

# Florida

## Section 626.991 - Short title

This act may be referred to as the "Viatical Settlement Act."

*Fla. Stat. § 626.991*

## Section 626.9911 - Definitions

As used in this act, the term:

**(1)** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, or purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds or credit enhancement to effect the viatical settlement or the purchase of one or more viaticated policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. The term does not include a nonaccredited investor or other natural person. A financing entity may not enter into a viatical settlement contract.**(2)** "Fraudulent viatical settlement act" means an act or omission committed by a person who knowingly, or with intent to defraud for the purpose of depriving another of property or for pecuniary gain, commits or allows an employee or agent to commit any of the following acts: **(a)** Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by another person, false or concealed material information as part of, in support of, or concerning a fact material to:**1.** An application for the issuance of a viatical settlement contract or a life insurance policy;**2.** The underwriting of a viatical settlement contract or a life insurance policy;**3.** A claim for payment or benefit pursuant to a viatical settlement contract or a life insurance policy;**4.** Premiums paid on a life insurance policy;**5.** Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or a life insurance policy;**6.** The reinstatement or conversion of a life insurance policy;**7.** The solicitation, offer, effectuation, or sale of a viatical settlement contract or a life insurance policy;**8.** The issuance of written evidence of a viatical settlement contract or a life insurance policy; or**9.** A financing transaction for a viatical settlement contract or life insurance policy.**(b)** Employing a plan, financial structure, device, scheme, or artifice relating to viaticated policies for the purpose of perpetrating fraud.**(c)** Engaging in a stranger-originated life insurance practice.**(d)** Failing to disclose, upon request by an insurer, that the prospective insured has undergone a life expectancy evaluation by a person other than the insurer or its authorized representatives in connection with the issuance of the life insurance policy.**(e)** Perpetuating a fraud or preventing the detection of a fraud by: **1.** Removing, concealing, altering, destroying, or sequestering from the office the assets or records of a licensee or other person engaged in the business of viatical settlements;**2.** Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;**3.** Transacting in the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority to transact such business; or**4.** Filing with the office or the equivalent chief insurance regulatory official of another jurisdiction a document that contains false information or conceals information about a material fact from the office or other regulatory official.**(f)** Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums,

credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or other person engaged in the business of viatical settlements or life insurance. **(g)** Entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained based on information that was falsified or concealed for the purpose of defrauding the policy's issuer, viatical settlement provider, or viator. **(h)** Facilitating the viator's change of residency state to avoid the provisions of this act. **(i)** Facilitating or causing the creation of a trust with a non-Florida or other nonresident entity for the purpose of owning a life insurance policy covering a Florida resident to avoid the provisions of this act. **(j)** Facilitating or causing the transfer of the ownership of an insurance policy covering a Florida resident to a trust with a situs outside this state or to another nonresident entity to avoid the provisions of this act. **(k)** Applying for or obtaining a loan that is secured directly or indirectly by an interest in a life insurance policy with intent to defraud, for the purpose of depriving another of property or for pecuniary gain. **(l)** Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit, an act or omission specified in this subsection. **(3)** "Independent third-party trustee or escrow agent" means an attorney, certified public accountant, financial institution, or other person providing escrow services under the authority of a regulatory body. The term does not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker. **(4)** "Life expectancy" means an opinion or evaluation as to how long a particular person is to live, or relating to such person's expected demise. **(5)** "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: **(a)** On behalf of a viatical settlement provider, viatical settlement broker, life agent, or person engaged in the business of viatical settlements; **(b)** In connection with a viatical settlement investment as defined in s. 517.021; or **(c)** On residents of this state in connection with a viatical settlement contract or viatical settlement investment. **(6)** "Person" has the meaning specified in s. 1.01. **(7)** "Related form" means any form, created by or on behalf of a licensee, which a viator is required to sign or initial. The forms include, but are not limited to, a power of attorney, a release of medical information form, a suitability questionnaire, a disclosure document, or any addendum, schedule, or amendment to a viatical settlement contract considered necessary by a provider to effectuate a viatical settlement transaction. **(8)** "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with a licensed viatical settlement provider or financing entity under which the licensed viatical settlement provider or financing entity is responsible for insuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to viatical settlement transactions available to the office as if those records and files were maintained directly by the licensed viatical settlement provider. This term does not include an independent third-party trustee or escrow agent or a trust that does not enter into agreements with a viator. A related provider trust shall be subject to all provisions of this act that apply to the viatical settlement provider who established the related provider trust, except s. 626.9912, which shall not be applicable. A viatical settlement provider may establish no more than one related provider trust, and the sole trustee of such related provider trust shall be the viatical settlement provider licensed under s. 626.9912. The name of the licensed viatical settlement provider shall be included within the name of the related provider trust. **(9)** "Stranger-originated life insurance practice" means an act, practice, arrangement, or agreement 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. Stranger-originated life insurance

