

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2268

Introduced by

Senators Klein, Hacker, Heitkamp

Representatives Ekstrom, N. Johnson, Keiser

1 A BILL for an Act to create and enact chapter 26.1-33.3 of the North Dakota Century Code,
2 relating to viatical settlement contracts; to amend and reenact subdivision a of subsection 21 of
3 section 10-04-02 of the North Dakota Century Code, relating to the definition of viatical
4 settlement contract; to repeal chapter 26.1-33.2 of the North Dakota Century Code, relating to
5 viatical settlement contracts; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subdivision a of subsection 21 of section 10-04-02 of the
8 North Dakota Century Code is amended and reenacted as follows:

9 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life
10 insurance policy, or certificate of insurance by the viator to the viatical
11 settlement provider pursuant to chapter ~~26.1-33.2~~ 26.1-33.3;

12 **SECTION 2.** Chapter 26.1-33.3 of the North Dakota Century Code is created and
13 enacted as follows:

14 **26.1-33.3-01. Definitions.**

- 15 1. "Advertising" means any written, electronic, or printed communication or any
16 communication by means of recorded telephone messages or transmitted on
17 radio, television, the internet, or similar communications media, including film
18 strips, motion pictures, and videos, published, disseminated, circulated, or placed
19 directly before the public, in this state, for the purpose of creating an interest in or
20 inducing a person to sell, assign, devise, bequest, or transfer the death benefit or
21 ownership of a life insurance policy pursuant to a viatical settlement contract.
- 22 2. "Business of viatical settlements" means an activity involved in, but not limited to,
23 the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing,
24 financing, monitoring, tracking, underwriting, selling, transferring, assigning,

- 1 pledging, hypothocating, or in any other manner, acquiring an interest in a life
2 insurance policy by means of a viatical settlement contract.
- 3 3. "Chronically ill" means:
- 4 a. Being unable to perform at least two activities of daily living, such as eating,
5 toileting, transferring, bathing, dressing, or continence;
- 6 b. Requiring substantial supervision to protect the individual from threats to
7 health and safety due to severe cognitive impairment; or
- 8 c. Having a level of disability similar to that described in subdivision a as
9 determined by the secretary of health and human services.
- 10 4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser
11 of securities, purchaser of a policy or certificate from a viatical settlement
12 provider, credit enhancer, or any entity that has a direct ownership in a policy
13 or certificate that is the subject of a viatical settlement contract, but:
- 14 (1) Whose principal activity related to the transaction is providing funds to
15 effect the viatical settlement or purchase of one or more viaticated
16 policies; and
- 17 (2) Who has an agreement in writing with one or more licensed viatical
18 settlement providers to finance the acquisition of viatical settlement
19 contracts.
- 20 b. "Financing entity" does not include a nonaccredited investor or a viatical
21 settlement purchaser.
- 22 5. "Fraudulent viatical settlement act" includes:
- 23 a. Acts or omissions committed by any person who, knowingly or with intent to
24 defraud, for the purpose of depriving another of property or for pecuniary
25 gain, commits, or permits its employees or its agents to engage in acts
26 including:
- 27 (1) Presenting, causing to be presented or preparing with knowledge or
28 belief that it will be presented to or by a viatical settlement provider,
29 viatical settlement broker, viatical settlement purchaser, financing
30 entity, insurer, insurance producer, or any other person, false material

- 1 information, or concealing material information, as part of, in support of
2 or concerning a fact material to one or more of the following:
- 3 (a) An application for the issuance of a viatical settlement contract or
4 insurance policy;
- 5 (b) The underwriting of a viatical settlement contract or insurance
6 policy;
- 7 (c) A claim for payment or benefit pursuant to a viatical settlement
8 contract or insurance policy;
- 9 (d) Premiums paid on an insurance policy;
- 10 (e) Payments and changes in ownership or beneficiary made in
11 accordance with the terms of a viatical settlement contract or
12 insurance policy;
- 13 (f) The reinstatement or conversion of an insurance policy;
- 14 (g) The solicitation, offer, effectuation, or sale of a viatical settlement
15 contract or insurance policy;
- 16 (h) The issuance of written evidence of a viatical settlement contract
17 or insurance; or
- 18 (i) A financing transaction;
- 19 (2) Employing any plan, financial structure, device, scheme, or artifice to
20 defraud related to viaticated policies; and
- 21 (3) Failing to disclose to an insurer a plan, transaction or series of
22 transactions as required pursuant to section 26.1-33.3-09;
- 23 b. In the furtherance of a fraud or to prevent the detection of a fraud any person
24 commits or permits its employees or its agents to:
- 25 (1) Remove, conceal, alter, destroy, or sequester from the commissioner
26 the assets or records of a licensee or other person engaged in the
27 business of viatical settlements;
- 28 (2) Misrepresent or conceal the financial condition of a licensee, financing
29 entity, insurer, or other person;

- 1 (3) Transact the business of viatical settlements in violation of laws
2 requiring a license, certificate of authority, or other legal authority for
3 the transaction of the business of viatical settlements; or
- 4 (4) File with the commissioner or the equivalent chief insurance regulatory
5 official of another jurisdiction a document containing false information
6 or otherwise conceal information about a material fact from the
7 commissioner;
- 8 c. Embezzlement, theft, misappropriation, or conversion of moneys, funds,
9 premiums, credits, or other property of a viatical settlement provider, insurer,
10 insured, viator, insurance policyowner, or any other person engaged in the
11 business of viatical settlements or insurance;
- 12 d. Recklessly entering into, negotiating, brokering, or otherwise dealing in a
13 viatical settlement contract, the subject of which is a life insurance policy that
14 was obtained by presenting false information concerning any fact material to
15 the policy or by concealing, for the purpose of misleading another, information
16 concerning any fact material to the policy, if the person or the persons
17 intended to defraud the policy's issuer, the viatical settlement provider or the
18 viator. "Recklessly" means engaging in the conduct in conscious and clearly
19 unjustifiable disregard of a substantial likelihood of the existence of the
20 relevant facts or risks, such disregard involving a gross deviation from
21 acceptable standards of conduct;
- 22 e. Facilitating the change of state of ownership of a policy or certificate or the
23 state of residency of a viator to a state or jurisdiction that does not have a law
24 similar to this chapter for the express purposes of evading or avoiding the
25 provisions of this chapter; or
- 26 f. Attempting to commit, assisting, aiding, or abetting in the commission of, or
27 conspiracy to commit the acts or omissions specified in this subsection.
- 28 6. "Person" means a natural person or a legal entity, including an individual,
29 partnership, limited liability company, association, trust, or corporation.

- 1 7. "Policy" means an individual or group policy, group certificate, contract, or
2 arrangement of life insurance owned by a resident of this state, regardless of
3 whether delivered or issued for delivery in this state.
- 4 8. "Related provider trust" means a titling trust or other trust established by a licensed
5 viatical settlement provider or a financing entity for the sole purpose of holding the
6 ownership or beneficial interest in purchased policies in connection with a
7 financing transaction. The trust must have a written agreement with the licensed
8 viatical settlement provider under which the licensed viatical settlement provider is
9 responsible for ensuring compliance with all statutory and regulatory requirements
10 and under which the trust agrees to make all records and files related to viatical
11 settlement transactions available to the commissioner as if those records and files
12 were maintained directly by the licensed viatical settlement provider.
- 13 9. "Special purpose entity" means a corporation, partnership, trust, limited liability
14 company, or other similar entity formed solely to provide either directly or indirectly
15 access to institutional capital markets:
- 16 a. For a financing entity or licensed viatical settlement provider; or
- 17 b. (1) In connection with a transaction in which the securities in the special
18 purposes entity are acquired by the viator or by "qualified institutional
19 buyers" as defined in rule 144 adopted under the Securities Act of
20 1933, as amended; or
- 21 (2) The securities pay a fixed rate of return commensurate with established
22 asset-backed institutional capital markets.
- 23 10. "Terminally ill" means having an illness or sickness that can reasonably be
24 expected to result in death in twenty-four months or less.
- 25 11. "Viatical settlement broker" means a person who working exclusively on behalf of a
26 viator and for a fee, commission, or other valuable consideration, offers or
27 attempts to negotiate viatical settlement contracts between a viator and one or
28 more viatical settlement providers or one or more viatical settlement brokers.
29 Notwithstanding the manner in which the viatical settlement broker is
30 compensated, a viatical settlement broker is deemed to represent only the viator,
31 and not the insurer or the viatical settlement provider, and owes a fiduciary duty to

1 the viator to act according to the viator's instructions and in the best interest of the
2 viator. The term does not include an attorney, certified public accountant, or a
3 financial planner accredited by a nationally recognized accreditation agency, who
4 is retained to represent the viator and whose compensation is not paid directly or
5 indirectly by the viatical settlement provider or purchaser.

6 12. a. "Viatical settlement contact" means a written agreement between a viator and
7 a viatical settlement provider or any affiliate of the viatical settlement provider
8 establishing the terms under which compensation or anything of value is or
9 will be paid, which compensation or value is less than the expected death
10 benefits of the policy, in return for the viator's present or future assignment,
11 transfer, sale, devise, or bequest of the death benefit or ownership of any
12 portion of the insurance policy or certificate of insurance.

13 b. "Viatical settlement contract" includes a premium finance loan made for a life
14 insurance policy by a lender to a viator on, before, or after the date of
15 issuance of the policy if:

16 (1) The loan proceeds are not used solely to pay:

17 (a) Premiums for the policy; or

18 (b) The costs of the loan, including interest, arrangement fees,
19 utilization fees and similar fees closing costs, legal fees and
20 expenses, trustee fees and expenses, and third-party collateral
21 provider fees and expenses, including fees payable to letter of
22 credit issuers;

23 (2) The viator or the insured receives on the date of the premium finance
24 loan a guarantee of a future viatical settlement value of the policy; or

25 (3) The viator or the insured agrees on the date of the premium finance
26 loan to sell the policy or any portion of its death benefit on any date
27 following the issuance of the policy.

