

**HOUSE BILL NO. 1397**

Introduced by

Representatives Kasper, Ruby, Schneider

Senators Klein, Potter, Wanzek

1 A BILL for an Act to amend and reenact sections 10-04-02, 26.1-33.3-01, 26.1-33.3-02,  
2 26.1-33.3-03, 26.1-33.3-04, 26.1-33.3-05, 26.1-33.3-06, 26.1-33.3-07, 26.1-33.3-08,  
3 26.1-33.3-09, 26.1-33.3-10, 26.1-33.3-11, 26.1-33.3-12, 26.1-33.3-13, 26.1-33.3-14,  
4 26.1-33.3-15, 26.1-33.3-16, and 26.1-33.3-17 of the North Dakota Century Code, relating to  
5 revisions to viatical settlement law and references to the viatical settlement law; and to provide  
6 a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **10-04-02. Definitions.** When used in this chapter, unless the context or subject matter  
11 otherwise requires:

- 12 1. "Agent" means an individual, other than a broker-dealer, who represents a  
13 broker-dealer or an issuer or is self-employed in effecting or attempting to effect  
14 purchases or sales of securities. However, a partner, officer, or director of a  
15 broker-dealer, or an individual having a similar status or performing similar  
16 functions is an agent only if the individual otherwise comes within the term.
- 17 2. "Bank" means:
  - 18 a. A bank institution organized under the laws of the United States;
  - 19 b. A member bank of the federal reserve system;
  - 20 c. Any other banking institution, whether or not incorporated, doing business  
21 under the laws of a state or of the United States, a substantial portion of the  
22 business of which consists of receiving deposits or exercising fiduciary  
23 powers similar to those permitted to be exercised by national banks under the  
24 authority of the comptroller of the currency pursuant to section 1 of Public Law

- 1                   87-722, and which is supervised and examined by a state or federal agency  
2                   having supervision over banks, and which is not operated for the purpose of  
3                   evading this chapter; and
- 4                   d.    A receiver, conservator, or other liquidating agent of any institution or firm  
5                   included in subdivision a, b, or c.
- 6                   3.    "Broker-dealer" means a person engaged in the business of effecting transactions  
7                   in securities issued by another person or by such person for the account of others  
8                   or for the person's own account. The term does not include:
- 9                   a.    An agent; or
- 10                   b.    A bank or savings institution if ~~its~~ the bank's or savings institution's activities  
11                   as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i)  
12                   through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions;  
13                   3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934 [15 U.S.C.  
14                   78a et seq.] or a bank that satisfies the conditions described in  
15                   subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 [15 U.S.C. 78a  
16                   et seq.].
- 17                   4.    "Commissioner" means the securities commissioner of this state.
- 18                   5.    "Department" means the state securities department.
- 19                   6.    "Depository institution" means:
- 20                   a.    A bank; or
- 21                   b.    A savings institution, trust company, credit union, or similar institution that is  
22                   organized or chartered under the laws of a state or of the United States,  
23                   authorized to receive deposits, and supervised and examined by an official or  
24                   agency of a state or the United States if its deposits or share accounts are  
25                   insured to the maximum amount authorized by statute by the federal deposit  
26                   insurance corporation, the national credit union shares insurance fund, or a  
27                   successor authorized by federal law. The term does not include:
- 28                   (1)   An insurance company or other organization primarily engaged in the  
29                   business of insurance;
- 30                   (2)   A Morris plan bank; or
- 31                   (3)   An industrial loan company.

- 1           7. "Federal covered adviser" means a person who is registered under section 203 of  
2           the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].
- 3           8. "Federal covered security" means a security that is, or upon completion of a  
4           transaction will be, a covered security pursuant to section 18(b) of the Securities  
5           Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that Act.
- 6           9. "Institutional investor" means any of the following, whether acting for itself or for  
7           others in a fiduciary capacity:
- 8           a. A depository institution or international banking institution;
- 9           b. An insurance company;
- 10          c. A separate account of an insurance company;
- 11          d. An investment company as defined in the Investment Company Act of 1940  
12          [15 U.S.C. 80a-1 et seq.];
- 13          e. A broker-dealer under the Securities Exchange Act of 1934 [15 U.S.C. 78a et  
14          seq.];
- 15          f. An employee pension, profit-sharing, or benefit plan if the plan has total  
16          assets in excess of ten million dollars or its investment decisions are made by  
17          a named fiduciary, as defined in the Employee Retirement Income Security  
18          Act of 1974 [Pub. L. 93-406; 88 Stat. 829], that is a broker-dealer registered  
19          under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], an  
20          investment adviser registered or exempt from registration under the  
21          Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], an investment  
22          adviser registered under this Act, a depository institution, or an insurance  
23          company;
- 24          g. A plan established and maintained by a state, a political subdivision of a state,  
25          or an agency or instrumentality of a state or a political subdivision of a state  
26          for the benefit of ~~its~~ the plan's employees, if the plan has total assets in  
27          excess of ten million dollars or its investment decisions are made by a duly  
28          designated public official or by a named fiduciary, as defined in the Employee  
29          Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829], that is  
30          a broker-dealer registered under the Securities Exchange Act of 1934 [15  
31          U.S.C. 78a et seq.], an investment adviser registered or exempt from

- 1 registration under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1  
2 et seq.], an investment adviser registered under this chapter, a depository  
3 institution, or an insurance company;
- 4 h. A trust, if it has total assets in excess of ten million dollars, ~~is~~ the trust's  
5 trustee is a depository institution, and ~~is~~ the trust's participants are  
6 exclusively plans of the types identified in subdivision f or g, regardless of the  
7 size of ~~their~~ the participants' assets, except a trust that includes as  
8 participants self-directed individual retirement accounts or similar self-directed  
9 plans;
- 10 i. An organization described in section 501(c)(3) of the Internal Revenue Code  
11 [26 U.S.C. 501(c)(3)], corporation, Massachusetts trust or similar business  
12 trust, limited liability company, or partnership, not formed for specific purpose  
13 of acquiring the securities offered, with total assets in excess of ten million  
14 dollars;
- 15 j. A small business investment company licensed by the small business  
16 administration under section 301(c) of the Small Business Investment Act of  
17 1958 [Pub. L. 85-699] with total assets in excess of ten million dollars;
- 18 k. A private business development company as defined in section 202(a)(22) of  
19 the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.] with total  
20 assets in excess of ten million dollars;
- 21 l. A federal covered investment adviser acting for ~~is~~ the adviser's own account;
- 22 m. A qualified investment buyer as defined in rule 144A(a)(1), other than rule  
23 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 [15 U.S.C. 77a  
24 et seq.];
- 25 n. A major United States institutional investor as defined in rule 15a-6(b)(4)(i)  
26 adopted under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];  
27 or
- 28 o. Any other person, other than an individual, of institutional character with total  
29 assets in excess of ten million dollars not organized for the specific purpose of  
30 evading this chapter.

- 1           10. "Investment adviser" means any person ~~who~~ that, for compensation, engages in  
2           the business of advising others, either directly or through publications or writings,  
3           as to the value of securities or as to the advisability of investing in, purchasing, or  
4           selling securities, or ~~who~~ which, for compensation and as a part of a regular  
5           business, issues or promulgates analyses or reports concerning securities. The  
6           term includes financial planners and other persons ~~who~~ that, as an integral  
7           component of other financially related services, provide the foregoing investment  
8           advisory services to others for compensation and as part of a business or ~~who~~  
9           which hold themselves out as providing the foregoing investment advisory services  
10          to others for compensation. The term does not include:
- 11           a. An investment adviser representative.
- 12           b. A bank, savings institution, or trust company.
- 13           c. A lawyer, accountant, engineer, or teacher whose performance of these  
14           services is solely incidental to the practice of the ~~person's~~ individual's  
15           profession.
- 16           d. A broker-dealer or ~~its~~ the broker-dealer's agent whose performance of these  
17           services is solely incidental to the conduct of business as a broker-dealer and  
18           who receives no special compensation for ~~them~~ these services.
- 19           e. A publisher of any bona fide newspaper, news column, newsletter, news  
20           magazine, or business or financial publication or service, whether  
21           communicated in hard copy form, or by electronic means, or otherwise, that  
22           does not consist of the rendering of advice on the basis of the specific  
23           investment situation of each client.
- 24           f. A federal covered adviser.
- 25           g. A person ~~who~~ that is excluded by the Investment Advisers Act of 1940 [15  
26           U.S.C. 80b-1 et seq.] from the definition of investment adviser.
- 27           h. Such other persons not within the intent of this subsection as the  
28           commissioner may by rule or order designate.
- 29          11. a. "Investment adviser representative" means an individual employed by or  
30          associated with an investment adviser or federal covered adviser and who:

- 1 (1) Makes any recommendations or otherwise renders advice regarding
- 2 securities directly to advisory clients;
- 3 (2) Manages the accounts or portfolios of clients;
- 4 (3) Determines which recommendations or advice regarding securities
- 5 should be given;
- 6 (4) Provides investment advice or holds out as providing investment
- 7 advice, receives compensation to solicit, offer, or negotiate for the sale
- 8 of or sells investment advisory services; or
- 9 (5) Immediately supervises employees in the performance of any of the
- 10 foregoing.
- 11 b. The term does not include an individual who:
- 12 (1) Is employed by or associated with a federal covered investment
- 13 adviser, unless the individual has a "place of business" in this state, as
- 14 that term is defined by the securities and exchange commission
- 15 pursuant to section 203A of the Investment Advisers Act of 1940 [15
- 16 U.S.C. 80b-1 et seq.].
- 17 (2) Is an agent whose performance of investment advice is solely incidental
- 18 to the individual acting as an agent and who does not receive special
- 19 compensation for investment advisory services.
- 20 (3) Performs only clerical or ministerial acts.
- 21 12. "Issuer" means every person ~~who~~ that issues or proposes to issue any security,
- 22 except that:
- 23 a. With respect to certificates of deposit, voting-trust certificates, collateral trust
- 24 certificates, or shares in an unincorporated investment trust, issuer means the
- 25 person or persons performing the acts and assuming the duties of depositor
- 26 or manager pursuant to the provisions of the trust or other agreement or
- 27 instrument under which such securities are issued.
- 28 b. With respect to equipment trust certificates or like securities serving the same
- 29 purpose, issuer means the person by whom the equipment or property is or
- 30 will be used or to which the property or equipment is or will be leased or

- 1                    conditionally sold or that is otherwise contractually responsible for assuring  
2                    payment of the certificate.
- 3                    c.    With respect to fractional interests in an oil, gas, or other mineral lease or in  
4                    payments out of production under a lease, right, or royalty, issuer means the  
5                    owner of any such right or any interest in such lease or in payments out of  
6                    production under a lease, right, or royalty, whether whole or fractional, that  
7                    creates fractional interests for the purpose of sale.
- 8                    d.    With respect to a fractional or pooled interest in a ~~vietical~~ life settlement  
9                    contract, issuer means the person ~~who~~ that creates, for the purpose of sale,  
10                   the fractional or pooled interest. The issuer of a ~~vietical~~ life settlement  
11                   contract that is not fractionalized or pooled means the person effecting the  
12                   transactions with the investors in such contracts.
- 13                13.   "Life settlement contract" means an agreement for the purchase, sale, assignment,  
14                transfer, devise, or bequest of any portion of the death benefit or ownership of a life  
15                insurance policy or certificate, for consideration that is less than the expected  
16                death benefit of the life insurance policy or certificate. "Life settlement contract"  
17                does not include:
- 18                    a.    The assignment, transfer, sale, devise, or bequest of a death benefit, life  
19                    insurance policy, or certificate of insurance by the owner to the life settlement  
20                    provider pursuant to chapter 26.1-33.3;
- 21                    b.    The assignment of a life insurance policy to a bank or depository institution; or  
22                    c.    The exercise of accelerated benefits pursuant to the terms of a life insurance  
23                    policy issued in accordance with the insurance laws of this state.
- 24                14.   "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or  
25                solicitation of an order or offer to buy, a security or interest in a security for value.
- 26                14.   ~~"Person" means an individual, a corporation, a limited liability company, a~~  
27                ~~partnership, an association, a joint venture, a trust, a government, governmental~~  
28                ~~subdivision, agency, or instrumentality, or any other legal or commercial entity.~~
- 29                15.   "Place of business" of a broker-dealer, an investment adviser, or a federal covered  
30                investment adviser means:

- 1           a.    An office at which the broker-dealer, investment adviser, or federal covered  
2                   investment adviser regularly provides brokerage or investment advice or  
3                   solicits, meets with, or otherwise communicates with customers or clients; or  
4           b.    Any other location that is held out to the general public as a location at which  
5                   the broker-dealer, investment adviser, or federal covered investment adviser  
6                   provides brokerage or investment advice or solicits, meets with, or otherwise  
7                   communicates with customers or clients.
- 8       16.   "Principal place of business" of a broker-dealer or an investment adviser means  
9                   the executive office of the broker-dealer or investment adviser from which the  
10                   officers, partners, or managers of the broker-dealer or investment adviser direct,  
11                   control, and coordinate the activities of the broker-dealer or investment adviser.
- 12       17.   "Record" except in phrases "of record", "official record", and "public record" means  
13                   information that is inscribed on a tangible medium or that is stored in an electronic  
14                   or other medium and is retrievable in perceivable form.
- 15       18.   "Sale" or "sell" means every sale, contract to sell, or disposition of a security or  
16                   interest in a security for value, and every contract to make any such sale or  
17                   disposition. The term includes:  
18                   a.    Any security given or delivered with, or as a bonus on account of any  
19                            purchase of securities or any other thing, must be conclusively presumed to  
20                            constitute a part of the subject of such purchase and to have been sold for  
21                            value.  
22                   b.    A sale or offer of a warrant or right to purchase or subscribe to another  
23                            security of the same or another issuer and a sale or offer of a security that  
24                            gives the holder a present or future right or privilege to convert the security  
25                            into another security of the same or another issuer, including an offer of the  
26                            other security.
- 27       19.   "Security" means any note; stock; treasury stock; bond; debenture; evidence of  
28                   indebtedness; certificate of interest or participation in any profit-sharing agreement;  
29                   certificate of interest or participation in an oil, gas, or mining title or lease or in  
30                   payments out of production under such a title or lease; collateral trust certificate;  
31                   preorganization certificate or subscription; transferable share; investment contract;



1            ~~viatical~~ life settlement contract or a fractionalized or pooled interest therein;  
2            program, contract, or other arrangement in which persons invest in a common  
3            enterprise the returns of which depend to any extent upon inducing other persons  
4            to participate or invest in the enterprise; investment of money or money's worth  
5            including goods furnished or services performed in the risk capital of a venture with  
6            the expectation of profit or some other form of benefit to the investor when the  
7            investor has no direct control over the investment or policy decisions of the  
8            venture; voting-trust certificate; certificate of deposit for a security; foreign currency  
9            commodity contract, as used in chapter 51-23; or beneficial interest in title to  
10           property, profits, or earnings; or, in general, any interest or instrument commonly  
11           known as a "security"; or any certificate of interest or participation in, temporary or  
12           interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or  
13           purchase, any of the foregoing.

