

2024 Maryland Statutes

Insurance

Title 8 - Entities That Act as Insurers

Subtitle 6 - Viatical Settlement

Providers and Viatical Settlement Brokers

Section 8-601 - Definitions **(a)** In this subtitle the following words have the meanings indicated. **(b)** "Activities of daily living" includes bathing, continence, dressing, eating, toileting, and transferring. **(c)** "Chronically ill" means that an individual: **(1)** is unable to perform at least two activities of daily living; **(2)** requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or **(3)** has a level of disability similar to that described in item (1) of this subsection. **(d)** "Credit enhancer" includes an authorized insurer that provides to a viatical settlement provider stop loss coverage, an annuity policy, an insurance policy, or similar coverage. **(e)** "Financing entity" means a person: **(1)** that is an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or an entity that has a direct ownership interest in a policy or certificate that is the subject of a viatical settlement contract; and **(2)** **(i)** whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; **(ii)** that has an agreement in writing with one or more registered viatical settlement providers to finance the acquisition of viatical settlement contracts; or **(iii)** that is a qualified institutional buyer, as that term is defined in Rule 144A of the federal Securities Act of 1933. **(f)** "Fraudulent viatical settlement act" means a fraudulent insurance act as described in § 27-403(6) of this article. **(g)** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance that affects the rights of a resident of the State or that bears a reasonable relation to the State, regardless of whether delivered or issued for delivery in the State. **(h)** "Related provider trust" means a titling trust or other trust that: **(1)** is established by a registered viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction; and **(2)** has a written agreement with the registered viatical settlement provider under which: **(i)** the viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and **(ii)** the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the registered viatical settlement provider. **(i)** "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or a registered viatical settlement provider. **(j)** "Terminally ill" means that an individual has an illness or sickness that can

reasonably be expected to result in death in 24 months or less. **(k)(1)** "Viatical settlement broker" means an insurance producer who: **(i)** is licensed under Title 10, Subtitle 1 of this article to sell life insurance; and **(ii)** 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 and one or more viatical settlement providers. **(2)** "Viatical settlement broker" does not include an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider. **(l)(1)** "Viatical settlement contract" means a written agreement that establishes the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any part of the policy. **(2)** "Viatical settlement contract" includes: **(i)** a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurer under the terms of the policy or a loan secured by the cash value of a policy; and **(ii)** an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. **(3)** "Viatical settlement contract" does not include a contract entered into or effectuated between a viatical settlement provider and a financing entity, a related provider trust, or a special purpose entity. **(m)(1)** "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract. **(2)** "Viatical settlement provider" does not include an individual who enters into or effectuates no more than one agreement in a calendar year for the transfer of policies for any value less than the expected death benefit. **(n)** "Viaticated policy" means a policy that has been acquired by a viatical settlement provider under a viatical settlement contract. **(o)(1)** "Viator" means the owner or certificate holder of a policy who enters or seeks to enter into a viatical settlement contract. **(2)** "Viator" does not include an accredited investor or qualified institutional buyer, as defined in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933.

Md. Code, IN § 8-601

Section 8-602 - Applicability

This subtitle applies only to a viatical settlement contract between a viator and a viatical settlement provider.

Md. Code, IN § 8-602

Section 8-603 - Registration of providers **(a)** A person must register with the Commissioner before the person acts as or represents itself as a viatical settlement provider in the State. **(b)(1)** Except for an individual listed in § 8-601(k)(2) of this subtitle, only an individual who is a viatical settlement broker may negotiate viatical settlement contracts between a viator and one or more settlement providers. **(2)** Not later than 30 days after negotiating a viatical settlement contract on behalf of a viator, a viatical settlement broker shall register with the Commissioner in accordance with § 8-604 of this subtitle. **(c)** Employees and agents of a registered viatical settlement provider or a registered viatical settlement broker may not be required to be separately registered except in accordance with regulations adopted by the Commissioner.

Md. Code, IN § 8-603

Section 8-604 - Application; fee
An applicant for registration shall:

(1) file with the Commissioner an application on the form that the Commissioner requires; and **(2)** pay to the Commissioner a registration fee set by the Commissioner.

Md. Code, IN § 8-604

Section 8-605 - Representation of viator; viator status not limited to owner or holder of policy **(a)** 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. **(b)** For purposes of this subtitle, a viator may not be limited to an owner or certificate holder of a policy that insures the life of an individual who is terminally ill or chronically ill.

