

215 ILCS 159/5 Viatical Settlements Act of 2009

Sec. 5. Definitions.

"Accredited investor" means an accredited investor as defined in Rule 501(a) promulgated under the Securities Act of 1933 (15 U.S.C. 77 et seq.), as amended.

"Advertising" 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, digital picture slides, motion pictures, and videos published, disseminated, circulated, or placed before the public in this State, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy pursuant to a viatical settlement contract.

"Alien licensee" means a licensee incorporated or organized under the laws of any country other than the United States.

"Business of viatical settlements" means any activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract or other agreement.

"Chronically ill" means having been certified within the preceding 12-month period by a licensed health professional as:

- (1) being unable to perform, without substantial assistance from another individual and for at least 90 days due to a loss of functional capacity, at least 2 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 paragraph (1) as determined by the Secretary of Health and Human Services.

"Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed the management, control, or activities of the viatical settlement provider.

"Director" means the Director of the Department of Insurance.

"Escrow agent" means an independent third-party person who, pursuant to a written agreement signed by the viatical settlement provider and viator, provides escrow services related to the acquisition of a life insurance policy pursuant to a viatical settlement contract. "Escrow agent" does not include any person associated or affiliated with or under the control of a licensee.

"Financial institution" means a financial institution as defined by the Financial Institutions Insurance Sales Law in Article XLIV of the Illinois Insurance Code.

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or an entity that has a direct

ownership in a policy that is the subject of a viatical settlement contract, and to which both of the following apply:

- (1) its principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
- (2) it has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

"Financing entity" does not include an investor that is not an accredited investor.

"Financing transaction" means a transaction in which a viatical settlement provider obtains financing from a financing entity, including, without limitation, any secured or unsecured financing, securitization transaction, or securities offering that either is registered or exempt from registration under federal and State securities law.

"Foreign licensee" means any viatical settlement provider incorporated or organized under the laws of any state of the United States other than this State.

"Insurance producer" means an insurance producer as defined by Section 10 of Article XXXI of the Illinois Insurance Code.

"Licensee" means a viatical settlement provider or viatical settlement broker.

"Life expectancy provider" means a person who determines or holds himself or herself out as determining life expectancies or mortality ratings used to determine life expectancies on behalf of or in connection with any of the following:

- (1) A viatical settlement provider, viatical settlement broker, or person engaged in the business of viatical settlements.
- (2) A viatical investment as defined by Section 2.33 of the Illinois Securities Law of 1953 or a viatical settlement contract.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual or a legal entity, including, without limitation, a partnership, limited liability company, limited liability partnership, association, trust, business trust, or corporation.

"Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance of the class defined by subsection (a) of Section 4 of the Illinois Insurance Code owned by a resident of this State, regardless of whether delivered or issued for delivery in this State.

"Qualified institutional buyer" means a qualified institutional buyer as defined in Rule 144 promulgated under the Securities Act of 1933, as amended.

"Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the

Director as if those records and files were maintained directly by the licensed viatical settlement provider.

"Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed only to provide, directly or indirectly, access to institutional capital markets

- (i) for a financing entity or licensed viatical settlement provider; or
- (ii) in connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by qualified institutional buyers or the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

"Stranger-originated life insurance" or "STOLI" means an act, practice, or arrangement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy himself or itself and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or policy benefits to a third party. Trusts created to give the appearance of an insurable interest and used to initiate policies for investors violate insurance interest laws and the prohibition against wagering on life. STOLI arrangements do not include lawful viatical settlement contracts as permitted by this Act.

"Terminally ill" means certified by a physician as having an illness or physical condition that reasonably is expected to result in death in 24 months or less.

"Viatical settlement broker" means a licensed insurance producer who has been issued a license pursuant to Section 500-35(a)(1) or 500-35(a)(2) of the Insurance Code who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers, solicits, promotes, or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. "Viatical settlement broker" does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

"Viatical settlement contract" means any of the following:

- (1) A written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy.
- (2) A written agreement for a loan or other lending transaction, secured primarily by an individual life insurance policy or an individual certificate of a group life insurance policy.
- (3) The transfer for compensation or value of ownership of a 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 and the life insurance contract insures the life of a person residing in this State.

(4) A premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy in either of the following situations:

(A) The viator or the insured receives a guarantee of the viatical settlement value of the policy.

(B) The viator or the insured agrees to sell the policy or any portion of the policy's death benefit on any date before or after issuance of the policy.

"Viatical settlement contract" does not include any of the following acts, practices, or arrangements listed below in subparagraphs (a) through (i) of this definition of "viatical settlement contract", unless part of a plan, scheme, device, or artifice to avoid application of this Act; provided, however, that the list of excluded items contained in subparagraphs (a) through (i) is not intended to be an exhaustive list and that an act, practice, or arrangement that is not described below in subparagraphs (a) through (i) does not necessarily constitute a viatical settlement contract:

(a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(b) Loan proceeds that are used solely to pay:

(i) premiums for the policy and

(ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(c) A loan made by a bank or other financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this Act;

(d) A loan made by a lender that does not violate Article XXXIIa of the Illinois Insurance Code, provided that the premium finance loan is not described in this Act;

(e) An agreement in which 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 trusts established primarily for the benefit of such parties;

(f) 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;

(g) 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;

(h) 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

(i) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the Director based on the Director's determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this Act.

"Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider. A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.

"Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract with a viator. "Viatical settlement provider" does not include:

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

(2) a financial institution or premium finance company making premium finance loans and exempted by the Director from the licensing requirement under the premium finance laws where the institution or company takes an assignment of a life insurance policy solely as collateral for a premium finance loan;

(3) the issuer of the life insurance policy;

(4) an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(5) An individual person who enters into or effectuates no more than one viatical settlement contract in a calendar year for the transfer of policies for any value less than the expected death benefit;

(6) a financing entity;

(7) a special purpose entity;

(8) a related provider trust;

(9) a viatical settlement purchaser; or

(10) any other person that the Director determines is consistent with the definition of viatical settlement provider.

"Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns

or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy, in each case where such policy has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include:

- (i) a licensee under this Act;
- (ii) an accredited investor or qualified institutional buyer;
- (iii) a financing entity;
- (iv) a special purpose entity; or
- (v) a related provider trust.

"Viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

"Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition, except where specifically addressed. "Viator" does not include:

- (1) A licensee;
- (2) a qualified institutional buyer;
- (3) a financing entity;
- (4) a special purpose entity; or
- (5) a related provider trust.

(Source: P.A. 96-736, eff. 7-1-10.)