14           20. "State" means a state of the United States, the District of Columbia, Puerto Rico,  
15           the United States Virgin Islands, or any territory or insular possession subject to  
16           the jurisdiction of the United States.

17           ~~21. "Viatical settlement contract" means an agreement for the purchase, sale,~~  
18           ~~assignment, transfer, devise, or bequest of any portion of the death benefit or~~  
19           ~~ownership of a life insurance policy or certificate, for consideration that is less than~~  
20           ~~the expected death benefit of the life insurance policy or certificate. "Viatical~~  
21           ~~settlement contract" does not include:~~

- 22           a. ~~The assignment, transfer, sale, devise, or bequest of a death benefit, life~~  
23           ~~insurance policy, or certificate of insurance by the viator to the viatical~~  
24           ~~settlement provider pursuant to chapter 26.1-33.3;~~  
25           b. ~~The assignment of a life insurance policy to a bank or depository institution; or~~  
26           e. ~~The exercise of accelerated benefits pursuant to the terms of a life insurance~~  
27           ~~policy issued in accordance with the insurance laws of this state.~~

28           **SECTION 2. AMENDMENT.** Section 26.1-33.3-01 of the North Dakota Century Code  
29           is amended and reenacted as follows:

30           **26.1-33.3-01. Definitions.** As used in this chapter, unless the context requires  
31           otherwise:

- 1           1. "Advertising" means any written, electronic, or printed communication or any  
2           communication by means of recorded telephone messages or transmitted on radio,  
3           television, the internet, or similar communications media, including film strips,  
4           motion pictures, and videos, published, disseminated, circulated, or placed directly  
5           before the public, in this state, for the purpose of creating an interest in or inducing  
6           a person to sell, assign, devise, bequest, or transfer the death benefit or ownership  
7           of a life insurance policy pursuant to a ~~vatical~~ life settlement contract.
- 8           2. "Broker" means a person that works exclusively on behalf of an owner and for a  
9           fee, commission, or other valuable consideration, offers or attempts to negotiate  
10           life settlement contracts between an owner and one or more providers or one or  
11           more brokers. Notwithstanding the manner in which the broker is compensated, a  
12           broker is deemed to represent only the owner, and not the insurer or the provider,  
13           and owes a fiduciary duty to the owner to act according to the owner's instructions  
14           and in the best interest of the owner. The term does not include an attorney,  
15           certified public accountant, or a financial planner accredited by a nationally  
16           recognized accreditation agency which is retained to represent the owner and  
17           whose compensation is not paid directly or indirectly by the provider or purchaser.
- 18           3. "Business of ~~vatical~~ life settlements" means an activity involved in, but not limited  
19           to, the offering, soliciting, negotiating, procuring, effectuating, purchasing,  
20           investing, financing, monitoring, tracking, underwriting, selling, transferring,  
21           assigning, pledging, hypothecating, or in any other manner, acquiring an interest in  
22           a life insurance policy by means of a ~~vatical~~ life settlement contract.
- 23           ~~3.~~ 4. "Chronically ill" means:  
24           a. Being unable to perform at least two activities of daily living, such as eating,  
25           toileting, transferring, bathing, dressing, or continence;  
26           b. Requiring substantial supervision to protect the individual from threats to  
27           health and safety due to severe cognitive impairment; or  
28           c. Having a level of disability similar to that described in subdivision a as  
29           determined by the secretary of health and human services.
- 30           ~~4.~~ 5. a. "Financing entity" means an underwriter, placement agent, lender, purchaser  
31           of securities, purchaser of a policy or certificate from a ~~vatical settlement~~

- 1 provider, credit enhancer, or any entity that has a direct ownership in a policy  
2 or certificate that is the subject of a ~~vatical~~ life settlement contract, but:
- 3 (1) Whose principal activity related to the transaction is providing funds to  
4 effect the ~~vatical~~ life settlement or purchase of one or more ~~vatical~~  
5 settled policies; and
- 6 (2) ~~Who~~ Which has an agreement in writing with one or more licensed  
7 ~~vatical-settlement~~ providers to finance the acquisition of ~~vatical~~ life  
8 settlement contracts.
- 9 b. "Financing entity" does not include a nonaccredited investor or a ~~vatical~~ life  
10 settlement purchaser.
- 11 ~~5.~~ 6. "Fraudulent ~~vatical~~ life settlement act" includes:
- 12 a. Acts or omissions committed by any person ~~who~~ that, knowingly or with intent  
13 to defraud, for the purpose of depriving another of property or for pecuniary  
14 gain, commits, or permits its employees or its agents to engage in acts,  
15 including:
- 16 (1) Presenting, causing to be presented, or preparing with knowledge or  
17 belief that it will be presented to or by a ~~vatical-settlement~~ provider,  
18 ~~vatical-settlement~~ broker, ~~vatical~~ life settlement purchaser, financing  
19 entity, insurer, insurance producer, or any other person, false material  
20 information, or concealing material information, as part of, in support of,  
21 or concerning a fact material to one or more of the following:
- 22 (a) An application for the issuance of a ~~vatical~~ life settlement  
23 contract or insurance policy;
- 24 (b) The underwriting of a ~~vatical~~ life settlement contract or insurance  
25 policy;
- 26 (c) A claim for payment or benefit pursuant to a ~~vatical~~ life  
27 settlement contract or insurance policy;
- 28 (d) Premiums paid on an insurance policy;
- 29 (e) Payments and changes in ownership or beneficiary made in  
30 accordance with the terms of a ~~vatical~~ life settlement contract or  
31 insurance policy;

- 1 (f) The reinstatement or conversion of an insurance policy;
- 2 (g) The solicitation, offer, effectuation, or sale of a ~~vatical~~ life
- 3 settlement contract or insurance policy;
- 4 (h) The issuance of written evidence of a ~~vatical~~ life settlement
- 5 contract or insurance; or
- 6 (i) A financing transaction; ~~and~~
- 7 (2) Employing any plan, financial structure, device, scheme, or artifice to
- 8 defraud related to ~~vatical~~ settled policies;
- 9 (3) Entering any practice or plan that involves stranger-originated life
- 10 insurance; and
- 11 (4) Failing to disclose to the insurer when requested by the insurer that the
- 12 prospective insured has undergone a life expectancy evaluation by any
- 13 person other than the insurer or the insured's authorized
- 14 representatives in connection with the issuance of the policy;
- 15 b. In the furtherance of a fraud or to prevent the detection of a fraud any person
- 16 commits or permits its employees or its agents to:
- 17 (1) Remove, conceal, alter, destroy, or sequester from the commissioner
- 18 the assets or records of a licensee or other person engaged in the
- 19 business of ~~vatical~~ life settlements;
- 20 (2) Misrepresent or conceal the financial condition of a licensee, financing
- 21 entity, insurer, or other person;
- 22 (3) Transact the business of ~~vatical~~ life settlements in violation of laws
- 23 requiring a license, certificate of authority, or other legal authority for the
- 24 transaction of the business of ~~vatical~~ life settlements; or
- 25 (4) File with the commissioner or the equivalent chief insurance regulatory
- 26 official of another jurisdiction a document containing false information or
- 27 otherwise conceal information about a material fact from the
- 28 commissioner;
- 29 c. Embezzlement, theft, misappropriation, or conversion of moneys, funds,
- 30 premiums, credits, or other property of a ~~vatical~~ settlement provider, insurer,

- 1                   insured, ~~viator~~ owner, insurance policy owner, or any other person engaged in  
2                   the business of ~~viatical~~ life settlements or insurance;
- 3                   d. Recklessly entering ~~into~~, negotiating, brokering, or otherwise dealing in a  
4                   ~~viatical~~ life settlement contract, the subject of which is a life insurance policy  
5                   that was obtained by presenting false information concerning any fact material  
6                   to the policy or by concealing, for the purpose of misleading another,  
7                   information concerning any fact material to the policy, if the person or the  
8                   persons intended to defraud the policy's issuer, the ~~viatical settlement~~  
9                   provider or the ~~viator~~ owner. "Recklessly" means engaging in the conduct in  
10                  conscious and clearly unjustifiable disregard of a substantial likelihood of the  
11                  existence of the relevant facts or risks, such disregard involving a gross  
12                  deviation from acceptable standards of conduct; or
- 13                  e. Attempting to commit, assisting, aiding, or abetting in the commission of, or  
14                  conspiracy to commit the acts or omissions specified in this subsection.
- 15                  6. ~~"Person" means a natural person or a legal entity, including an individual,~~  
16                  ~~partnership, limited liability company, association, trust, or corporation.~~
- 17                  7. a. "Life settlement contract" means a written agreement between an owner and  
18                  a provider or any affiliate of the provider establishing the terms under which  
19                  compensation or anything of value is or will be paid, which compensation or  
20                  value is less than the expected death benefits of the policy, in return for the  
21                  owner's present or future assignment, transfer, sale, devise, or bequest of the  
22                  death benefit or ownership of any portion of the insurance policy or certificate  
23                  of insurance. "Life settlement contract" also includes the transfer for  
24                  compensation or value of ownership or beneficial interest in a trust or other  
25                  entity that owns such policy if the trust or other entity was formed or availed of  
26                  for the principal purpose of acquiring one or more life insurance contracts,  
27                  which life insurance contract insures the life of a person residing in this state.
- 28                  b. "Life settlement contract" includes a premium finance loan made for a life  
29                  insurance policy by a lender to an owner on, before, or after the date of  
30                  issuance of the policy if:
- 31                  (1) The loan proceeds are not used solely to pay:

- 1                   (a) Premiums for the policy; or
- 2                   (b) The costs of the loan, including interest; arrangement fees;
- 3                         utilization fees and similar fees; closing costs; legal fees and
- 4                         expenses; trustee fees and expenses; and third-party collateral
- 5                         provider fees and expenses, including fees payable to letter of
- 6                         credit issuers;
- 7                   (2) The owner or the insured receives on the date of the premium finance
- 8                         loan a guarantee of a future life settlement value of the policy; or
- 9                   (3) The owner or the insured agrees on the date of the premium finance
- 10                        loan to sell the policy or any portion of its death benefit on any date
- 11                        following the issuance of the policy.
- 12           c. "Life settlement contract" does not include"
- 13                   (1) A policy loan or accelerated death benefit made by the insurer pursuant
- 14                        to the policy's terms;
- 15                   (2) A loan made by a bank or other licensed financial institution in which
- 16                        the lender takes an interest in a life insurance policy solely to secure
- 17                        repayment of the loan or, if there is a default on the loan and the policy
- 18                        is transferred, the further assignment of the policy by the lender,
- 19                        provided that neither the default itself nor the transfer of the policy in
- 20                        connection with such default is pursuant to an agreement or
- 21                        understanding with any other person for the purpose of evading
- 22                        regulation under this chapter;
- 23                   (3) A loan made by a lender that does not violate chapter 26.1-20.1,
- 24                        provided that the premium finance loan is not described in
- 25                        subdivision b;
- 26                   (4) An agreement in which all the parties are closely related to the insured
- 27                        by blood or law or have a lawful substantial economic interest in the
- 28                        continued life, health, and bodily safety of the individual insured, or are
- 29                        trusts established primarily for the benefit of such parties;
- 30                   (5) Any designation, consent, or agreement by an insured who is an
- 31                        employee of an employer in connection with the purchase by the

- 1                   employer, or a trust established by the employer, of life insurance on  
2                   the life of the employee;
- 3                   (6) A bona fide business succession planning arrangement:
- 4                   (a) Between one or more shareholders in a corporation or between a  
5                   corporation and one or more of the corporation's shareholders or  
6                   one or more trusts established by the corporation's shareholders;
- 7                   (b) Between one or more partners in a partnership or between a  
8                   partnership and one or more of the partnership's partners or one  
9                   or more trusts established by the partnership's partners; or
- 10                  (c) Between one or more members in a limited liability company or  
11                  between a limited liability company and one or more of the limited  
12                  liability company's members or one or more trusts established by  
13                  the limited liability company's members;
- 14                  (7) An agreement entered into by a service recipient, or a trust established  
15                  by the service recipient, and a service provider, or a trust established by  
16                  the service provider, who performs significant services for the service  
17                  recipient's trade or business; or
- 18                  (8) Any other contract, transaction, or arrangement exempted from the  
19                  definition of life settlement contract by the commissioner based on a  
20                  determination that the contract, transaction, or arrangement is not of the  
21                  type intended to be regulated by this chapter.
- 22                  8. "Life settlement investment agent" means an individual who is an appointed or  
23                  contracted agent of a provider who solicits or arranges the funding for the purchase  
24                  of a life settlement by a life settlement purchaser and who is acting on behalf of a  
25                  provider. A life settlement investment agent is an agent as defined in section  
26                  10-04-02.
- 27                  a. A life settlement investment agent may not have any contact directly or  
28                  indirectly with the owner or insured or have knowledge of the identity of the  
29                  owner or insured.