practices include, but are not limited to: **(a)** The purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of such policy's inception, could not lawfully initiate the policy and the execution of a verbal or written arrangement or agreement to directly or indirectly transfer the ownership of such policy or policy benefits to a third party. **(b)** The creation of a trust or other entity that has the appearance of an insurable interest in order to initiate policies for investors, in violation of insurable interest laws and the prohibition against wagering on life. **(10)** "Special purpose entity" means an entity established by a licensed viatical settlement provider or by a financing entity, which may be a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets to a viatical settlement provider or financing entity. A special purpose entity may not obtain capital from any natural person or entity with less than \$50 million in assets and may not enter into a viatical settlement contract. **(11)** "Viatical settlement broker" means a person who, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator resident in this state and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, licensed Certified Public Accountant, or investment adviser lawfully registered under chapter 517, who is retained to represent the viator and whose compensation is paid directly by or at the direction and on behalf of the viator. **(12)** "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider, or its related provider trust, and a viator. The viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation of a life insurance policy at a later date, regardless of the date that compensation is paid to the viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. **(13)** "Viatical settlement investment" has the same meaning as specified in s. 517.021. **(14)** "Viatical settlement provider" means a person who, in this state, from this state, or with a resident of this state, effectuates a viatical settlement contract. The term does not include: **(a)** Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan. **(b)** A life and health insurer that has lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificateholders. **(c)** Any natural person who enters into no more than one viatical settlement contract with a viator in 1 calendar year, unless such natural person has previously been licensed under this act or is currently licensed under this act. **(d)** A trust that meets the definition of a "related provider trust." **(e)** A viator in this state. **(f)** A financing entity. **(15)** "Viaticated policy" means a life insurance policy, or a certificate under a group policy, which is the subject of a viatical settlement contract. **(16)** "Viator" means the owner of a life insurance policy or a certificateholder under a group policy, which policy is not a previously viaticated policy, who enters or seeks to enter into a viatical settlement contract. This term does not include a viatical settlement provider or any person acquiring a policy or interest in a policy from a viatical settlement provider, nor does it include an independent third-party trustee or escrow agent.

**Section 626.9912 - Viatical settlement provider license required; application for license**

(1) A person may not perform the functions of a viatical settlement provider as defined in this act or enter into or solicit a viatical settlement contract without first having obtained a license from the office. (2) Application for a viatical settlement provider license must be made to the office by the applicant on a form prescribed by the commission, under oath and signed by the applicant. The application must be accompanied by a fee of \$500. If the applicant is a corporation, the application must be under oath and signed by the president and the secretary of the corporation. (3) In the application, the applicant must provide all of the following: (a) The applicant's full name, age, residence address, and business address, and all occupations engaged in by the applicant during the 5 years preceding the date of the application. (b) A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents. (c) Copies of all bylaws, rules, regulations, or similar documents regulating the conduct of the applicant's internal affairs. (d) A list showing the name, business and residence addresses, and official position of each individual who is responsible for conduct of the applicant's affairs, including, but not limited to, any member of the applicant's board of directors, board of trustees, executive committee, or other governing board or committee and any other person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant. (e) With respect to each individual identified under paragraph (d): 1. A sworn biographical statement on forms adopted by the commission and supplied by the office. 2. A set of fingerprints on forms prescribed by the commission, certified by a law enforcement officer, and accompanied by the fingerprinting fee specified in s. 624.501. 3. Authority for release of information relating to the investigation of the individual's background. (f) All applications, viatical settlement contract forms, escrow forms, and other related forms proposed to be used by the applicant. (g) A general description of the method the viatical settlement provider will use in determining life expectancies, including a description of the applicant's intended receipt of life expectancies, the applicant's intended use of life expectancy providers, and the written plan or plans of policies and procedures used to determine life expectancies. (h) Such other information as the commission or office deems necessary to determine that the applicant and the individuals identified under paragraph (d) are competent and trustworthy and can lawfully and successfully act as a viatical settlement provider. (4) The office may not issue a license to an entity other than a natural person if it is not satisfied that all officers, directors, employees, stockholders, partners, and any other persons who exercise or have the ability to exercise effective control of the entity or who have the ability to influence the transaction of business by the entity meet the standards of this act and have not violated any provision of this act or rules of the commission related to the business of viatical settlement contracts. (5) Upon the filing of a sworn application and the payment of the license fee, the office shall investigate each applicant and may issue the applicant a license if the office finds that the applicant: (a) Has provided a detailed plan of operation. (b) Is competent and trustworthy and intends to act in good faith in the business authorized by the license applied for. (c) Has a good business reputation and has had experience, training, or education that qualifies the applicant to conduct the business authorized by the license applied for. (d) If the applicant is a corporation, is a corporation incorporated under the laws of this state, or is a foreign corporation authorized to transact business in this state. (e) Has designated the

Chief Financial Officer as its agent for service of process.(f) Has made the deposit required by s. 626.9913(3).

