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CHAPTER _____

1 AN ACT concerning

2 **Insurance - Viatical Settlements**

3 FOR the purpose of ~~requiring the Maryland Insurance Commissioner to develop a~~
4 ~~course of continuing education in viaticals; providing that credits received by a~~
5 ~~viatical settlement broker in the course may be used to satisfy certain~~
6 ~~continuing education requirements; requiring a viatical settlement broker to~~
7 ~~provide a written disclosure to a viator before performing certain services for a~~
8 ~~viator at the time of each application for a viatical settlement; specifying certain~~
9 ~~contents of the written disclosure; requiring a viatical settlement broker, before~~
10 ~~entering into a viatical settlement brokerage relationship with a viator, to make~~
11 ~~a reasonable attempt to verify the accuracy and completeness of certain~~
12 ~~representations made by the viator under certain circumstances; prohibiting a~~
13 ~~viatical settlement broker from paying certain fees, commissions, or other~~
14 ~~compensation to another viatical settlement broker under certain~~
15 ~~circumstances; prohibiting a viatical settlement broker from purchasing,~~
16 ~~directly or indirectly, a policy that is the subject of a viatical settlement~~
17 ~~brokerage relationship contract between the viatical settlement broker and a~~
18 ~~viator; requiring a viatical settlement broker to submit certain offers,~~
19 ~~counter-offers, acceptances, and rejections to a viator within a certain time~~
20 ~~period; prohibiting a viatical settlement broker from soliciting other offers for a~~
21 ~~viator's policy after a certain contract is signed; altering a certain disclosure~~
22 ~~requirement relating to a viatical settlement broker's compensation; requiring a~~
23 ~~certain brochure to include a description of a certain fiduciary duty; requiring~~
24 ~~an insurer to respond to a certain request for verification of coverage within a~~
25 ~~certain time period under certain circumstances; establishing a certain limit on~~

1 the fee an insurer may charge to respond to the request; authorizing an insurer
 2 to send an acknowledgment of receipt of the request to certain persons;
 3 requiring the Commissioner to adopt a certain form by regulation; providing
 4 that nothing in this Act shall affect the jurisdiction of the Securities
 5 Commissioner of the Office of the Attorney General; and generally relating to
 6 viatical settlements and viatical settlement brokers.

7 BY adding to
 8 Article - Insurance
 9 Section ~~8-604.1~~, 8-605.1, and 8-610.1
 10 Annotated Code of Maryland
 11 (2003 Replacement Volume and 2005 Supplement)

12 BY repealing and reenacting, with amendments,
 13 Article - Insurance
 14 Section 8-606(c) and (f)(3)
 15 Annotated Code of Maryland
 16 (2003 Replacement Volume and 2005 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Insurance**

20 ~~8-604.1.~~

21 ~~(A) THE COMMISSIONER SHALL DEVELOP A COURSE OF CONTINUING~~
 22 ~~EDUCATION IN VIATICALS.~~

23 ~~(B) CREDITS RECEIVED BY A VIATICAL SETTLEMENT BROKER IN THE COURSE~~
 24 ~~MAY BE USED TO SATISFY THE VIATICAL SETTLEMENT BROKER'S CONTINUING~~
 25 ~~EDUCATION REQUIREMENTS UNDER § 10-116 OF THIS ARTICLE.~~

26 8-605.1.

27 ~~(A) BEFORE PERFORMING SERVICES TO PLACE A POLICY FOR A VIATOR AT~~
 28 ~~THE TIME OF EACH APPLICATION FOR A VIATICAL SETTLEMENT, A VIATICAL~~
 29 ~~SETTLEMENT BROKER SHALL PROVIDE TO THE VIATOR A WRITTEN DISCLOSURE~~
 30 ~~THAT, AT A MINIMUM, CONTAINS: A DESCRIPTION OF THE SERVICES REQUIRED BY~~
 31 ~~STATUTE TO BE PROVIDED BY THE VIATICAL SETTLEMENT BROKER TO THE VIATOR.~~

32 ~~(1) A DESCRIPTION OF THE SERVICES TO BE PROVIDED BY THE~~
 33 ~~VIATICAL SETTLEMENT BROKER;~~

34 ~~(2) A DESCRIPTION OF ALL FEES, COMMISSIONS, OR OTHER~~
 35 ~~COMPENSATION TO BE PAID BY THE VIATOR TO THE VIATICAL SETTLEMENT BROKER~~
 36 ~~FOR THE SERVICES TO BE PROVIDED; AND~~

