

State of New Hampshire: Life Settlements Statutes

New Hampshire Revised Code → Title 37 Insurance → Chapter 408-D Life Settlements Act

Section 408-D:1 - Short Title

This chapter may be cited as the life settlements act.

RSA 408-D:1

Section 408-D:2 - Definitions

In this chapter:

I. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, in this state, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy to a life settlement contact.**II.** "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a life settlement contract.**III.** "Chronically ill" means:**(a)** Being unable to perform at least 2 activities of daily living, including eating, toileting, transferring, bathing, dressing, or continence;**(b)** Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or**(c)** Having a level of disability similar to that described in subparagraph (a) as determined by the department of health and human services.**IV.** "Commissioner" means the insurance commissioner.**V.****(a)** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:**(1)** Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more viaticated policies; and**(2)** Who has an agreement in writing with one or more licensed life settlement providers to finance the acquisition of life settlement contracts.**(b)** "Financing entity" does not include a non-accredited investor or a life settlement purchaser.**VI.** "Fraudulent life settlement act" includes:**(a)** Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including, but not limited to:**(1)** Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement premium finance lender, life settlement producer, life settlement purchaser, financing entity insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:**(A)** An application for the issuance of a life settlement contract or insurance policy;**(B)** The underwriting of a life settlement contract or insurance policy;**(C)** A claim for payment or benefit pursuant to a life settlement contract or insurance

policy;(D) Premiums paid on an insurance policy;(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;(F) The reinstatement or conversion of an insurance policy;(G) The solicitation, offer, effectuation, or sale of a life settlement contract or insurance policy;(H) The issuance of written evidence of life settlement contracts or insurance;(I) A financing transaction; or(J) A plan which involves "stranger-originated life insurance" (STOLI) as defined in paragraph XVI.(2) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.(b) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:(1) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;(3) Transact the business of life settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of life settlements; or(4) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.(c) Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of life settlements or insurance.(d) Recklessly entering into, negotiating, brokering, otherwise dealing in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting 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 person or the persons intended to defraud the policy's issuer, the life settlement provider, or the viator. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.(e) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter.(f) Attempting to commit, assisting, aiding or abetting the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.VII. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to RSA 402-J:7, I(a).VIII. "Life settlement producer" means a person as provided for in RSA 408-D:3, who working for a fee, commission, or other valuable consideration, offers or attempts to solicit or negotiate life settlement contracts between a viator and one or more life settlement providers or one or more life settlement producers. The term does not include an attorney, certified public accountant or a 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 life settlement provider or life settlement purchaser.IX. "Life settlement contract" means the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.(a) "Life settlement contract" includes a written agreement between a viator and a life settlement provider or any affiliate of the life settlement provider establishing the terms

under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. **(b)** "Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where: **(1)** The viator or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or **(2)** The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. **(c)** "Life settlement contract" does not include: **(1)** A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms; **(2)** Loan proceeds that are used solely to pay: **(A)** Premiums for the policy; **(B)** The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers; **(3)** A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter; **(4)** A loan made by a lender that does not violate RSA 415-B, provided that the premium finance loan is not described in subparagraph (b); **(5)** An agreement where all the parties are closely related to the insured by blood or law, or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties; **(6)** Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee; **(7)** A bona fide business succession planning arrangement: **(A)** Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders; **(B)** Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or **(C)** Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members; **(8)** An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or **(9)** Any other contract, transaction, or arrangement exempted from the definition of life settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type to be regulated by this chapter. **X. (a)** "Life settlement provider" means a person, other than a viator, that enters into or effectuates a life settlement contract with a viator resident in this state. **(b)** "Life settlement provider" does not include: **(1)** A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan; **(2)** A premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan; **(3)** The issuer of the life insurance policy; **(4)** An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a life settlement provider, life settlement purchaser, financing entity, special purpose entity or related provider trust; **(5)** A natural person