28 c. "Viatical settlement contract" does not include:

29 (1) A policy loan or accelerated death benefit made by the insurer pursuant
30 to the policy's terms;

- 1 (2) A loan made by a bank or other licensed financial institution in which
2 the lender takes an interest in a life insurance policy solely to secure
3 repayment of the loan or, if there is a default on the loan and the policy
4 is transferred, the further assignment of the policy by the lender,
5 provided that the default itself is not pursuant to an agreement or
6 understanding with any other person for the purpose of evading
7 regulation under this chapter;
- 8 (3) A loan made by a lender that does not violate chapter 26.1-20.1,
9 provided that the premium finance loan is not described in
10 subdivision b;
- 11 (4) An agreement in which all the parties are closely related to the insured
12 by blood or law or have a lawful substantial economic interest in the
13 continued life, health, and bodily safety of the person insured, or are
14 trusts established primarily for the benefit of such parties;
- 15 (5) Any designation, consent, or agreement by an insured who is an
16 employee of an employer in connection with the purchase by the
17 employer, or trust established by the employer, of life insurance on the
18 life of the employee;
- 19 (6) A bona fide business succession planning arrangement:
- 20 (a) Between one or more shareholders in a corporation or between a
21 corporation and one or more of its shareholders or one or more
22 trusts established by its shareholders;
- 23 (b) Between one or more partners in a partnership or between a
24 partnership and one or more of its partners or one or more trusts
25 established by its partners; or
- 26 (c) Between one or more members in a limited liability company or
27 between a limited liability company and one or more of its
28 members or one or more trusts established by its members;
- 29 (7) An agreement entered into by a service recipient, or a trust established
30 by the service recipient, and a service provider, or a trust established

1 by the service provider, who performs significant services for the
2 service recipient's trade or business; or
3 (8) Any other contract, transaction, or arrangement exempted from the
4 definition of viatical settlement contract by the commissioner based on
5 a determination that the contract, transaction, or arrangement is not of
6 the type intended to be regulated by this chapter.

7 13. "Viatical settlement investment agent" means a person who is an appointed or
8 contracted agent of a licensed viatical settlement provider who solicits or arranges
9 the funding for the purchase of a viatical settlement by a viatical settlement
10 purchaser and who is acting on behalf of a viatical settlement provider. A viatical
11 settlement investment agent is an agent as defined in section 10-04-02.

12 a. A viatical settlement investment agent shall not have any contact directly or
13 indirectly with the viator or insured or have knowledge of the identity of the
14 viator or insured.

15 b. A viatical settlement investment agent is deemed to represent the viatical
16 settlement provider of whom the viatical settlement investment agent is an
17 appointed or contracted agent.

18 14. a. "Viatical settlement provider" means a person, other than a viator, that enters
19 into or effectuates a viatical settlement contract with a viator resident in this
20 state.

21 b. "Viatical settlement provider" does not include:

22 (1) A bank, savings bank, savings and loan association, or credit union;

23 (2) A licensed lending institution or premium finance company making
24 premium finance loans and exempted by the commissioner from the
25 licensing requirement under the premium finance laws, that takes an
26 assignment of a life insurance policy solely as collateral for a loan;

27 (3) The issuer of the life insurance policy;

28 (4) An authorized or eligible insurer that provides stop-loss coverage or
29 financial guaranty insurance to a viatical settlement provider,
30 purchaser, financing entity, special purpose entity, or related provider
31 trust;

- 1 (5) A natural person who enters into or effectuates no more than one
2 agreement in a calendar year for the transfer of life insurance policies
3 for any value less than the expected death benefit;
4 (6) A financing entity;
5 (7) A special purpose entity;
6 (8) A related provider trust;
7 (9) A viatical settlement purchaser; or
8 (10) Any other person that the commissioner determines is not the type of
9 person intended to be covered by the definition of viatical settlement
10 provider.

11 15. "Viatical settlement purchase agreement" means a contract or agreement, entered
12 into by a viatical settlement purchaser, to which the viator is not a party, to
13 purchase a life insurance policy or an interest in a life insurance policy, that is
14 entered into for the purpose of deriving an economic benefit. A viatical settlement
15 purchase agreement is a viatical settlement contract as defined in section
16 10-04-02.

17 16. a. "Viatical settlement purchaser" means a person who provides a sum of
18 money as consideration for a life insurance policy or an interest in the death
19 benefits of a life insurance policy, or a person who owns or acquires or is
20 entitled to a beneficial interest in a trust that owns a viatical settlement
21 contract or is the beneficiary of a life insurance policy that has been or will be
22 the subject of a viatical settlement contract, for the purpose of deriving an
23 economic benefit.

24 b. "Viatical settlement purchaser" does not include:

- 25 (1) A licensee under this chapter;
26 (2) An accredited investor or qualified institutional buyer as defined,
27 respectively, in rule 501(a) or rule 144A adopted under the Federal
28 Securities Act of 1933, as amended;
29 (3) A financing entity;
30 (4) A special purpose entity; or
31 (5) A related provider trust.

1 17. "Viaticated policy" means a life insurance policy or certificate that has been
2 acquired by a viatical settlement provider pursuant to a viatical settlement contract.

3 18. a. "Viator" means the owner of a life insurance policy or a certificate holder
4 under a group policy who resides in this state and enters or seeks to enter
5 into a viatical settlement contract. For the purposes of this chapter, a viator
6 shall not be limited to an owner of a life insurance policy or a certificate holder
7 under a group policy insuring the life of an individual with a terminal or chronic
8 illness or condition except where specifically addressed. If there is more than
9 one viator on a single policy and the viators are residents of different states,
10 the transactions shall be governed by the law of the state in which the viator
11 having the largest percentage ownership resides or, if the viators hold equal
12 ownership, the state of residence of one viator agreed upon in writing by all
13 the viators.

14 b. "Viator" does not include:
15 (1) A licensee under this chapter;
16 (2) Qualified institutional buyer as defined, respectively, in rule 144A
17 adopted under the Federal Securities Act of 1933, as amended;
18 (3) A financing entity;
19 (4) A special purpose entity; or
20 (5) A related provider trust.

21 **26.1-33.3-02. License and bond requirements.**

22 1. a. A person shall not operate as a viatical settlement provider or viatical
23 settlement broker without first obtaining a license from the commissioner of
24 the state of residence of the viator. A person may not operate as a viatical
25 settlement broker without first obtaining an insurance producer license from
26 the commissioner.

27 b. The insurer that issued the policy being viaticated shall not be responsible for
28 any act or omission of a viatical settlement broker or viatical settlement
29 provider arising out of or in connection with the viatical settlement transaction,
30 unless the insurer receives compensation for the placement of a viatical

- 1 settlement contract from the viatical settlement provider or viatical settlement
2 broker in connection with the viatical settlement contract.
- 3 c. A person licensed as an attorney, certified public accountant, or financial
4 planner accredited by a nationally recognized accreditation agency, who is
5 retained to represent the viator, whose compensation is not paid directly or
6 indirectly by the viatical settlement provider, may negotiate viatical settlement
7 contracts on behalf of the viator without having to obtain a license as a viatical
8 settlement broker.
- 9 2. Application for a viatical settlement provider or viatical settlement broker license
10 shall be made to the commissioner by the applicant on a form prescribed by the
11 commissioner, and these applications shall be accompanied by a two hundred fifty
12 dollar fee.
- 13 3. Licenses may be renewed from year to year on the anniversary date upon
14 payment of the annual renewal fee of one hundred dollars. Failure to pay the fees
15 by the renewal date results in expiration of the license.
- 16 4. The applicant shall provide information on forms required by the commissioner.
17 The commissioner shall have authority, at any time, to require the applicant to fully
18 disclose the identity of all stockholders, partners, officers, members, and
19 employees, and the commissioner may refuse to issue a license in the name of a
20 legal entity if not satisfied that any officer, employee, stockholder, partner or
21 member thereof who may materially influence the applicant's conduct meets the
22 standards of this chapter.
- 23 5. A license issued to a legal entity authorizes all partners, officers, members and
24 designated employees to act as viatical settlement providers or viatical settlement
25 brokers, as applicable, under the license, and all those persons shall be named in
26 the application and any supplements to the application.
- 27 6. Upon the filing of an application and the payment of the license fee, the
28 commissioner shall make an investigation of each applicant and issue a license if
29 the commissioner finds that the applicant:
- 30 a. If a viatical settlement provider, has provided a detailed plan of operation;

- 1 b. Is competent and trustworthy and intends to act in good faith in the capacity
2 involved by the license applied for;
- 3 c. Has a good business reputation and has had experience, training or
4 education so as to be qualified in the business for which the license is applied
5 for;
- 6 d. (1) If a viatical settlement provider, has demonstrated evidence of financial
7 responsibility in a format prescribed by the commissioner through either
8 a surety bond executed and issued by an insurer authorized to issue
9 surety bonds in this state or a deposit of cash, certificates of deposit or
10 securities or any combination thereof in the amount of two hundred fifty
11 thousand dollars.
- 12 (2) If a viatical settlement broker, has demonstrated evidence of financial
13 responsibility in a format prescribed by the commissioner through either
14 a surety bond executed and issued by an insurer authorized to issue
15 surety bonds in this state or a deposit of cash, certificates of deposit, or
16 securities or any combination thereof in the amount of two hundred fifty
17 thousand dollars.
- 18 (3) The commissioner shall accept, as evidence of financial responsibility,
19 proof that financial instruments in accordance with the requirements in
20 this paragraph have been filed with one or more states where the
21 applicant is licensed as a viatical settlement provider or viatical
22 settlement broker.
- 23 (4) The commissioner may ask for evidence of financial responsibility at
24 any time the commissioner deems necessary.
- 25 (5) Any surety bond issued pursuant to this subdivision shall be in the favor
26 of this state and shall specifically authorize recovery by the commission
27 on behalf of any person in this state who sustained damages as the
28 result of erroneous acts, failure to act, conviction of fraud, or conviction
29 of unfair practices by the viatical settlement provider or viatical
30 settlement broker.

- 1 e. If a legal entity, provides a certificate of good standing from the state of its
2 domicile; and
- 3 f. If a viatical settlement provider or viatical settlement broker, has provided an
4 antifraud plan that meets the requirements of subsection 7 of section
5 26.1-33.3-13.
- 6 7. The commissioner shall not issue a license to a nonresident applicant, unless a
7 written designation of an agent for service of process is filed and maintained with
8 the commissioner or the applicant has filed with the commissioner, the applicant's
9 written irrevocable consent that any action against the applicant may be
10 commenced against the applicant by service of process on the commissioner.
- 11 8. A viatical settlement provider or viatical settlement broker shall provide to the
12 commissioner new or revised information about officers, ten percent or more
13 stockholders, partners, directors, members, or designated employees within thirty
14 days of the change.

