers, directors, employees, or
15.14 agents to submit to examination or to comply with any reasonable written request of the
15.15 commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license
15.16 or authority held by the licensee to engage in the life settlement business or other business
15.17 subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or
15.18 refusal of any license or authority shall be conducted pursuant to chapter 14.

15.19 (c) The commissioner shall have the power to issue subpoenas, to administer oaths,
15.20 and to examine under oath any person as to any matter pertinent to the examination. Upon
15.21 the failure or refusal of a person to obey a subpoena, the commissioner may petition a
15.22 court of competent jurisdiction, and upon proper showing, the court may enter an order
15.23 compelling the witness to appear and testify or produce documentary evidence.

15.24 (d) When making an examination under sections 60A.957 to 60A.9587, the
15.25 commissioner may retain attorneys, appraisers, independent actuaries, independent
15.26 certified public accountants, or other professionals and specialists as examiners, the
15.27 reasonable cost of which shall be borne by the licensee that is the subject of the
15.28 examination.

15.29 (e) Nothing contained in sections 60A.957 to 60A.9587 shall be construed to limit
15.30 the commissioner's authority to terminate or suspend an examination in order to pursue
15.31 other legal or regulatory action pursuant to the insurance laws of this state. Findings of
15.32 fact and conclusions made pursuant to any examination shall be prima facie evidence
15.33 in any legal or regulatory action.

15.34 (f) Nothing contained in sections 60A.957 to 60A.9587 shall be construed to limit
15.35 the commissioner's authority to use and, if appropriate, to make public any final or
15.36 preliminary examination report, any examiner or licensee work papers or other documents,

or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

Subd. 6. Examination reports. (a) Examination reports shall be comprised of only facts appearing upon the books, from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.

(c) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

Subd. 7. Confidentiality of examination information. (a) Names and individual identification data for all owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(b) Except as otherwise provided in sections 60A.957 to 60A.9587, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under sections 60A.957 to 60A.9587, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to chapter 13, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

Subd. 8. Conflict of interest. (a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to

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examination under sections 60A.957 to 60A.9587. This section shall not be construed to automatically preclude an examiner from being:

(1) an owner;

(2) an insured in a life settlement contract or insurance policy; or

(3) a beneficiary in an insurance policy that is proposed for a life settlement contract.

(b) Notwithstanding the requirements of this subdivision, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under sections 60A.957 to 60A.9587.

Subd. 9. **Immunity from liability.** (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of sections 60A.957 to 60A.9587.

(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 commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under sections 60A.957 to 60A.9587, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (a).

(c) A person identified in paragraph (a) or (b) shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of sections 60A.957 to 60A.9587 and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

Subd. 10. **Investigative authority of the commissioner.** The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

Sec. 8. [60A.9578] ADVERTISING.

(a) A broker or provider licensed pursuant to sections 60A.957 to 60A.9587 may conduct or participate in advertisements within this state. Such advertisements shall

comply with all advertising and marketing laws that are applicable to life insurers or to brokers and providers licensed pursuant to sections 60A.957 to 60A.9587.

(b) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(c) No person or trust shall directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with the primary emphasis on settling the policy. However, it shall be permitted for any such person or trust to advise a prospective owner that a life settlement is an available alternative transaction to the owner in addition to policy surrender and/or policy retention.

Sec. 9. [60A.9579] DISCLOSURE TO OWNERS.

Subdivision 1. **Provider disclosures.** The provider shall provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner no later than the date the life settlement contract is signed by all parties:

(1) the fact that possible alternatives to life settlement contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(3) the fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(4) the fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(5) the fact that the owner has a right to terminate a life settlement contract within 15 days of the date it is executed by all parties and the owner has received the disclosures contained herein. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(6) the fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

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19.1 (7) the fact that entering into a life settlement contract may cause other rights or
19.2 benefits, including conversion rights and waiver of premium benefits that may exist under
19.3 the policy or certificate of a group policy to be forfeited by the owner and that assistance
19.4 should be sought from a professional financial advisor;

19.5 (8) the amount and method of calculating the compensation paid or to be paid to
19.6 the broker, or any other person acting for the owner in connection with the transaction,
19.7 wherein the term compensation includes anything of value paid or given;

19.8 (9) the date by which the funds will be available to the owner and the transmitter of
19.9 the funds;

19.10 (10) the fact that the commissioner shall require delivery of a buyer's guide or a
19.11 similar consumer advisory package in the form prescribed by the commissioner to owners
19.12 during the solicitation process;

