

**§ 78A -13. Disclosures required in offer and sale of viaticals.**

(a) Disclosures Required Prior to Signing of Purchase Agreement or Transfer of Consideration. – The following disclosures shall be required in the offer and sale of viatical settlement contracts, whether such offer and sale is pursuant to an exemption from registration or pursuant to the registration of such securities, and shall be conspicuously displayed in each viatical settlement purchase agreement or in a separate document signed by the viatical settlement purchaser and by the issuer or its sales agent:

- (1) Disclosures prior to payment of consideration. – On or before the date the viatical settlement purchaser remits consideration pursuant to the purchase agreement, the viatical settlement purchaser shall be provided the following written disclosures:
  - a. The name, principal business, and mailing addresses, and telephone number of the issuer;
  - b. The suitability standards for prospective purchasers as set forth by rule or order promulgated by the Administrator;
  - c. A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;
  - d. A brief description of the business of the issuer;
  - e. If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within six months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than 120 days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;
  - f. The names of all directors, officers, partners, members, or trustees of the issuer;
  - g. A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (i) revoking, suspending, denying, or censuring, for cause, any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly ten percent (10%) or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (ii) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (iii) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise,

- insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (iv) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than 10 years old;
- h. Notice of the purchaser's right to rescind or cancel the investment and receive a refund;
  - i. A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;
  - j. A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and
  - k. Any other information as may be prescribed by rule or order of the Administrator.
- (2) Disclosures prior to closing. – At least five business days prior to the date the purchase agreement is signed, the viatical settlement purchaser shall receive the following written disclosures:
- a. The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;
  - b. The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;
  - c. The insurance policy number, issue date, and type;
  - d. If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;
  - e. If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;
  - f. Whether the insurance policy is beyond the state statute for contestability and the reason therefor;
  - g. The insurance policy premiums and terms of premium payments;

- h. The amount of the purchaser's money that will be set aside to pay premiums;
- i. The name, address, and telephone number of the person who will be the insurance policy owner and the person who will be responsible for paying premiums;
- j. The date on which the purchaser will be required to pay premiums and the amount of the premium, if known;
- k. A statement of risk factors associated with investment in viatical settlement contracts, including, but not limited, to the following:
  - 1. The purchaser will receive no returns (i.e., dividends and interest) until the insured dies.
  - 2. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.
  - 3. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.
  - 4. The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.
  - 5. The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.
  - 6. If the purchaser is responsible for payment of the insurance premiums or other costs related to the policy or if the insured returns to health, the amount of the premiums, if applicable.
  - 7. The name and address of any person providing escrow services and the relationship to the issuer.
  - 8. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.
  - 9. Whether the purchaser is entitled to a refund of all or part of his or her investment under the settlement contract if the policy is later determined to be null and void.
  - 10. A disclosure that group policies may contain limitations or caps in the conversion rights; that additional premiums may have to be paid if the policy is converted; the name of the party responsible for the payment of the additional premiums; and, if a group policy is terminated and replaced by another group policy, that there may be no right to convert the original coverage.

11. A disclosure of the risks associated with policy contestability including, but not limited to, the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.
12. A disclosure of whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including, but not limited to, the risk that the beneficiary may be changed or the premium may not be paid.
13. The experience and qualifications of the person who determines the life expectancy of the insured, i.e., in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.
14. Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The NAIC's form for the brochure shall be used unless the Administrator prescribes one by rule or order.
  1. Any other information as may be prescribed by rule or order of the Administrator.

(b) Disclosures Required Upon Assignment or Sale of Underlying Insurance Policy. – The issuer shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer, or sale of all or a portion of an insurance policy underlying the viatical settlement contract, and the disclosure shall be contained in a document signed by the viatical settlement purchaser and by the issuer or its sales agent:

- (1) Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.
- (2) State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted; whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums; and the name and address of the escrow agent.
- (3) State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.
- (4) Disclose the type of policy offered or sold, i.e., whole life, term life, universal life, or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.
- (5) If the policy is term insurance, disclose the special risks associated with term insurance including, but not limited to, the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.
- (6) State whether the policy is contestable.
- (7) State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical

settlement contract, what these rights are, and under what conditions these rights are activated.

- (8) State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.(2001-436, s. 7.)