- 1            b. A life settlement investment agent is deemed to represent the provider of  
2            whom the life settlement investment agent is an appointed or contracted  
3            agent.
- 4            9. "Life settlement purchase agreement" means a contract or agreement, entered by  
5            a life settlement purchaser, to which the owner is not a party, to purchase a life  
6            insurance policy or an interest in a life insurance policy, that is entered for the  
7            purpose of deriving an economic benefit. A life settlement purchase agreement is  
8            a life settlement contract as defined in section 10-04-02.
- 9            10. a. "Life settlement purchaser" means a person that provides a sum of money as  
10           consideration for a life insurance policy or an interest in the death benefits of a  
11           life insurance policy that has been or will be the subject of a life settlement  
12           contract, or a person that owns or acquires or is entitled to a beneficial  
13           interest in a trust that owns a life settlement contract or is the beneficiary of a  
14           life insurance policy that has been or will be the subject of a life settlement  
15           contract, for the purpose of deriving an economic benefit.
- 16           b. "Life settlement purchaser" does not include:
- 17           (1) A licensee under this chapter;  
18           (2) An accredited investor or qualified institutional buyer as defined,  
19           respectively, in rule 501(a) or rule 144A adopted under the Securities  
20           Act of 1933, as amended [15 U.S.C. 77a et seq.];
- 21           (3) A financing entity;  
22           (4) A special purpose entity; or  
23           (5) A related provider trust.
- 24           11. a. "Owner" means the owner of a life insurance policy or a certificate holder  
25           under a group policy that resides in this state and enters or seeks to enter a  
26           life settlement contract. For the purposes of this chapter, an owner may not  
27           be limited to an owner of a life insurance policy or a certificate holder under a  
28           group policy insuring the life of an individual with a terminal or chronic illness  
29           or condition except where specifically addressed. If there is more than one  
30           owner on a single policy and the owners are residents of different states, the  
31           transactions must be governed by the law of the state in which the owner



1                   having the largest percentage ownership resides or, if the owners hold equal  
2                   ownership, the state of residence of one owner agreed upon in writing by all  
3                   the owners.

4                   b. "Owner" does not include:

5                   (1) A licensee under this chapter;

6                   (2) A qualified institutional buyer as defined in rule 144A adopted under the  
7                   Securities Act of 1933, as amended [15 U.S.C. 77a et seq.];

8                   (3) A financing entity;

9                   (4) A special purpose entity; or

10                  (5) A related provider trust.

11                  12. "Policy" means an individual or group policy, group certificate, contract, or  
12                  arrangement of life insurance owned by a resident of this state, regardless of  
13                  whether delivered or issued for delivery in this state.

14                  13. a. "Provider" means a person, other than an owner, that enters or effectuates a  
15                  life settlement contract with an owner resident in this state.

16                  b. "Provider" does not include:

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

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

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

23                  (4) An authorized or eligible insurer that provides stop-loss coverage or  
24                  financial guaranty insurance to a provider, purchaser, financing entity,  
25                  special purpose entity, or related provider trust;

26                  (5) An individual who enters or effectuates no more than one agreement in  
27                  a calendar year for the transfer of life insurance policies for any value  
28                  less than the expected death benefit;

29                  (6) A financing entity;

30                  (7) A special purpose entity;

31                  (8) A related provider trust;

- 1                   (9) A life settlement purchaser; or
- 2                   (10) Any other person that the commissioner determines is not the type of
- 3                   person intended to be covered by the definition of provider.
- 4    8- 14. "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 financing
- 7    transaction. The trust must have a written agreement with the licensed ~~viatical~~
- 8    ~~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~~ life
- 11   settlement transactions available to the commissioner as if those records and files
- 12   were maintained directly by the licensed ~~viatical settlement~~ provider.
- 13    15. "Settled policy" means a life insurance policy or certificate that has been acquired
- 14    by a provider pursuant to a life settlement contract.
- 15    9- 16. "Special purpose entity" means a corporation, partnership, trust, limited liability
- 16    company, or other similar entity formed solely to provide either directly or indirectly
- 17    access to institutional capital markets:
- 18    a. For a financing entity or licensed ~~viatical settlement~~ provider; or
- 19    b. (1) In connection with a transaction in which the securities in the special
- 20       purposes entity are acquired by the ~~viator~~ owner or by "qualified
- 21       institutional buyers" as defined in rule 144 adopted under the Securities
- 22       Act of 1933, as amended [15 U.S.C. 77a et seq.]; or
- 23       (2) The securities pay a fixed rate of return commensurate with established
- 24       asset-backed institutional capital markets.
- 25    17. "Stranger-originated life insurance" means a practice or a plan to initiate a life
- 26    insurance policy for the benefit of a third-party investor that, at the time of policy
- 27    origination, has no insurable interest in the insured. Stranger-originated life
- 28    insurance practices include cases in which life insurance is purchased with
- 29    resources or guarantees from or through a person that on its own, at the time of
- 30    policy inception, could not lawfully initiate the policy, and in which, at the time of
- 31    policy inception, there is an arrangement or agreement, whether verbal or written,

1           to directly or indirectly transfer the ownership of the policy or the policy benefits or  
2           both to a third party. Trusts that are created to give the appearance of insurable  
3           interest and are used to initiate policies for investors violate insurable interest laws  
4           and the prohibition against wagering on life. Stranger-originated life insurance  
5           arrangements do not include those practices set forth in subdivision c of  
6           subsection 7.

7    40. 18. "Terminally ill" means having an illness or sickness that can reasonably be  
8           expected to result in death in twenty-four months or less.

9           41. ~~"Viatical settlement broker" means a person who working exclusively on behalf of a~~  
10          ~~viator and for a fee, commission, or other valuable consideration, offers or attempts~~  
11          ~~to negotiate viatical settlement contracts between a viator and one or more viatical~~  
12          ~~settlement providers or one or more viatical settlement brokers. Notwithstanding~~  
13          ~~the manner in which the viatical settlement broker is compensated, a viatical~~  
14          ~~settlement broker is deemed to represent only the viator, and not the insurer or the~~  
15          ~~viatical settlement provider, and owes a fiduciary duty to the viator to act according~~  
16          ~~to the viator's instructions and in the best interest of the viator. The term does not~~  
17          ~~include an attorney, certified public accountant, or a financial planner accredited by~~  
18          ~~a nationally recognized accreditation agency, who is retained to represent the~~  
19          ~~viator and whose compensation is not paid directly or indirectly by the viatical~~  
20          ~~settlement provider or purchaser.~~

21          42. a. ~~"Viatical settlement contract" means a written agreement between a viator~~  
22               ~~and a viatical settlement provider or any affiliate of the viatical settlement~~  
23               ~~provider establishing the terms under which compensation or anything of~~  
24               ~~value is or will be paid, which compensation or value is less than the expected~~  
25               ~~death benefits of the policy, in return for the viator's present or future~~  
26               ~~assignment, transfer, sale, devise, or bequest of the death benefit or~~  
27               ~~ownership of any portion of the insurance policy or certificate of insurance.~~

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

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

- 1                                   (a) ~~Premiums for the policy; or~~
- 2                                   (b) ~~The costs of the loan, including interest, arrangement fees,~~
- 3   ~~utilization fees and similar fees closing costs, legal fees and~~
- 4   ~~expenses, trustee fees and expenses, and third party collateral~~
- 5   ~~provider fees and expenses, including fees payable to letter of~~
- 6   ~~credit issuers;~~
- 7                                   (2) ~~The viator or the insured receives on the date of the premium finance~~
- 8   ~~loan a guarantee of a future viatical settlement value of the policy; or~~
- 9                                   (3) ~~The viator or the insured agrees on the date of the premium finance~~
- 10   ~~loan to sell the policy or any portion of its death benefit on any date~~
- 11   ~~following the issuance of the policy.~~
- 12                   e. ~~"Viatical settlement contract" does not include:~~
- 13                                   (1) ~~A policy loan or accelerated death benefit made by the insurer pursuant~~
- 14   ~~to the policy's terms;~~
- 15                                   (2) ~~A loan made by a bank or other licensed financial institution in which~~
- 16   ~~the lender takes an interest in a life insurance policy solely to secure~~
- 17   ~~repayment of the loan or, if there is a default on the loan and the policy~~
- 18   ~~is transferred, the further assignment of the policy by the lender,~~
- 19   ~~provided that the default itself is not pursuant to an agreement or~~
- 20   ~~understanding with any other person for the purpose of evading~~
- 21   ~~regulation under this chapter;~~
- 22                                   (3) ~~A loan made by a lender that does not violate chapter 26.1-20.1,~~
- 23   ~~provided that the premium finance loan is not described in~~
- 24   ~~subdivision b;~~
- 25                                   (4) ~~An agreement in which all the parties are closely related to the insured~~
- 26   ~~by blood or law or have a lawful substantial economic interest in the~~
- 27   ~~continued life, health, and bodily safety of the person insured, or are~~
- 28   ~~trusts established primarily for the benefit of such parties;~~
- 29                                   (5) ~~Any designation, consent, or agreement by an insured who is an~~
- 30   ~~employee of an employer in connection with the purchase by the~~

- 1                    employer, or trust established by the employer, of life insurance on the  
2                    life of the employee;
- 3                    (6) ~~A bona fide business succession planning arrangement:~~
- 4                    (a) ~~Between one or more shareholders in a corporation or between a~~  
5                    ~~corporation and one or more of its shareholders or one or more~~  
6                    ~~trusts established by its shareholders;~~
- 7                    (b) ~~Between one or more partners in a partnership or between a~~  
8                    ~~partnership and one or more of its partners or one or more trusts~~  
9                    ~~established by its partners; or~~
- 10                    (c) ~~Between one or more members in a limited liability company or~~  
11                    ~~between a limited liability company and one or more of its~~  
12                    ~~members or one or more trusts established by its members;~~
- 13                    (7) ~~An agreement entered into by a service recipient, or a trust established~~  
14                    ~~by the service recipient, and a service provider, or a trust established by~~  
15                    ~~the service provider, who performs significant services for the service~~  
16                    ~~recipient's trade or business; or~~
- 17                    (8) ~~Any other contract, transaction, or arrangement exempted from the~~  
18                    ~~definition of viatical settlement contract by the commissioner based on~~  
19                    ~~a determination that the contract, transaction, or arrangement is not of~~  
20                    ~~the type intended to be regulated by this chapter.~~
- 21                    13. ~~"Viatical settlement investment agent" means a person who is an appointed or~~  
22                    ~~contracted agent of a licensed viatical settlement provider who solicits or arranges~~  
23                    ~~the funding for the purchase of a viatical settlement by a viatical settlement~~  
24                    ~~purchaser and who is acting on behalf of a viatical settlement provider. A viatical~~  
25                    ~~settlement investment agent is an agent as defined in section 10-04-02.~~
- 26                    a. ~~A viatical settlement investment agent shall not have any contact directly or~~  
27                    ~~indirectly with the viator or insured or have knowledge of the identity of the~~  
28                    ~~viator or insured.~~
- 29                    b. ~~A viatical settlement investment agent is deemed to represent the viatical~~  
30                    ~~settlement provider of whom the viatical settlement investment agent is an~~  
31                    ~~appointed or contracted agent.~~