19.13 (11) the disclosure document shall contain the following language: "all medical,
19.14 financial, or personal information solicited or obtained by a provider or broker about an
19.15 insured, including the insured's identity or the identity of family members, a spouse or
19.16 a significant other may be disclosed as necessary to effect the life settlement contract
19.17 between the owner and provider. If you are asked to provide this information, you will be
19.18 asked to consent to the disclosure. The information may be provided to someone who
19.19 buys the policy or provides funds for the purchase. You may be asked to renew your
19.20 permission to share information every two years";

19.21 (12) the fact that the commissioner shall require providers and brokers to print
19.22 separate signed fraud warnings on their applications and on their life settlement contracts
19.23 is as follows:

19.24 "Any person who knowingly presents false information in an application for
19.25 insurance or life settlement contract is guilty of a crime and may be subject to fines
19.26 and confinement in prison.";

19.27 (13) the fact that the insured may be contacted by either the provider or broker or
19.28 the provider's or broker's authorized representative for the purpose of determining the
19.29 insured's health status or to verify the insured's address. This contact is limited to once
19.30 every three months if the insured has a life expectancy of more than one year, and no more
19.31 than once per month if the insured has a life expectancy of one year or less;

19.32 (14) the affiliation, if any, between the provider and the issuer of the insurance
19.33 policy to be settled;

19.34 (15) that a broker represents exclusively the owner, and not the insurer or the
19.35 provider or any other person, and owes a fiduciary duty to the owner, including a duty to
19.36 act according to the owner's instructions and in the best interest of the owner;

(16) the document shall include the name, address, and telephone number of the provider;

(17) the name, business address, and telephone number of the independent third-party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(18) the fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

Subd. 2. **Display.** The written disclosures shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker.

Subd. 3. **Broker disclosures.** A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

(1) the name, business address, and telephone number of the broker;

(2) a full, complete, and accurate description of all the offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts;

(4) the name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;

(5) a complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid shall mean the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

(6) the failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice pursuant to section 60A.9587.

Sec. 10. [60A.958] DISCLOSURE BY INSURER.

Subdivision 1. **Premium payment financing.** In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to

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21.1 pay premiums with the assistance of financing from a lender that will use the policy as
21.2 collateral to support the financing.

21.3 If, as described in section 60A.9572, subdivision 13, the loan provides funds which
21.4 can be used for a purpose other than paying for the premiums, costs, and expenses
21.5 associated with obtaining and maintaining the life insurance policy and loan, the
21.6 application shall be rejected as a violation of the prohibited practices in section 60A.9583.

21.7 If the financing does not violate 60A.9583 in this manner, the insurance carrier:

21.8 (1) may make disclosures, including but not limited to such as the following, to the
21.9 applicant and the insured, either on the application or an amendment to the application
21.10 to be completed no later than the delivery of the policy:

21.11 "If you have entered into a loan arrangement where the policy is used as collateral,
21.12 and the policy does change ownership at some point in the future in satisfaction
21.13 of the loan, the following may be true:

21.14 (i) a change of ownership could lead to a stranger owning an interest in the insured's
21.15 life;

21.16 (ii) a change of ownership could in the future limit your ability to purchase future
21.17 insurance on the insured's life because there is a limit to how much coverage insurers
21.18 will issue on one life;

21.19 (iii) should there be a change of ownership and you wish to obtain more insurance
21.20 coverage on the insured's life in the future, the insured's higher issue age, a change
21.21 in health status, and/or other factors may reduce the ability to obtain coverage and/or
21.22 may result in significantly higher premiums;

21.23 (iv) you should consult a professional advisor, since a change in ownership in
21.24 satisfaction of the loan may result in tax consequences to the owner, depending on
21.25 the structure of the loan"; and

21.26 (2) may require certifications, such as the following, from the applicant and the
21.27 insured:

21.28 (i) "I have not entered into any agreement or arrangement providing for the future
21.29 sale of this life insurance policy";

21.30 (ii) "My loan arrangement for this policy provides funds sufficient to pay for some or
21.31 all of the premiums, costs, and expenses associated with obtaining and maintaining
21.32 my life insurance policy, but I have not entered into any agreement by which I am to
21.33 receive consideration in exchange for procuring this policy"; and

21.34 (iii) "The borrower has an insurable interest in the insured."