15 **26.1-33.3-03. License revocation and denial.**

- 16 1. The commissioner may refuse to issue, suspend, revoke or refuse to renew the
17 license of a viatical settlement provider or viatical settlement broker if the
18 commissioner finds that:
- 19 a. There was any material misrepresentation in the application for the license;
20 b. The licensee or any officer, partner, member, or key management personnel
21 has been convicted of fraudulent or dishonest practices, is subject to a final
22 administrative action or is otherwise shown to be untrustworthy or
23 incompetent;
- 24 c. The viatical settlement provider demonstrates a pattern of unreasonable
25 payments to viators;
- 26 d. The licensee or any officer, partner, member or key management personnel
27 has been found guilty of, or has pleaded guilty or nolo contendere to, any
28 felony, or to misdemeanor involving fraud or moral turpitude, regardless of
29 whether a judgment of conviction has been entered by the court;
- 30 e. The viatical settlement provider has entered into any viatical settlement
31 contract that has not been approved pursuant to this chapter;

- 1 f. The viatical settlement provider has failed to honor contractual obligations set
2 out in a viatical settlement contract;
- 3 g. The licensee no longer meets the requirements for initial licensure;
- 4 h. The viatical settlement provider has assigned, transferred, or pledged a
5 viaticated policy to a person other than a viatical settlement provider licensed
6 in this state, viatical settlement purchaser, an accredited investor or qualified
7 institutional buyer as defined respectively in rule 501(a) or rule 144A
8 promulgated under the Federal Securities Act of 1933, as amended, financing
9 entity, special purpose entity, or related provider trust; or
- 10 i. The licensee or any officer, partner, member, or key management personnel
11 has violated any provision of this chapter.
- 12 2. The commissioner may suspend, revoke or refuse to renew the license of a viatical
13 settlement broker if the commissioner finds that the viatical settlement broker has
14 violated the provisions of this chapter or has otherwise engaged in bad faith
15 conduct with one or more viators.
- 16 3. If the commissioner denies a license application or suspends, revokes or refuses
17 to renew the license of a viatical settlement provider or viatical settlement broker
18 pursuant to this chapter the commissioner shall conduct a hearing in accordance
19 with chapter 28-32.

20 **26.1-33.3-04. Approval of viatical settlement contracts and disclosure**

21 **statements.** A person shall not use a viatical settlement contract form or provide to a viator a
22 disclosure statement from in this state unless first filed with and approved by the commissioner.
23 The commissioner shall disapprove a viatical settlement contract form or disclosure statement
24 form if in the commissioner's opinion, the contract or provisions contained therein fail to meet
25 the requirement of sections 26.1-33.3-07, 26.1-33.3-09, and 26.1-33.3-12, and subsection 2 of
26 section 26.1-33.3-13 or are unreasonable, contrary to the interests of the public, or otherwise
27 misleading or unfair to the viator. At the commissioner's discretion, the commissioner may
28 require the submission of advertising material.

29 **26.1-33.3-05. Reporting requirements and privacy.**

- 30 1. Each viatical settlement provider shall file with the commissioner on or before
31 March first of each year an annual statement containing such information as the

1 commissioner may prescribed by regulation. Such information shall be limited to
2 only those transactions where the viator is a resident of this state. Individual
3 transaction data regarding the business of viatical settlements or data that could
4 compromise the privacy of personal, financial, and health information of the viator
5 or insured shall be filed with the commissioner on a confidential basis.

6 2. Except as otherwise allowed or required by law, a viatical settlement provider,
7 viatical settlement broker, insurance company, insurance producer, information
8 bureau, rating agency or company, or any other person with actual knowledge of
9 an insured's identity, shall not disclose that identity as an insured, or the insured's
10 financial or medical information to any other person unless the disclosure:

11 a. Is necessary to effect a viatical settlement between the viator and a viatical
12 settlement provider and the viator and insured have provided prior written
13 consent to the disclosure;

14 b. Is provided in response to an investigation or examination by the
15 commissioner or any other governmental officer or agency or pursuant to the
16 requirements of subsection 3 of section 26.1-33.3-13;

17 c. Is a term of or condition to the transfer of a policy by one viatical settlement
18 provider to another viatical settlement provider;

19 d. Is necessary to permit a financing entity, related provider trust or special
20 purpose entity to finance the purchase of policies by a viatical settlement
21 provider and the viator and insured have provided prior written consent to the
22 disclosure;

23 e. Is necessary to allow the viatical settlement provider or viatical settlement
24 broker or their authorized representatives to make contacts for the purpose of
25 determining health status; or

26 f. Is required to purchase stop-loss coverage or financial guaranty insurance.

27 **26.1-33.3-06. Examination or investigations.**

28 1. Authority, scope and scheduling of examinations.

29 a. (1) The commissioner may conduct an examination under this chapter of a
30 licensee as often as the commissioner deems appropriate after
31 considering the factors set forth in this subdivision.

- 1 (2) In scheduling and determining the nature, scope, and frequency of the
2 examinations, the commissioner shall consider such matters as the
3 consumer complaints, results of financial statement analyses and
4 ratios, changes in management or ownership, actuarial opinions, report
5 of independent certified public accountants, and other relevant criteria
6 as determined by the commissioner.
- 7 b. For purposes of completing an examination of a licensee under this chapter,
8 the commissioner may examine or investigate any person, or the business of
9 any person, in so far as the examination or investigation is, in the sole
10 discretion of the commissioner, necessary or material to the examination of
11 the licensee.
- 12 c. In lieu of an examination under this chapter of any foreign or alien licensee
13 licensed in this state, the commissioner may accept an examination report on
14 the licensee as prepared by the commissioner for the licensee's state of
15 domicile or port-of-entry state.
- 16 d. As far as practical, the examination of a foreign or alien insurer shall be made
17 in cooperation with the insurance supervisory officials of other states in which
18 the insurer transacts business.
- 19 2. Record retention requirement.
- 20 a. A person required to be licensed by this chapter shall for five years retain
21 copies of all:
- 22 (1) Proposed, offered or executed contracts, purchase agreements,
23 underwriting documents, policy forms, and applications from the date of
24 the proposal, offer or execution of the contract or purchase agreement,
25 whichever is later;
- 26 (2) Checks, drafts or other evidence and documentation related to the
27 payment, transfer, deposit or release of funds from the date the
28 transaction; and
- 29 (3) Other records and documents related to the requirements of this
30 chapter.

- 1 b. The section does not relieve a person of the obligation to produce these
2 documents to the commissioner after the retention period has expired if the
3 person has retained the documents.
- 4 c. Records required to be retained by this section must be legible and complete
5 and may be retained in paper, photograph, microprocess, magnetic,
6 mechanical, or electronic media, or by any process that accurately
7 reproduces or forms a durable medium for the reproduction of a record.
- 8 3. Conduct of examinations.
- 9 a. Upon determining that an examination should be conducted, the
10 commissioner shall issue an examination warrant appointing one or more
11 examiners to perform the examination and instructing them as to the scope of
12 the examination. In conducting the examination, the examiner shall observe
13 those guidelines and procedures set forth in the examiners handbook
14 adopted by the national association of insurance commissioners. The
15 commissioner may also employ such other guidelines or procedures as the
16 commissioner may deem appropriate.
- 17 b. Every licensee or person from whom information is sought, its officers,
18 directors and agents shall provide to the examiners timely, convenient, and
19 free access at all reasonable hours at its offices to all books, records,
20 accounts, papers, documents, assets, and computer or other recordings
21 relating to the property, assets, business, and affairs of the licensee being
22 examined. The officers, directors, employees, and agents of the licensee or
23 person shall facilitate the examination and aid in the examination so far as it
24 is in their power to do so. The refusal of a licensee, by its officers, directors,
25 employees, or agents, to submit to examination or to comply with any
26 reasonable written request of the commissioner shall be grounds for
27 suspension or refusal of, or nonrenewal of any license or authority held by the
28 licensee to engage in the viatical settlement business or other business
29 subject to the commissioner's jurisdiction. Any proceedings for suspension,
30 revocation or refusal of any license or authority shall be conducted pursuant
31 to this title and chapter 28-32.

- 1 c. The commissioner shall have the power to issue subpoenas, to administer
2 oaths and to examine under oath any person as to any matter pertinent to the
3 examination. Upon the failure or refusal of a person to obey a subpoena, the
4 commissioner may petition a court of competent jurisdiction, and upon proper
5 showing, the court may enter an order compelling the witness to appear and
6 testify or produce documentary evidence. Failure to obey the court order
7 shall be punishable as contempt of court.
- 8 d. When making an examination under this chapter, the commissioner may
9 retain attorneys, appraisers, independent actuaries, independent certified
10 public accountants, or other professionals and specialists as examiners, the
11 reasonable cost of which shall be borne by the licensee that is the subject of
12 the examination.
- 13 e. Nothing contained in this chapter shall be construed to limit the
14 commissioner's authority to terminate or suspend an examination in order to
15 pursue other legal or regulatory action pursuant to the insurance laws of this
16 state. Findings of fact and conclusions made pursuant to any examination
17 shall be prima facie evidence in any legal or regulatory action.
- 18 f. Nothing contained in this chapter shall be construed to limit the
19 commissioner's authority to use and, if appropriate, to make public any final or
20 preliminary examination report, any examiner or licensee workpapers or other
21 documents, or any other information discovered or developed during the
22 course of any examination in the furtherance of any legal or regulatory action
23 which the commissioner may deem appropriate.
- 24 4. Examination reports.
- 25 a. Examination reports shall be comprised of only facts appearing upon the
26 books, records or other documents of the licensee, its agents or other
27 persons examined, or as ascertained from the testimony of its officers or
28 agent or other persons examined concerning its affairs, and such conclusions
29 and recommendations as the examiners find reasonably warranted from the
30 facts.