who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;(6) A financing entity;(7) A special purpose entity;(8) A related provider trust;(9) A life settlement purchaser; or(10) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of life settlement provider.**XI.(a)** "Life settlement purchaser" means a person who provides a sum of money as consideration for the life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract, for the purpose of deriving an economic benefit.**(b)** "Life settlement purchaser" does not include:(1) A licensee under this chapter;(2) An accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;(3) A financing entity;(4) A special purpose entity; or(5) A related provider trust.**XII.** "Person" means a natural person or a legal entity, including, but not limited to, an individual, a partnership, limited liability company, association, trust, or corporation.**XIII.** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.**XIV.** "Related provider trust" means a titling trust or other trust established by a licensed life 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. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.**XV.** "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:(a) For a financing entity or licensed life settlement provider;(b) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or(c) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.**XVI.** "Stranger-originated life insurance" or "STOLI" means a practice or plan 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. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity who, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in RSA 408-D:2, XI(b)(2).**XVII.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.**XVIII.** "Viaticated policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.**XIX.(a)** "Viator" means the owner of a life insurance policy

or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this chapter, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators. **(b)** "Viator" does not include: **(1)** A licensee under this chapter, including a life insurance producer acting as a life settlement producer pursuant to this chapter; **(2)** Qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended; **(3)** A financing entity; **(4)** A special purpose entity; or **(5)** A related provider trust.

RSA 408-D:2

Section 408-D:3 - License and Appointment Requirements
I. (a) A person shall not operate as a life settlement provider or life settlement producer without first obtaining a license from the commissioner of the state of residence of the viator. If there is no license requirement in the state of residence of the viator, then a license must be obtained in New Hampshire. **(b) (1)** A resident or nonresident life insurance producer who has been duly licensed with a life line of authority in this state or his or her home state for at least one year shall be deemed to meet the licensing requirements of subparagraph VI(b)(1) and (2) of this section and shall be permitted to operate as a life settlement producer upon demonstration of evidence of financial responsibility as required in subparagraph VI(b)(3). **(2)** Not later than 30 days from the first day of operating as a life settlement producer, the life insurance producer shall notify the commissioner that he or she is acting as a life settlement producer on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a life settlement producer in accordance with this chapter. **(3)** The insurer that issued the policy being viated shall not be responsible for any act or omission of a life settlement producer or life settlement provider arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the life settlement provider or life settlement producer in connection with the life settlement contract. **(4)** While such life settlement producer's appointment remains in force, the life settlement provider shall be bound by the acts of the person named therein within his or her apparent authority as its acknowledged producer. **(c)** A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts on behalf of the viator without having to obtain a license as a life settlement producer.
II. Application for a life settlement provider or a life settlement producer license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the producer fees specified in RSA 400-A:29. **III.** Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in RSA 400-A:29. Failure to pay the fees by the renewal date results in expiration of the license. **IV.** The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders,

partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of any person if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

V.(a) A life settlement producer that solicits or negotiates a life settlement contract between a viator and a life settlement provider shall be appointed by the life settlement provider.

(b) To appoint a life settlement producer, the life settlement provider shall file a notice of appointment in a format approved by the commissioner within 15 days from the date the contract between the life settlement provider and the life settlement producer is executed or the life settlement contract is signed and executed.

(c) The life settlement provider shall pay a producer appointment fee as set forth in RSA 400-A:29 for each life settlement producer appointed by the life settlement provider.

(d) The life settlement provider shall notify the commissioner within 15 days of any termination of an appointment of a life settlement producer using a format approved by the commissioner.

VI. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(a) If the life settlement provider:

(1) Has provided a detailed plan of operation;

(2) Is competent and trustworthy and intends to act in good faith;

(3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(4) Has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

(b) If a life settlement producer:

(1) Is competent and trustworthy and intends to act in good faith;

(2) Has a good business reputation and has had 15 hours of training or education related to life settlements and life settlement transactions so as to be qualified in the business for which the license is applied;

(3) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;

(4) Any surety bond issued pursuant to subparagraph (a)(4) shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement provider or life settlement producer; and

(5) Notwithstanding any provision of this paragraph to the contrary, the commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with one state where the applicant is licensed as a life settlement provider or life settlement producer.