21.35 Subd. 2. **Notice of alternative transaction.** With respect to each policy issued by
21.36 an insurance company, the insurance company shall send written notice to the owner of an

22.1 individual life insurance policy, or a certificate holder under a group life insurance policy,
22.2 where the insured person under such policy is age 60 or older or is known to be terminally
22.3 ill or chronically ill, that a life settlement is an available alternative transaction to such
22.4 owner at the time of each of the following:

22.5 (1) when a life insurance company receives from such owner a request to surrender,
22.6 in whole or in part, an individual life insurance policy, or a certificate under a group
22.7 life insurance policy;

22.8 (2) when a life insurance company receives from such owner a request to receive
22.9 an accelerated death benefit under an individual life insurance policy, or a certificate
22.10 under a group life insurance policy;

22.11 (3) when a life insurance company receives from such owner a request to collaterally
22.12 assign an individual life insurance policy, or a certificate under a group life insurance
22.13 policy as security for a loan;

22.14 (4) when a life insurance company sends to such owner a notice of lapse of an
22.15 individual life insurance policy, or a certificate under a group life insurance policy; or

22.16 (5) or at any other time that the commissioner may require by rule or regulation.

22.17 Sec. 11. **[60A.9581] LIFE SETTLEMENT CONTRACTS; GENERAL RULES.**

22.18 Subdivision 1. **Life settlement contracts.** A provider entering into a life settlement
22.19 contract with any owner of a policy, wherein the insured is terminally or chronically
22.20 ill, shall first obtain:

22.21 (1) if the owner is the insured, a written statement from a licensed attending
22.22 physician that the owner is of sound mind and under no constraint or undue influence to
22.23 enter into a settlement contract; and

22.24 (2) a document in which the insured consents to the release of the insured's medical
22.25 records to a provider, settlement broker, or insurance producer and, if the policy was
22.26 issued less than two years from the date of application for a settlement contract, to the
22.27 insurance company that issued the policy.

22.28 Subd. 2. **Request for verification of coverage.** The insurer shall respond to a
22.29 request for verification of coverage submitted by a provider, settlement broker, or life
22.30 insurance producer not later than 30 calendar days of the date the request is received.
22.31 The request for verification of coverage must be made on a form approved by the
22.32 commissioner. The insurer shall complete and issue the verification of coverage or
22.33 indicate in which respects it is unable to respond. In its response, the insurer shall indicate
22.34 whether, based on the medical evidence and documents provided, the insurer intends to
22.35 pursue an investigation at this time regarding the validity of the insurance contract.

23.1 Subd. 3. **Owner's consent.** Before or at the time of execution of the settlement
23.2 contract, the provider shall obtain a witnessed document in which the owner consents to
23.3 the settlement contract, represents that the owner has a full and complete understanding
23.4 of the settlement contract, that the owner has a full and complete understanding of the
23.5 benefits of the policy, acknowledges that the owner is entering into the settlement contract
23.6 freely and voluntarily, and, for persons with a terminal or chronic illness or condition,
23.7 acknowledges that the insured has a terminal or chronic illness and that the terminal or
23.8 chronic illness or condition was diagnosed after the policy was issued.

23.9 Subd. 4. **Unreasonable delay in change of ownership or beneficiary.** The insurer
23.10 shall not unreasonably delay effecting change of ownership or beneficiary with any life
23.11 settlement contract lawfully entered into in this state or with a resident of this state.

23.12 Subd. 5. **Alternative compliance.** (a) If a settlement broker or life insurance
23.13 producer performs any of these activities required of the provider, the provider is deemed
23.14 to have fulfilled the requirements of this section.

23.15 (b) If a broker performs those verification of coverage activities required of the
23.16 provider, the provider is deemed to have fulfilled the requirements of section 60A.9579,
23.17 subdivision 1.

23.18 Subd. 6. **Notice that policy subject to life settlement contracts.** Within 20 days
23.19 after an owner executes the life settlement contract, the provider shall give written notice
23.20 to the insurer that issued the insurance policy that the policy has become subject to a
23.21 life settlement contract. The notice shall be accompanied by the documents required by
23.22 section 60A.958, subdivision 1, clause (1).

23.23 Subd. 7. **Confidentiality of medical information.** All medical information
23.24 solicited or obtained by any licensee shall be subject to the applicable provision of state
23.25 law relating to confidentiality of medical information if not otherwise provided in sections
23.26 60A.957 to 60A.9587.

23.27 Subd. 8. **Rescission.** All life settlement contracts entered into in this state shall
23.28 provide that the owner may rescind the contract on or before 15 days after the date it
23.29 is executed by all parties thereto. Rescission, if exercised by the owner, is effective
23.30 only if both notice of the rescission is given, and the owner repays all proceeds and any
23.31 premiums, loans, and loan interest paid on account of the provider within the rescission
23.32 period. If the insured dies during the rescission period, the contract shall be deemed
23.33 to have been rescinded subject to repayment by the owner or the owner's estate of all
23.34 proceeds and any premiums, loans, and loan interest to the provider.