- 1 b. No later than sixty days following completion of the examination, the examiner
2 in charge shall file with the commissioner a verified written report of
3 examination under oath. Upon receipt of the verified report, the
4 commissioner shall transmit the report to the licensee examined, together
5 with a notice that shall afford the licensee examined a reasonable opportunity
6 of not more than thirty days to make a written submission or rebuttal with
7 respect to any matters contained in the examination report.
- 8 c. If the commissioner determines that regulatory action is appropriate as a
9 result of an examination, the commissioner may initiate any proceedings or
10 actions provided by law.
- 11 5. Confidentiality of examination information.
- 12 a. Names and individual identification data for all viators shall be considered
13 private and confidential information and shall not be disclosed by the
14 commissioner, unless required by law.
- 15 b. Except as otherwise provided in this chapter, all examination reports, working
16 papers, recorded information, documents, and copies thereof produced by,
17 obtained by or disclosed to the commissioner or any other person in the
18 course of an examination made under this chapter, or in the course of
19 analysis or investigation by the commissioner of the financial condition or
20 market conduct of a licensee shall be confidential by law and privileged, shall
21 not be subject to section 44-04-18 and section 6 of article XI of the
22 Constitution of North Dakota shall not be subject to subpoena, and shall not
23 be subject to discovery or admissible in evidence in any private civil action.
24 The commissioner is authorized to use the documents, materials or other
25 information in the furtherance of any regulatory or legal action brought as part
26 of the commissioner's official duties.
- 27 c. Documents, materials or other information, including all working papers, and
28 copies thereof, in the possession or control of the national association of
29 insurance commissioners and its affiliates and subsidiaries shall be
30 confidential by law and privileged, shall not be subject to subpoena, and shall

- 1 not be subject to discovery or admissible in evidence in any private civil action
2 if they are:
- 3 (1) Created, produced, or obtained by or disclosed to the national
4 association of insurance commissioners and its affiliates and
5 subsidiaries in the course of assisting an examination made under this
6 chapter, or assisting a commissioner in the analysis or investigation of
7 the financial condition or market conduct of a licensee; or
- 8 (2) Disclosed to the national association of insurance commissioners and
9 its affiliates and subsidiaries under subdivision d by a commissioner.
- 10 (3) For the purposes of subdivision b, this chapter includes the law of
11 another state or jurisdiction that is substantially similar to this chapter.
- 12 d. Neither the commissioner nor any person that received the documents,
13 material, or other information while acting under the authority of the
14 commissioner, including the national association of insurance commissioners
15 and its affiliates and subsidiaries, shall be permitted to testify in any private
16 civil action concerning any confidential documents, materials, or information
17 subject to subdivision a.
- 18 e. In order to assist in the performance of the commissioner's duties, the
19 commissioner:
- 20 (1) May share documents, materials or other information, including the
21 confidential and privileged documents, materials or information subject
22 to subdivision a, with other state, federal and international regulatory
23 agencies, with the national association of insurance commissioners and
24 its affiliates and subsidiaries, and with state, federal and international
25 law enforcement authorities, provided that the recipient agrees to
26 maintain the confidentiality and privileged status of the document,
27 material, communication, or other information;
- 28 (2) May receive documents, materials, communications, or information,
29 including otherwise confidential and privileged documents, materials or
30 information, from the national association of insurance commissioners
31 and its affiliates and subsidiaries, and from regulatory and law

- 1 enforcement official of other foreign or domestic jurisdiction, and shall
2 maintain as confidential or privileged any document, material, or
3 information received with notice or the understanding that it is
4 confidential or privileged under the laws of the jurisdiction that is the
5 source of the document, material, or information; and
6 (3) May enter into agreements governing sharing and use of information
7 consistent with this subsection.
- 8 f. No waiver of any applicable privilege or claim of confidentiality in the
9 documents, materials or information shall occur as a result of disclosure to
10 the commissioner under this section or as a result of sharing as authorized in
11 subdivision d.
- 12 g. A privilege established under the law of any state or jurisdiction that is
13 substantially similar to the privilege established under this subsection shall be
14 available and enforced in any proceeding in, and in any court of, this state.
- 15 h. Nothing contained in this chapter shall prevent or be construed as prohibiting
16 the commissioner from disclosing the content of an examination report,
17 preliminary examination report or results, or any matter relating thereto, to the
18 commissioner of any other state or country, or to law enforcement officials of
19 this or any other state or agency of the federal government at any time or to
20 the national association of insurance commissioners, so long as such agency
21 or office receiving the report or matters relating thereto agrees in writing to
22 hold it confidential and in a manner consistent with this chapter.
- 23 6. Conflict of interest.
- 24 a. An examiner may not be appointed by the commissioner if the examiner,
25 either directly or indirectly, has a conflict of interest or is affiliated with the
26 management of or owns a pecuniary interest in any person subject to
27 examination under this chapter. This section shall not be construed to
28 automatically preclude an examiner from being:
- 29 (1) A viator;
30 (2) An insured in a viaticated insurance policy; or
31 (3) A beneficiary in an insurance policy that is proposed to be viaticated.

- 1 b. Notwithstanding the requirements of this clause, the commissioner may retain
2 from time to time, on an individual basis, qualified actuaries, certified public
3 accountants, or other similar individuals who are independently practicing
4 their professions, even though these persons may from time to time be
5 similarly employed or retained by persons subject to examination under this
6 chapter.
- 7 7. Cost of examinations. The expenses incurred in conducting any examination must
8 be paid by the licensee or applicant.
- 9 8. Immunity from liability.
- 10 a. No cause of action shall arise nor shall any liability be imposed against the
11 commissioner, the commissioner's authorized representatives or any
12 examiner appointed by the commissioner for any statements made or conduct
13 performed in good faith while carrying out the provisions of this chapter.
- 14 b. No cause of action shall arise, nor shall any liability be imposed against any
15 person for the act of communicating or delivering information or data to the
16 commissioner or the commissioner's authorized representative or examiner
17 pursuant to an examination made under this chapter, if the act of
18 communication or delivery was performed in good faith and without fraudulent
19 intent or the intent to deceive. This subdivision does not abrogate or modify
20 in any way any common law or statutory privilege or immunity heretofore
21 enjoyed by any person identified in subdivision a.
- 22 c. A person identified in subdivision a or b shall be entitled to an award of
23 attorney's fees and costs if the person is the prevailing party in a civil cause of
24 action for libel, slander, or any other relevant tort arising out of activities in
25 carrying out the provisions of this chapter and the party bringing the action
26 was not substantially justified in doing so. For purposes of this section a
27 proceeding is "substantially justified" if it had a reasonable basis in law or fact
28 at the time that it was initiated.
- 29 9. Investigative authority of the commissioner. The commissioner may investigate
30 suspected fraudulent viatical settlement acts and persons engaged in the business
31 of viatical settlements.

1 **26.1-33.3-07. Disclosure to viator.**

2 1. With each application for a viatical settlement, a viatical settlement provider or
3 viatical settlement broker shall provide the viator with at least the following
4 disclosures no later than the time the application for the viatical settlement contract
5 is signed by all parties. The disclosures shall be provided in a separate document
6 that is signed by the viator and the viatical settlement provider or viatical
7 settlement broker, and shall provide the following information:

- 8 a. There are possible alternatives to viatical settlement contracts including any
9 accelerated death benefits or policy loans offered under the viator's life
10 insurance policy.
- 11 b. That a viatical settlement broker represents exclusively the viator, and not the
12 insurer or the viatical settlement provider, and owes a fiduciary duty to the
13 viator, including a duty to act according to the viator's instructions and in the
14 best interest of the viator.
- 15 c. Some or all of the proceeds of the viatical settlement may be taxable under
16 federal income tax and state franchise and income taxes, and assistance
17 should be sought from a professional tax advisor.
- 18 d. Proceeds of the viatical settlement could be subject to the claims of creditors.
- 19 e. Receipt of the proceeds of a viatical settlement may adversely affect the
20 viator's eligibility for medicaid or other government benefits or entitlements,
21 and advice should be obtained from the appropriate government agencies.
- 22 f. The viator has the right to rescind a viatical settlement contract before the
23 earlier of sixty calendar days after the date upon which the viatical settlement
24 contract is executed by all parties or thirty calendar days after the viatical
25 settlement proceeds have been paid to the viator, as provided in subsection 6
26 of section 26.1-33.3-09. Rescission, if exercised by the viator, is effective
27 only if both notice of the rescission is given, and the viator repays all
28 proceeds and any premiums, loans and loan interest paid on account of the
29 viatical settlement within the rescission period. If the insured dies during the
30 rescission period, the viatical settlement contract shall be deemed to have
31 been rescinded, subject to repayment by the viator or the viator's estate of all

- 1 viatical settlement proceeds and any premiums, loans, and loan interest the
2 viatical settlement within sixty days of the insured's death.
- 3 g. Funds will be sent to the viator within three business days after the viatical
4 settlement provider has received the insurer or group administrator's written
5 acknowledgment that ownership of the policy or interest in the certificate has
6 been transferred and the beneficiary has been designated.
- 7 h. Entering into a viatical settlement contract may cause other rights or benefits,
8 including conversion rights and waiver of premium benefits that may exist
9 under the policy or certificate, to be forfeited by the viator. Assistance should
10 be sought from a financial adviser.
- 11 i. Disclosure to a viator shall include distribution of a brochure describing the
12 process of viatical settlements. The national association of insurance
13 commissioner's form for the brochure shall be used unless another form is
14 developed or approved by the commissioner.
- 15 j. The disclosure document shall contain the following language: "All medical,
16 financial or personal information solicited or obtained by a viatical settlement
17 provider or viatical settlement broker about an insured, including the insured's
18 identity or the identity of family members, a spouse or a significant other may
19 be disclosed as necessary to effect the viatical settlement between the viator
20 and the viatical settlement provider. If you are asked to provide this
21 information, you will be asked to consent to the disclosure. The information
22 may be provided to someone who buys the policy or provides funds for the
23 purchase. You may be asked to renew your permission to share information
24 every two years."
- 25 k. Following execution of a viatical contract, the insured may be contacted for
26 the purpose of determining the insured's health status and to confirm the
27 insured's residential or business street address and telephone number, or as
28 otherwise provided in this chapter. This contact shall be limited to once every
29 three months if the insured has a life expectancy of more than one year, and
30 no more than once per month if the insured has a life expectancy of one year
31 or less. All such contacts shall be made only by a viatical settlement provider