VII. The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

VIII. A life settlement provider or life settlement producer shall provide to the commissioner new or revised information about officers, 10 percent or more stockholders, partners, directors, members of designated employees within 30 days of the change.

IX. An individual licensed as a life settlement producer shall complete on an annual basis 15 hours of training related to life settlements and life settlement transactions, as required by the commissioner. Any person failing to meet the requirements of this paragraph shall be subject to the penalties imposed by the commissioner.

Section 408-D:4 - License Revocation and Denial**I.** The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a life settlement provider, or a life settlement producer, or a life insurance producer operating as a life settlement producer if the commissioner finds that:**(a)** There was any material misrepresentation in the application for the license;**(b)** The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to final administrative action, or is otherwise shown to be untrustworthy or incompetent;**(c)** The life settlement provider demonstrates a pattern of unreasonable payments to viators;**(d)** The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;**(e)** The life settlement provider has entered into any life settlement contract using a form that has not been approved pursuant to this chapter;**(f)** The life settlement provider has failed to honor contractual obligations set out in a life settlement contract;**(g)** The licensee no longer meets the requirements for initial licensure;**(h)** The life settlement provider has assigned, transferred, or pledged a settled policy to a person other than a life settlement provider licensed in this state, life settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or**(i)** The licensee or any officer, partner, member, or key management personnel has violated any provision of this chapter.**II.** If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement producer, or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a life settlement producer pursuant to this chapter the commissioner shall conduct a hearing in accordance with RSA 541-A.

RSA 408-D:4

Section 408-D:5 - Approval of Life Settlement Contracts and Life Settlement Provider Disclosure Statements**I.** A person shall not use a life settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner.**II.** The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the life settlement contract or provisions contained therein fail to meet the requirements of RSA 408-D:9, RSA 408-D:11, RSA 408-D:14 and RSA 408-D:15, II, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

RSA 408-D:5

Section 408-D:6 - Reporting Requirements and Privacy**I.** Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. Individual transaction data regarding the business of life settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured shall be filed with the commissioner on a confidential basis.**II.** Except as otherwise allowed or required by law, a life settlement provider, life settlement producer, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not

disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:(a) Is necessary to effect a life settlement between the viator and a life settlement provider and the viator and insured have provided prior written consent to the disclosure;(b) Is necessary to effect a life settlement purchase agreement between the life settlement purchaser and a life settlement provider and the viator and insured have provided prior written consent to the disclosure;(c) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of RSA 408-D:15, III;(d) Is a term of or condition to the transfer of a policy by one life settlement provider to another life settlement provider;(e) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a life settlement provider, and the viator and insured have provided prior written consent to the disclosure;(f) Is necessary to allow the life settlement provider or life settlement producer or their authorized representatives to make contacts for the purpose of determining health status; or(g) Is required to purchase stop loss coverage or financial guaranty insurance.

RSA 408-D:6

Section 408-D:7 - Examination or Investigations**I. Authority, scope, and scheduling of examinations.**(a)(1) The commissioner may conduct an examination under this chapter of a licensee as often as the commissioner in his or her discretion deems appropriate.(2) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner may consider such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the commissioner.(b) For purposes of completing an examination of a licensee under this chapter, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.(c) In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.(d) As far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.**II. Record retention requirements.**(a) A person required to be licensed by this chapter shall for 5 years retain copies of all:(1) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;(2) All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and(3) All other records and documents related to the requirements of this chapter.(b) This paragraph shall not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.(c) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.**III. Conduct of examinations.**(a) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the

examiner shall observe those guidelines and procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate. **(b)** Every licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to Title XXXVII. **(c)** The commissioner may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. **(d)** When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination. **(e)** Nothing contained in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action. **(f)** Nothing contained in this chapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate. **IV. Examination reports.** **(a)** Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts. **(b)** No later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report. **(c)** In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law. **V. Confidentiality of examination information.** **(a)** Names and individual identification data for all viators, owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law. **(b)** Except as otherwise provided in this chapter, all examination

reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(c) Documents, materials, or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

- (1)** Created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this chapter, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or
- (2)** Disclosed to the NAIC and its affiliates and subsidiaries under subparagraph V(e) by a commissioner.