*Fla. Stat. § 626.9912*

**Section 626.9913 - Viatical settlement provider license continuance; annual report; fees; deposit**

(1) A viatical settlement provider license continues in force until suspended or revoked.(2) Annually, on or before March 1, the viatical settlement provider licensee shall file a statement containing information the commission requires and shall pay to the office a license fee in the amount of \$500. After December 31, 2007, the annual statement shall include an annual audited financial statement of the viatical settlement provider prepared in accordance with generally accepted accounting principles by an independent certified public accountant covering a 12-month period ending on a day falling during the last 6 months of the preceding calendar year. If the audited financial statement has not been completed, however, the licensee shall include in its annual statement an unaudited financial statement for the preceding calendar year and an affidavit from an officer of the licensee stating that the audit has not been completed. In this event, the licensee shall submit the audited statement on or before June 1. The annual statement, due on or before March 1 each year, shall also provide the office with a report of all life expectancy providers who have provided life expectancies directly or indirectly to the viatical settlement provider for use in connection with a viatical settlement contract or a viatical settlement investment. A viatical settlement provider shall include in all statements filed with the office all information requested by the office regarding a related provider trust established by the viatical settlement provider. The office may require more frequent reporting. Failure to timely file the annual statement or the audited financial statement or to timely pay the license fee is grounds for immediate suspension of the license. The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with the electronic data format specified by the commission.(3) To ensure the faithful performance of its obligations to its viators in the event of insolvency or the loss of its license, a viatical settlement provider licensee must deposit and maintain deposited in trust with the department securities eligible for deposit under s. 625.52, having at all times a value of not less than \$100,000.(4) There shall be no additional annual license fee or deposit requirements under this act for a related provider trust established by a viatical settlement provider.(5) A judgment creditor or other claimant of a viatical settlement provider does not have the right to levy upon any of the assets or securities held in this state pursuant to this section.

*Fla. Stat. § 626.9913*

**Section 626.9914 - Suspension, revocation, denial, or nonrenewal of viatical settlement provider license; grounds; administrative fine**

(1) The office shall suspend, revoke, deny, or refuse to renew the license of any viatical settlement provider if the office finds that the licensee: (a) Has made a misrepresentation in the application for the license;(b) Has engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or incompetent to act as a viatical settlement provider;(c) Demonstrates a pattern of

unreasonable payments to viators;(d) Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;(e) Has issued viatical settlement contracts that have not been approved pursuant to this act;(f) Has failed to honor contractual obligations related to the business of viatical settlement contracts;(g) Deals in bad faith with viators;(h) Has violated any provision of the insurance code or of this act;(i) Employs any person who materially influences the licensee's conduct and who fails to meet the requirements of this act;(j) No longer meets the requirements for initial licensure; or(k) Obtains or utilizes life expectancies from life expectancy providers who are not registered with the office pursuant to this act.(2) The office may, in lieu of or in addition to any suspension or revocation, assess an administrative fine not to exceed \$2,500 for each nonwillful violation or \$10,000 for each willful violation by a viatical settlement provider licensee. The office may also place a viatical settlement provider licensee on probation for a period not to exceed 2 years.(3) If an employee of a viatical settlement provider violates any provision of this act, the office may take disciplinary action against such employee as if the employee were licensed under this act, including suspending or otherwise prohibiting the employee from performing the functions of a viatical settlement provider or viatical settlement broker as defined in this act.(4) If a viatical settlement provider establishes a related provider trust as permitted by this act, the viatical settlement provider shall be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the related provider trust, and for the compliance of the related provider trust with all provisions of this act. Any violation of this act by the related provider trust shall be deemed a violation of this act by the viatical settlement provider as well as the related provider trust. If the related provider trust violates any provisions of this act, the office may exercise all remedies set forth in this act for such violations against the viatical settlement provider, as well as the related provider trust.

*Fla. Stat. § 626.9914*

**Section 626.9915 - Effect of suspension or revocation of viatical settlement provider license; duration of suspension; reinstatement**

(1) When its license is suspended or revoked, the provider must proceed, immediately following the effective date of the suspension or revocation, to conclude the affairs it is transacting under its license. The provider may not solicit, negotiate, advertise, or effectuate new contracts. The office retains jurisdiction over the provider until all contracts have been fulfilled or canceled or have expired. A provider whose license is suspended or revoked may continue to maintain and service viaticated policies subject to the approval of the office.(2) The suspension of the license of a viatical settlement provider licensee may be for such period, not to exceed 2 years, as determined by the office. The office may shorten, rescind, or modify the suspension.(3) During the period of suspension, the licensee shall file its annual statement and pay license fees as if the license had continued in full force.(4) If, upon expiration of the suspension order, the license has not otherwise been terminated, the office must reinstate the license only upon written request by the suspended licensee unless the office finds that the grounds giving rise to the suspension have not been removed or that the licensee is otherwise not in compliance with the requirements of this act. The office shall give the licensee notice of its findings no later than 90 days after receipt of the request or upon expiration of the suspension order, whichever occurs later. If a license is not reinstated

pursuant to the procedures set forth in this subsection, it expires at the end of the suspension or on the date it otherwise would have expired, whichever is sooner.