- 1 licensed in the state in which the viator resided at the time of the viatical
2 settlement, or by the authorized representative of a duly licensed viatical
3 settlement provider.
- 4 2. A viatical settlement provider shall provide the viator with at least the following
5 disclosures no later than the date the viatical settlement contract is signed by all
6 parties. The disclosures shall be conspicuously displayed in the viatical settlement
7 contract or in a separate document signed by the viator and provide the following
8 information:
- 9 a. The affiliation, if any, between the viatical settlement provider and the issuer
10 of the insurance policy to be viaticated;
- 11 b. The document shall include the name, business address, and telephone
12 number of the viatical settlement provider;
- 13 c. Any affiliations or contractual arrangements between the viatical settlement
14 provider and the viatical settlement purchaser, including the amount and
15 method of calculating the provider's compensation. The term "compensation"
16 includes anything of value paid or given to a viatical settlement broker for the
17 placement of a policy;
- 18 d. If an insurance policy to be viaticated has been issued as a joint policy or
19 involves family riders or any coverage of a life other than the insured under
20 the policy to be viaticated, the viator shall be informed of the possible loss of
21 coverage on the other lives under the policy and shall be advised to consult
22 with the viator's insurance producer or the insurer issuing the policy for advice
23 on the proposed viatical settlement;
- 24 e. State the dollar amount of the current death benefit payable to the viatical
25 settlement provider under the policy or certificate. If known, the viatical
26 settlement provider shall also disclose the availability of any additional
27 guaranteed insurance benefits, the dollar amount of any accidental death and
28 dismemberment benefits under the policy or certificate, and the extent to
29 which the viator's interest in those benefits will be transferred as a result of
30 the viatical settlement contract; and

- 1 f. State whether the funds will be escrowed with an independent third party
2 during the transfer process, and if so, provide the name, business address,
3 and telephone number of the independent third party escrow agent, and the
4 fact that the viator or owner may inspect or receive copies of the relevant
5 escrow or trust agreements or documents.
- 6 3. A viatical settlement broker shall provide the viator with at least the following
7 disclosures no later than the date the viatical settlement contract is signed by all
8 parties. The disclosures shall be conspicuously displayed in the viatical settlement
9 contract or in a separate document signed by the viator and provide the following
10 information:
- 11 a. The name, business address, and telephone number of the viatical settlement
12 broker;
- 13 b. A full, complete, and accurate description of all offers, counteroffers,
14 acceptances and rejections relating to the proposed viatical settlement
15 contract;
- 16 c. A written disclosure of any affiliations or contractual arrangements between
17 the viatical settlement broker and any person making an offer in connection
18 with the proposed viatical settlement contracts;
- 19 d. The amount and method of calculating the broker's compensation, which term
20 "compensation" includes anything of value paid or given to a viatical
21 settlement broker for the placement of a policy; and
- 22 e. If any portion of the viatical settlement broker's compensation, as defined in
23 subdivision c, is taken from a proposed viatical settlement offer, the broker
24 shall disclose the total amount of the viatical settlement offer and the
25 percentage of the viatical settlement offer comprised by the viatical settlement
26 broker's compensation.
- 27 4. If the viatical settlement provider transfers ownership or changes the beneficiary of
28 the insurance policy, the provider shall communicate in writing the change in
29 ownership or beneficiary to the insured within twenty days after the change.
- 30 5. A viatical settlement provider or its viatical settlement investment agent shall
31 provide the viatical settlement purchaser with at least the following disclosures

- 1 prior to the date the viatical settlement purchase agreement is signed by all
2 parties. The disclosures shall be conspicuously displayed in any viatical purchase
3 contract or in a separate document signed by the viatical settlement purchaser and
4 viatical settlement provider or viatical settlement investment agent, and shall make
5 the following disclosure to the viatical settlement purchaser:
- 6 a. The purchaser will receive no returns, such as dividends and interest, until the
7 insured dies and a death claim payment is made.
- 8 b. The actual annual rate of return on a viatical settlement contract is dependent
9 upon an accurate projection of the insured's life expectancy, and the actual
10 date of the insured's death. An annual "guaranteed" rate of return is not
11 determinable.
- 12 c. The viaticated life insurance contract should not be considered a liquid
13 purchase since it is impossible to predict the exact timing of its maturity and
14 the funds probably are not available until the death of the insured. There is
15 no established secondary market for resale of these products by the
16 purchaser.
- 17 d. The purchaser may lose all benefits or may receive substantially reduced
18 benefits if the insurer goes out of business during the term of the viatical
19 investment.
- 20 e. The purchaser is responsible for payment of the insurance premium or other
21 costs related to the policy, if required by the terms of the viatical purchase
22 agreement. These payments may reduce the purchaser's return. If a party
23 other than the purchaser is responsible for the payment, the name and
24 address of that party also shall be disclosed.
- 25 f. The purchaser is responsible for payment of the insurance premiums or other
26 costs related to the policy if the insured returns to health. Disclose the
27 amount of such premiums, if applicable.
- 28 g. State the name, business address, and telephone number of the independent
29 third party providing escrow services and the relationship to the broker.
- 30 h. The amount of any trust fees or other expenses to be charged to the viatical
31 settlement purchaser shall be disclosed.

- 1 i. State whether the purchaser is entitled to a refund of all or part of the
2 purchaser's investment under the settlement contract if the policy is later
3 determined to be null and void.
- 4 j. Disclose that group policies may contain limitations or caps in the conversion
5 rights, additional premiums may have to be paid if the policy is converted,
6 name the party responsible for the payment of the additional premiums and, if
7 a group policy is terminated and replaced by another group policy, state that
8 there may be no right to convert the original coverage.
- 9 k. Disclose the risks associated with policy contestability including, but not
10 limited to, the risk that the purchaser will have no claim or only a partial claim
11 to death benefits should the insurer rescind the policy within the contestability
12 period.
- 13 l. Disclose whether the purchaser will be the owner of the policy in addition to
14 being the beneficiary, and if the purchaser is the beneficiary only and not also
15 the owner, the special risks associated with that status, including, but not
16 limited to, the risk that the beneficiary may be changed or the premium may
17 not be paid.
- 18 m. Describe the experience and qualifications of the person who determines the
19 life expectancy of the insured, such as in-house staff, independent
20 physicians, and specialty firms that weigh medical and actuarial data; the
21 information this projection is based on; and the relationship of the projection
22 maker to the viatical settlement provider, if any.
- 23 n. Disclosure to an investor shall include distribution of a brochure describing
24 the process of investment in viatical settlements. The national association of
25 insurance commissioner's form for the brochure shall be used unless one is
26 developed by the commissioner.
- 27 6. A viatical settlement provider or its viatical settlement investment agent shall
28 provide the viatical settlement purchaser with at least the following disclosures no
29 later than at the time of the assignment, transfer or sale of all or a portion of an
30 insurance policy. The disclosures shall be contained in a document signed by the
31 viatical settlement purchaser and viatical settlement provider or viatical settlement

- 1 investment agent, and shall make the following disclosures to the viatical
2 settlement purchaser:
- 3 a. Disclose all the life expectancy certifications obtained by the provider in the
4 process of determining the price paid to the viator.
- 5 b. State whether premium payments or other costs related to the policy have
6 been escrowed. If escrowed, state the date upon which the escrowed funds
7 will be depleted and whether the purchaser will be responsible for payment of
8 premiums thereafter and, if so, the amount of the premiums.
- 9 c. State whether premium payments or other costs related to the policy have
10 been waived. If waived, disclose whether the investor will be responsible for
11 payment of the premiums if the insurer that wrote the policy terminates the
12 waiver after purchase and the amount of those premiums.
- 13 d. Disclose the type of policy offered or sold, such as whole life, term life,
14 universal life or a group policy certificate, any additional benefits contained in
15 the policy, and the current status of the policy.
- 16 e. If the policy is term insurance, disclose the special risks associated with term
17 insurance including the purchaser's responsibility for additional premiums if
18 the viator continues the term policy at the end of the current term.
- 19 f. State whether the policy is contestable.
- 20 g. State whether the insurer that wrote the policy has any additional rights that
21 could negatively affect or extinguish the purchaser's rights under the viatical
22 settlement contract, what these rights are, and under what conditions these
23 rights are activated.
- 24 h. State the name and address of the person responsible for monitoring the
25 insured's condition. Describe how often the monitoring of the insured's
26 condition is done, how the date of death is determined, and how and when
27 this information will be transmitted to the purchased.
- 28 7. The viatical settlement purchase agreement is voidable by the purchaser at any
29 time within three days after the disclosures mandated by subsections 5 and 6 are
30 received by the purchaser.

1 **26.1-33.3-08. Disclosure to insurer.** Prior to the initiation of a plan, transaction or
2 series of transactions, a viatical settlement broker or viatical settlement provider shall fully
3 disclose to an insurer a plan, transaction, or series of transactions, to which the viatical
4 settlement broker or viatical settlement provider is a party, to originate, renew, continue, or
5 finance a life insurance policy with the insurer for the purpose of engaging in the business of
6 viatical settlements at any time prior to, or during the first five years after, issuance of the
7 policy.

8 **26.1-33.3-09. General rules.**

- 9 1. a. A viatical settlement provider entering into a viatical settlement contract shall
10 first obtain:
- 11 (1) If the viator is the insured, a written statement from a licensed attending
12 physician that the viator is of sound mind and under no constraint or
13 undue influence to enter into a viatical settlement contract; and
- 14 (2) A document in which the insured consents to the release of the
15 insured's medical records to a licensed viatical settlement provider,
16 viatical settlement broker and the insurance company that issued the
17 life insurance policy covering the life of the insured.
- 18 b. Within twenty days after a viator executes documents necessary to transfer
19 any rights under an insurance policy or within twenty days of entering any
20 agreement, option, promise or any other form of understanding, expressed or
21 implied, to viaticate the policy, the viatical settlement provider shall give
22 written notice to the insurer that issued that insurance policy that the policy
23 has or will become a viaticated policy. The notice shall be accompanied by
24 the documents required by subdivision c.
- 25 c. The viatical provider shall deliver a copy of the medical release required
26 under paragraph 2 of subdivision a, a copy of the viator's application for the
27 viatical settlement contract, the notice required under subdivision b, and a
28 request for verification of coverage to the insurer that issued the life policy
29 that is the subject of the viatical transaction. The national association of
30 insurance commissioner's form for verification of coverage shall be used
31 unless another form is developed or approved by the commissioner.