- 1           14.—a. ~~"Viatical settlement provider" means a person, other than a viator, that enters~~  
2                     ~~into or effectuates a viatical settlement contract with a viator resident in this~~  
3                     ~~state.~~
- 4           b. ~~"Viatical settlement provider" does not include:~~
- 5                     (1) ~~A bank, savings bank, savings and loan association, or credit union;~~  
6                     (2) ~~A licensed lending institution or premium finance company making~~  
7                     ~~premium finance loans and exempted by the commissioner from the~~  
8                     ~~licensing requirement under the premium finance laws, that takes an~~  
9                     ~~assignment of a life insurance policy solely as collateral for a loan;~~  
10                    (3) ~~The issuer of the life insurance policy;~~  
11                    (4) ~~An authorized or eligible insurer that provides stop loss coverage or~~  
12                    ~~financial guaranty insurance to a viatical settlement provider, purchaser,~~  
13                    ~~financing entity, special purpose entity, or related provider trust;~~  
14                    (5) ~~A natural person who enters into or effectuates no more than one~~  
15                    ~~agreement in a calendar year for the transfer of life insurance policies~~  
16                    ~~for any value less than the expected death benefit;~~  
17                    (6) ~~A financing entity;~~  
18                    (7) ~~A special purpose entity;~~  
19                    (8) ~~A related provider trust;~~  
20                    (9) ~~A viatical settlement purchaser; or~~  
21                    (10) ~~Any other person that the commissioner determines is not the type of~~  
22                    ~~person intended to be covered by the definition of viatical settlement~~  
23                    ~~provider.~~
- 24           15. ~~"Viatical settlement purchase agreement" means a contract or agreement, entered~~  
25                    ~~into by a viatical settlement purchaser, to which the viator is not a party, to~~  
26                    ~~purchase a life insurance policy or an interest in a life insurance policy, that is~~  
27                    ~~entered into for the purpose of deriving an economic benefit. A viatical settlement~~  
28                    ~~purchase agreement is a viatical settlement contract as defined in section~~  
29                    ~~10-04-02.~~
- 30           16.—a. ~~"Viatical settlement purchaser" means a person who provides a sum of money~~  
31                    ~~as consideration for a life insurance policy or an interest in the death benefits~~

1                   of a life insurance policy that has been or will be the subject of a viatical  
2                   settlement contract, or a person who owns or acquires or is entitled to a  
3                   beneficial interest in a trust that owns a viatical settlement contract or is the  
4                   beneficiary of a life insurance policy that has been or will be the subject of a  
5                   viatical settlement contract, for the purpose of deriving an economic benefit.

6                   b. ~~"Viatical settlement purchaser" does not include:~~

- 7                   (1) ~~A licensee under this chapter;~~  
8                   (2) ~~An accredited investor or qualified institutional buyer as defined,~~  
9                   ~~respectively, in rule 501(a) or rule 144A adopted under the Securities~~  
10                  ~~Act of 1933, as amended;~~  
11                  (3) ~~A financing entity;~~  
12                  (4) ~~A special purpose entity; or~~  
13                  (5) ~~A related provider trust.~~

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

16                  18. —a. ~~"Viator" means the owner of a life insurance policy or a certificate holder~~  
17                  ~~under a group policy who resides in this state and enters or seeks to enter~~  
18                  ~~into a viatical settlement contract. For the purposes of this chapter, a viator~~  
19                  ~~shall not be limited to an owner of a life insurance policy or a certificate holder~~  
20                  ~~under a group policy insuring the life of an individual with a terminal or chronic~~  
21                  ~~illness or condition except where specifically addressed. If there is more than~~  
22                  ~~one viator on a single policy and the viators are residents of different states,~~  
23                  ~~the transactions shall be governed by the law of the state in which the viator~~  
24                  ~~having the largest percentage ownership resides or, if the viators hold equal~~  
25                  ~~ownership, the state of residence of one viator agreed upon in writing by all~~  
26                  ~~the viators.~~

27                  b. ~~"Viator" does not include:~~

- 28                  (1) ~~A licensee under this chapter;~~  
29                  (2) ~~Qualified institutional buyer as defined, respectively, in rule 144A~~  
30                  ~~adopted under the Securities Act of 1933, as amended;~~  
31                  (3) ~~A financing entity;~~

- 1                   (4) ~~A special purpose entity; or~~  
2                   (5) ~~A related provider trust.~~

3                   **SECTION 3. AMENDMENT.** Section 26.1-33.3-02 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5                   **26.1-33.3-02. License and bond requirements.**

- 6                   1. a. A person ~~shall~~ may not operate as a ~~viatical settlement~~ provider or ~~viatical~~  
7                   ~~settlement~~ broker without first obtaining a license from the commissioner of  
8                   the state of residence of the ~~viator~~ owner. A person may not operate as a  
9                   ~~viatical settlement~~ broker without first obtaining an insurance producer license  
10                  from the commissioner.  
11                  b. The insurer that issued the policy being ~~viaticated~~ settled may not be  
12                  responsible for any act or omission of a ~~viatical settlement~~ broker or ~~viatical~~  
13                  ~~settlement~~ provider arising out of or in connection with the ~~viatical life~~  
14                  settlement transaction, unless the insurer receives compensation for the  
15                  placement of a ~~viatical life~~ settlement contract from the ~~viatical settlement~~  
16                  provider or ~~viatical settlement~~ broker in connection with the ~~viatical life~~  
17                  settlement contract.  
18                  c. ~~A person~~ An individual licensed as an attorney, certified public accountant, or  
19                  financial planner accredited by a nationally recognized accreditation agency,  
20                  who is retained to represent the ~~viator~~ owner, whose compensation is not  
21                  paid directly or indirectly by the ~~viatical settlement~~ provider, may negotiate  
22                  ~~viatical life~~ settlement contracts on behalf of the ~~viator~~ owner without having  
23                  to obtain a license as a ~~viatical settlement~~ broker.  
24                  2. Application for a ~~viatical settlement~~ provider or ~~viatical settlement~~ broker license  
25                  ~~shall~~ must be made to the commissioner by the applicant on a form prescribed by  
26                  the commissioner, and these applications ~~shall~~ must be accompanied by a two  
27                  hundred fifty dollar fee for a provider license and a two hundred dollar fee for a  
28                  broker license.  
29                  3. Licenses may be renewed from year to year on the anniversary date upon payment  
30                  of the annual renewal fee of one hundred dollars. Failure to pay the fees by the  
31                  renewal date results in expiration of the license.



- 1           4.    The applicant shall provide information on forms required by the commissioner.  
2                    The commissioner ~~shall have authority~~ may, at any time, ~~to~~ require the applicant to  
3                    fully disclose the identity of all stockholders, partners, officers, members, and  
4                    employees, and the commissioner may refuse to issue a license in the name of a  
5                    legal entity if not satisfied that any officer, employee, stockholder, partner, or  
6                    member thereof who may materially influence the applicant's conduct meets the  
7                    standards of this chapter.
- 8           5.    A license issued to a legal entity authorizes all partners, officers, members, and  
9                    designated employees to act as ~~viatical settlement~~ providers or ~~viatical settlement~~  
10                   brokers, as applicable, under the license, and all those persons ~~shall~~ must be  
11                   named in the application and any supplements to the application.
- 12           6.    Upon the filing of an application and the payment of the license fee, the  
13                   commissioner shall make an investigation of each applicant and issue a license if  
14                   the commissioner finds that the applicant:
- 15                   a.    If a ~~viatical settlement~~ provider, has provided a detailed plan of operation;  
16                   b.    Is competent and trustworthy and intends to act in good faith in the capacity  
17                   involved by the license applied for;  
18                   c.    Has a good business reputation and has had experience, training, or  
19                   education so as to be qualified in the business for which the license is applied  
20                   for;
- 21                   d.    (1)   If a ~~viatical settlement~~ provider, has demonstrated evidence of financial  
22                   responsibility in a format prescribed by the commissioner through either  
23                   a surety bond executed and issued by an insurer authorized to issue  
24                   surety bonds in this state or a deposit of cash, certificates of deposit, or  
25                   securities or any combination thereof in the amount of one hundred fifty  
26                   thousand dollars.
- 27                   (2)   If a ~~viatical settlement~~ broker, has demonstrated evidence of financial  
28                   responsibility in a format prescribed by the commissioner through either  
29                   a surety bond executed and issued by an insurer authorized to issue  
30                   surety bonds in this state or a deposit of cash, certificates of deposit, or

1 securities or any combination thereof in the amount of one hundred fifty  
2 thousand dollars.

3 (3) The commissioner shall accept, as evidence of financial responsibility,  
4 proof that financial instruments in accordance with the requirements in  
5 this section have been filed with one or more states where the applicant  
6 is licensed as a ~~viatical-settlement~~ provider or ~~viatical-settlement~~ broker.

7 (4) The commissioner may ask for evidence of financial responsibility at  
8 any time the commissioner deems necessary.

9 (5) Any surety bond issued pursuant to this subdivision shall specifically  
10 authorize recovery by the commissioner on behalf of any person in this  
11 state ~~who~~ which sustained damages as the result of erroneous acts,  
12 failure to act, conviction of fraud, or conviction of unfair practices by the  
13 ~~viatical-settlement~~ provider or ~~viatical-settlement~~ broker;

14 e. If a legal entity, provides a certificate of good standing from the state of its  
15 domicile; and

16 f. If a ~~viatical-settlement~~ provider or ~~viatical-settlement~~ broker, has provided an  
17 antifraud plan that meets the requirements of subsection 7 of section  
18 26.1-33.3-13.

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

24 8. A ~~viatical-settlement~~ provider or ~~viatical-settlement~~ broker shall provide to the  
25 commissioner new or revised information about officers, ten percent or more  
26 stockholders, partners, directors, members, or designated employees within thirty  
27 days of the change.

28 **SECTION 4. AMENDMENT.** Section 26.1-33.3-03 of the North Dakota Century Code  
29 is amended and reenacted as follows:

30 **26.1-33.3-03. License revocation and denial.**

- 1           1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the  
2 license of a ~~viatical settlement~~ provider or ~~viatical settlement~~ broker if the  
3 commissioner finds that:
- 4           a. There was any material misrepresentation in the application for the license;  
5           b. The licensee or any officer, partner, member, or key management personnel  
6 has been convicted of fraudulent or dishonest practices is subject to a final  
7 administrative action or is otherwise shown to be untrustworthy or  
8 incompetent;
- 9           c. The ~~viatical settlement~~ provider demonstrates a pattern of unreasonable  
10 payments to ~~viators~~ owners;
- 11           d. The licensee or any officer, partner, member, or key management personnel  
12 has been found guilty of, or has pleaded guilty or nolo contendere to, any  
13 felony, or to misdemeanor involving fraud or moral turpitude, regardless of  
14 whether a judgment of conviction has been entered by the court;
- 15           e. The ~~viatical settlement~~ provider has entered ~~into~~ any viatical life settlement  
16 contract that has not been approved pursuant to this chapter;
- 17           f. The ~~viatical settlement~~ provider has failed to honor contractual obligations set  
18 out in a viatical life settlement contract;
- 19           g. The licensee no longer meets the requirements for initial licensure;
- 20           h. The ~~viatical settlement~~ provider has assigned, transferred, or pledged a  
21 ~~viaticated~~ settled policy to a person other than a ~~viatical settlement~~ provider  
22 licensed in this state, viatical life settlement purchaser, an accredited investor,  
23 or qualified institutional buyer as defined, respectively, in rule 501(a) or rule  
24 144A promulgated under the Securities Act of 1933, as amended [15 U.S.C.  
25 77a et seq.], financing entity, special purpose entity, or related provider trust;  
26 or
- 27           i. The licensee or any officer, partner, member, or key management personnel  
28 has violated any provision of this chapter.
- 29           2. The commissioner may suspend, revoke, or refuse to renew the license of a  
30 ~~viatical settlement~~ broker if the commissioner finds that the ~~viatical settlement~~

1 broker has violated the provisions of this chapter or has otherwise engaged in  
2 bad-faith conduct with one or more ~~viators~~ owners.

3 3. If the commissioner denies a license application or suspends, revokes, or refuses  
4 to renew the license of a ~~viatical settlement~~ provider or ~~viatical settlement~~ broker  
5 pursuant to this chapter, the commissioner shall conduct a hearing in accordance  
6 with chapter 28-32.

7 **SECTION 5. AMENDMENT.** Section 26.1-33.3-04 of the North Dakota Century Code  
8 is amended and reenacted as follows:

9 **26.1-33.3-04. Approval of ~~viatical~~ life settlement contracts and disclosure**

10 **statements.** A person ~~shall~~ may not use a ~~viatical~~ life settlement contract form or provide to a  
11 ~~viator~~ an owner a disclosure statement form in this state unless first filed with and approved by  
12 the commissioner. The commissioner shall disapprove a ~~viatical~~ life settlement contract form or  
13 disclosure statement form if, in the commissioner's opinion, the contract or provisions contained  
14 ~~therein~~ in the form fail to meet the requirement of sections 26.1-33.3-07, 26.1-33.3-09, and  
15 26.1-33.3-12 and subsection 2 of section 26.1-33.3-13 or are unreasonable, contrary to the  
16 interests of the public, or otherwise misleading or unfair to the ~~viator~~ owner.