(d) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this paragraph.

(e) In order to assist in the performance of the commissioner's duties, the commissioner:

- (1)** May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to this paragraph, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;
- (2)** May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the jurisdiction that is the source of the document, material, or information; and
- (3)** May enter into agreements governing sharing and use of information consistent with this paragraph.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subparagraph V(e).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this paragraph shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

VI. Conflict of interest.

(a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest, or is affiliated with the

management of, or owns a pecuniary interest in, any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being: **(1)** A viator; **(2)** An insured in a viaticated insurance policy; or **(3)** A beneficiary in an insurance policy that is proposed to be viaticated. **(b)** Notwithstanding the requirements of this paragraph, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. **VII.** Cost of examinations. The cost of examinations shall be borne by the licensee examined, and shall be pursuant to RSA 400-A:37, III(d), VII, and VIII. **VIII.** Immunity from liability. **(a)** No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter. **(b)** No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subparagraph (a). **(c)** A person identified in subparagraph (a) or (b) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. **IX.** Investigative authority of the commissioner. The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements. The confidentiality protections set forth in paragraph V shall apply to any investigation conducted by the commissioner.

RSA 408-D:7

Section 408-D:8 - Life Insurer Disclosure to Viator **I.** Life insurers shall provide individual life insurance policyholders with a written notice that any of the acts described in paragraph III can have significant future financial, tax, or other implications and the consumer should consult with a licensed financial advisor, attorney, or other professional who can explain to the consumer all available options and consequences before acting. **II.** The timing of the issuance of the notice, and the form of the notice shall be as set forth in rules adopted by the commissioner. **III.** Actions that may have a significant future financial, tax, or other implication to the consumer are: **(a)** Sale of the policy. **(b)** Surrender of the policy. **(c)** Lapse of the policy. **(d)** Assignment of the policy or any right under the policy. **(e)** Failure to pay premium. **(f)** Application of the equity of the policy toward payment of premium. **(g)** Application of accumulated dividends toward payment of premium. **(h)** Financing of premium payments. **IV.** Life insurers shall comply with regulations that require annual reporting to the consumer of policy information including annual reporting of the cash value of the policy.

RSA 408-D:8

Section 408-D:9 - Life Settlement Provider Disclosure to Viator and Insured; Life Settlement Producer Disclosure to Viator**I.** With each application for a life settlement, a life settlement provider or a life settlement producer on behalf of the life settlement provider shall provide the viator with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosure shall be provided in a separate document that is signed by the viator and the life settlement provider or life settlement producer, and shall provide the following information:**(a)** There are possible alternatives to life settlement contracts including, but not limited to, any accelerated death benefits or policy loans offered under the viator's life insurance policy, and the viator should consider all options carefully and seek advice from a licensed financial advisor, attorney, or other professional who can explain all available options and consequences.**(b)** Some or all of the proceeds of the life settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.**(c)** Proceeds of the life settlement could be subject to the claims of creditors.**(d)** Receipt of the proceeds of a life 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.**(e)** The viator has the right to rescind a life settlement contract before the earlier of 30 calendar days after the date upon which the life settlement contract is executed by all parties or 15 calendar days after the life settlement proceeds have been paid to the viators, as provided in RSA 408-D:11, VI. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the life settlement provider within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all life settlement proceeds and any premiums, loans, and loan interest the life settlement within 60 days of the insured's death.**(f)** Funds will be sent to the viator within 3 business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.**(g)** Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.**(h)** Disclosure to a viator shall include distribution of a brochure describing the process of life settlements. The NAIC's form for the brochure shall be used unless another form is developed or approved by the commissioner.**(i)** The amount and method of calculating the compensation paid or to be paid to the life settlement producer, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given.**(j)** The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement producer 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 life settlement contract between the viator and the life 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."**(k)** Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this chapter. This