- 1 d. The insurer shall respond to a request for verification of coverage submitted
2 on an approved form by a viatical settlement provider or viatical settlement
3 broker within thirty calendar days of the date the request is received and shall
4 indicate whether, based on the medical evidence and documents provided,
5 the insurer intends to pursue an investigation at this time regarding the
6 validity of the insurance contract or possible fraud. The insurer shall accept a
7 request for verification of coverage made on a national association of
8 insurance commissioner's form or any other form approved by the
9 commissioner. The insurer shall accept an original or facsimile or electronic
10 copy of such request and any accompanying authorization signed by the
11 viator. Failure by the insurer to meet its obligations under this subsection
12 shall be a violation of subsection 3 of section 26.1-33.3-10 and section
13 26.2-33.3-15.
- 14 e. Prior to or at the time of execution of the viatical settlement contract, the
15 viatical settlement provider shall obtain a witnessed document in which the
16 viator consents to the viatical settlement contract, represents that the viator
17 has a full and complete understanding of the viatical settlement contract, that
18 the viator has a full and complete understanding of the benefits of the life
19 insurance policy, acknowledges that the viator is entering into the viatical
20 settlement contract freely and voluntarily and, for persons with a terminal or
21 chronic illness or condition, acknowledges that the insured has a terminal or
22 chronic illness and that the terminal or chronic illness or condition was
23 diagnosed after the life insurance policy was issued.
- 24 f. If a viatical settlement broker performs any of these activities required of the
25 viatical settlement provider, the provider is deemed to have fulfilled the
26 requirements of this section.
- 27 2. All medical information solicited or obtained by any licensee shall be subject to the
28 applicable provisions of state law relating to confidentiality of medical information.
- 29 3. All viatical settlement contracts entered into in this state shall provide the viator
30 with an absolute right to rescind the contract before the earlier of sixty calendar
31 days after the date upon which the viatical settlement contract is executed by all

1 parties or thirty calendar days after the viatical settlement proceeds have been
2 sent to the viator as provided in subdivision 6 of section 26.1-33.3-09. Rescission
3 by the viator may be conditioned upon the viator both giving notice and repaying to
4 the viatical settlement provider within the rescission period all proceeds of the
5 settlement and any premiums, loans, and loan interest paid by or on behalf of the
6 viatical settlement provider in connection with or as a consequence of the viatical
7 settlement. If the insured dies during the rescission period, the viatical settlement
8 contract shall be deemed to have been rescinded, subject to repayment to the
9 viatical settlement provider or purchaser of all viatical settlement proceeds, and
10 any premiums, loans, and loan interest that have been paid by the viatical
11 settlement provider or purchaser, which shall be paid within sixty calendar days of
12 the death of the insured. In the event of any rescission, if the viatical settlement
13 provider has paid commissions or other compensation to a viatical settlement
14 broker in connection with the rescinded transaction, the viatical settlement broker
15 shall refund all such commissions and compensation to the viatical settlement
16 provider within five business days following receipt of written demand from the
17 viatical settlement provider, which demand shall be accompanied by either the
18 viator's notice of rescission if rescinded at the election of the viator, or notice of the
19 death of the insured if rescinded by reason of the death of the insured within the
20 applicable rescission period.

21 4. The viatical settlement provider shall instruct the viator to send the executed
22 documents required to effect the change in ownership, assignment, or change in
23 beneficiary directly to the independent escrow agent. Within three business days
24 after the date the escrow agent receives the document, or from the date the
25 viatical settlement provider receives the documents, if the viator erroneously
26 provides the documents directly to the provider, the provider shall pay or transfer
27 the proceeds of the viatical settlement into an escrow or trust account maintained
28 in a state or federally chartered financial institution whose deposits are insured by
29 the federal deposit insurance corporation. Upon payment of the settlement
30 proceeds into the escrow account, the escrow agent shall deliver the original
31 change in ownership, assignment, or change in beneficiary forms to the viatical

1 settlement provider or related provider trust or other designated representative of
2 the viatical settlement provider. Upon the escrow agent's receipt of the
3 acknowledgment of the properly completed transfer of ownership, assignment, or
4 designation of beneficiary from the insurance company, the escrow agent shall pay
5 the settlement proceeds to the viator.

6 5. Failure to tender consideration to the viator for the viatical settlement contract
7 within the time set forth in the disclosure pursuant to subdivision g of subsection 1
8 of section 26.1-33.3-07 renders the viatical settlement contract voidable by the
9 viator for lack of consideration until the time consideration is tendered to and
10 accepted by the viator. Funds shall be deemed sent by a viatical settlement
11 provider to a viator as of the date that the escrow agent either releases funds for
12 wire transfer to the viator or places a check for delivery to the viator via United
13 States postal service or other nationally recognized delivery service.

14 6. Contacts with the insured for the purpose of determining the health status of the
15 insured by the viatical settlement provider or viatical settlement broker after the
16 viatical settlement has occurred shall only be made by the viatical settlement
17 provider or broker licensed in this state or its authorized representatives and shall
18 be limited to once every three months for insureds with a life expectancy of more
19 than one year, and to no more than once per month for insureds with a life
20 expectancy of one year or less. The provider or broker shall explain the procedure
21 for these contacts at the time the viatical settlement contract is entered into. The
22 limitations set forth in this subsection shall not apply to any contacts with an
23 insured for reasons other than determining the insured's health status. Viatical
24 settlement providers and viatical settlement brokers shall be responsible for the
25 actions of their authorized representatives.

26 **26.1-33.3-10. Prohibited practices.**

27 1. It is in violation of this chapter for any person to enter into a viatical settlement
28 contract at any time prior to the application or issuance of a policy which is the
29 subject of a viatical settlement contract or within a five-year period commencing
30 with the date of issuance of the insurance policy or certificate unless the viator
31 certifies to the viatical settlement provider or it is otherwise conclusively shown by

- 1 the viatical settlement provider that one or more of the following conditions have
2 been met within the five-year period:
- 3 a. The policy was issued upon the viator's exercise of conversion rights arising
4 out of a group or individual policy, provided the total of the time covered under
5 the conversion policy plus the time covered under the prior policy is at least
6 sixty months. The time covered under a group policy shall be calculated
7 without regard to any change in insurance carriers, provided the coverage
8 has been continuous and under the same group sponsorship;
- 9 b. The viator submits independent evidence to the viatical settlement provider
10 that one or more of the following conditions have been met within the
11 five-year period:
- 12 (1) The viator or insured is terminally or chronically ill;
13 (2) The viator's spouse dies;
14 (3) The viator divorces a spouse;
15 (4) The viator retires from full-time employment; or
16 (5) The viator becomes physically or mentally disabled and a physician
17 determines that the disability prevents the viator from maintaining
18 full-time employment;
- 19 c. A final order, judgment, or decree is entered by a court of competent
20 jurisdiction, on the application of a creditor of the viator, adjudicating the viator
21 in default, bankrupt, or insolvent, or approving a petition seeking
22 reorganization of the viator or appointing a receiver, trustee, or liquidator to all
23 or a substantial part of the viator's assets; or
- 24 d. The viator enters into a viatical settlement contract more than two years after
25 the date of issuance of a policy and, with respect to the policy, at all times
26 prior to the date that is two years after policy issuance, the following
27 conditions are met:
- 28 (1) Policy premiums have been funded exclusively with unencumbered
29 assets, including an interest in the life insurance policy being financed
30 only to the extent of its net cash surrender value, provided by, or fully

- 1 recourse liability incurred by, the insured or a person described in
2 paragraph 4 of subdivision c of subsection 12 of section 26.1-33.3-01;
3 (2) There is no agreement or understanding with any other person to
4 guarantee any such liability or to purchase, or stand ready to purchase,
5 the policy, including through an assumption or forgiveness of the loan;
6 and
7 (3) Neither the insured nor the policy has been evaluated for settlement.
- 8 2. Copies of the independent evidence described in subdivision b of subsection 1 and
9 documents required by subsection 1 of section 26.1-33.3-09 shall be submitted to
10 the insurer when the viatical settlement provider or other party entering into a
11 viatical settlement contract with a viator submits a request to the insurer for
12 verification of coverage. The copies shall be accompanied by a letter of attestation
13 from the viatical settlement provider that the copies are true and correct copies of
14 the documents received by the viatical settlement provider.
- 15 3. If the viatical settlement provider submits to the insurer a copy of the owner or
16 insured's certification described in and the independent evidence required by
17 subdivision b of subsection 1 when the provider submits a request to the insurer to
18 effect the transfer of the policy or certificate to the viatical settlement provider, the
19 copy shall be deemed to conclusively establish that the viatical settlement contract
20 satisfies the requirements of this section and the insurer shall timely respond to the
21 request.
- 22 4. A insurer may not require, as a condition of responding to a request for verification
23 of coverage or effecting the transfer of a policy pursuant to a viatical settlement
24 contract, that the viator, insured, viatical settlement provider, or viatical settlement
25 broker sign any forms, disclosures, consent, or waiver form that has not been
26 expressly approved by the commissioner for use in connection with viatical
27 settlement contracts in this state.
- 28 5. Upon receipt of a properly completed request for change of ownership or
29 beneficiary of a policy, the insurer shall respond in writing within thirty calendar
30 days with written acknowledgement confirming that the change has been effected
31 or specifying the reasons why the requested change cannot be processed. The

1 insurer shall not unreasonably delay effecting change of ownership or beneficiary
2 and shall not otherwise seek to interfere with any viatical settlement contract
3 lawfully entered into in this state.

4 **26.1-33.3-11. Prohibited practices and conflicts of interest.**

- 5 1. With respect to any viatical settlement contract or insurance policy, no viatical
6 settlement broker knowingly shall solicit an offer from, effectuate a viatical
7 settlement with, or make a sale to any viatical settlement provider, viatical
8 settlement purchaser, financing entity, or related provider that is controlling,
9 controlled by, or under common control with such viatical settlement broker.
- 10 2. With respect to any viatical settlement contract or insurance policy, no viatical
11 settlement provider knowingly may enter into a viatical settlement contract with a
12 viator, if, in connection with such viatical settlement contract, anything of value will
13 be paid to a viatical settlement broker that is controlling, controlled by, or under
14 common control with such viatical settlement provider or the viatical settlement
15 purchaser, financing entity, or related provider trust that is involved in such viatical
16 settlement contract.
- 17 3. A violation of subsection 1 or 2 shall be deemed a fraudulent viatical settlement
18 act.
- 19 4. No viatical settlement provider shall enter into a viatical settlement contract unless
20 the viatical settlement promotional, advertising, and marketing materials, as may
21 be prescribed by rule, have been filed with the commissioner. In no event shall
22 any marketing materials expressly reference that the insurance is free for any
23 period of time. The inclusion of any reference in the marketing materials that
24 would cause a viator to reasonably believe that the insurance is free for any period
25 of time shall be considered a violation of this chapter.
- 26 5. No insurance company, viatical settlement broker, or viatical settlement provider
27 shall make any statement or representation to the applicant or policyholder in
28 connection with the sale or financing of a life insurance policy to the effect that the
29 insurance is free or without cost to the policyholder for any period of time unless
30 provided in the policy.