17 **SECTION 6. AMENDMENT.** Section 26.1-33.3-05 of the North Dakota Century Code  
18 is amended and reenacted as follows:

19 **26.1-33.3-05. Reporting requirements and privacy.**

20 1. ~~Each viatical~~ For any policy settled within five years of policy issuance, each life  
21 settlement provider shall file with the commissioner on or before March first of each  
22 year an annual statement containing such information as the commissioner may  
23 prescribe by regulation. In addition to any other requirements, the annual  
24 statement must specify the total number, aggregate face amount, and life  
25 settlement proceeds of policies settled during the immediately preceding calendar  
26 year, together with a breakdown of the information by policy issue year. The  
27 annual statement must also include the names of the insurance companies with  
28 which policies have been settled and the life settlement brokers that have settled  
29 such policies. Such information ~~shall be~~ is limited to only those transactions ~~where~~  
30 for which the ~~viator~~ owner is a resident of this state. Individual transaction data  
31 regarding the business of ~~viatical~~ life settlements or data that could compromise

- 1 the privacy of personal, financial, and health information of the ~~viator~~ owner or  
2 insured ~~shall~~ must be filed with the commissioner on a confidential basis.
- 3 2. Except as otherwise allowed or required by law, a ~~viatical settlement~~ provider,  
4 ~~viatical settlement~~ broker, insurance company, insurance producer, information  
5 bureau, rating agency or company, or any other person with actual knowledge of  
6 an insured's identity, ~~shall~~ may not disclose that identity as an insured, or the  
7 insured's financial or medical information to any other person unless the  
8 disclosure:
- 9 a. Is necessary to effect a ~~viatical~~ life settlement between the ~~viator~~ owner and a  
10 ~~viatical settlement~~ provider and the ~~viator~~ owner and insured have provided  
11 prior written consent to the disclosure;
- 12 b. Is provided in response to an investigation or examination by the  
13 commissioner or any other governmental officer or agency or pursuant to the  
14 requirements of subsection 3 of section 26.1-33.3-13;
- 15 c. Is a term of or condition to the transfer of a policy by one ~~viatical settlement~~  
16 provider to another ~~viatical settlement~~ provider;
- 17 d. Is necessary to permit a financing entity, related provider trust, or special  
18 purpose entity to finance the purchase of policies by a ~~viatical settlement~~  
19 provider and the ~~viator~~ owner and insured have provided prior written consent  
20 to the disclosure;
- 21 e. Is necessary to allow the ~~viatical settlement~~ provider or ~~viatical settlement~~  
22 broker or ~~their~~ the provider's or broker's authorized representatives to make  
23 contacts for the purpose of determining health status; or
- 24 f. Is required to purchase stop-loss coverage or financial guaranty insurance.

25 **SECTION 7. AMENDMENT.** Section 26.1-33.3-06 of the North Dakota Century Code  
26 is amended and reenacted as follows:

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, insofar 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~~ must be  
17                  made in cooperation with the insurance supervisory officials of other states in  
18                  which the insurer transacts business.
- 19                  2. Record retention requirement.
- 20                  a. A person required to be licensed by this chapter ~~shall~~ for five years shall  
21                  retain 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 of 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 reproduces  
7           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~~ the examiners as  
12          to the scope of the examination. In conducting the examination, the examiner  
13          shall observe those guidelines and procedures set forth in the examiners  
14          handbook adopted by the national association of insurance commissioners.  
15          The commissioner may also employ such other guidelines or procedures as  
16          the 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 is  
24          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  
28          the licensee to engage in the ~~vital~~ vital life settlement business or other  
29          business subject to the commissioner's jurisdiction. Any proceedings for  
30          suspension, revocation, or refusal of any license or authority ~~shall~~ must be  
31          conducted pursuant to this title and chapter 28-32.

- 1 c. The commissioner ~~shall have the power to~~ may issue subpoenas, ~~to~~  
2 administer oaths, and ~~to~~ examine under oath any person as to any matter  
3 pertinent to the examination. Upon the failure or refusal of a person to obey a  
4 subpoena, the commissioner may petition a court of competent jurisdiction,  
5 and upon proper showing, the court may enter an order compelling the  
6 witness to appear and testify or produce documentary evidence. Failure to  
7 obey the court order ~~shall~~ must 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~~ must be borne by the licensee that is the  
12 subject of the examination.
- 13 e. ~~Nothing contained in this~~ This chapter ~~shall~~ may not 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~~ must be prima facie evidence in any legal or regulatory action.
- 18 f. ~~Nothing contained in this~~ This chapter ~~shall~~ may not 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~~ must be comprised of only facts appearing upon the  
26 books, records, or other documents of the licensee, ~~its~~ the licensee's agents,  
27 or other persons examined, or as ascertained from the testimony of ~~its~~ the  
28 licensee's officers or agents or other persons examined concerning ~~its~~ the  
29 licensee's affairs, and such conclusions and recommendations as the  
30 examiners find reasonably warranted from the 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 commissioner  
4           shall transmit the report to the licensee examined, together with a notice that  
5           shall afford the licensee examined a reasonable opportunity of not more than  
6           thirty days to make a written submission or rebuttal with respect to any  
7           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 ~~visitors shall~~ owners must be  
13           considered private and confidential information and ~~shall~~ may not be  
14           disclosed by the 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~~ are subject to section 44-04-18 and section 6 of article XI of the  
22           Constitution of North Dakota, ~~shall~~ are not ~~be~~ subject to subpoena, and ~~shall~~  
23           are not ~~be~~ subject to discovery or admissible in evidence in any private civil  
24           action. The commissioner ~~is authorized to~~ may use the documents, materials,  
25           or other information in the furtherance of any regulatory or legal action  
26           brought as part 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~~ are  
30           confidential by law and privileged, ~~shall~~ are not ~~be~~ subject to subpoena, and

- 1                   ~~shall~~ are not be subject to discovery or admissible in evidence in any private  
2                   civil action 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~~ may be permitted to testify in any  
16                  private civil action concerning any confidential documents, materials, or  
17                  information 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 officials 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~~ Waiver of any applicable privilege or claim of confidentiality in the  
9 documents, materials, or information ~~shall~~ may not occur as a result of  
10 disclosure to the commissioner under this section or as a result of sharing as  
11 authorized in 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~~  
14 must be available and enforced in any proceeding in, and in any court of, this  
15 state.
- 16 h. ~~Nothing contained in this~~ This chapter ~~shall~~ may not prevent or be construed  
17 as prohibiting the commissioner from disclosing the content of an examination  
18 report, preliminary examination report or results, or any matter relating  
19 thereto, to the commissioner of any other state or country, or to law  
20 enforcement officials of this or any other state or agency of the federal  
21 government at any time or to the national association of insurance  
22 commissioners, so long as such agency or office receiving the report or  
23 matters relating thereto agrees in writing to hold ~~it~~ the reports or matters  
24 confidential and in a manner consistent with this chapter.
- 25 6. Conflict of interest.
- 26 a. An examiner may not be appointed by the commissioner if the examiner,  
27 either directly or indirectly, has a conflict of interest or is affiliated with the  
28 management of or owns a pecuniary interest in any person subject to  
29 examination under this chapter. This section ~~shall~~ may not be construed to  
30 automatically preclude an examiner from being:
- 31 (1) ~~A viator~~ An owner;

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

1 proceeding is "substantially justified" if it had a reasonable basis in law or fact  
2 at the time that it was initiated.

3 9. ~~Investigative authority of the commissioner.~~ The commissioner may investigate  
4 suspected fraudulent viatical life settlement acts and persons engaged in the  
5 business of viatical life settlements.

6 **SECTION 8. AMENDMENT.** Section 26.1-33.3-07 of the North Dakota Century Code  
7 is amended and reenacted as follows:

8 **26.1-33.3-07. Disclosure to viator owner.**

9 1. With each application for a viatical life settlement, a ~~viatical settlement~~ provider or  
10 ~~viatical settlement~~ broker shall provide the viator owner with at least the following  
11 disclosures no later than the time the application for the viatical life settlement  
12 contract is signed by all parties. The disclosures ~~shall~~ must be provided in a  
13 separate document that is signed by the viator owner and the ~~viatical settlement~~  
14 provider or ~~viatical settlement~~ broker, and ~~shall~~ must provide the following  
15 information:

16 a. There are possible alternatives to viatical life settlement contracts, including  
17 any accelerated death benefits or policy loans offered under the ~~viator's~~  
18 owner's life insurance policy.

19 b. ~~That a viatical settlement~~ A broker represents exclusively the viator owner,  
20 and not the insurer or the ~~viatical settlement~~ provider, and owes a fiduciary  
21 duty to the viator owner, including a duty to act according to the ~~viator's~~  
22 owner's instructions and in the best interest of the viator owner.

23 c. Some or all of the proceeds of the viatical life settlement may be taxable  
24 under federal income tax and state franchise and income taxes, and  
25 assistance should be sought from a professional tax advisor.

26 d. Proceeds of the viatical life settlement could be subject to the claims of  
27 creditors.

28 e. Receipt of the proceeds of a viatical life settlement may adversely affect the  
29 ~~viator's~~ owner's eligibility for medicaid or other government benefits or  
30 entitlements, and advice should be obtained from the appropriate government  
31 agencies.

- 1           f.    The ~~viator~~ owner has the right to rescind a ~~viatical~~ life settlement contract  
2           before the earlier of sixty calendar days after the date upon which the ~~viatical~~  
3           life settlement contract is executed by all parties or thirty calendar days after  
4           the ~~viatical~~ life settlement proceeds have been delivered to the escrow agent  
5           by or on behalf of the settlement provider, as provided in subsection 5 of  
6           section 26.1-33.3-09. Rescission, if exercised by the ~~viator~~ owner, is effective  
7           only if both notice of the rescission is given, and the ~~viator~~ owner repays all  
8           proceeds and any premiums, loans, and loan interest paid on account of the  
9           ~~viatical-settlement~~ provider within the rescission period. If the insured dies  
10          during the rescission period, the ~~viatical~~ life settlement contract ~~shall~~ must be  
11          deemed to have been rescinded, subject to repayment by the ~~viator~~ owner or  
12          the ~~viator's~~ owner's estate of all ~~viatical~~ life settlement proceeds and any  
13          premiums, loans, and loan interest.
- 14          g.    Funds will be sent to the ~~viator~~ owner by the later of the expiration of the  
15          rescission period or within three business days after the ~~viatical-settlement~~  
16          provider has received the ~~insurer~~ insurer's or group administrator's written  
17          acknowledgment that ownership of the policy or interest in the certificate has  
18          been transferred and the beneficiary has been designated.
- 19          h.    Entering ~~into~~ a ~~viatical~~ life settlement contract may cause other rights or  
20          benefits, including conversion rights and waiver of premium benefits that may  
21          exist under the policy or certificate, to be forfeited by the ~~viator~~ owner.  
22          Assistance should be sought from a financial adviser.
- 23          i.    Disclosure to a ~~viator~~ an owner shall include distribution of a brochure  
24          describing the process of ~~viatical~~ life settlements. The national association of  
25          insurance commissioners' form for the brochure ~~shall~~ must be used unless  
26          another form is developed or approved by the commissioner.
- 27          j.    The disclosure document ~~shall~~ must contain the following language: "All  
28          medical, financial, or personal information solicited or obtained by a ~~viatical~~  
29          settlement provider or ~~viatical-settlement~~ broker about an insured, including  
30          the insured's identity or the identity of family members, a spouse, or a  
31          significant other may be disclosed as necessary to effect the ~~viatical~~ life

1 settlement between the ~~viator~~ owner and the ~~viatical settlement~~ provider. If  
2 you are asked to provide this information, you will be asked to consent to the  
3 disclosure. The information may be provided to someone who buys the policy  
4 or provides funds for the purchase. You may be asked to renew your  
5 permission to share information every two years."

6 k. Following execution of a ~~viatical~~ life contract, the insured may be contacted  
7 for the purpose of determining the insured's health status and to confirm the  
8 insured's residential or business street address and telephone number, or as  
9 otherwise provided in this chapter. This contact ~~shall~~ must be limited to once  
10 every three months if the insured has a life expectancy of more than one year,  
11 and no more than once per month if the insured has a life expectancy of one  
12 year or less. All such contacts ~~shall~~ must be made only by a ~~viatical~~  
13 ~~settlement~~ provider licensed in the state in which the ~~viator~~ owner resided at  
14 the time of the ~~viatical~~ life settlement, or by the authorized representative of a  
15 duly licensed ~~viatical settlement~~ provider.