*Fla. Stat. § 626.9915*

#### **Section 626.9916 - Viatical settlement broker license required**

**(1)** After October 1, 2006, a person, other than a life agent licensed under this chapter, may not in this state, from this state, or with a resident of this state perform the functions of a viatical settlement broker.**(2)** Before performing the functions of a viatical settlement broker, a life agent shall appoint himself or herself with the department and pay applicable fees pursuant to s. 624.501(7)(a).**(3)** Each natural person who on July 1, 2005, held a viatical settlement broker's license and self-appointment may, upon obtaining a life agent license on or before October 1, 2006, transfer an existing broker self-appointment to such license.**(4)** All viatical settlement broker licenses shall terminate on October 1, 2006, and shall not be subject to continuation or renewal.**(5)** Notwithstanding the manner in which the viatical settlement broker is compensated, he or she is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.**(6)** The compensation received by a life agent for activities performed as a viatical settlement broker may not be divided or shared with another person unless such other person is a life agent licensed under this chapter and appointed as provided in this part.

*Fla. Stat. § 626.9916*

#### **Section 626.99175 - Life expectancy providers; registration required; denial, suspension, revocation**

**(1)** A person may not perform the functions of a life expectancy provider without first having registered as a life expectancy provider, except as provided in subsection (6).**(2)** Application for registration as a life expectancy provider must be made to the office by the applicant on a form prescribed by the office, under oath and signed by the applicant. The application must be accompanied by a fee of \$500.**(3)** A completed application shall be evidenced on a form and in a manner prescribed by the office and shall require the registered life expectancy provider to update such information and renew such registration as required by the office.**(4)** In the application, the applicant must provide all of the following:**(a)** The full name, age, residence address, and business address, and all occupations engaged in by the applicant during the 5 years preceding the date of the application.**(b)** A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents.**(c)** Copies of all bylaws, rules, regulations, or similar documents regulating the conduct of the applicant's internal affairs.**(d)** A list showing the name, business and residence addresses, and official position of each individual who is responsible for conduct of the applicant's affairs, including, but not limited to, any member of the board of directors, board of trustees, executive committee, or other governing board or committee and any other person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant, and any person performing life expectancies by the applicant.**(e)** A sworn biographical statement on forms supplied by the office with respect to each

individual identified under paragraph (d), including whether such individual has been associated with any other life expectancy provider or has performed any services for a person in the business of viatical settlements. **(f)** A sworn statement of any criminal and civil actions pending or final against the registrant or any individual identified under paragraph (d). **(g)** A general description of the following policies and procedures covering all life expectancy determination criteria and protocols: **1.** The plan or plans of policies and procedures used to determine life expectancies. **2.** A description of the training, including continuing training, of the individuals who determine life expectancies. **3.** A description of how the life expectancy provider updates its manuals, underwriting guides, mortality tables, and other reference works and ensures that the provider bases its determination of life expectancies on current data. **(h)** A plan for assuring confidentiality of personal, medical, and financial information in accordance with federal and state laws. **(i)** An anti-fraud plan as required pursuant to s. 626.99278. **(j)** A list of any agreements, contracts, or any other arrangement to provide life expectancies to a viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements in connection with any viatical settlement contract or viatical settlement investment. **(5)** As part of the application, and on or before March 1 of every 3 years thereafter, a registered life expectancy provider shall file with the office an audit of all life expectancies by the life expectancy provider for the 5 calendar years immediately preceding such audit, which audit shall be conducted and certified by a nationally recognized actuarial firm and shall include only the following: **(a)** A mortality table. **(b)** The number, percentage, and an actual-to-expected ratio of life expectancies in the following categories: life expectancies of less than 24 months, life expectancies of 25 months to 48 months, life expectancies of 49 months to 72 months, life expectancies of 73 months to 108 months, life expectancies of 109 months to 144 months, life expectancies of 145 months to 180 months, and life expectancies of more than 180 months. **(6)** No viatical settlement broker, viatical settlement provider, or insurance agent in the business of viatical settlements in this state shall directly or indirectly own or be an officer, director, or employee of a life expectancy provider. **(7)** Each registered life expectancy provider shall provide the office, as applicable, at least 30 days' advance notice of any change in the registrant's name, residence address, principal business address, or mailing address. **(8)** A person required to be registered by this section shall for 5 years retain copies of all life expectancies and supporting documents and medical records unless those personal medical records are subject to different retention or destruction requirements of a federal or state personal health information law. **(9)** An application for life expectancy provider registration shall be approved or denied by the commissioner within 60 calendar days following receipt of a completed application by the commissioner. The office shall notify the applicant that the application is complete. A completed application that is not approved or denied in 60 calendar days following its receipt shall be deemed approved. **(10)** The office may, in its discretion, deny the application for a life expectancy provider registration or suspend, revoke, or refuse to renew or continue the registration of a life expectancy provider if the office finds: **(a)** Any cause for which registration could have been refused had it then existed and been known to the office; **(b)** A violation of any provision of this code or of any other law applicable to the applicant or registrant; **(c)** A violation of any lawful order or rule of the department, commission, or office; or **(d)** That the applicant or registrant: **1.** Has been found guilty of or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country; **2.** Has knowingly and willfully aided, assisted, procured, advised, or abetted any person in the violation of a provision of the insurance code or any order or rule of the department, commission, or office; **3.** Has knowingly and with intent to defraud, provided a life expectancy that does not conform to an applicant's or registrant's general practice; **4.** Does not have a good business reputation or does not have



