

## 215 ILCS 159/35(a)(b)(c) Disclosure to Viator

### Sec. 159(a)(b)(c) Disclosure to Viator

(a) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the viatical settlement contract is signed by all parties. The disclosures shall include distribution of a brochure describing the process of viatical settlements. The NAIC form for the brochure shall be used unless another form is developed or approved by the Director. Other disclosures required by this subsection (a) shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:

(1) If a viator enters into a viatical settlement contract, then the beneficiaries of the life insurance policy lose the life insurance policy's benefits, equity, and protection. In addition, by entering into this viatical settlement contract, the insured may not qualify for another life insurance policy or may be required to pay substantially higher premiums.

(2) That there are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(3) That a viatical settlement broker represents only the viator and not the insurer or the viatical settlement provider and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.

(4) That some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance may be sought from a professional tax advisor.

(5) That proceeds of the viatical settlement contract may be subject to the claims of creditors.

(6) That receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements and advice should be obtained from the appropriate government agencies.

(7) That the viator has the right to rescind a viatical settlement contract before the earlier of 30 calendar days after the date upon which the viatical settlement contract is executed by all parties or 15 calendar days after the viatical settlement proceeds have been paid to the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and the viator repays all proceeds and any premiums, loans, and loan interest paid on the account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment by the viator or the viator's estate to the viatical settlement provider of all viatical settlement proceeds and any premiums, loans, and loan interest paid on the account of the viatical settlement within 60 days after the insured's death.

(8) That funds must be sent to the viator within 3 business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated.

(9) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(10) That the disclosure document must contain the following language: "A viatical settlement provider or viatical settlement broker may ask the insured for medical, financial, and personal information. All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of the insured's family members, the insured's spouse or the insured's significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every 2 years."

(11) That, following execution of a viatical settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or for other purposes permitted by law. This contact is limited to once every 3 months if the insured has a life expectancy of more than one year, and no more than once each month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

(12) If the policy to be viaticated is group coverage, the insured is advised to check with the manager of the group about whether permission is required to sell the policy or other conditions.

(13) Entering into a viatical settlement contract will result in investors having a financial interest in the insured's death.

(b) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the prospective viator with a document titled "Important Consumer Notices". The document must be provided to the prospective viator and contain, in conspicuous type size and format, the following:

"By entering into a viatical settlement contract:

(1) You are making a complex financial decision that may or may not be in your or your family's financial best interest. Seek independent advice from financial planning experts and responsible government agencies.

(2) You may not be able to purchase another life insurance policy.

(3) You could lose Medicaid and other valuable government benefits.

(4) You will receive proceeds that may be subject to federal and state taxes and to the claims of creditors.

(5) You have sold your life insurance policy to strangers who have a financial interest in the life and death of the person whose life is insured by the policy.

(6) You or your residence may be contacted on a regular basis to determine if you have died or if your health status has deteriorated."

The disclosure document required by this subsection (b) shall be the cover page of the viatical settlement contract and shall be signed by the viator and the viatical settlement provider or viatical settlement broker. The viator and viatical settlement provider or viatical settlement broker shall sign the disclosure prior to signing the viatical settlement contract. A copy of the signed document must be provided to the viator.

(c) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures must be displayed conspicuously in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider, and provide the following information:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of the policy to be acquired pursuant to a viatical settlement contract.

(2) The name, business address, and telephone number of the viatical settlement provider.

(3) Whether any affiliations or contractual arrangements exist between the viatical settlement provider and the viatical settlement purchaser.

(4) If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a viatical settlement contract, the viator must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the viator's insurance producer or the company issuing the policy for advice on the proposed viatical settlement contract.

(5) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy. If known, the viatical settlement provider also shall disclose the availability of additional guaranteed insurance benefits, the dollar amount of accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viator's settlement contract.

(6) The name, business address, and telephone number of the escrow agent, and that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents. Also, that an escrow agent shall provide escrow services to the parties pursuant to a written agreement signed by the viatical settlement provider, the escrow agent, and the viator. At the close of escrow, the escrow agent must distribute the proceeds of the sale to the viator, minus any compensation to be paid to any other persons who provided services and to whom the viator has agreed to compensate out of the gross amount offered by the viatical settlement purchaser. All persons receiving any form of compensation under the escrow agreement shall be clearly identified, including name, business address, telephone number, and tax identification number.

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