16 2. A ~~viatical settlement~~ provider shall provide the ~~viator~~ owner with at least the  
17 following disclosures no later than the date the ~~viatical~~ life settlement contract is  
18 signed by all parties. The disclosures ~~shall~~ must be conspicuously displayed in the  
19 ~~viatical~~ life settlement contract or in a separate document signed by the ~~viator~~  
20 owner and provide the following information:

- 21 a. The affiliation, if any, between the ~~viatical settlement~~ provider and the issuer  
22 of the insurance policy to be ~~viaticated~~ settled;
- 23 b. The document ~~shall~~ must include the name, business address, and telephone  
24 number of the ~~viatical settlement~~ provider;
- 25 c. Any affiliations or contractual arrangements between the ~~viatical settlement~~  
26 provider and the ~~viatical~~ life settlement purchaser;
- 27 d. If an insurance policy to be ~~viaticated~~ settled has been issued as a joint policy  
28 or involves family riders or any coverage of a life other than the insured under  
29 the policy to be ~~viaticated~~ settled, the ~~viator~~ owner ~~shall~~ must be informed of  
30 the possible loss of coverage on the other lives under the policy and ~~shall~~

- 1            must be advised to consult with the ~~viator's~~ owner's insurance producer or the
- 2            insurer issuing the policy for advice on the proposed ~~viatical~~ life settlement;
- 3            e. State the dollar amount of the current death benefit payable to the ~~viatical~~
- 4            ~~settlement~~ provider under the policy or certificate. If known, the ~~viatical~~
- 5            ~~settlement~~ provider ~~shall~~ also shall disclose the availability of any additional
- 6            guaranteed insurance benefits, the dollar amount of any accidental death and
- 7            dismemberment benefits under the policy or certificate, and the extent to
- 8            which the ~~viator's~~ owner's interest in those benefits will be transferred as a
- 9            result of the ~~viatical~~ life settlement contract; and
- 10           f. Provide the name, business address, and telephone number of the
- 11           independent third-party escrow agent, and the fact that the ~~viator~~ or owner
- 12           may inspect or receive copies of the relevant escrow or trust agreements or
- 13           documents.
- 14           3. A ~~viatical settlement~~ broker shall provide the ~~viator~~ owner with at least the following
- 15           disclosures no later than the date the ~~viatical~~ life settlement contract is signed by
- 16           all parties. The disclosures ~~shall~~ must be conspicuously displayed in the ~~viatical~~
- 17           life settlement contract or in a separate document signed by the ~~viator~~ owner and
- 18           provide the following information:
- 19           a. The name, business address, and telephone number of the ~~viatical settlement~~
- 20           broker;
- 21           b. A full, complete, and accurate description of all offers, counteroffers,
- 22           acceptances, and rejections relating to the proposed ~~viatical~~ life settlement
- 23           contract;
- 24           c. A written disclosure of any affiliations or contractual arrangements between
- 25           the ~~viatical settlement~~ broker and any person making an offer in connection
- 26           with the proposed ~~viatical~~ life settlement contracts;
- 27           d. The amount and method of calculating the broker's compensation, which term
- 28           "compensation" includes anything of value paid or given to a ~~viatical~~
- 29           ~~settlement~~ broker for the placement of a policy; and
- 30           e. If any portion of the ~~viatical settlement~~ broker's compensation, as defined in
- 31           subdivision c, is taken from a proposed ~~viatical~~ life settlement offer, the broker



- 1 shall disclose the total amount of the ~~viatical~~ life settlement offer and the  
2 percentage of the ~~viatical~~ life settlement offer comprised by the ~~viatical~~  
3 ~~settlement~~ broker's compensation.
- 4 4. If the ~~viatical~~ settlement provider transfers ownership or changes the beneficiary of  
5 the insurance policy, the provider shall communicate in writing the change in  
6 ownership or beneficiary to the insured within twenty days after the change.
- 7 5. A ~~viatical~~ settlement provider or ~~its~~ ~~viatical~~ the provider's life settlement investment  
8 agent shall provide the ~~viatical~~ life settlement purchaser with at least the following  
9 disclosures ~~prior to~~ before the date the ~~viatical~~ life settlement purchase agreement  
10 is signed by all parties. The disclosures ~~shall~~ must be conspicuously displayed in  
11 any ~~viatical~~ life purchase contract or in a separate document signed by the ~~viatical~~  
12 life settlement purchaser and ~~viatical~~ settlement provider or ~~viatical~~ life settlement  
13 investment agent, and ~~shall~~ must make the following disclosure to the ~~viatical~~ life  
14 settlement purchaser:
- 15 a. The purchaser will receive no returns, such as dividends and interest, until the  
16 insured dies and a death claim payment is made.
- 17 b. The actual annual rate of return on a ~~viatical~~ life settlement contract is  
18 dependent upon an accurate projection of the insured's life expectancy, and  
19 the actual date of the insured's death. An annual "guaranteed" rate of return  
20 is not determinable.
- 21 c. The ~~viatical~~ settled life insurance contract should not be considered a liquid  
22 purchase since it is impossible to predict the exact timing of its maturity and  
23 the funds probably are not available until the death of the insured. There is no  
24 established secondary market for resale of these products by the purchaser.
- 25 d. The purchaser may lose all benefits or may receive substantially reduced  
26 benefits if the insurer goes out of business during the term of the ~~viatical~~ life  
27 settlement investment.
- 28 e. The purchaser is responsible for payment of the insurance premium or other  
29 costs related to the policy, if required by the terms of the ~~viatical~~ life  
30 settlement purchase agreement. These payments may reduce the

- 1 purchaser's return. If a party other than the purchaser is responsible for the  
2 payment, the name and address of that party also ~~shall~~ must be disclosed.
- 3 f. The purchaser is responsible for payment of the insurance premiums or other  
4 costs related to the policy if the insured returns to health. Disclose the  
5 amount of such premiums, if applicable.
- 6 g. State the name, business address, and telephone number of the independent  
7 third party providing escrow services and the relationship to the broker.
- 8 h. The amount of any trust fees or other expenses to be charged to the ~~vital~~  
9 life settlement purchaser shall be disclosed.
- 10 i. State whether the purchaser is entitled to a refund of all or part of the  
11 purchaser's investment under the settlement contract if the policy is later  
12 determined to be null and void.
- 13 j. Disclose that group policies may contain limitations or caps in the conversion  
14 rights, additional premiums may have to be paid if the policy is converted,  
15 name the party responsible for the payment of the additional premiums and, if  
16 a group policy is terminated and replaced by another group policy, state that  
17 there may be no right to convert the original coverage.
- 18 k. Disclose the risks associated with policy contestability, including the risk that  
19 the purchaser will have no claim or only a partial claim to death benefits  
20 should the insurer rescind the policy within the contestability period.
- 21 l. Disclose whether the purchaser will be the owner of the policy in addition to  
22 being the beneficiary, and if the purchaser is the beneficiary only and not also  
23 the owner, the special risks associated with that status, including the risk that  
24 the beneficiary may be changed or the premium may not be paid.
- 25 m. Describe the experience and qualifications of the person ~~who~~ that determines  
26 the life expectancy of the insured, such as in-house staff, independent  
27 physicians, and specialty firms that weigh medical and actuarial data; the  
28 information this projection is based on; and the relationship of the projection  
29 maker to the ~~vital settlement~~ provider, if any.
- 30 n. Disclosure to an investor ~~shall~~ must include distribution of a brochure  
31 describing the process of investment in ~~vital~~ life settlement settlements. The national

1                    association of insurance commissioners' form for the brochure ~~shall~~ must be  
2                    used unless one is developed by the commissioner.

3                    6. A ~~viatical settlement~~ provider or ~~its viatical~~ the provider's life settlement investment  
4                    agent shall provide the ~~viatical~~ life settlement purchaser with at least the following  
5                    disclosures no later than at the time of the assignment, transfer, or sale of all or a  
6                    portion of an insurance policy. The disclosures ~~shall~~ must be contained in a  
7                    document signed by the ~~viatical~~ life settlement purchaser and ~~viatical settlement~~  
8                    provider or ~~viatical~~ life settlement investment agent, and shall make the following  
9                    disclosures to the ~~viatical~~ life settlement purchaser:

- 10                    a.    Disclose all the life expectancy certifications obtained by the provider in the  
11                    process of determining the price paid to the ~~viator~~ owner.
- 12                    b.    State whether premium payments or other costs related to the policy have  
13                    been escrowed. If escrowed, state the date upon which the escrowed funds  
14                    will be depleted and whether the purchaser will be responsible for payment of  
15                    premiums thereafter and, if so, the amount of the premiums.
- 16                    c.    State whether premium payments or other costs related to the policy have  
17                    been waived. If waived, disclose whether the investor will be responsible for  
18                    payment of the premiums if the insurer that wrote the policy terminates the  
19                    waiver after purchase and the amount of those premiums.
- 20                    d.    Disclose the type of policy offered or sold, such as whole life, term life,  
21                    universal life, or a group policy certificate, any additional benefits contained in  
22                    the policy, and the current status of the policy.
- 23                    e.    If the policy is term insurance, disclose the special risks associated with term  
24                    insurance, including the purchaser's responsibility for additional premiums if  
25                    the ~~viator~~ owner continues the term policy at the end of the current term.
- 26                    f.    State whether the policy is contestable.
- 27                    g.    State whether the insurer that wrote the policy has any additional rights that  
28                    could negatively affect or extinguish the purchaser's rights under the ~~viatical~~  
29                    life settlement contract, what these rights are, and under what conditions  
30                    these rights are activated.

1           h. State the name and address of the person responsible for monitoring the  
2           insured's condition. Describe how often the monitoring of the insured's  
3           condition is done, how the date of death is determined, and how and when  
4           this information will be transmitted to the purchaser.

5           7. The ~~viatical life~~ settlement purchase agreement is voidable by the purchaser at any  
6           time within three days after the disclosures mandated by subsections 5 and 6 are  
7           received by the purchaser.

8           **SECTION 9. AMENDMENT.** Section 26.1-33.3-08 of the North Dakota Century Code  
9           is amended and reenacted as follows:

10           **26.1-33.3-08. Disclosure to insurer.** ~~Prior to~~ Before the initiation of a ~~viatical life~~  
11           settlement plan, ~~viatical life~~ settlement transaction, or series of ~~viatical life~~ settlement  
12           transactions, a ~~viatical settlement~~ broker or ~~viatical settlement~~ provider shall fully disclose all  
13           nonproprietary information to an insurer the details of the plan, transaction, or series of  
14           transactions, to which the ~~viatical settlement~~ broker or ~~viatical settlement~~ provider is a party, to  
15           originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of  
16           engaging in the business of ~~viatical life~~ settlements at any time ~~prior to~~, before or during the first  
17           five years after; issuance of the policy. Any disclosure required under this section must be in  
18           writing.

19           **SECTION 10. AMENDMENT.** Section 26.1-33.3-09 of the North Dakota Century Code  
20           is amended and reenacted as follows:

21           **26.1-33.3-09. General rules.**

22           1. a. A ~~viatical settlement~~ provider entering ~~into~~ a ~~viatical life~~ settlement contract  
23           shall first obtain:

24           (1) If the ~~viator~~ owner is the insured, a written statement from a licensed  
25           attending physician that the ~~viator~~ owner is of sound mind and under no  
26           constraint or undue influence to enter into a ~~viatical life~~ settlement  
27           contract; and

28           (2) A document in which the insured consents to the release of the  
29           insured's medical records to a licensed ~~viatical settlement~~ provider,  
30           ~~viatical settlement~~ broker, and the insurance company that issued the  
31           life insurance policy covering the life of the insured.

- 1           b. Within twenty days after ~~a viator~~ an owner executes documents necessary to  
2           transfer any rights under an insurance policy or within twenty days of entering  
3           any agreement, option, promise, or any other form of understanding,  
4           expressed or implied, to ~~viaticate~~ settle the policy, the ~~viatical settlement~~  
5           provider shall give written notice to the insurer that issued that insurance  
6           policy that the policy has or will become a ~~viaticated~~ settled policy. The notice  
7           ~~shall~~ must be accompanied by the documents required by subdivision c.
- 8           c. The ~~viatical~~ provider shall deliver a copy of the medical release required  
9           under paragraph 2 of subdivision a, a copy of the ~~viator's~~ owner's application  
10          for the ~~viatical~~ life settlement contract, the notice required under subdivision b,  
11          and a request for verification of coverage to the insurer that issued the life  
12          policy that is the subject of the ~~viatical~~ life settlement transaction. The  
13          national association of insurance commissioners' form for verification of  
14          coverage ~~shall~~ must be used unless another form is developed or approved  
15          by the commissioner.
- 16          d. The insurer shall respond to a request for verification of coverage submitted  
17          on an approved form by a ~~viatical settlement~~ provider or ~~viatical settlement~~  
18          broker within thirty calendar days of the date the request is received and shall  
19          indicate whether, based on the medical evidence and documents provided,  
20          the insurer intends to pursue an investigation at this time regarding the validity  
21          of the insurance contract or possible fraud. The insurer shall accept a request  
22          for verification of coverage made on a national association of insurance  
23          commissioners' form or any other form approved by the commissioner. The  
24          insurer shall accept an original or facsimile or electronic copy of such request  
25          and any accompanying authorization signed by the ~~viator~~ owner. Failure by  
26          the insurer to meet ~~its~~ the insurer's obligations under this subsection ~~shall be~~  
27          is a violation of subsection 3 of section 26.1-33.3-10 and section  
28          26.2-33.3-15.
- 29          e. ~~Prior to~~ Before or at the time of execution of the ~~viatical~~ life settlement  
30          contract, the ~~viatical settlement~~ provider shall obtain a witnessed document in  
31          which the ~~viator~~ owner consents to the ~~viatical~~ life settlement contract,

1 represents that the ~~viator~~ owner has a full and complete understanding of the  
2 ~~viatical life~~ settlement contract, that the ~~viator~~ owner has a full and complete  
3 understanding of the benefits of the life insurance policy, acknowledges that  
4 the ~~viator~~ owner is entering ~~into~~ the ~~viatical life~~ settlement contract freely and  
5 voluntarily, and, for persons with a terminal or chronic illness or condition,  
6 acknowledges that the insured has a terminal or chronic illness and that the  
7 terminal or chronic illness or condition was diagnosed after the life insurance  
8 policy was issued.