23.35 Subd. 9. **Settlement proceeds.** Within three business days after receipt from the
23.36 owner of documents to effect the transfer of the insurance policy, the provider shall pay the

24.1 proceeds of the settlement to an escrow or trust account managed by a trustee or escrow
24.2 agent in a state or federally chartered financial institution pending acknowledgment of
24.3 the transfer by the issuer of the policy. The trustee or escrow agent shall be required to
24.4 transfer the proceeds due to the owner within three business days of acknowledgment
24.5 of the transfer from the insurer.

24.6 Subd. 10. **Failure to tender proceeds.** Failure to tender the life settlement contract
24.7 proceeds to the owner by the date disclosed to the owner renders the contract voidable
24.8 by the owner for lack of consideration until the time the proceeds are tendered to and
24.9 accepted by the owner. A failure to give written notice of the right of rescission hereunder
24.10 shall toll the right of rescission until 30 days after the written notice of the right of
24.11 rescission has been given.

24.12 Subd. 11. **Fee computation.** Any fee paid by a provider, party, individual, or an
24.13 owner to a broker in exchange for services provided to the owner pertaining to a life
24.14 settlement contract shall be computed as a percentage of the offer obtained, not the face
24.15 value of the policy. Nothing in this section shall be construed as prohibiting a broker from
24.16 reducing such broker's fee below this percentage if the broker so chooses.

24.17 Subd. 12. **Broker's disclosure.** The broker shall disclose to the owner anything of
24.18 value paid or given to a broker which relates to a life settlement contract.

24.19 Subd. 13. **Prohibition; entry into life settlement contract.** No person at any time
24.20 prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year
24.21 period commencing with the date of issuance of the policy, shall enter into a life settlement
24.22 contract regardless of the date the compensation is to be provided and regardless of the
24.23 date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur.
24.24 This prohibition shall not apply if the owner certifies to the provider that:

24.25 (1) the policy was issued upon the owner's exercise of conversion rights arising out
24.26 of a group or individual policy, provided the total of the time covered under the conversion
24.27 policy plus the time covered under the prior policy is at least 24 months. The time covered
24.28 under a group policy must be calculated without regard to a change in insurance carriers,
24.29 provided the coverage has been continuous and under the same group sponsorship;

24.30 (2) the owner submits independent evidence to the provider that one or more of the
24.31 following conditions have been met within the two-year period:

24.32 (i) the owner or insured is terminally or chronically ill;

24.33 (ii) the owner or insured disposes of his ownership interests in a closely held
24.34 corporation, pursuant to the terms of a buyout or other similar agreement in effect at the
24.35 time the insurance policy was initially issued;

24.36 (iii) the owner's spouse dies;

(iv) the owner divorces the owner's spouse;
(v) the owner retires from full-time employment;
(vi) the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or
(vii) a final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets;
(3) copies of the independent evidence required by clause (2) shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy; and
(4) if the provider submits to the insurer a copy of independent evidence provided for in clause (2), item (i), when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

Sec. 12. **[60A.9582] AUTHORITY TO ADOPT RULES; CONFLICT OF LAWS.**

Subdivision 1. **Rulemaking.** The commissioner may adopt rules implementing sections 60A.957 to 60A.9587 and regulating the activities and relationships of providers, brokers, insurers, and agents, subject to statutory limitations on administrative rulemaking.

Subd. 2. **Conflict of laws.** (a) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(b) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates

the transaction upon which the owner is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the department.

(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

Sec. 13. **[60A.9583] PROHIBITED PRACTICES.**

It is unlawful for any person to:

(1) enter into a life settlement contract if such person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for such policy;

(2) engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this section;

(3) engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;

(4) issue, solicit, market, or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy;

(5) enter into a life settlement contract on a policy that was the subject of a premium finance agreement as described in section 60A.9572, subdivision 13, paragraph (b), clause (2);

(6) with respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker unless the relationship is disclosed to the owner;

(7) with respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with a owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract unless the relationship is disclosed to the owner;

(8) with respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The

27.1 inclusion of any reference in the marketing materials that would cause an owner to
27.2 reasonably believe that the insurance is free for any period of time shall be considered a
27.3 violation of this act;