experience, training, or education that qualifies the applicant or registrant to conduct the business of a life expectancy provider; or **5.** Has demonstrated a lack of fitness or trustworthiness to engage in the business of issuing life expectancies. **(11)** The office may, in lieu of or in addition to any suspension or revocation, assess an administrative fine not to exceed \$2,500 for each nonwillful violation or \$10,000 for each willful violation by a registered life expectancy provider. The office may also place a registered life expectancy provider on probation for a period not to exceed 2 years. **(12)** It is a violation of this section for a person to represent, orally or in writing, that a life expectancy provider's registration pursuant to this act is in any way a recommendation or approval of the entity or means that the qualifications or abilities have in any way been approved of. **(13)** The Financial Services Commission may, by rule, require that all or part of the statements or filings required under this section be submitted by electronic means and in a computer-readable format specified by the commission.

*Fla. Stat. § 626.99175*

#### **Section 626.99181 - Viatical settlement broker's compensation**

A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

*Fla. Stat. § 626.99181*

#### **Section 626.9919 - Notice of change of licensee or registrant's address or name**

Each viatical settlement provider licensee and registered life expectancy provider must provide the office at least 30 days' advance notice of any change in the licensee's or registrant's name, residence address, principal business address, or mailing address.

*Fla. Stat. § 626.9919*

#### **Section 626.992 - Use of licensed viatical settlement providers, viatical settlement brokers, and registered life expectancy providers required**

**(1)** A licensed viatical settlement provider may not use any person to perform the functions of a viatical settlement broker as defined in this act unless such person holds a current, valid life agent license and has appointed himself or herself in conformance with this chapter. **(2)** A viatical settlement broker may not use any person to perform the functions of a viatical settlement provider as defined in this act unless such person holds a current, valid license as a viatical settlement provider. **(3)** A person may not operate as a life expectancy provider unless such person is registered as a life expectancy provider pursuant to this act. **(4)** A viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements may not obtain life expectancies from a person who is not registered as a life expectancy provider pursuant to this act.

*Fla. Stat. § 626.992*

### **Section 626.9921 - Filing of forms; required procedures; approval**

(1) A viatical settlement contract form, escrow form, or related form may be used in this state only after the form has been filed with the office and only after the form has been approved by the office. (2) The viatical settlement contract form, escrow form, or related form must be filed with the office at least 60 days before its use. The form is considered approved on the 60th day after its date of filing unless it has been previously disapproved by the office. The office must disapprove a viatical settlement contract form, escrow form, or related form that is unreasonable, contrary to the public interest, discriminatory, misleading, or unfair to the viator. (3) If a viatical settlement provider elects to use a related provider trust in accordance with this act, the viatical settlement provider shall file notice of its intention to use a related provider trust with the office, including a copy of the trust agreement of the related provider trust. The organizational documents of the trust must be submitted to and approved by the office before the transacting of business by the trust. (4) The commission may adopt, by rule, standardized forms to be used by licensees, at the licensee's option in place of separately approved forms.

*Fla. Stat. § 626.9921*

### **Section 626.9922 – Examination**

(1) The office or department may examine the business and affairs of any of its respective licensees or applicants for a license. The office or department may order any such licensee or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the licensee or applicant is in violation of the law or is acting contrary to the public interest. The expenses incurred in conducting any examination or investigation must be paid by the licensee or applicant. Examinations and investigations must be conducted as provided in chapter 624, and licensees are subject to all applicable provisions of the insurance code. (2) All accounts, books and records, documents, files, contracts, and other information relating to all transactions of viatical settlement contracts, life expectancies, or viatical settlement purchase agreements made before July 1, 2005, must be maintained by the licensee for a period of at least 3 years after the death of the insured and must be available to the office or department for inspection during reasonable business hours. (3) All such records or accurate copies of such records must be maintained at the licensee's home office. As used in this section, the term "home office" means the principal place of business and any other single storage facility, the street address of which shall be disclosed to the office or department within 20 days after its initial use, or within 20 days of the effective date of this subsection. (4) The originals of records required to be maintained under this section must be made available to the office or department for examination at the office's or department's request. (5) The office has jurisdiction over all viatical settlement purchase agreements made before July 1, 2005, including, but not limited to, the authority to examine persons in possession of records relating to viatical settlement purchase agreements made before July 1, 2005, and that authority set forth in s. 624.319. (6) If the office makes the determination that a viatical settlement provider does not have the financial ability to perform its present or future obligations under the viatical settlement purchase agreements made before July 1, 2005, the office shall make a referral to the United States Securities and Exchange Commission or the Office of Financial Regulation for further administrative action pursuant to s. 517.191, including, but not