Md. Code, IN § 8-605

Section 8-605.1 - Duties of viatical settlement brokers **(a)** At the time of each application for a viatical settlement, a viatical settlement broker shall provide to the viator a written disclosure that, at a minimum, contains a description of the services required by statute to be provided by the viatical settlement broker to the viator. **(b)** A viatical settlement broker may not purchase a policy that is the subject of a viatical settlement brokerage contract between the viatical settlement broker and a viator directly or indirectly through: **(1)** a person owning or controlling an interest in the viatical settlement broker; or **(2)** a person in which any interest is owned or controlled by the viatical settlement broker. **(c)** A viatical settlement broker shall submit to the viator all offers, counteroffers, acceptances, and rejections relating to the placement of the viator's policy within 72 hours after receipt by the viatical settlement broker. **(d)(1)** A viatical settlement broker shall provide to the viator a written disclosure of the amount and method of calculating the viatical settlement broker's compensation, including anything of value received by a viatical settlement broker for the placement of a policy. **(2)** A viatical settlement broker shall provide the disclosure required under this subsection no later than 72 hours before the viatical settlement contract is signed by all parties to the contract.

Md. Code, IN § 8-605.1

Section 8-606 - Disclosures **(a)** Before an offer to purchase a policy can be made to a viator, a viatical settlement provider shall: **(1)** provide the viator with a disclosure statement that: **(i)** contains the disclosures required in subsections (b) and (c) of this section; and **(ii)** has been signed by the viatical settlement provider; and **(2)** receive from the viator the disclosure statement signed by the viator. **(b)** Before an offer to purchase a policy can be made to the viator, a viatical settlement provider shall provide to the viator a disclosure statement that contains the following disclosures: **(1)** there are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's policy; **(2)** some or all of the proceeds of the viatical settlement may be taxable under federal or State income tax law, and assistance should be sought from a professional tax adviser; **(3)** proceeds of the viatical settlement could be subject to the claims of creditors; **(4)** receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies; **(5)(i)** the viator has the right to rescind a viatical settlement contract for 15 calendar

days after receipt of the viatical settlement proceeds by the viator, subject to repayment of all viatical settlement proceeds and any premiums and loan interest paid by the viatical settlement provider; and(ii) if the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider;(6) funds will be sent to the viator within 3 business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of or interest in the policy has been transferred and the beneficiary has been designated;(7) entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator, and assistance should be sought from a financial adviser; and(8)(i) the insured may be contacted by either the viatical settlement provider or the viatical settlement broker or its authorized representative for the purpose of determining the insured's health status; and(ii) this contact is limited to:1. once every 3 months if the insured has a life expectancy of more than 1 year; and2. not more than once per month if the insured has a life expectancy of 1 year or less.(c)(1) Disclosure to a viator also shall include distribution of a brochure that describes the process of viatical settlements and contains a description of the statutory fiduciary duty of a viatical settlement broker to a viator.(2) The National Association of Insurance Commissioners form for the brochure shall be used unless a brochure is:(i) developed by the Commissioner; or(ii) developed by a viatical settlement broker or viatical settlement provider and approved by the Commissioner.(d) The disclosure statement shall contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every 2 years."(e) A viatical settlement provider or viatical settlement broker shall provide the viator with a copy of the disclosure statement signed by the viator and the viatical settlement provider or viatical settlement broker, at the time that an application for a viatical settlement contract is provided to the viator.(f)(1) A viatical settlement provider shall provide the viator with at least the disclosures required by this subsection no later than the date that the viatical settlement contract is signed by all parties.(2) The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker.(3) The disclosures required under this subsection shall provide the following information:(i) a statement of the affiliation, if any, between the viatical settlement broker, viatical settlement provider, and the insurer that issued the policy to be viaticated;(ii) the name, address, and telephone number of the viatical settlement provider;(iii) if the policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with an insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;(iv)1. the dollar amount of the current death benefit payable to the viatical settlement provider under the policy; and2. if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the viatical settlement provider's interest in those benefits;

and(v)**1.** the name, business address, and telephone number of the independent third party escrow agent; and**2.** the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.(g) If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

Md. Code, IN § 8-606

Section 8-607 - Expiration of registration(a) A registration expires at the end of every other year on the anniversary of the registration unless it is renewed as provided in this section.(b) Before a registration expires, the registrant may renew it for an additional 2-year term, if the registrant:(**1**) otherwise is entitled to be registered;(b) files with the Commissioner a renewal application on the form that the Commissioner requires; and(**3**) pays to the Commissioner a renewal fee of \$50.(c) An application for renewal of a registration shall be considered made in a timely manner if it is postmarked on or before the anniversary date of the registration of the year of renewal.