27.4 (9) with respect to any life insurance producer, insurance company, broker, or
27.5 provider, make any statement or representation to the applicant or policyholder in
27.6 connection with the sale or financing of a life insurance policy to the effect that the
27.7 insurance is free or without cost to the policyholder for any period of time unless provided
27.8 in the policy; or

27.9 (10) if an insurer, to:

27.10 (i) prohibit, restrict, limit, or impair a life insurance producer from lawfully
27.11 negotiating a life settlement contract on behalf of an owner, aiding and assisting an owner
27.12 with a life settlement contract, or otherwise participating in a life settlement transaction
27.13 under sections 60A.157 to 60A.9587;

27.14 (ii) engage in or permit any discrimination between individuals of the same class,
27.15 same policy amount, and equal expectation of life in the rates charged for any life
27.16 insurance policy or annuity contract based upon an individual's having entered into a life
27.17 settlement contract or being insured under a settled policy;

27.18 (iii) make any false or misleading statement as to the business of life settlements or
27.19 financing premiums due for a policy or to any owner or insured for the purpose of inducing
27.20 or tending to induce the owner or insured not to enter into a life settlement contract; or

27.21 (iv) engage in any transaction, act, practice or course of business or dealing
27.22 which restricts, limits or impairs in any way the lawful transfer of ownership, change
27.23 of beneficiary, or assignment of a policy.

27.24 **Sec. 14. [60A.9584] FRAUD PREVENTION AND CONTROL.**

27.25 **Subdivision 1. Fraudulent life settlement acts, interference and participation of**
27.26 **convicted felons prohibited.** (a) A person shall not commit a fraudulent life settlement
27.27 act.

27.28 (b) A person shall not knowingly and intentionally interfere with the enforcement of
27.29 the provisions of sections 60A.957 to 60A.9587 or investigations of suspected or actual
27.30 violations of sections 60A.957 to 60A.9587.

27.31 (c) A person in the business of life settlements shall not knowingly or intentionally
27.32 permit any person convicted of a felony involving dishonesty or breach of trust to
27.33 participate in the business of life settlements.

Subd. 2. **Fraud warning required.** (a) Life settlement contracts and applications for life settlement contracts, 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 life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in paragraph (a) does not constitute a defense in any prosecution for a fraudulent life settlement act.

Subd. 3. **Mandatory reporting of fraudulent life settlement acts.** (a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Subd. 4. **Immunity from liability.** (a) 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 life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(1) the commissioner or the commissioner's employees, agents, or representatives;

(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 life settlement acts or that person's agents, employees, or representatives;

(4) any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

(5) the life insurer that issued the life insurance policy covering the life of the insured; or

(6) the licensee and any agents, employees, or representatives.

(b) Paragraph (a) 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 life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (a) does not apply because the person filing the report or furnishing the information did so with actual malice.

29.1 (c) A person identified in paragraph (a) shall be entitled to an award of attorney's
29.2 fees and costs if the person is the prevailing party in a civil cause of action for libel,
29.3 slander, or any other relevant tort arising out of activities in carrying out the provisions
29.4 of sections 60A.957 to 60A.9587 and the party bringing the action was not substantially
29.5 justified in doing so. For purposes of this section, a proceeding is "substantially justified"
29.6 if it had a reasonable basis in law or fact at the time that it was initiated.

29.7 (d) This section does not abrogate or modify common law or statutory privileges or
29.8 immunities enjoyed by a person described in paragraph (a).

29.9 Subd. 5. **Confidentiality.** (a) The documents and evidence provided pursuant to
29.10 subdivision 4 or obtained by the commissioner in an investigation of suspected or actual
29.11 fraudulent life settlement acts shall be privileged and confidential and shall not be a public
29.12 record and shall not be subject to discovery or subpoena in a civil or criminal action.

29.13 (b) Paragraph (a) does not prohibit release by the commissioner of documents and
29.14 evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

29.15 (1) in administrative or judicial proceedings to enforce laws administered by the
29.16 commissioner;

29.17 (2) to federal, state, or local law enforcement or regulatory agencies, to an
29.18 organization established for the purpose of detecting and preventing fraudulent life
29.19 settlement acts or to the National Association of Insurance Commissioners; or

29.20 (3) at the discretion of the commissioner, to a person in the business of life
29.21 settlements that is aggrieved by a fraudulent life settlement act.

29.22 (c) Release of documents and evidence under paragraph (b) does not abrogate or
29.23 modify the privilege granted in paragraph (a).

