

## 215 ILCS 159/60 Advertising for Viatical Settlements

### Sec. 159/60 Advertising for Viatical Settlements

(a) The purpose of this Section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. All product descriptions must be presented in a manner that prevents unfair, deceptive, or misleading advertising and conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees.

(b) This Section applies to any advertising of viatical settlement contracts or related products or services circulated or placed directly before the public, including Internet advertising. 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.

(c) Every 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 licensee, 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 licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the licensee.

(d) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract product or service shall be sufficiently complete and clear so as to avoid deception. 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 Director 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.

(e) The information required to be disclosed under this Section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

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 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 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 includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

An advertisement shall not use the name or title of an insurance company or an insurance policy unless the advertisement has been approved by the insurer.

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.

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 life insurance policy or 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.

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

If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the subject of the testimonial, appraisal, analysis, or endorsement, either directly or indirectly 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.

An advertisement shall not state or imply that a viatical settlement contract, 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 the group of individuals, society, association, or organization and the licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be prominently disclosed in the advertisement.

When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of 5 years after its use.

(f) An advertisement shall not contain statistical information unless the information accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(g) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.

(h) The name of the licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract 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 or providers shall be shown on the application.

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

(j) 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 into believing that the solicitation is in some manner connected with a government program or agency.

(k) An advertisement may state that a licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing licensees may not be so licensed. The advertisement may ask the audience to consult the licensee's Internet website or contact the Division to find out if the state requires licensing and, if so, whether the viatical settlement provider, or viatical settlement broker, is licensed.

(l) 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 are recommended or endorsed by any government entity.

(m) The name of the actual licensee shall be stated in all of a licensee's 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.

(n) An advertisement shall not directly or indirectly create the impression that any division or agency of the State or of the U. S. government endorses, approves, or favors:

(1) any licensee or its business practices or methods of operation;

(2) any viatical settlement contract; or

(3) any life insurance policy or life insurance company.

(o) 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.

(p) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose, using the same type and font size as the dollar amount available to the viator, the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past 6 months.

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