limited to, the appointment of a receiver by the court. **(7)** Subsections (1), (2), (3), and (4) apply to life expectancy providers providing life expectancies in the state and providing life expectancies to viatical settlement providers in the state, as if life expectancy providers were licensees.

*Fla. Stat. § 626.9922*

#### **Section 626.9923 - Viatical settlement contracts; required disclosures**

The viatical settlement broker, or the viatical settlement provider in transactions in which no broker is used, must inform the viator by the date of application for a viatical settlement contract:

**(1)** That there are possible alternatives to viatical settlement contracts for persons who have a catastrophic or life-threatening illness, including, but not limited to, accelerated benefits offered by the issuer of a life insurance policy. **(2)** That proceeds of the viatical settlement could be taxable, and assistance should be sought from a personal tax advisor. **(3)** That viatical settlement proceeds could be subject to the claims of creditors. **(4)** That receipt of viatical settlement proceeds could adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate agencies. **(5)** That all viatical settlement contracts entered into in this state must contain an unconditional rescission provision which allows the viator to rescind the contract within 15 days after the viator receives the viatical settlement proceeds, conditioned on the return of such proceeds. **(6)** The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.

*Fla. Stat. § 626.9923*

#### **Section 626.9924 - Viatical settlement contracts; procedures; rescission**

**(1)** A viatical settlement provider entering into a viatical settlement contract with any viator must first obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that he or she has a full and complete understanding of the viatical settlement contract and the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily. **(2)** All viatical settlement contracts subject to this act must contain an unconditional rescission provision which allows the viator to rescind the contract within 15 days after the viator receives the viatical settlement proceeds, conditioned on the return of such proceeds. **(3)** A viatical settlement transaction may be completed only through the use of an independent third-party trustee or escrow agent. Immediately upon receipt by the independent third-party trustee or escrow agent of documents from the viator to effect the transfer of the insurance policy, the viatical settlement provider must pay the proceeds of the settlement to an escrow or trust account managed by the independent third-party trustee or escrow agent in a financial institution licensed under Florida law or a federally chartered financial institution that is a member of the Federal Reserve System, pending acknowledgment of the transfer by the issuer of the policy. An advance or partial payment of the proceeds due under a viatical settlement contract may not be used to effect transfer of the subject policy; any such advance or partial payment is made at the sole discretion and risk of the viatical settlement provider. **(4)** Upon receipt of all viatical settlement contract proceeds, the independent third-party trustee or escrow agent must release to the viatical settlement provider all documents

necessary to complete the transfer of the insurance policy or certificate of insurance so that the transfer, assignment, sale, bequest, or devise may be effected.(5) The independent third-party trustee or escrow agent must transfer all proceeds of the viatical settlement contract within 3 business days after receiving from the issuer of the subject policy acknowledgment of the transfer, assignment, bequest, sale, or devise. Failure to transfer proceeds as required by this subsection renders the viatical settlement contract and the transfer, assignment, bequest, sale, or devise voidable.(6) A viatical settlement provider may not negotiate or enter into a viatical settlement contract with a viator if the subject policy contains an accelerated benefits provision allowing benefits to be paid for a period in advance of the expected death which is equal to or exceeds the time period available under the viatical settlement contract, and at an amount which is equal to or exceeds the amount available under the viatical settlement contract, unless the issuer of the policy, in writing, denies, declines, or refuses to provide such accelerated benefits. If the insurer does not respond to a request to effectuate an accelerated benefits provision sent by certified mail within 30 days after receiving the request, the insurer shall be deemed to have denied, declined, or refused to provide such accelerated benefits.(7) At any time during the contestable period, within 20 days after a viator executes documents necessary to transfer rights under an insurance policy or within 20 days of any agreement, option, promise, or any other form of understanding, express or implied, to viaticate the policy, the provider must give notice to the insurer of the policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by s. 626.99287.(8) If the owner of the insurance policy is not the insured, the provider shall notify the insured that the policy has become the subject of a viatical settlement contract within 20 days after the transfer of rights under the contract.(9) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider must communicate the initial change in ownership or beneficiary to the insured within 20 days after the change.(10) The viatical settlement provider who effectuated the viatical settlement contract with the viator (the "initial provider") is responsible for tracking the insured, including, but not limited to, keeping track of the insured's whereabouts and health status, submission of death claims or assisting the beneficiary in the submission of death claims, and the status of the payment of premiums until the death of the insured. This responsibility may be contracted out to a third party; however, the ultimate responsibility remains with the initial provider. This responsibility continues with the initial provider, notwithstanding any transfers of the viaticated policy in the secondary market. This subsection applies only to those viaticated policies that are or are to become the subject of viatical settlement purchase agreements.