contact shall be limited to once every 3 months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in this state in which the viator resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider. **(l)** The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be viaticated; **(m)** The disclosure document shall include the name, address, and telephone number of the life settlement provider; **(n)** Any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser; **(o)** If an insurance 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 his or her insurance producer or the insurer issuing the policy for advice on the proposed life settlement; **(p)** State the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the life settlement contract; **(q)** State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents. **II.** A life settlement producer shall provide the viator with at least the following written disclosures no later than the date the life settlement contract is signed by all parties. The written disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the viator and provide the following information: **(a)** The name, business address, and telephone number of the life settlement producer. **(b)** A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract. **(c)** A written disclosure of any affiliations or contractual arrangements between the life settlement producer and any person making an offer in connection with the proposed life settlement contracts. **(d)** The amount and method of calculating the life settlement producer's compensation, which term "compensation" includes anything of value paid or given to a life settlement producer for the placement of a policy. **(e)** Where any portion of the life settlement producer's compensation, as defined in subparagraph (d), is taken from a proposed life settlement offer, the life settlement producer shall disclose the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement producer's compensation. **III.** If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the life settlement provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

RSA 408-D:9

Section 408-D:10 - Life Settlement Provider and Life Settlement Producer Disclosure to Insurer
Prior to the initiation of a plan, transaction, or series of transactions, a life settlement producer or life settlement provider shall fully disclose to an insurer a plan, transaction, or series of transactions, to which the life settlement producer or life settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of

engaging in the business of life settlements at anytime prior to, or during the first 5 years after, issuance of the policy.

RSA 408-D:10

Section 408-D:11 - General Rules**I.**(a) A life settlement provider entering into a life settlement contract shall first obtain:(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and(2) A document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement producer, and the insurance company that issued the life insurance policy covering the life of the insured.(b) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subparagraph (c).(c) The life settlement provider shall deliver a copy of the medical release required under subparagraph (a)(2), a copy of the viator's application for the life settlement contract, the notice required under subparagraph (b) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The NAIC's form for verification of coverage shall be used unless another form is developed and approved by the commissioner.**II.** The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement producer or life insurance producer within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this paragraph shall be a violation of RSA 408-D:12 and RSA 408-D:16.**III.** Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the viator consents to the life settlement contract, represents that the viator has a full and complete understanding of the life settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.**IV.** A life settlement producer may perform any of the requirements of this section on behalf of the life settlement provider.**V.** All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.**VI.** All life settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the life settlement contract before the earlier of 30 calendar days after the date upon which the life settlement contract is executed by all parties or 15 calendar days after the life settlement proceeds have been sent to the viator as provided in RSA 408-D:9, I(f). Rescission by the viator may be conditioned upon the viator both giving notice and repaying to

the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement contract. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or life settlement purchaser of all life settlement proceeds, and any premiums, loans, and loan interest that have been paid by the life settlement provider or life settlement purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement producer in connection with the rescinded transaction, the life settlement producer shall refund all such commissions and compensation to the life settlement provider within 5 business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.**VII.** The life settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent.**VIII.** Within 3 business days after the date the escrow agent receives the document, (or from the date the life settlement provider receives the documents), if the viator erroneously provides the documents directly to the life settlement provider, the life settlement provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.**IX.** Failure to tender consideration to the viator for the life settlement contract within the time set forth in the disclosure pursuant to RSA 408-D:9, I(f) renders the life settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a life settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.**X.** Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement producer after the life settlement has occurred shall only be made by the life settlement provider or life settlement producer licensed in this state or its authorized representatives and shall be limited to once every 3 months for insureds with a life expectancy of more than one year, and to no more than once a month for insureds with a life expectancy of one year or less. The life settlement provider or life settlement producer shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement producers shall be responsible for the actions of their authorized representatives.

