



Illinois Insurance Facts

Illinois Department of Insurance

Viatical Settlements, Accelerated Death Benefits, and Stranger-Originated Life Insurance

Updated
July 2010

Note: This information was developed to provide consumers with general information and guidance about insurance coverages and laws. It is not intended to provide a formal, definitive description or interpretation of Department policy. For specific Department policy on any issue, regulated entities (insurance industry) and interested parties should contact the Department.

If you are diagnosed with a terminal illness, such as AIDS or cancer, or a chronic illness that prevents you from performing daily functions, you face many hurdles. You are likely to have medical expenses that insurance won't pay, as well as other bills. Traditionally, life insurance helps surviving beneficiaries meet expenses. There are, however, two other options available that let an insured tap into their life insurance benefits while they are still living. These options are Viatical Settlements and Accelerated Death Benefits.

As of July 1, 2010, Illinois law places strict and specific guidelines on viatical settlements for persons who are not terminally or chronically ill. If someone offers you "free" or "no cost" or "zero premium" life insurance you may be the subject of an illegal scam. Please see the section below on "Stranger-Originated Life Insurance" or call the Department toll-free at (866) 445-5364 for more information.

What is a Viatical Settlement?

A viatical settlement is a contractual agreement to provide a life insurance policyholder immediate cash in exchange for the sale and transfer of life insurance policy ownership rights. The person selling the life insurance policy, who is known as the **viator**, gives up ownership of the policy in return for a cash payment that is less than the full amount of the death benefit in the life insurance policy. If you are terminally or chronically ill, a viatical settlement lets you sell a life insurance policy you already have to a viatical settlement provider.

The term *viatical* comes from the Latin term *viaticum*, which means "provisions for a long journey."

Who are the parties involved in a Viatical Settlement?

A **viatical settlement provider** is the person or company that buys the life insurance policy. The viatical settlement provider becomes the policy owner, must pay any premiums that are due, and eventually collects the full amount of the death benefit from the insurance company.

The person or company who represents the seller (viator) and who can "comparison shop" for viatical offers is a **viatical settlement broker**.

What is a terminal or chronic illness for purposes of a Viatical Settlement?

A **terminal illness** is an illness or physical condition a physician has certified as reasonably expected to result in death in 24 months or less.

A **chronic illness** requires certification within the preceding 12 months by a licensed health professional of: (1) an inability to perform, without substantial assistance 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.

What are Accelerated Death Benefits?

Accelerated Death Benefits are paid by an insurance company on an existing policy as a percentage of the policy's face value, minus any outstanding policy loans. While some older policies may not grant an accelerated death benefit in the terms of the life insurance contract, many insurance companies are making this option available to their policyholders. You should check with your insurance agent or company to find out if this option is available.

If you accept an accelerated death benefit payment, you may become ineligible for Medicaid or other governmental benefits and the benefits may be taxable. You should consult with your tax and/or legal advisor to determine whether or not this may be the case in your individual situation prior to entering into any financial agreement.

What Should I Consider in Evaluating a Viatical Settlement or Accelerated Death Benefits?

A viatical settlement or accelerated death benefit option may be a good source of funds, but you should fully understand how your choice will affect you and your survivors.

Before you decide to apply for a viatical settlement or accelerated death benefits, you should:

- Find out the name of the viatical settlement provider if you negotiate through a viatical settlement broker. Call the Department to make sure both the provider and broker are licensed.
- Realize that after your death the policy may not pay your beneficiaries any death benefit. Or it may pay a much lower benefit than you planned when you bought the policy.
- Think about whether other options would be better for you. You might borrow the cash value of your life insurance policy or cancel the policy and take out the cash value.
- If you owe money, ask your accountant if your creditors can try to collect what you owe them from your life insurance payouts. Recent federal legislation makes payouts from a viatical settlement or accelerated death benefits tax free, a great benefit to terminally ill individuals.
- You should contact your personal tax advisor as there may be tax implications under certain circumstances on the sale of a life insurance policy; for example, if you are not terminally ill and you sell your life insurance policy to a viatical settlement provider.
- Decide how payments from your life insurance will affect your eligibility for programs such as Medicaid and supplemental Social Security income.

NOTE: Effective July 1, 2010, it is a violation of Illinois law for any person to enter into a viatical settlement contract within 2 years after the insurance policy is issued unless one or more specific conditions has been met, including the viator being diagnosed as terminally or chronically ill. You should contact the Department before entering into a viatical settlement contract less than two years after your life insurance policy has been issued.

Is there anything that has to be disclosed to me before I sign a Viatical Settlement Contract?

Yes. Effective July 1, 2010, the Viatical Settlement Act of 2009 (P.A. 96-739) (the Act), provides new consumer protections for individuals seeking to enter into a viatical settlement. The Act requires that certain disclosures are made to the viator no later than the time the viatical settlement application is signed. Both the viator and the provider or broker must sign the disclosures.