*Fla. Stat. § 626.9924*

#### **Section 626.99245 - Conflict of regulation of viaticals**

(1) A viatical settlement provider who from this state enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence. If the state in which the viator is a resident has not enacted statutes or regulations governing viatical settlement agreements, the provider shall give the viator notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in those states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. The forms used in those states need not be approved by the office.(2) This section does not

affect the requirement of ss. 626.9911(14) and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts from offices in this state, regardless of the state of residence of the viator.

*Fla. Stat. § 626.99245*

#### **Section 626.9925 - Rules**

The commission may adopt rules to administer this act, including rules establishing standards for evaluating advertising by licensees; rules providing for the collection of data, for disclosures to viators, for the reporting of life expectancies, and for the registration of life expectancy providers; and rules defining terms used in this act and prescribing recordkeeping requirements relating to executed viatical settlement contracts.

*Fla. Stat. § 626.9925*

#### **Section 626.9926 - Rate regulation not authorized**

Nothing in this act shall be construed to authorize the office or department to directly or indirectly regulate the amount paid as consideration for entry into a viatical settlement contract.

*Fla. Stat. § 626.9926*

#### **Section 626.9927 - Unfair trade practices; cease and desist; injunctions; civil remedy**

**(1)** A violation of this act is an unfair trade practice under ss. 626.9521 and 626.9541 and is subject to the penalties provided in the insurance code. Part IX of this chapter, entitled Unfair Insurance Trade Practices, applies to a licensee under this act or a transaction subject to this act as if a viatical settlement contract were an insurance policy.**(2)** In addition to the penalties and other enforcement provisions of this act, if any person violates this act or any rule implementing this act, the office or department, as appropriate, may seek an injunction in the circuit court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the office or department determines necessary to restrain the person from committing the violation.**(3)** Any person damaged by the acts of a person in violation of this act may bring a civil action against the person committing the violation in the circuit court of the county in which the alleged violator resides or has a principal place of business or in the county wherein the alleged violation occurred. Upon an adverse adjudication, the defendant is liable for damages, together with court costs and reasonable attorney's fees incurred by the plaintiff. When so awarded, court costs and attorney's fees must be included in the judgment or decree rendered in the case. If it appears to the court that the suit brought by the plaintiff is frivolous or brought for purposes of harassment, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.

*Fla. Stat. § 626.9927*

#### **Section 626.99272 - Cease and desist orders and fines**

**(1)** The office or department as appropriate may issue a cease and desist order upon a person that violates any provision of this part, any rule or order adopted by the commission, office, or department, or any written agreement entered into with the office or department. **(2)** When the office or department finds that such an action presents an immediate danger to the public which requires an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the office or department begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to s. 120.68, until the conclusion of proceedings under ss. 120.569 and 120.57. **(3)** The office or department may impose and collect an administrative fine not to exceed \$10,000 for each nonwillful violation and \$25,000 for each willful violation of any provision of this part.

*Fla. Stat. § 626.99272*

#### **Section 626.99275 - Prohibited practices; penalties**

**(1)** It is unlawful for a person to: **(a)** Knowingly enter into, broker, or otherwise deal in a viatical settlement contract the subject of which is a life insurance policy, knowing that the policy was obtained by presenting materially false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. **(b)** Knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain, issue or use a pattern of false, misleading, or deceptive life expectancies. **(c)** Knowingly engage in any transaction, practice, or course of business intending thereby to avoid the notice requirements of s. 626.9924(7). **(d)** Knowingly or intentionally facilitate the change of state of residency of a viator to avoid the provisions of this chapter. **(e)** Knowingly enter into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of a viatical settlement contract or during an applicable period specified in s. 626.99287(1) or (2), unless the viator provides a sworn affidavit and accompanying independent evidentiary documentation in accordance with s. 626.99287. **(f)** Engage in a fraudulent viatical settlement act, as defined in s. 626.9911. **(g)** Knowingly issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of or with an emphasis on selling the policy to a third party. **(h)** Engage in a stranger-originated life insurance practice, as defined in s. 626.9911. **(2)** A person who violates any provision of this section commits: **(a)** A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the insurance policy involved is valued at any amount less than \$20,000. **(b)** A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the insurance policy involved is valued at \$20,000 or more, but less than \$100,000. **(c)** A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the insurance policy involved is valued at \$100,000 or more.