29.24 Subd. 6. **Other law enforcement or regulatory authority.** Sections 60A.957 to
29.25 60A.9587 shall not:

29.26 (1) preempt the authority or relieve the duty of other law enforcement or regulatory
29.27 agencies to investigate, examine, and prosecute suspected violations of law;

29.28 (2) preempt, supersede, or limit any provision of any state securities law or any rule,
29.29 order, or notice issued thereunder;

29.30 (3) prevent or prohibit a person from disclosing voluntarily information concerning
29.31 life settlement fraud to a law enforcement or regulatory agency other than the insurance
29.32 department; or

29.33 (4) limit the powers granted elsewhere by the laws of this state to the commissioner
29.34 or an insurance fraud unit to investigate and examine possible violations of law and to
29.35 take appropriate action against wrongdoers.

Subd. 7. **Life settlement antifraud initiatives.** (a) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) fraud investigators, who may be provider or broker employees or independent contractors; and

(2) an antifraud plan, which shall be submitted to the commissioner.

(b) The antifraud plan shall include, but not be limited to:

(1) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(2) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(3) a description of the plan for antifraud education and training of underwriters and other personnel; and

(4) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the commissioner are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.

Sec. 15. **[60A.9586] PENALTIES.**

(a) It is a violation of sections 60A.957 to 60A.9587 for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.

(b) For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud and shall be subject to additional penalties under sections 60A.951 to 60A.956.

(c) The commissioner shall be empowered to levy a civil penalty not exceeding \$1,000 and the amount of the claim for each violation upon any person, including those

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31.1 persons and their employees licensed pursuant to sections 60A.957 to 60A.9587, who is
31.2 found to have committed a fraudulent life settlement act or violated any other provision of
31.3 sections 60A.957 to 60A.9587.

31.4 (d) The license of a person licensed under sections 60A.957 to 60A.9587 that
31.5 commits a fraudulent life settlement act shall be revoked for a period of at least one year.

31.6 Sec. 16. **[60A.9587] UNFAIR TRADE PRACTICES.**

31.7 A violation of sections 60A.957 to 60A.9586 shall be considered an unfair trade
31.8 practice pursuant to state law and subject to the penalties provided by state law.

31.9 Sec. 17. **EFFECTIVE DATE.**

31.10 (a) A provider lawfully transacting business in this state prior to the effective date of
31.11 this act may continue to do so pending approval or disapproval of that person's application
31.12 for a license as long as the application is filed with the commissioner not later than 30 days
31.13 after publication by the commissioner of an application form and instructions for licensure
31.14 of providers. If the publication of the application form and instructions is prior to the
31.15 effective date of this act, then the filing of the application shall not be later than 30 days
31.16 after the effective date of this act. During the time that such an application is pending with
31.17 the commissioner, the applicant may use any form of life settlement contract that has been
31.18 filed with the commissioner pending approval thereof, provided that such form is otherwise
31.19 in compliance with the provisions of this act. Any person transacting business in this state
31.20 under this provision shall be obligated to comply with all other requirements of this act.

31.21 (b) A person who has lawfully negotiated life settlement contracts between any
31.22 owner residing in this state and one or more providers for at least one year immediately
31.23 prior to the effective date of this act may continue to do so pending approval or
31.24 disapproval of that person's application for a license as long as the application is filed
31.25 with the commissioner not later than 30 days after publication by the commissioner of
31.26 an application form and instructions for licensure of brokers. If the publication of the
31.27 application form and instructions is prior to the effective date of this chapter, then the
31.28 filing of the application shall not be later than 30 days after the effective date of this act.
31.29 Any person transacting business in this state under this provision shall be obligated to
31.30 comply with all other requirements of this act.

31.31 Sec. 18. **REPEALER.**

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32.1 Minnesota Statutes 2006, sections 60A.961; 60A.962; 60A.963; 60A.964; 60A.965;
32.2 60A.966; 60A.967; 60A.968; 60A.969; 60A.970; 60A.971; 60A.972; 60A.973; and
32.3 60A.974, are repealed.

32.4 Sec. 19. **EFFECTIVE DATE.**

32.5 This act is effective January 1, 2009, and applies to policies issued on or after that
32.6 date.

60A.961 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 60A.961 to 60A.974, the definitions in this section have the meanings given them.

Subd. 2. **Person.** "Person" means a natural or artificial entity, including individuals, partnerships, associations, trusts, limited liability companies, or corporations.