RSA 408-D:11

Section 408-D:12 - Prohibited Practices**I.** It is a violation of this chapter for any person to solicit or promote STOLI or to knowingly participate in any transaction, practice, or course of business involving the sale or settlement of STOLI.**II.** It is a violation of this chapter for any person to enter into a life settlement contract at any time prior to the application or issuance of a policy which is the subject of a life settlement contract or within a 5 year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the life settlement provider that one or more of the following conditions have been met within the 5 year period:**(a)** The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;**(b)** The viator submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the 5 year period:**(1)** The viator or insured is terminally or chronically ill;**(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; or**(6)** 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 assets; or**(c)** The viator enters into a life settlement contract more than 2 years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is 2 years after policy issuance, the following conditions are 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 or a person described in RSA 408-D:2, IX(c)(5); and**(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.**III.** Copies of the independent evidence described in subparagraph I(b) and document required by RSA 408-D:11, I shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.**IV.** If the life settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by subparagraph I(c) when the life settlement provider submits a requests to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy shall be deemed to conclusively establish that the life settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.**V.** No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the viator, insured, life settlement provider or life settlement producer sign any forms, disclosures, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.**VI.** Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has

been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.**VII.** With respect to any life settlement contract or insurance policy, no life settlement producer knowingly shall solicit an offer from, effectuate a life settlement with or make a sale to any life settlement provider, life settlement purchaser, financing entity or related provider trust that is controlling, controlled by, or under common control with such life settlement producer.**VIII.** With respect to any life settlement contract or insurance policy, no life settlement producer knowingly may enter into a life settlement contract with a viator, if, in connection with such life settlement contract, anything of value will be paid to a life settlement producer that is controlling, controlled by, or under common control with such life settlement provider or the life settlement purchaser, financing entity, or related provider trust that is involved in such life settlement contract.**IX.** A violation of paragraph I or II shall be deemed a fraudulent life settlement act.**X.** No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter.**XI.** No life insurance producer, insurance company, life settlement producer, or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

RSA 408-D:12

Section 408-D:13 - Advertising for Life Settlements

The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of life settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any life settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of life settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of life settlements through the advertising media and material used by life settlement licensees.

I. This section shall apply to any advertising of life settlement contracts, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.**II.** Every life settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the life settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others

authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the life settlement licensee.

III. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

IV. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied, or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(b) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the payment or use other appropriate language.

(e) Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee under this chapter makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(2) An advertisement shall not state or imply that a life settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(3) When an endorsement refers to benefits received under a life settlement contract all pertinent information shall be retained for a period of 5 years after its use.

V. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

VI. An

advertisement shall not disparage insurers, life settlement providers, life settlement producers, life settlement investment agents, insurance producers, policies, services or methods of marketing.**VII.** The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.**VIII.** An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identify of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.**IX.** An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.**X.** An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the insurance department to find out if the state requires licensing and, if so, whether the life settlement provider or life settlement producer is licensed.**XI.** An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.**XII.** The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.**XIII.** An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves, or favors:**(a)** Any life settlement licensee or its business practices or methods of operation;**(b)** The merits, desirability or advisability, of any life settlement contract;**(c)** Any life settlement contract; or**(d)** Any life insurance policy or life insurance company.**XIV.** If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.**XV.** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past 6 months.