9 f. If a ~~viatical settlement~~ broker performs any of these activities required of the  
10 ~~viatical settlement~~ provider, the provider is deemed to have fulfilled the  
11 requirements of this section.

12 2. All medical information solicited or obtained by any licensee ~~shall~~ must be subject  
13 to the applicable provisions of state law relating to confidentiality of medical  
14 information.

15 3. All ~~viatical life~~ settlement contracts entered ~~into~~ in this state shall provide the ~~viator~~  
16 owner with a right to rescind the contract before the earlier of sixty calendar days  
17 after the date upon which the ~~viatical life~~ settlement contract is executed by all  
18 parties or thirty calendar days after the ~~viatical life~~ settlement proceeds have been  
19 sent to the escrow agent by or on behalf of the ~~viatical settlement~~ provider as  
20 provided in subsection 5 of section ~~26-1-33.3-09~~. Rescission by the ~~viator~~ owner  
21 may be conditioned upon the ~~viator~~ owner both giving notice and repaying to the  
22 ~~viatical settlement~~ provider within the rescission period all proceeds of the  
23 settlement and any premiums, loans, and loan interest paid by or on behalf of the  
24 ~~viatical settlement~~ provider in connection with or as a consequence of the ~~viatical~~  
25 life settlement. If the insured dies during the rescission period, the ~~viatical life~~  
26 settlement contract ~~shall be~~ is deemed to have been rescinded, subject to  
27 repayment to the ~~viatical settlement~~ provider or purchaser of all ~~viatical life~~  
28 settlement proceeds, and any premiums, loans, and loan interest that have been  
29 paid by the ~~viatical settlement~~ provider or purchaser, which ~~shall~~ must be paid  
30 within sixty calendar days of the death of the insured. In the event of any  
31 rescission, if the ~~viatical settlement~~ provider has paid commissions or other

1 compensation to a ~~viatical settlement~~ broker in connection with the rescinded  
2 transaction, the ~~viatical settlement~~ broker shall refund all ~~such~~ the commissions  
3 and compensation to the ~~viatical settlement~~ provider within five business days  
4 following receipt of written demand from the ~~viatical settlement~~ provider, which  
5 demand ~~shall~~ must be accompanied by either the ~~viator's~~ owner's notice of  
6 rescission if rescinded at the election of the ~~viator~~ owner, or notice of the death of  
7 the insured if rescinded by reason of the death of the insured within the applicable  
8 rescission period.

9 4. The ~~viatical settlement~~ provider shall instruct the ~~viator~~ owner to send the executed  
10 documents required to effect the change in ownership, assignment, or change in  
11 beneficiary directly to the independent escrow agent. Within three business days  
12 after the date the escrow agent receives the document, or from the date the ~~viatical~~  
13 ~~settlement~~ provider receives the documents, if the ~~viator~~ owner erroneously  
14 provides the documents directly to the provider, the provider shall pay or transfer  
15 the proceeds of the ~~viatical~~ life settlement into an escrow or trust account  
16 maintained in a state or federally chartered financial institution whose deposits are  
17 insured by the federal deposit insurance corporation. Upon payment of the  
18 settlement proceeds into the escrow account, the escrow agent shall deliver the  
19 original change in ownership, assignment, or change in beneficiary forms to the  
20 ~~viatical settlement~~ provider or related provider trust or other designated  
21 representative of the ~~viatical settlement~~ provider. Upon the later to occur of the  
22 expiration of any then remaining rescission period or the escrow agent's receipt of  
23 the acknowledgement of the properly completed transfer of ownership,  
24 assignment, or designation of beneficiary from the insurance company, the escrow  
25 agent shall pay the settlement proceeds to the ~~viator~~ owner.

26 5. Failure to tender consideration to the ~~viator~~ owner for the ~~viatical~~ life settlement  
27 contract within the time set forth in the disclosure pursuant to subdivision g of  
28 subsection 1 of section 26.1-33.3-07 renders the ~~viatical~~ life settlement contract  
29 voidable by the ~~viator~~ owner for lack of consideration until the time consideration is  
30 tendered to and accepted by the ~~viator~~ owner. Funds ~~shall be~~ are deemed sent by  
31 a ~~viatical settlement~~ provider to a ~~viator~~ an owner as of the date that the escrow

1 agent either releases funds for wire transfer to the ~~viator~~ owner or places a check  
2 for delivery to the ~~viator~~ owner via United States postal service or other nationally  
3 recognized delivery service.

4 6. Contacts with the insured for the purpose of determining the health status of the  
5 insured by the ~~viatical settlement~~ provider or ~~viatical settlement~~ broker after the  
6 ~~viatical life~~ settlement has occurred ~~shall only~~ may be made by the ~~viatical~~  
7 ~~settlement~~ provider or broker licensed in this state or ~~its~~ the provider's or broker's  
8 authorized representatives and ~~shall~~ must be limited to once every three months  
9 for insureds with a life expectancy of more than one year, and to no more than  
10 once per month for insureds with a life expectancy of one year or less. The  
11 provider or broker shall explain the procedure for these contacts at the time the  
12 ~~viatical life~~ settlement contract is entered ~~into~~. The limitations set forth in this  
13 subsection ~~shall~~ do not apply to any contacts with an insured for reasons other  
14 than determining the insured's health status. ~~Viatical settlement providers~~  
15 Providers and ~~viatical settlement~~ brokers ~~shall be~~ are responsible for the actions of  
16 ~~their~~ the provider's and broker's authorized representatives.

17 **SECTION 11. AMENDMENT.** Section 26.1-33.3-10 of the North Dakota Century Code  
18 is amended and reenacted as follows:

19 **26.1-33.3-10. Prohibited practices.**

20 1. It is in violation of this chapter for any person to enter ~~into~~ a ~~viatical life~~ settlement  
21 contract at any time ~~prior to~~ before the application for or issuance of a policy ~~which~~  
22 that is the subject of a ~~viatical life~~ settlement contract or within a five-year period  
23 commencing with the date of issuance of the insurance policy or certificate unless  
24 the ~~viator~~ owner certifies to the ~~viatical settlement~~ provider or it is otherwise  
25 conclusively shown by the ~~viatical settlement~~ provider that one or more of the  
26 following conditions have been met within the five-year period:

27 a. The policy was issued upon the ~~viator's~~ owner's exercise of conversion rights  
28 arising out of a group or individual policy, provided the total of the time  
29 covered under the conversion policy plus the time covered under the prior  
30 policy is at least sixty months. The time covered under a group policy ~~shall~~  
31 must be calculated without regard to any change in insurance carriers,



- 1 provided the coverage has been continuous and under the same group  
2 sponsorship;
- 3 b. The ~~viator~~ owner submits independent evidence to the ~~viatical settlement~~  
4 provider that one or more of the following conditions have been met within the  
5 five-year period:
- 6 (1) The ~~viator~~ owner or insured is terminally or chronically ill;  
7 (2) The ~~viator's~~ owner's spouse dies or no remaining beneficiaries are then  
8 surviving;  
9 (3) The ~~viator~~ owner divorces a spouse;  
10 (4) The ~~viator~~ owner retires from full-time employment; or  
11 (5) The ~~viator~~ owner becomes physically or mentally disabled and a  
12 physician determines that the disability prevents the ~~viator~~ owner from  
13 maintaining full-time employment;
- 14 c. A final order, judgment, or decree is entered by a court of competent  
15 jurisdiction, on the application of a creditor of the ~~viator~~ owner, adjudicating  
16 the ~~viator~~ owner in default, bankrupt, or insolvent, or approving a petition  
17 seeking reorganization of the ~~viator~~ owner or appointing a receiver, trustee, or  
18 liquidator to all or a substantial part of the ~~viator's~~ owner's assets; or
- 19 d. The ~~viator~~ owner enters ~~into a viatical life~~ settlement contract more than two  
20 years after the date of issuance of a policy and, with respect to the policy, at  
21 all times ~~prior to~~ before the date that is two years after policy issuance, the  
22 following conditions are met:
- 23 (1) Policy premiums have been funded exclusively with unencumbered  
24 assets, including an interest in the life insurance policy being financed  
25 only to the extent of ~~its~~ the policy's net cash surrender value, provided  
26 by, or fully recourse liability incurred by, the insured or a person  
27 described in paragraph 4 of subdivision c of subsection ~~42 7~~ of section  
28 26.1-33.3-01;
- 29 (2) There is no agreement or understanding with any other person to  
30 guarantee any such liability or to purchase, or stand ready to purchase,

1 the policy, including through an assumption or forgiveness of the loan;  
2 and

3 (3) Neither the insured nor the policy has been evaluated for settlement in  
4 connection with the issuance of the policy.

5 2. Copies of the independent evidence described in subdivision b of subsection 1 and  
6 documents required by subsection 1 of section 26.1-33.3-09 ~~shall~~ must be  
7 submitted to the insurer when the ~~viatical settlement~~ provider submits a request to  
8 the insurer for verification of coverage. The copies ~~shall~~ must be accompanied by  
9 a letter of attestation from the ~~viatical settlement~~ provider that the copies are true  
10 and correct copies of the documents received by the ~~viatical settlement~~ provider.

11 3. If the ~~viatical settlement~~ provider submits to the insurer a copy of the ~~owner~~  
12 owner's or insured's certification described in and the independent evidence  
13 required by subdivision b of subsection 1 when the provider submits a request to  
14 the insurer to effect the transfer of the policy or certificate to the ~~viatical settlement~~  
15 provider, the copy ~~shall be~~ is deemed to conclusively establish that the ~~viatical life~~  
16 settlement contract satisfies the requirements of this section and the insurer shall  
17 timely respond to the request.

18 4. An insurer may not require, as a condition of responding to a request for  
19 verification of coverage or effecting the transfer of a policy pursuant to a ~~viatical life~~  
20 settlement contract, that the ~~viator~~ owner, insured, ~~viatical settlement~~ provider, or  
21 ~~viatical settlement~~ broker sign any forms, disclosures, consent, or waiver form that  
22 has not been expressly approved by the commissioner for use in connection with  
23 ~~viatical life~~ settlement contracts in this state.

24 5. Upon receipt of a properly completed request for change of ownership or  
25 beneficiary of a policy, the insurer shall respond in writing within thirty calendar  
26 days with written acknowledgement confirming that the change has been effected  
27 or specifying the reasons why the requested change cannot be processed. The  
28 insurer ~~shall~~ may not unreasonably delay effecting change of ownership or  
29 beneficiary and ~~shall~~ may not otherwise seek to interfere with any ~~viatical life~~  
30 settlement contract lawfully entered into in this state.

1           **SECTION 12. AMENDMENT.** Section 26.1-33.3-11 of the North Dakota Century Code  
2 is amended and reenacted as follows:

3           **26.1-33.3-11. Prohibited practices and conflicts of interest.**

- 4           1. With respect to any ~~viatical life~~ settlement contract or insurance policy, ~~no viatical~~  
5 ~~settlement~~ a broker may not knowingly ~~shall~~ solicit an offer from, effectuate a  
6 ~~viatical life~~ settlement with, or make a sale to any ~~viatical settlement~~ provider,  
7 ~~viatical life~~ settlement purchaser, financing entity, or related provider that is  
8 controlling, controlled by, or under common control with ~~such viatical settlement~~  
9 the broker unless the relationship is disclosed to the owner.
- 10          2. With respect to any ~~viatical life~~ settlement contract or insurance policy, ~~no viatical~~  
11 ~~settlement~~ a provider may not knowingly ~~may~~ enter into a ~~viatical life~~ settlement  
12 contract with ~~a viator~~, an owner if, in connection with such ~~viatical life~~ settlement  
13 contract, anything of value will be paid to a ~~viatical settlement~~ broker that is  
14 controlling, controlled by, or under common control with ~~such viatical settlement~~  
15 the provider or the viatical life settlement purchaser, financing entity, or related  
16 provider trust that is involved in such viatical the life settlement contract, unless the  
17 relationship is disclosed to the owner.
- 18          3. A violation of subsection 1 or 2 ~~shall be~~ is deemed a fraudulent ~~viatical life~~  
19 settlement act.
- 20          4. A person may not issue, solicit, market, or otherwise promote the purchase of an  
21 insurance policy for the purpose of or with an emphasis on settling the policy.
- 22          5. A person may not enter a premium finance agreement with any other person or  
23 agency, or any person affiliated with that person or agency, pursuant to which the  
24 person shall receive any proceeds, fees, or other consideration, directly or  
25 indirectly, from the policy or owner of the policy or any other person with respect to  
26 the premium finance agreement or any life settlement contract or other transaction  
27 related to that policy which are in addition to the amounts required to pay the  
28 principal, interest, and service charges related to policy premiums pursuant to the  
29 premium finance agreement or subsequent sale of the agreement; provided,  
30 further, that any payment, charge, fee, or other amount in addition to the amount  
31 required to pay the principal, interest, and service charges related to policy

1           premiums paid under the premium finance agreement must be remitted to the  
2           original owner of the policy or to the original owner's estate if the original owner is  
3           not living at the time of the determination of overpayment.