Subd. 3. **Viatical settlement broker.** "Viatical settlement broker" means an individual, partnership, limited liability company, corporation, or other entity who or which for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

Subd. 4. **Viatical settlement contract.** "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Subd. 5. **Viatical settlement provider.** "Viatical settlement provider" means an individual, partnership, limited liability company, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

(1) a bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) the issuer of a life insurance policy providing accelerated benefits under section 61A.072; or

(3) a natural person who enters into 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.

Subd. 6. **Viator.** "Viator" means the owner or certificate holder of a life insurance policy insuring the life of a person with a catastrophic or life threatening illness or condition who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, 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 the insurance policy or certificate to the viatical settlement provider.

60A.962 LICENSE REQUIREMENTS.

Subdivision 1. **License.** No individual, partnership, limited liability company, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner of commerce.

Subd. 2. **Form.** An applicant for a viatical settlement provider license shall submit an application to the commissioner of commerce on a form prescribed by the commissioner.

Subd. 3. **Contents.** The applicant shall provide information that the commissioner requires on forms prepared by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all shareholders, members, partners, officers, and employees. The commissioner may, in the exercise of discretion, refuse to issue a license in the name of a firm, partnership, limited liability company, or corporation if not satisfied that an officer, employee, shareholder, member, or partner who may materially influence the applicant's conduct meets the requirements of sections 60A.961 to 60A.974.

Subd. 4. **Named persons.** A license issued to a partnership, limited liability company, corporation, or other entity authorizes all members, officers, partners, and designated employees to act as viatical settlement providers under the license, and all those persons must be named in the application and any supplements to the application.

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Subd. 5. **Investigation.** Upon the filing of an application and the payment of the license fee, the commissioner shall investigate each applicant and may issue a license if the commissioner finds that the applicant:

- (1) has provided a detailed plan of operation;
- (2) is competent and trustworthy and intends to act in good faith in the capacity involved in the license applied for;
- (3) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
- (4) if a corporation is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

60A.963 SERVICE OF PROCESS; NONRESIDENT LICENSING.

Subdivision 1. **License.** A nonresident of this state may be licensed as a viatical settlement provider upon compliance with all provisions of sections 60A.961 to 60A.974.

Subd. 2. **Service of process.** Section 45.028 applies to service of process upon a viatical settlement provider.

60A.964 FEES.

Subdivision 1. **Amount.** The licensing fee for a viatical settlement provider license is \$750 for initial licensure and \$250 for each annual renewal. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

Subd. 2. **Automatic revocation.** A license is automatically revoked for failure to pay the licensing fee within the terms prescribed by the commissioner.

60A.965 LICENSE REVOCATION.

Subdivision 1. **Revocation.** The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement provider if the commissioner finds that:

- (1) there was any misrepresentation in the application for the license;
- (2) the holder of the license has been found guilty of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;
- (3) the licensee demonstrates a pattern of unreasonable payments to policy owners;
- (4) the licensee has been convicted of a felony or a misdemeanor of which criminal fraud is an element; or
- (5) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 2. **Administrative action.** Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 60A.961 to 60A.974.

60A.966 APPROVAL OF VIATICAL SETTLEMENTS CONTRACT FORMS.

A viatical settlement provider or broker may not use a viatical settlement contract form in this state unless it has been filed with and approved by the commissioner. A viatical settlement contract form filed with the commissioner is considered to have been approved if it has not been disapproved within 60 days of the filing. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's opinion, the contract or contract provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner.

60A.967 REPORTING REQUIREMENTS.

Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing the following information for the previous calendar year:

- (1) for each policy viaticated, the date that the viatical settlement was entered into; the life expectancy of the viator at the time of the contract; the face amount of the policy; the amount paid by the viatical settlement provider to viaticate the policy; and if the viator has died, the date of death and the total insurance premiums paid by the viatical settlement provider to maintain the policy in force;
- (2) a breakdown of applications received, accepted, and rejected, by disease category;
- (3) a breakdown of policies viaticated by issuer and policy type;

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- (4) the number of secondary market versus primary market transactions;
- (5) the portfolio size; and
- (6) the amount of outside borrowings.

60A.968 EXAMINATION.

Subdivision 1. **Authorization.** The commissioner may, when the commissioner considers it reasonably necessary to protect the interests of the public, examine the business and affairs of a licensee or applicant for a license. The commissioner may order a licensee or applicant to produce records, books, files, or other information reasonably necessary to determine whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

Subd. 2. **Private data.** Names and individual identification data for all viators is private and confidential information and must not be disclosed by the commissioner, unless required by law.

Subd. 3. **Records.** The licensee shall maintain records of all transactions of viatical settlement contracts and shall make them available to the commissioner for inspection during reasonable business hours.