RSA 408-D:13

Section 408-D:14 - Fraud Prevention and Control**I.** Fraudulent life settlement acts, interference, and participation of convicted felons prohibited.**(a)** A person shall not commit a fraudulent life

settlement act. **(b)** A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter. **(c)** A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements. **II. Fraud warning required.** **(a)** Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison." **(b)** The lack of a statement as required in subparagraph (a) does not constitute a defense in any prosecution for a fraudulent life settlement act. **III. Mandatory reporting of fraudulent life settlement acts.** **(a)** Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be or has been committed shall provide to the commissioner the information as required by, and in a manner prescribed by, the commissioner. **(b)** Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner. **IV. Immunity from liability.** **(a)** No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from: **(1)** The commissioner or the commissioner's employees, agents, or representatives; **(2)** Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives; **(3)** A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives; **(4)** The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administration Association (NASAA), or their employees, agents, or representatives, or other regulatory body overseeing life insurance, life settlements, securities, or investment fraud; or **(5)** The life insurer that issued the life insurance policy covering the life of the insured; or **(b)** Subparagraph (a) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action shall plead specifically any allegation that subparagraph (a) does not apply because the person filing the report or furnishing the information did so with actual malice. **(c)** A person furnishing information as identified in subparagraph (a) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent life settlement acts. **(d)** This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subparagraph (a). **V. Confidentiality.** **(a)** The documents and evidence provided pursuant to paragraph IV or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record under RSA 91-A and shall not be subject to discovery or subpoena in a civil or criminal action. **(b)** Subparagraph (a) shall not prohibit release by the commissioner of documents and evidence obtained in an

investigation of suspected or actual fraudulent life settlement acts:(1) In administrative or judicial proceedings to enforce laws administered by the commissioner; or(2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts or to the NAIC.(c) Release of documents and evidence under subparagraph (b) shall not abrogate or modify the privilege granted in subparagraph (a).**VI.** Other law enforcement or regulatory authority. This act shall not:(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;(b) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or(c) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.**VII.** Life settlement antifraud initiatives.(a) Life settlement providers and life settlement producers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:(1) Fraud investigators, who may be life settlement provider or life settlement producer employees or independent contractors; and(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;(C) A description of the plan for antifraud education and training of underwriters and other personnel; and(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record under RSA 91-A and shall not be subject to discovery or subpoena in a civil or criminal action.

RSA 408-D:14

Section 408-D:15 - Injunctions; Civil Remedies; Cease and Desist**I.** In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.**II.** Any person damaged by the acts of a person found in violation of this chapter by the commissioner may bring a civil action against the person committing the violation in a court of competent jurisdiction.**III.** The commissioner may issue, in accordance with RSA 541-A, a cease and desist order upon a person that violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner.**IV.** When the commissioner finds that an activity in violation of this chapter presents an immediate danger to

the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the 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 commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to RSA 541:18.**V.** In addition the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to civil penalties of up to \$2,500 per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued under RSA 400-A:23. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.**VI.** A person convicted of a violation of this chapter shall be ordered to pay restitution to persons aggrieved by the violation of this chapter. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. The commissioner may order a life settlement provider to pay restitution to persons aggrieved by the violations of this chapter committed by its appointed life settlement producers.**VII.** Except for a fraudulent life settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

RSA 408-D:15

Section 408-D:16 - Unfair Trade Practices

A violation of this chapter, including the commission of a fraudulent life settlement act, shall be considered an unfair trade practice under RSA 417.

RSA 408-D:16

Section 408-D:17 - Rulemaking

The commissioner shall have the authority to:

I. Adopt rules pursuant to RSA 541-A, implementing this chapter;**II.** Establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;**III.** Establish appropriate licensing requirements, fees, and standards for continued licensure for life settlement providers and life settlement producers;**IV.** Require a bond or other mechanism for financial accountability for life settlement providers and life settlement producers; and**V.** Adopt rules governing the relationship and responsibilities of both insurers and life settlement providers and life settlement producers during the viatication of a life insurance policy or certificate.

RSA 408-D:17

Section 408-D:18 - Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

RSA 408-D:18

Section 408-D:19 - Applicability

A life settlement provider or life settlement producer transacting business in this state may continue to do so pending approval or disapproval of the life settlement provider, or life settlement producer application for licensure if the application is filed with the commissioner within one month of the effective date of this chapter.

RSA 408-D:19