1 **26.1-33.3-12. Advertising for viatical settlements.** The purpose of this section is to
2 provide prospective viators with clear and unambiguous statements in the advertisement of
3 viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits,
4 risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to
5 be accomplished by the establishment of guidelines and standards of permissible and
6 impermissible conduct in the advertising of viatical settlements to assure that product
7 descriptions are presented in a manner that prevents unfair, deceptive, or misleading
8 advertising and is conducive to accurate presentation and description of viatical settlements
9 through the advertising media and material used by viatical settlement licensees.

10 1. This section shall apply to any advertising of viatical settlement contracts or related
11 products or services intended for dissemination in this state, including internet
12 advertising viewed by persons located in this state. When disclosure requirements
13 are established pursuant to federal regulations, this section shall be interpreted so
14 as to minimize or eliminate conflict with federal regulations wherever possible.

15 2. Every viatical settlement licensee shall establish and at all times maintain a system
16 of control over the content, form, and method of dissemination of all
17 advertisements of its contracts, products, and services. All advertisements,
18 regardless of by whom written, created, designed, or presented, shall be the
19 responsibility of the viatical settlement licensees, as well as the individual who
20 created or presented the advertisement. A system of control shall include regular
21 routine notification, at least once a year, to agents and others authorized by the
22 viatical settlement licensee who disseminate advertisements of the requirements
23 and procedures for approval prior to the use of any advertisements not furnished
24 by the viatical settlement licensee.

25 3. Advertisements shall be truthful and not misleading in fact or by implication. The
26 form and content of an advertisement of a viatical settlement contract shall be
27 sufficiently complete and clear so as to avoid deception. It shall not have the
28 capacity or tendency to mislead or deceive. Whether an advertisement has the
29 capacity or tendency to mislead or deceive shall be determined by the
30 commissioner from the overall impression that the advertisement may be

- 1 reasonably expected to create upon a person of average education or intelligence
2 within the segment of the public to which it is directed.
- 3 4. Certain viatical settlement advertisements are deemed false and misleading on
4 their face and are prohibited. False and misleading viatical settlement
5 advertisements include the following representations:
- 6 a. "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure,"
7 "safe," "backed by rated insurance companies," "backed by federal law,"
8 "backed by state law," or "state guaranty funds," or similar representations;
- 9 b. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or
10 similar representations;
- 11 c. "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs,
12 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA,
13 other retirement account rollovers," "tax deferred," or similar representations;
- 14 d. Utilization of the word "guaranteed" to describe the fixed return, annual return,
15 principal, earnings, profits, investment, or similar representations;
- 16 e. "No sales charges or fees" or similar representations;
- 17 f. "High yield," "superior return," "excellent return," "high return," "quick profit,"
18 or similar representations; and
- 19 g. Purported favorable representations or testimonials about the benefits of
20 viatical settlement contracts or viatical settlement purchase agreements as an
21 investment, taken out of context from newspapers, trade papers, journals,
22 radio and television programs, and all other forms of print and electronic
23 media.
- 24 5. The information required to be disclosed under this section shall not be minimized,
25 rendered obscure, or presented in an ambiguous fashion or intermingled with the
26 text of the advertisement so as to be confusing or misleading.
- 27 a. An advertisement shall not omit material information or use words, phrases,
28 statements, references, or illustrations if the omission or use has the capacity,
29 tendency, or effect of misleading or deceiving viators as to the nature or
30 extent of any benefit, loss covered, premium payable, or state or federal tax
31 consequence. The fact that the viatical settlement contract offered is made

- 1 available for inspection prior to consummation of the sale, or an offer is made
2 to refund the payment if the viator is not satisfied or that the viatical
3 settlement contract includes a free-look period that satisfies or exceeds legal
4 requirements, does not remedy misleading statements.
- 5 b. An advertisement shall not use the name or title of a life insurance company
6 or a life insurance policy unless the advertisement has been approved by the
7 insurer.
- 8 c. An advertisement shall not represent that premium payments will not be
9 required to be paid on the life insurance policy that is the subject of a viatical
10 settlement contract or viatical settlement purchase agreement in order to
11 maintain that policy, unless that is the fact.
- 12 d. An advertisement shall not state or imply that interest charged on an
13 accelerated death benefit or a policy loan is unfair, inequitable, or in any
14 manner an incorrect or improper practice.
- 15 e. The words "free," "no cost," "without cost," "no additional cost," "at no extra
16 cost," or words of similar import shall not be used with respect to any benefit
17 or service unless true. An advertisement may specify the charge for a benefit
18 or a service or may state that a charge is included in the payment or use
19 other appropriate language.
- 20 f. Testimonials, appraisals, or analysis used in advertisements must be
21 genuine; represent the current opinion of the author; be applicable to the
22 viatical settlement contract, product, or service advertised, if any; and be
23 accurately reproduced with sufficient completeness to avoid misleading or
24 deceiving prospective viators as to the nature or scope of the testimonials,
25 appraisal, analysis or endorsement. In using testimonials, appraisals or
26 analysis, a licensee under this chapter makes as its own all the statements
27 contained therein, and the statements are subject to all the provisions of this
28 section.
- 29 (1) If the individual making a testimonial, appraisal, analysis or an
30 endorsement has a financial interest in the party making use of the
31 testimonial, appraisal, analysis, or endorsement, either directly or

1 through a related entity as a stockholder, director, officer, employee, or
2 otherwise, or receives any benefit directly or indirectly other than
3 required union scale wages, that fact shall be prominently disclosed in
4 the advertisement.

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

15 (3) When an endorsement refers to benefits received under a viatical
16 settlement contract, all pertinent information shall be retained for a
17 period of five years after its use.

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

21 7. An advertisement shall not disparage insurers, viatical settlement providers,
22 viatical settlement brokers, viatical settlement investment agents, insurance
23 producers, policies, services, or methods of marketing.

24 8. The name of the viatical settlement licensee shall be clearly identified in all
25 advertisements about the licensee or its viatical settlement contract, products, or
26 services, and if any specific viatical settlement contract is advertised, the viatical
27 settlement contract shall be identified either by form number or some other
28 appropriate description. If an application is part of the advertisement, the name of
29 the viatical settlement provider shall be shown on the application.

30 9. An advertisement shall not use a trade name, group designation, name of the
31 parent company of a viatical settlement licensee, name of a particular division of

1 the viatical settlement licensee, service mark, slogan, symbol, or other devise or
2 reference without disclosing the name of the viatical settlement licensee, if the
3 advertisement would have the capacity or tendency to mislead or deceive as to the
4 true identity of the viatical settlement licensee, or to create the impression that a
5 company other than the viatical settlement licensee would have any responsibility
6 for the financial obligation under a viatical settlement contract.

7 10. An advertisement shall not use any combination of words, symbols, or physical
8 materials that by their content, phraseology, shape, color, or other characteristics
9 are so similar to a combination of words, symbols, or physical materials used by a
10 government program or agency or otherwise appear to be of such a nature that
11 they tend to mislead prospective viators into believing that the solicitation is in
12 some manner connected with a government program or agency.

13 11. An advertisement may state that a viatical settlement licensee is licensed in the
14 state where the advertisement appears, provided it does not exaggerate that fact
15 or suggest or imply that a competing viatical settlement licensee may not be so
16 licensed. The advertisement may ask the audience to consult the licensee's web
17 site or contact the department of insurance to find out if the state requires licensing
18 and, if so, whether the viatical settlement provider or viatical settlement broker is
19 licensed.

20 12. An advertisement shall not create the impression that the viatical settlement
21 provider, its financial condition or status, the payment of its claims or the merits,
22 desirability, or advisability of its viatical settlement contracts are recommended or
23 endorsed by any government entity.

24 13. The name of the actual licensee shall be stated in all of its advertisements. An
25 advertisement shall not use a trade name, any group designation, name of any
26 affiliate or controlling entity of the licensee, service mark, slogan, symbol or other
27 device in a manner that would have the capacity or tendency to mislead or deceive
28 as to the true identity of the actual licensee or create the false impression that an
29 affiliate or controlling entity would have any responsibility for the financial
30 obligation of the licensee.

- 1 14. An advertisement shall not directly or indirectly create the impression that any
2 division or agency of the state or of the United States government endorses,
3 approves or favors:
- 4 a. Any viatical settlement licensee or its business practices or methods of
5 operation;
- 6 b. The merits, desirability, or advisability of any viatical settlement contract;
- 7 c. Any viatical settlement contract; or
- 8 d. Any life insurance policy or life insurance company.
- 9 15. If the advertiser emphasizes the speed with which the viatication will occur, the
10 advertising must disclose the average time frame from completed application to
11 the date of offer and from acceptance of the offer to receipt of the funds by the
12 viator.
- 13 16. If the advertising emphasizes the dollar amounts available to viators, the
14 advertising shall disclose the average purchase price as a percent of face value
15 obtained by viators contracting with the licensee during the past six months.

16 **26.1-33.3-13. Fraud prevention and control.**

- 17 1. Fraudulent viatical settlement acts, interference and participation of convicted
18 felons prohibited.
- 19 a. A person shall not commit a fraudulent viatical settlement act.
- 20 b. A person shall not knowingly or intentionally interfere with the enforcement of
21 the provisions of this chapter or investigations of suspected or actual
22 violations of this chapter.
- 23 c. A person in the business of viatical settlements shall not knowingly or
24 intentionally permit any person convicted of a felony involving dishonesty or
25 breach of trust to participate in the business of viatical settlements.
- 26 2. Fraud warning required.
- 27 a. Viatical settlement contracts and applications for viatical settlements,
28 regardless of the form of transmission, must contain the following statement
29 or a substantially similar statement:

1 "Any person who knowingly presents false information in an application
2 for insurance or viatical settlement contract is guilty of a crime and may
3 be subject to fines and confinement in prison."

4 b. The lack of a statement as required in subdivision a does not constitute a
5 defense in any prosecution for a fraudulent viatical settlement act.

6 3. Mandatory reporting of fraudulent viatical settlement acts.

7 a. Any person engaged in the business of viatical settlements having knowledge
8 or a reasonable suspicion that a fraudulent viatical settlement act is being, will
9 be or has been committed shall provide to the commissioner such information
10 as required by, and in a manner prescribed by, the commissioner.

11 b. Any other person having knowledge or a reasonable belief that a fraudulent
12 viatical settlement act is being, will be or has been committed may provide to
13 the commissioner the information required by, and in a manner prescribed by,
14 the commissioner.

15 4. Immunity from liability.