1 ~~(3)~~ ~~THE DURATION OF THE VIATICAL SETTLEMENT BROKERAGE~~
2 ~~RELATIONSHIP.~~

3 ~~(B)~~ ~~BEFORE ENTERING INTO A VIATICAL SETTLEMENT BROKERAGE~~
4 ~~RELATIONSHIP WITH A VIATOR FOR THE PLACEMENT OF A POLICY, A VIATICAL~~
5 ~~SETTLEMENT BROKER, AFTER OBTAINING WRITTEN CONSENT OF THE VIATOR FOR~~
6 ~~THE RELEASE OF CONFIDENTIAL INSURANCE AND MEDICAL INFORMATION TO THE~~
7 ~~VIATICAL SETTLEMENT BROKER, SHALL MAKE A REASONABLE ATTEMPT TO VERIFY,~~
8 ~~THROUGH THE CONFIDENTIAL INSURANCE AND MEDICAL INFORMATION RELEASED~~
9 ~~TO THE VIATICAL SETTLEMENT BROKER, THE ACCURACY AND COMPLETENESS OF~~
10 ~~ANY REPRESENTATIONS MADE BY THE VIATOR REGARDING THE POLICY AND~~
11 ~~VIATOR'S HEALTH.~~

12 ~~(C)~~ ~~(B)~~ ~~A VIATICAL SETTLEMENT BROKER MAY NOT: PURCHASE A POLICY~~
13 ~~THAT IS THE SUBJECT OF A VIATICAL SETTLEMENT BROKERAGE CONTRACT~~
14 ~~BETWEEN THE VIATICAL SETTLEMENT BROKER AND A VIATOR DIRECTLY OR~~
15 ~~INDIRECTLY THROUGH:~~

16 ~~(1)~~ ~~A PERSON OWNING OR CONTROLLING AN INTEREST IN THE VIATICAL~~
17 ~~SETTLEMENT BROKER; OR~~

18 ~~(2)~~ ~~A PERSON IN WHICH ANY INTEREST IS OWNED OR CONTROLLED BY~~
19 ~~THE VIATICAL SETTLEMENT BROKER.~~

20 ~~(4)~~ ~~PAY A FEE, COMMISSION, OR OTHER COMPENSATION TO ANOTHER~~
21 ~~VIATICAL SETTLEMENT BROKER WITHOUT DISCLOSING THE FEE, COMMISSION, OR~~
22 ~~OTHER COMPENSATION TO THE VIATOR AND OBTAINING THE VIATOR'S PRIOR~~
23 ~~WRITTEN CONSENT TO THE PAYMENT; OR~~

24 ~~(2)~~ ~~PURCHASE, DIRECTLY OR INDIRECTLY, A POLICY THAT IS THE~~
25 ~~SUBJECT OF A VIATICAL SETTLEMENT BROKERAGE RELATIONSHIP BETWEEN THE~~
26 ~~VIATICAL SETTLEMENT BROKER AND A VIATOR.~~

27 ~~(D)~~ ~~(C)~~ ~~(4)~~ ~~A VIATICAL SETTLEMENT BROKER SHALL SUBMIT TO THE~~
28 ~~VIATOR ALL WRITTEN OFFERS, COUNTER-OFFERS, ACCEPTANCES, AND REJECTIONS~~
29 ~~RELATING TO THE PLACEMENT OF THE VIATOR'S POLICY WITHIN 48 72 HOURS AFTER~~
30 ~~RECEIPT BY THE VIATICAL SETTLEMENT BROKER.~~

31 ~~(D)~~ ~~(1)~~ ~~A VIATICAL SETTLEMENT BROKER SHALL PROVIDE TO THE VIATOR A~~
32 ~~WRITTEN DISCLOSURE OF THE AMOUNT AND METHOD OF CALCULATING THE~~
33 ~~VIATICAL SETTLEMENT BROKER'S COMPENSATION, INCLUDING ANYTHING OF~~
34 ~~VALUE RECEIVED BY A VIATICAL SETTLEMENT BROKER FOR THE PLACEMENT OF A~~
35 ~~POLICY.~~

36 ~~(2)~~ ~~A VIATICAL SETTLEMENT BROKER SHALL PROVIDE THE DISCLOSURE~~
37 ~~REQUIRED UNDER THIS SUBSECTION NO LATER THAN 72 HOURS BEFORE THE~~
38 ~~VIATICAL SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES TO THE CONTRACT.~~

1 ~~(2) AFTER A VIATICAL SETTLEMENT CONTRACT IS SIGNED BY A VIATOR~~
2 ~~AND A VIATICAL SETTLEMENT PROVIDER, A VIATICAL SETTLEMENT BROKER MAY~~
3 ~~NOT SOLICIT OTHER OFFERS FOR THE VIATOR'S POLICY.~~

4 8-606.

5 (c) (1) Disclosure to a viator also shall include distribution of a brochure
6 that describes the process of viatical settlements AND CONTAINS A DESCRIPTION OF
7 THE STATUTORY FIDUCIARY DUTY OF A VIATICAL SETTLEMENT BROKER TO A
8 VIATOR.

9 (2) The National Association of Insurance Commissioners form for the
10 brochure shall be used unless a brochure is:

11 (i) developed by the Commissioner; or

12 (ii) developed by a viatical settlement broker or viatical settlement
13 provider and approved by the Commissioner.