Md. Code, IN § 8-607

Section 8-608 - Registration - Denial, nonrenewal, suspension, revocation

Subject to the hearing provisions of Title 2 of this article, the Commissioner may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a registrant if the applicant or registrant:

(**1**) knowingly makes a material misstatement in an application for registration;(b) fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registrant or for another;(c) has been convicted of a felony or of a misdemeanor involving moral turpitude;(d) in connection with the viatical settlement contract and related insurance application, commits fraud or engages in illegal or dishonest activities;(e) otherwise has shown a lack of trustworthiness or competence to act as a viatical settlement broker or viatical settlement provider; or(f) violates any provision of this subtitle or a regulation adopted under it.

Md. Code, IN § 8-608

Section 8-609 - Penalties; restitution

Instead of or in addition to suspending or revoking a registration, the Commissioner may:

(**1**) impose on the holder a penalty not exceeding \$125,000 for each violation of this subtitle; and(**2**) require the holder to make restitution to any person that has suffered financial injury because of the violation of this subtitle.

Md. Code, IN § 8-609

Section 8-610 - Violations(a) It is a violation of this subtitle for a viatical settlement broker or viatical settlement provider to:(**1**) violate any provision of this subtitle or any regulation adopted under this subtitle;(b) fail to register with the Commissioner in accordance with this subtitle before acting or representing itself as a viatical settlement broker or viatical settlement provider;(c) fail to provide a viator with a disclosure statement in accordance with this subtitle;(d) fail to allow a viator to rescind a viatical settlement contract up to at least 15 calendar days after the receipt of the viatical settlement proceeds by the viator; and(**5**) fail to deliver to a

viator the viatical settlement proceeds in accordance with this subtitle. **(b)** It is a violation of this subtitle for a person to enter into a viatical settlement contract within a 2-year period commencing with the date of issuance of the insurance policy to be acquired under the viatical settlement contract unless: **(1)** the viator certifies to the viatical settlement provider that within the 2-year period: **(i)** the policy was issued on the viator's exercise of conversion rights arising out of a group or individual policy; **(ii)** the total time covered under the conversion policy and the prior policy is at least 24 months; **(iii)** the time covered under the group policy is calculated without regard to any change in insurance carriers; and **(iv)** the coverage under the group policy has been continuous and under the same group sponsorship; **(2)** the viator submits independent evidence to the viatical settlement provider that within the 2-year period the insured became terminally ill or chronically ill; or **(3)** the viator submits independent evidence to the viatical settlement provider that within the 2-year period the viator or insured disposed of ownership interests in a closely held corporation. **(c)** Any copies of certification or independent evidence required under subsection (b) of this section shall be: **(1)** submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage; and **(2)** accompanied by a letter of attestation from the viatical settlement provider that the copies of certification or independent evidence required under subsection (b) of this section are true and correct copies of the documents received by the viatical settlement provider.

Md. Code, IN § 8-610

Section 8-610.1 - Verification of coverage for life insurance policies **(a)** An insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider or a viatical settlement broker under this subtitle, including verification of whether the insurer intends, at the time of the request, to pursue an investigation regarding possible fraud affecting the validity of a policy, within 30 days after the request is received, if the following documents are submitted with the request: **(1)** an authorization signed by the viator; and **(2)** a "Verification of Coverage for Life Insurance Policies" form adopted by the Commissioner under subsection (d) of this section that has been completed by the viatical settlement provider or viatical settlement broker. **(b)** An insurer may not charge a fee for responding to a request for verification of coverage submitted by a viatical settlement provider or a viatical settlement broker that exceeds \$50. **(c)** **(1)** An insurer may send an acknowledgment of receipt of a request for verification of coverage to the viator and, if the viator is other than the insured, to the insured. **(2)** The acknowledgment may contain a general description of any accelerated death benefit that is available under the policy. **(d)** The Commissioner shall adopt by regulation a "Verification of Coverage for Life Insurance Policies" form.

Md. Code, IN § 8-610.1

Section 8-611 - Statement required in contracts and applications **(a)** Viatical settlement contracts and applications for viatical settlement contracts shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or an application for a viatical settlement contract has committed a fraudulent viatical settlement act and on conviction is subject to fines, imprisonment, or both, under § 27-408 of the Insurance Article of the Annotated Code of Maryland."

(b) The absence of a statement as required in subsection (a) of this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

Md. Code, IN § 8-611