60A.969 DISCLOSURE.

A viatical settlement provider or a broker shall disclose the following information to the viator no later than the date an application is given to the viator:

(1) possible alternatives to viatical settlement contracts for persons with catastrophic or life threatening illnesses, including accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor;

(3) the fact that the viatical settlement may be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipients' eligibility for Medicaid or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(5) the policy owner's right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties or 15 days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in section 60A.970, subdivision 3; and

(6) the date by which the funds will be available to the viator and the source of the funds.

60A.970 GENERAL REQUIREMENTS.

Subdivision 1. **Required documents.** A viatical settlement provider entering into a viatical settlement contract with a person with a catastrophic or life threatening illness or condition shall first obtain:

(1) a written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) a witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life threatening illness, represents that the person has a full and complete understanding of the viatical settlement contract, acknowledges that the person has a full and complete understanding of the benefits of the life insurance policy, releases the person's medical records, and acknowledges that the person has entered into the viatical settlement contract freely and voluntarily.

Subd. 2. **Confidentiality of medical information.** All medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating to confidentiality of medical information.

Subd. 3. **Unconditional refund provision.** All viatical settlement contracts entered into in this state must contain an unconditional refund provision of at least 30 days from the date that the viator signs an agreement to transfer an insurance policy or 15 days of the receipt of the viatical settlement proceeds, whichever is less.

Subd. 4. **Payment of proceeds.** Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent must transfer the proceeds due to the viator immediately upon

receipt of acknowledgment of the transfer from the insurer. Payment of the proceeds must be made by means of wire transfer to the viator or by certified check or cashier's check.

Subd. 5. **Lump sum payment.** Payment of the proceeds under a viatical settlement must be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Payment must not be made by installments unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.

Subd. 6. **Additional payment.** With respect to policies containing a provision for double or other additional indemnity for accidental death, the additional payment must remain payable to the beneficiary last named by the viator before entering into the viatical settlement agreement, or to a beneficiary designated by the viator, other than the viatical settlement provider, or in the absence of a designation, to the estate of the viator.

Subd. 7. **Prohibited payments.** A viatical settlement provider or broker must not pay or offer to pay a finder's fee, commission, or other compensation to a viator's physician, attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

Subd. 8. **Discrimination prohibited.** A viatical settlement provider or broker must not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation, or discriminate between viators with dependents and without.

Subd. 9. **Health status contacts.** Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred must not exceed one every three months for viators with a life expectancy of more than one year and must not exceed one per month for viators with a life expectancy of one year or less. The provider or broker must explain the procedure for these contacts at the time the viatical settlement contract is entered into.

Subd. 10. **Prohibited investor solicitation.** Viatical settlement providers and brokers shall not solicit investors who may influence the treatment of the illness of the viators whose coverage is the subject of the investment.

Subd. 11. **Contract null and void.** Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

60A.971 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS.

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following are the minimum permitted discounts:

	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Insured's Life Expectancy	
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%
Twenty-four months or more	50%

The percentage may be reduced by five percent for viaticating a policy written by an insurer rated lower than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

60A.972 VIATICAL SETTLEMENT BROKERS.

Subdivision 1. **License.** A viatical settlement broker may not solicit a viatical settlement contract without first obtaining a license from the commissioner of commerce.

Subd. 2. **Form.** An applicant for a viatical settlement broker license shall submit an application to the commissioner on a form prescribed by the commissioner.

Subd. 3. **Fees.** The licensing fee for a viatical settlement broker is \$750 for initial licensure and \$250 for each annual renewal. Failure to pay the renewal fee within the time required by the commissioner results in an automatic revocation of the license. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

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Subd. 4. **License limitation.** The license is a limited license which allows solicitation only of viatical settlements.

Subd. 5. **License revocation.** The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker if the commissioner finds that:

(1) there was any misrepresentation in the application for a license;

(2) the broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or a misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(3) the licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or

(4) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 6. **Agent.** 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.

Subd. 7. **Compensation prohibited.** A viatical settlement broker must 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.

60A.973 ADVERTISING STANDARDS.

Subdivision 1. **Generally.** Advertising by viatical settlement providers or brokers must be truthful and not misleading by fact or implication.

Subd. 2. **Average time.** If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

Subd. 3. **Average purchase price.** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase prices as a percent of face value obtained by viators contracting with the advertiser during the previous six months.

60A.974 UNFAIR TRADE PRACTICES.

A violation of sections 60A.961 to 60A.974 is an unfair trade practice under chapter 72A.