*Fla. Stat. § 626.99275*

#### **Section 626.99278 - Viatical provider anti-fraud plan**

Every licensed viatical settlement provider and registered life expectancy provider must adopt an anti-fraud plan and file it with the Division of Investigative and Forensic Services of the department. Each anti-fraud plan shall include:

**(1)** A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications.**(2)** A description of the procedures for the mandatory reporting of possible fraudulent insurance acts and prohibited practices set forth in s. 626.99275 to the Division of Investigative and Forensic Services of the department.**(3)** A description of the plan for anti-fraud education and training of its underwriters or other personnel.**(4)** A written description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and for the investigation of unresolved material inconsistencies between medical records and insurance applications.**(5)** For viatical settlement providers, a description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract or viatical settlement investment.

*Fla. Stat. § 626.99278*

#### **Section 626.9928 - Acquisitions**

Acquisition of interest in a viatical settlement provider is subject to s. 628.4615.

*Fla. Stat. § 626.9928*

#### **Section 626.99285 - Applicability of insurance code**

In addition to other applicable provisions cited in the insurance code, the office or department, as appropriate, has the authority granted under ss. 624.310, 626.901, and 626.989 to regulate viatical settlement providers, viatical settlement brokers, viatical settlement contracts, and viatical settlement transactions.

*Fla. Stat. § 626.99285*

#### **Section 626.99287 - Contestability of viaticated policies**

**(1)** Except as hereinafter provided, if a viatical settlement contract is entered into within the 2-year period commencing with the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party.**(2)** Except as hereinafter provided, if a viatical settlement policy is subject to a loan secured directly or indirectly by an interest in the policy within a 5-year period commencing on the date of issuance of the policy or certificate, the viatical settlement contract is void and unenforceable by either party.**(3)** Notwithstanding the limitations in subsections (1) and (2), such a viatical settlement contract is not void and unenforceable if the viator provides a sworn affidavit and accompanying independent evidentiary documentation certifying to the viatical settlement provider that one or more of the following conditions were met during the periods applicable to the viaticated policy as stated in subsection (1) or subsection (2):**(a)** The policy was issued upon the owner's exercise of

conversion rights arising out of a group or term policy, if the total time covered under the prior policy is at least 60 months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship. **(b)** The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. s. 501(c)(3). **(c)** The viator certifies by producing independent evidence to the viatical settlement provider that one or more of the following conditions were met: **1.** The viator or insured is terminally or chronically ill and the condition was not known to the insured at the time the life insurance contract was entered into; **2.** The viator's spouse dies; **3.** The viator divorces his or her spouse; **4.** The viator retires from full-time employment; **5.** The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; **6.** The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated; **7.** A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets; or **8.** The viator experiences a significant decrease in income which is unexpected by the viator and which impairs his or her reasonable ability to pay the policy premium. **(d)** The viator entered into a viatical settlement contract more than 2 years after the policy's issuance date and, with respect to the policy, at all times before the date that is 2 years after policy issuance, each of the following conditions is met: **1.** Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured; **2.** There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and **3.** Neither the insured or the policy has been evaluated for settlement.

*Fla. Stat. § 626.99287*

#### **Section 626.99289 - Void and unenforceable contracts, agreements, arrangements, and transactions**

Notwithstanding s. 627.455, a contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement or any other arrangement or understanding entered into, whether written or verbal, for the furtherance or aid of a stranger-originated life insurance practice is void and unenforceable.

*Fla. Stat. § 626.99289*

#### **Section 626.99291 - Contestability of life insurance policies**

Notwithstanding s. 627.455, a life insurer may contest a life insurance policy if the policy was obtained by a stranger-originated life insurance practice, as defined in s. 626.9911.

*Fla. Stat. § 626.99291*

#### **Section 626.99292 - Notice to insureds**



(1) A life insurer shall provide an individual life insurance policyholder with a statement informing him or her that if he or she is considering making changes in the status of his or her policy, he or she should consult with a licensed insurance or financial advisor. The statement may accompany or be included in notices or mailings otherwise provided to the policyholder. (2) The statement must also advise the policyholder that he or she may contact the department for more information and include a website address or other location or manner by which the policyholder may contact the department.

*Fla. Stat. § 626.99292*

#### **Section 626.99295 - Grace period**

Any person who, on July 1, 2005, is effectuating a viatical settlement purchase agreement made before July 1, 2005, under provisions of law in effect before such date, which viatical settlement purchase agreement was not registered pursuant to chapter 517, must proceed within 30 days after July 1, 2005, to conclude all viatical settlement purchase transactions in progress, provided, if funds have not been matched with a viaticated policy, such funds, or any unmatched portion of such funds, shall be returned to the viatical settlement purchaser within 30 days after July 1, 2005. The provider may not solicit, negotiate, advertise, or effectuate new viatical settlement purchase agreements after July 1, 2005.

*Fla. Stat. § 626.99295*