The following information must be disclosed before you sign a viatical settlement contract:

- The beneficiaries of your life insurance policy lose the policies benefits, equity, and protection and by entering into the contract you may not qualify for another life insurance policy or may be required to pay substantially higher premiums.
- There are possible alternatives to viatical settlement contracts, including accelerated death benefits or policy loans.
- The viatical settlement broker represents only you and not the insurer or viatical settlement provider and owes you a fiduciary duty, including the duty to act according to your instructions and in your best interests.
- Some or all of the proceeds of the viatical settlement may be taxable and you should seek assistance from a professional tax advisor.
- The proceeds of the viatical settlement may be subject to the claims of creditors.
- Receipt of the proceeds of a viatical settlement may adversely affect your eligibility for Medicaid or other government benefits or entitlement.
- You have the right to rescind the viatical settlement contract before the earlier of: (1) 30 calendar days after the date the contract is executed by all parties; or (2) 15 calendar days after the viatical settlement proceeds have been paid.
- Funds must be sent to you within three business days after the viatical settlement provider has received written acknowledgement that ownership of your life insurance contract has been transferred.
- A viatical settlement provider or broker may ask you for medical, financial, and personal information that may be disclosed as necessary to effect the settlement.
- You may be contacted for the purpose of determining your health status once every three months if you have a life expectancy of more than one year, or once each month if you have a life expectancy of one year or less.

- Entering into a viatical settlement contract will result in investors having a financial interest in your death.

You must also be provided with a document entitled “Important Consumer Notices” which contains similar disclosures as well as additional information about parties involved in the viatical settlement contract.

What are the Differences Between Viatical Settlements and Accelerated Death Benefits?

	Viatical Settlements	Accelerated Death Benefits (ADB)
Who is a candidate?	Generally, Viatical Settlement Providers (VSPs) only buy your policy if you have 24 months or less to live. But some may buy policies from people with longer life expectancies.	You are usually eligible if you have 24 months or less to live and you added this option to your life insurance policy before you became terminally ill.
How do I find a provider?	Check the list of licensed VSPs , or go through a viatical settlement broker who will shop for a viatical settlement provider for you.	Check first with your life insurance agent. Most insurers offer this option.
What type of policy qualifies?	A VSP can buy almost any type of life insurance policy, including term, whole and universal life.	Life insurance companies usually limit this option to certain policies.
Who pays the benefit?	The VSP pays you in return for the rights to your life insurance policy.	Your life insurance company pays you.
How do I get the money?	Contact a licensed VSP for an application and to find out what you must do to prove you are terminally or chronically ill.	Contact the life insurance company that issued the ADB option. Find out what you must do to prove you are terminally ill or have a qualified covered condition.
How much can I get?	VSPs pay a lump sum usually from 50% to 85% of the face value of your policy, depending on your life expectancy.	ADB options usually pay 50% to 80% of the face value of your policy. You may be able to choose between a lump sum or monthly payments. Illinois law also lets life insurance companies pay up to 75% of the policy's face value for some specific medical conditions, such as heart attack, Alzheimer's Disease, or major organ transplant.
What happens to my life insurance?	The VSP will pay the rest of the premiums. The insurance company will pay the policy's benefits to the VSP upon your death. Your beneficiary will not receive the death benefit.	You must keep paying the insurance premiums if you want the company to pay the beneficiary the remaining death benefit.

What is Stranger-Originated Life Insurance?

Stranger-Originated Life Insurance (also known as Stranger-Owned Life Insurance or "STOLI") arrangements, are **NOT** traditional life insurance policies. Traditionally, the consumer (*i.e.*, the insured) initiates the application for insurance and the insured's loved ones are beneficiaries of the death benefits. In a STOLI arrangement, an investor group – strangers – initiate the insured's application and will likely acquire an interest in the life (and possibly profit from the death) of a participant.

The main characteristic of STOLI arrangements is that insurance is purchased purely as an investment vehicle by a group of strangers, not to provide for the insured's beneficiaries.

Descriptions of STOLI arrangements vary. Some call them "zero premium life insurance," "estate maximization plans," or "no cost to the insured plans," while others refer to "new issue life settlements," "high net worth settlements," or "non-recourse premium finance transactions."

STOLI arrangements are typically promoted to consumers between the ages of 65 and 85 and include:

- allowing someone to purchase life insurance on your life in exchange for an immediate lump sum payment of some amount;
- allowing someone to purchase insurance on your life in exchange for a partial payment of the policy's face value to your beneficiaries upon your death;
- entering into a contract for "free" or "no-cost" insurance on your life; or
- purchasing a life insurance policy for the sole purpose of selling the policy to a third-party, whether immediately or in the future.

Are Stranger-Originated Life Insurance Arrangements Prohibited?

Yes. Effective July 1, 2010, the Act expressly prohibits any person from entering into a STOLI arrangement as defined by the Act.

What Else Should I Know?

Be sure that the viatical settlement provider you choose is licensed in Illinois. You can obtain this information from the Illinois Department of Insurance.

Viatical settlements have become an investment tool. If you are asked or you are considering investing in or buying a viatical settlement policy, you should contact the Illinois Department of Insurance to learn about the issues and risks associated with this investment.

If you are asked to buy a life insurance policy and then sell it immediately as a viatical settlement, you should contact the Illinois Department of Insurance. This activity may be considered fraudulent and the individuals involved may be prosecuted.

Related Topics:

Additional brochures are available from the National Association of Insurance Commissioners web site at <http://www.naic.org>.

For More Information

Call the Department of Insurance Consumer Services Section at (866) 445-5364 or
or visit our website at www.insurance.illinois.gov