14 (f) (3) The disclosures required under this subsection shall provide the
15 following information:

16 (i) a statement of the affiliation, if any, between the viatical
17 settlement broker, viatical settlement provider, and the insurer that issued the policy
18 to be viaticated;

19 (ii) the name, address, and telephone number of the viatical
20 settlement provider;

21 (iii) [a disclosure by the viatical settlement broker of the amount
22 and method of calculating the viatical settlement broker's compensation, including
23 anything of value paid or given to a viatical settlement broker for the placement of a
24 policy;

25 (iv) if the policy to be viaticated has been issued as a joint policy or
26 involves family riders or any coverage of a life other than the insured under the policy
27 to be viaticated, the viator shall be informed of the possible loss of coverage on the
28 other lives under the policy and shall be advised to consult with an insurance
29 producer or the insurer issuing the policy for advice on the proposed viatical
30 settlement;

31 [(v)] (IV) 1. the dollar amount of the current death benefit
32 payable to the viatical settlement provider under the policy; and

33 2. if known, the availability of any additional guaranteed
34 insurance benefits, the dollar amount of any accidental death and dismemberment
35 benefits under the policy, and the viatical settlement provider's interest in those
36 benefits; and

1 [(vi)] (V) 1. the name, business address, and telephone number
 2 of the independent third party escrow agent; and

3 2. the fact that the viator or owner may inspect or receive
 4 copies of the relevant escrow or trust agreements or documents.

5 8-610.1.

6 (A) AN INSURER SHALL RESPOND TO A REQUEST FOR VERIFICATION OF
 7 COVERAGE SUBMITTED BY A VIATICAL SETTLEMENT PROVIDER OR A VIATICAL
 8 SETTLEMENT BROKER UNDER THIS SUBTITLE, INCLUDING VERIFICATION OF
 9 WHETHER THE INSURER INTENDS, AT THE TIME OF THE REQUEST, TO PURSUE AN
 10 INVESTIGATION REGARDING POSSIBLE FRAUD AFFECTING THE VALIDITY OF A
 11 POLICY, WITHIN 30 DAYS AFTER THE REQUEST IS RECEIVED, IF THE FOLLOWING
 12 DOCUMENTS ARE SUBMITTED WITH THE REQUEST:

13 (1) AN AUTHORIZATION SIGNED BY THE VIATOR; AND

14 (2) A "VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES"
 15 FORM ADOPTED BY THE COMMISSIONER UNDER SUBSECTION (D) OF THIS SECTION
 16 THAT HAS BEEN COMPLETED BY THE VIATICAL SETTLEMENT PROVIDER OR
 17 VIATICAL SETTLEMENT BROKER.

18 (B) AN INSURER MAY NOT CHARGE A FEE FOR RESPONDING TO A REQUEST
 19 FOR VERIFICATION OF COVERAGE SUBMITTED BY A VIATICAL SETTLEMENT
 20 PROVIDER OR A VIATICAL SETTLEMENT BROKER THAT EXCEEDS ~~THE LESSER OF:~~

21 (1) ~~\$50; OR~~

22 (2) ~~THE USUAL AND CUSTOMARY FEE CHARGED TO POLICY OWNERS,~~
 23 ~~CERTIFICATE HOLDERS, OR INSURED FOR SIMILAR SERVICES \$50.~~

24 (C) (1) AN INSURER MAY SEND AN ACKNOWLEDGMENT OF RECEIPT OF A
 25 REQUEST FOR VERIFICATION OF COVERAGE TO THE VIATOR AND, IF THE VIATOR IS
 26 OTHER THAN THE INSURED, TO THE INSURED.

27 (2) THE ACKNOWLEDGMENT MAY CONTAIN A GENERAL DESCRIPTION
 28 OF ANY ACCELERATED DEATH BENEFIT THAT IS AVAILABLE UNDER THE POLICY.

29 (D) THE COMMISSIONER SHALL ADOPT BY REGULATION A "VERIFICATION OF
 30 COVERAGE FOR LIFE INSURANCE POLICIES" FORM ~~THAT IS SUBSTANTIALLY SIMILAR~~
 31 ~~TO THE FORM IN APPENDIX B OF THE VIATICAL SETTLEMENTS MODEL REGULATION~~
 32 ~~ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.~~

33 SECTION 2. AND BE IT FURTHER ENACTED, That the initial "Verification of
 34 Coverage for Life Insurance Policies" form required under § 8-610.1 of the Insurance
 35 Article, as enacted by Section 1 of this Act, shall be the form that appears in Appendix
 36 B of the Viatical Settlements Model Regulation adopted by the National Association of
 37 Insurance Commissioners.

1 SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act shall
2 affect the jurisdiction of the Securities Commissioner of the Office of the Attorney
3 General.

4 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect July 1, 2006.