16 a. No civil liability shall be imposed on and no cause of action shall arise from a
17 person's furnishing information concerning suspected, anticipated or
18 completed fraudulent viatical settlement acts or suspected or completed
19 fraudulent insurance acts, if the information is provided to or received from:

20 (1) The commissioner or the commissioner's employees, agents or
21 representatives;

22 (2) Federal, state or local law enforcement or regulatory officials or their
23 employees, agents or representatives;

24 (3) A person involved in the prevention and detection of fraudulent viatical
25 settlement acts or that person's agents, employees or representatives;

26 (4) The national association of insurance commissioners, national
27 association of securities dealers, the North American securities
28 administrators association, or their employees, agents or
29 representatives, or other regulatory body overseeing life insurance,
30 viatical settlements, securities or investment fraud; or

- 1 (5) The life insurer that issued the life insurance policy covering the life of
2 the insured.
- 3 b. Subdivision a shall not apply to statements made with actual malice. In an
4 action brought against a person for filing a report or furnishing other
5 information concerning a fraudulent viatical settlement act, the party bringing
6 the action shall plead specifically any allegation that subdivision a does not
7 apply because the person filing the report or furnishing the information did so
8 with actual malice.
- 9 c. A person furnishing information as identified in subdivision a shall be entitled
10 to an award of attorney's fees and costs if he or she is the prevailing party in a
11 civil cause of action for libel, slander or any other relevant tort arising out of
12 activities in carrying out the provisions of this chapter and the party bringing
13 the action was not substantially justified in doing so. For purposes of this
14 section a proceeding is "substantially justified" if it had a reasonable basis in
15 law or fact at the time that it was initiated. However, such an award does not
16 apply to any person furnishing information concerning that person's own
17 fraudulent viatical settlement acts.
- 18 d. This section does not abrogate or modify common law or statutory privileges
19 or immunities enjoyed by a person described in subdivision a.
- 20 5. Confidentiality.
- 21 a. The documents and evidence provided pursuant to subsection 4 or obtained
22 by the commissioner in an investigation of suspected or actual fraudulent
23 viatical settlement acts shall be privileged and confidential and shall not be a
24 public record and shall not be subject to discovery or subpoena in a civil or
25 criminal action.
- 26 b. Subdivision a does not prohibit release by the commissioner of documents
27 and evidence obtained in an investigation of suspected or actual fraudulent
28 viatical settlement acts:
- 29 (1) In administrative or judicial proceedings to enforce laws administered
30 by the commissioner;

- 1 (2) To federal, state or local law enforcement or regulator agencies, to an
2 organization established for the purpose of detecting and preventing
3 fraudulent viatical settlement acts or to the national association of
4 insurance commissioners; or
- 5 (3) At the discretion of the commissioner, to a person in the business of
6 viatical settlements that is aggrieved by a fraudulent viatical settlement
7 act.
- 8 c. Release of documents and evidence under subdivision b does not abrogate
9 or modify the privilege granted in subdivision a.
- 10 6. Other law enforcement or regulatory authority. This chapter shall not:
- 11 a. Preempt the authority or relieve the duty of other law enforcement or
12 regulatory agencies to investigate, examine and prosecute suspected
13 violations of law;
- 14 b. Prevent or prohibit a person from disclosing voluntarily information concerning
15 viatical settlement fraud to a law enforcement or regulatory agency other than
16 the insurance department; or
- 17 c. Limit the powers granted elsewhere by the laws of this state to the
18 commissioner or an insurance fraud unit to investigate and examine possible
19 violations of law and to take appropriate action against wrongdoers.
- 20 7. Viatical settlement antifraud initiatives.
- 21 a. Viatical settlement providers and viatical settlement brokers shall have in
22 place antifraud initiatives reasonably calculated to detect, prosecute and
23 prevent fraudulent viatical settlement acts. At the discretion of the
24 commissioner, the commissioner may order, or a licensee may request and
25 the commissioner may grant, such modifications of the following required
26 initiatives as necessary to ensure an effective antifraud program. The
27 modifications may be more or less restrictive than the required initiatives so
28 long as the modifications may reasonably be expected to accomplish the
29 purpose of this section.
- 30 b. Antifraud initiatives shall include:

- 1 (1) Fraud investigators, who may be viatical settlement provider or viatical
2 settlement broker employees or independent contractors; and
3 (2) An antifraud plan, which shall be submitted to the commissioner. The
4 antifraud plan shall include, but not be limited to:
5 (a) A description of the procedures for detecting and investigating
6 possible fraudulent viatical settlement acts and procedures for
7 resolving material inconsistencies between medical records and
8 insurance applications;
9 (b) A description of the procedures for reporting possible fraudulent
10 viatical settlement acts to the commissioner;
11 (c) A description of the plan for antifraud education and training of
12 underwriters and other personnel; and
13 (d) A description or chart outlining the organizational arrangement of
14 the antifraud personnel who are responsible for the investigation
15 and reporting of possible fraudulent viatical settlement acts and
16 investigating unresolved material inconsistencies between
17 medical records and insurance applications.
18 c. Antifraud plans submitted to the commissioner shall be privileged and
19 confidential and shall not be a public record and shall not be subject to
20 discovery or subpoena in a civil or criminal action.

21 **26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.**

- 22 1. In addition to the penalties and other enforcement provisions of this chapter, if any
23 person violates this chapter or any regulation implementing this chapter, the
24 commissioner may seek an injunction in a court of competent jurisdiction and may
25 apply for temporary and permanent orders that the commissioner determines are
26 necessary to restrain the person from committing the violation.
27 2. Any person damaged by the acts of a person in violation of this chapter may bring
28 a civil action against the person committing the violation in a court of competent
29 jurisdiction.
30 3. The commissioner may issue, in accordance with this title and chapter 28-32, a
31 cease and desist order upon a person that violates any provision of this chapter,

- 1 any regulation or order adopted by the commissioner, or any written agreement
2 entered into with the commissioner.
- 3 4. When the commissioner finds that an activity in violation of this chapter presents
4 an immediate danger to the public that requires an immediate final order, the
5 commissioner may issue an emergency cease and desist order reciting with
6 particularity the facts underlying the findings. The emergency cease and desist
7 order is effective immediately upon service of a copy of the order on the
8 respondent and remains effective for ninety days. If the commissioner begins
9 nonemergency cease and desist proceedings, the emergency cease and desist
10 order remains effective, absent an order by a court of competent jurisdiction
11 pursuant to this title and chapter 28-32.
- 12 5. In addition to the penalties and other enforcement provisions of this chapter, any
13 person who violates this chapter is subject to civil penalties of up to fifty thousand
14 dollars per violation. Imposition of civil penalties shall be pursuant to an order of
15 the commissioner issued under this title and chapter 28-32. The commissioner's
16 order may require a person found to be in violation of this chapter to make
17 restitution to persons aggrieved by violations of this chapter.
- 18 6. A person convicted of a violation of this chapter by a court of competent jurisdiction
19 is governed by chapter 12.1-32. A person convicted of a violation of this chapter
20 shall be ordered to pay restitution to persons aggrieved by the violation of this
21 chapter. Restitution shall be ordered in addition to a fine or imprisonment, but not
22 in lieu of a fine or imprisonment.
- 23 7. Except for a fraudulent viatical settlement act committed by a viator, the
24 enforcement provisions and penalties of this section shall not apply to a viator.
- 25 8. A person convicted of a violation of this chapter by a court of competent jurisdiction
26 may be sentenced in accordance with subdivision a, b, c, or d based on the
27 greater of the value of property, services, or other benefit wrongfully obtained or
28 attempted to obtain; or the aggregate economic loss suffered by any person as a
29 result of the violation. A person convicted of a fraudulent viatical settlement act
30 must be ordered to pay restitution to persons aggrieved by the fraudulent viatical

- 1 settlement act. Restitution must be ordered in addition to a fine or imprisonment
2 but not in lieu of a fine or imprisonment. A fraudulent viatical settlement act is:
3 a. A class A felony if the value of a viatical settlement contract is more than
4 thirty-five thousand dollars;
5 b. A class B felony if the value of a viatical settlement contract is more than two
6 thousand five hundred dollars but not more than thirty-five thousand dollars;
7 c. A class C felony if the value of a viatical settlement contract is more than five
8 hundred dollars but not more than two thousand five hundred dollars; or
9 d. A class A misdemeanor if the value of a viatical settlement contract is five
10 hundred dollars or less.

11 In any prosecution under this section under subdivisions a, b, c, and d, the value of
12 the viatical settlement contracts within any six-month period may be aggregated
13 and the defendant charged accordingly in applying in the provisions of this section;
14 provided that when two or more offenses are committed by the same person in two
15 or more counties, the accused may be prosecuted in any county in which one of
16 the offenses was committed for all of the offenses aggregated under this section.
17 The applicable statute of limitations provision shall not begin to run until the
18 insurance company or law enforcement agency is aware of the fraud, but in no
19 event may the prosecution be commenced later than seven years after the act has
20 occurred.

21 **26.1-33.3-15. Unfair trade practices.** A violation of this chapter, including the
22 commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice
23 under section 26.1-04-03 subject to the penalties contained in that section.

24 **26.1-33.3-16. Authority to promulgate regulations.** The commissioner shall have
25 the authority to:

- 26 1. Promulgate regulations implementing this chapter;
27 2. Establish standards for evaluating reasonableness of payments under viatical
28 settlement contracts for persons who are terminally or chronically ill. This authority
29 includes, but is not limited to, regulation of discount rates used to determine the
30 amount paid in exchange for assignment, transfer, sale, devise or bequest of a

- 1 benefit under a life insurance policy insuring the life of a person that is chronically
2 or terminally ill;
3 3. Establish appropriate licensing requirements, fees, and standards for continued
4 licensure for viatical settlement providers and brokers;
5 4. Require a bond or other mechanism for financial accountability for viatical
6 settlement providers and brokers; and
7 5. Adopt rules governing the relationship and responsibilities of both insurers and
8 viatical settlement providers and viatical settlement brokers during the viatication of
9 a life insurance policy or certificate.

10 **26.1-33.3-17. Effective date.** This chapter takes effect on August 1, 2007. A viatical
11 settlement provider or viatical settlement broker transacting business in this state may continue
12 to do so pending approval or disapproval of the provider or broker application for a license as
13 long as the application is filed with the commissioner by August 1, 2007.

14 **SECTION 3. REPEAL.** Chapter 26.1-33.2 of the North Dakota Century Code is
15 repealed.