

60A.9582 ADVERTISING FOR VIATICAL SETTLEMENTS AND VIATICAL SETTLEMENTS PURCHASE AGREEMENTS.

Subdivision 1. **Application.** This section applies to any advertising of viatical settlement contracts, viatical purchase agreements, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

Subd. 2. **System of control.** Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

Subd. 3. **Form and content.** Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract or viatical settlement purchase agreement, product, or service shall be sufficiently complete and clear so as to avoid deception and it shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

Subd. 4. **False and misleading advertisements.** Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:

(1) "guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," "state guaranty funds," or similar representations;

(2) "no risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

(3) "qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

(4) utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) "no sales charges or fees" or similar representations;

(6) "high yield," "superior return," "excellent return," "high return," "quick profit," or similar representations; and

(7) purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

Subd. 5. **Disclosures regulated.** (a) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, purchasers, or prospective purchasers as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract or viatical settlement purchase agreement offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract or viatical settlement purchase agreement includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

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

(d) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement in order to maintain that policy, unless that is the fact.

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

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

(g) Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract or viatical settlement purchase agreement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators or purchasers as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee under sections 60A.957 to 60A.9585 makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(h) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union-scale wages, that fact shall be prominently disclosed in the advertisement.

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

(j) When an endorsement refers to benefits received under a viatical settlement contract or viatical settlement purchase agreement, all pertinent information shall be retained for a period of five years after its use.

Subd. 6. **Statistics.** An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

Subd. 7. **Disparaging advertisements.** An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

Subd. 8. **Licensee's name.** The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract or viatical settlement purchase agreements, products, or services, and if any specific viatical settlement contract or viatical settlement purchase agreement is advertised, the viatical settlement contract or viatical settlement purchase agreement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

Subd. 9. **Licensee disclosure.** An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract or viatical settlement purchase agreement.

Subd. 10. **Government sponsorship; misleading advertisements.** An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators or purchasers into believing that the solicitation is in some manner connected with a government program or agency.

Subd. 11. **State licensure.** An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the Department of Commerce to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker, or viatical settlement investment agent is licensed.

Subd. 12. **Government entity endorsement.** An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts or viatical settlement purchase agreement forms are recommended or endorsed by any government entity.

Subd. 13. **Name.** The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

Subd. 14. **Government approval.** An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

- (1) any viatical settlement licensee or its business practices or methods of operation;
- (2) the merits, desirability, or advisability of any viatical settlement contract or viatical settlement purchase agreement;
- (3) any viatical settlement contract or viatical settlement purchase agreement; or
- (4) any life insurance policy or life insurance company.

Subd. 15. **Time frame disclosure.** 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. 16. **Average purchase price.** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

History: 2009 c 62 s 10