4           6. In the solicitation, application, or issuance of a life insurance policy, a person may  
5           not employ any device, scheme, or artifice in violation of the state's insurable  
6           interest laws.

7           7. It is unlawful for an insurance company to engage in any transaction, act, or  
8           practice or course of business or dealing which restricts, limits, or impairs in any  
9           way the lawful transfer of ownership, change of beneficiary, or assignment of a  
10          policy to effectuate a ~~vatical life~~ vatical life settlement contract.

11          **SECTION 13. AMENDMENT.** Section 26.1-33.3-12 of the North Dakota Century Code  
12 is amended and reenacted as follows:

13          **26.1-33.3-12. Advertising for ~~vatical life~~ vatical life settlements.** Every ~~vatical life~~ vatical life settlement  
14 licensee shall establish and at all times maintain a system of control over the content, form, and  
15 method of dissemination of all advertisements of ~~its~~ the licensee's contracts, products, and  
16 services. All advertisements, regardless of by whom written, created, designed, or presented,  
17 ~~shall be~~ are the responsibility of the ~~vatical life~~ vatical life settlement licensees, as well as the individual  
18 who created or presented the advertisement. A system of control ~~shall~~ must include regular  
19 routine notification, at least once a year, to agents and others authorized by the ~~vatical life~~ vatical life  
20 settlement licensee who disseminate advertisements of the requirements and procedures for  
21 approval ~~prior to~~ before the use of any advertisements not furnished by the ~~vatical life~~ vatical life  
22 settlement licensee. The commissioner may adopt rules to implement this section.

23          **SECTION 14. AMENDMENT.** Section 26.1-33.3-13 of the North Dakota Century Code  
24 is amended and reenacted as follows:

25          **26.1-33.3-13. Fraud prevention and control.**

26          1. Fraudulent ~~vatical life~~ vatical life settlement acts, interference, and participation of convicted  
27 felons prohibited.

28           a. A person ~~shall~~ may not commit a fraudulent ~~vatical life~~ vatical life settlement act.

29           b. A person ~~shall~~ may not knowingly or intentionally interfere with the  
30 enforcement of ~~the provisions of~~ this chapter or investigations of suspected or  
31 actual violations of this chapter.

- 1 c. A person in the business of ~~vatical~~ life settlements ~~shall~~ may not knowingly or  
2 intentionally permit any person convicted of a felony involving dishonesty or  
3 breach of trust to participate in the business of ~~vatical~~ life settlements.
- 4 2. Fraud warning required.
- 5 a. ~~Vatical~~ Life settlement contracts and applications for ~~vatical~~ life settlements,  
6 regardless of the form of transmission, must contain the following statement  
7 or a substantially similar statement:
- 8 "Any person ~~who~~ that knowingly presents false information in an  
9 application for insurance or ~~vatical~~ life settlement contract is guilty of a  
10 crime and may be subject to fines and confinement in prison."
- 11 b. The lack of a statement as required in subdivision a does not constitute a  
12 defense in any prosecution for a fraudulent ~~vatical~~ life settlement act.
- 13 3. Mandatory reporting of fraudulent ~~vatical~~ life settlement acts.
- 14 a. Any person engaged in the business of ~~vatical~~ life settlements having  
15 knowledge or a reasonable suspicion that a fraudulent ~~vatical~~ life settlement  
16 act is being, will be, or has been committed shall provide to the commissioner  
17 such information as required by, and in a manner prescribed by, the  
18 commissioner.
- 19 b. Any other person having knowledge or a reasonable belief that a fraudulent  
20 ~~vatical~~ life settlement act is being, will be, or has been committed may  
21 provide to the commissioner the information required by, and in a manner  
22 prescribed by, the commissioner.
- 23 4. Immunity from liability.
- 24 a. ~~No civil~~ Civil liability ~~shall~~ may not be imposed on and ~~no~~ a cause of action  
25 ~~shall~~ may not arise from a person's furnishing information concerning  
26 suspected, anticipated, or completed fraudulent ~~vatical~~ life settlement acts or  
27 suspected or completed fraudulent insurance acts, if the information is  
28 provided to or received from:
- 29 (1) The commissioner or the commissioner's employees, agents, or  
30 representatives;

- 1                   (2) Federal, state, or local law enforcement or regulatory officials or their  
2                   employees, agents, or representatives;
- 3                   (3) A person involved in the prevention and detection of fraudulent ~~vatical~~  
4                   life settlement acts or that person's agents, employees, or  
5                   representatives;
- 6                   (4) The national association of insurance commissioners, national  
7                   association of securities dealers, the North American securities  
8                   administrators association, or their employees, agents, or  
9                   representatives, or other regulatory body overseeing life insurance,  
10                  ~~vatical~~ life settlements, securities, or investment fraud; or
- 11                  (5) The life insurer that issued the life insurance policy covering the life of  
12                  the insured.
- 13                  b. Subdivision a ~~shall~~ does not apply to statements made with actual malice. In  
14                  an action brought against a person for filing a report or furnishing other  
15                  information concerning a fraudulent ~~vatical~~ life settlement act, the party  
16                  bringing the action shall plead specifically any allegation that subdivision a  
17                  does not apply because the person filing the report or furnishing the  
18                  information did so with actual malice.
- 19                  c. A person furnishing information as identified in subdivision a ~~shall be~~ is  
20                  entitled to an award of attorney's fees and costs if the person is the prevailing  
21                  party in a civil cause of action for libel, slander, or any other relevant tort  
22                  arising out of activities in carrying out the provisions of this chapter and the  
23                  party bringing the action was not substantially justified in doing so. For  
24                  purposes of this section, a proceeding is "substantially justified" if it had a  
25                  reasonable basis in law or fact at the time that it was initiated. However, such  
26                  an award does not apply to any person furnishing information concerning that  
27                  person's own fraudulent ~~vatical~~ life settlement acts.
- 28                  d. This section does not abrogate or modify common law or statutory privileges  
29                  or immunities enjoyed by a person described in subdivision a.
- 30                  5. Confidentiality.

- 1           a. The documents and evidence provided pursuant to subsection 4 or obtained  
2           by the commissioner in an investigation of suspected or actual fraudulent  
3           ~~vatical~~ life settlement acts shall be privileged and confidential and ~~shall is~~ not  
4           be a public record and ~~shall is~~ not be subject to discovery or subpoena in a  
5           civil or criminal action.
- 6           b. Subdivision a does not prohibit release by the commissioner of documents  
7           and evidence obtained in an investigation of suspected or actual fraudulent  
8           ~~vatical~~ life settlement acts:
- 9           (1) In administrative or judicial proceedings to enforce laws administered  
10           by the commissioner;
- 11           (2) To federal, state, or local law enforcement or regulatory agencies, to an  
12           organization established for the purpose of detecting and preventing  
13           fraudulent ~~vatical~~ life settlement acts, or to the national association of  
14           insurance commissioners; or
- 15           (3) At the discretion of the commissioner, to a person in the business of  
16           ~~vatical~~ life settlements that is aggrieved by a fraudulent ~~vatical~~ life  
17           settlement act.
- 18           c. Release of documents and evidence under subdivision b does not abrogate or  
19           modify the privilege granted in subdivision a.
- 20         6. Other law enforcement or regulatory authority. This chapter ~~shall~~ does not:
- 21           a. Preempt the authority or relieve the duty of other law enforcement or  
22           regulatory agencies to investigate, examine, and prosecute suspected  
23           violations of law;
- 24           b. Prevent or prohibit a person from disclosing voluntarily information concerning  
25           ~~vatical~~ life settlement fraud to a law enforcement or regulatory agency other  
26           than the insurance department; or
- 27           c. Limit the powers granted elsewhere by the laws of this state to the  
28           commissioner or an insurance fraud unit to investigate and examine possible  
29           violations of law and to take appropriate action against wrongdoers.
- 30         7. ~~Vatical~~ Life settlement antifraud initiatives.

- 1           a. ~~Vitacal settlement providers~~ Providers and ~~vitacal settlement~~ brokers shall  
2           have in place antifraud initiatives reasonably calculated to detect, prosecute,  
3           and prevent fraudulent ~~vitacal~~ life settlement acts. At the discretion of the  
4           commissioner, the commissioner may order, or a licensee may request and  
5           the commissioner may grant, such modifications of the following required  
6           initiatives as necessary to ensure an effective antifraud program. The  
7           modifications may be more or less restrictive than the required initiatives so  
8           long as the modifications may reasonably be expected to accomplish the  
9           purpose of this section.
- 10          b. Antifraud initiatives ~~shall~~ must include:
- 11           (1) Fraud investigators, who may be ~~vitacal settlement~~ provider or ~~vitacal~~  
12           ~~settlement~~ broker employees or independent contractors; and
- 13           (2) An antifraud plan, which ~~shall~~ must be submitted to the commissioner.  
14           The antifraud plan shall include, ~~but not be limited to~~:
- 15           (a) A description of the procedures for detecting and investigating  
16           possible fraudulent ~~vitacal~~ life settlement acts and procedures for  
17           resolving material inconsistencies between medical records and  
18           insurance applications;
- 19           (b) A description of the procedures for reporting possible fraudulent  
20           ~~vitacal~~ life settlement acts to the commissioner;
- 21           (c) A description of the plan for antifraud education and training of  
22           underwriters and other personnel; and
- 23           (d) A description or chart outlining the organizational arrangement of  
24           the antifraud personnel who are responsible for the investigation  
25           and reporting of possible fraudulent ~~vitacal~~ life settlement acts  
26           and investigating unresolved material inconsistencies between  
27           medical records and insurance applications.
- 28          c. Antifraud plans submitted to the commissioner ~~shall be~~ are privileged and  
29           confidential and ~~shall~~ are not be a public record and ~~shall~~ are not be subject  
30           to discovery or subpoena in a civil or criminal action.



1           **SECTION 15. AMENDMENT.** Section 26.1-33.3-14 of the North Dakota Century Code  
2 is amended and reenacted as follows:

3           **26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.**

- 4           1. In addition to the penalties and other enforcement provisions of this chapter, if any  
5 person violates this chapter or any regulation implementing this chapter, the  
6 commissioner may seek an injunction in a court of competent jurisdiction and may  
7 apply for temporary and permanent orders that the commissioner determines are  
8 necessary to restrain the person from committing the violation.
- 9           2. Any person damaged by the acts of a person in violation of this chapter may bring  
10 a civil action against the person committing the violation in a court of competent  
11 jurisdiction.
- 12           3. The commissioner may issue, in accordance with this title and chapter 28-32, a  
13 cease and desist order upon a person that violates any provision of this chapter,  
14 any regulation or order adopted by the commissioner, or any written agreement  
15 entered into with the commissioner.
- 16           4. ~~When~~ If the commissioner finds that an activity in violation of this chapter presents  
17 an immediate danger to the public that requires an immediate final order, the  
18 commissioner may issue an emergency cease and desist order reciting with  
19 particularity the facts underlying the findings. The emergency cease and desist  
20 order is effective immediately upon service of a copy of the order on the  
21 respondent and remains effective for ninety days. If the commissioner begins  
22 nonemergency cease and desist proceedings, the emergency cease and desist  
23 order remains effective, absent an order by a court of competent jurisdiction  
24 pursuant to this title and chapter 28-32.
- 25           5. In addition to the penalties and other enforcement provisions of this chapter, any  
26 person ~~who~~ that violates this chapter is subject to civil penalties of up to fifty  
27 thousand dollars per violation. Imposition of civil penalties ~~shall be~~ is pursuant to  
28 an order of the commissioner issued under this title and chapter 28-32. The  
29 commissioner's order may require a person found to be in violation of this chapter  
30 to make restitution to persons aggrieved by violations of this chapter.

- 1           6. A person convicted of a violation of this chapter by a court of competent jurisdiction  
2 is governed by chapter 12.1-32. A person convicted of a violation of this chapter  
3 ~~shall~~ must be ordered to pay restitution to persons aggrieved by the violation of this  
4 chapter. Restitution ~~shall~~ must be ordered in addition to a fine or imprisonment,  
5 but not in lieu of a fine or imprisonment.
- 6           7. Except for a fraudulent ~~vatical~~ life settlement act committed by a ~~viator~~ an owner,  
7 the enforcement provisions and penalties of this section ~~shall~~ do not apply to a  
8 ~~viator~~ an owner.
- 9           8. A person convicted of a violation of this chapter by a court of competent jurisdiction  
10 may be sentenced in accordance with subdivision a, b, c, or d based on the greater  
11 of the value of property, services, or other benefit wrongfully obtained or attempted  
12 to obtain; or the aggregate economic loss suffered by any person as a result of the  
13 violation. A person convicted of a fraudulent ~~vatical~~ life settlement act must be  
14 ordered to pay restitution to persons aggrieved by the fraudulent ~~vatical~~ life  
15 settlement act. Restitution must be ordered in addition to a fine or imprisonment  
16 but not in lieu of a fine or imprisonment. A fraudulent ~~vatical~~ life settlement act is:
- 17           a. A class A felony if the value of a ~~vatical~~ life settlement contract is more than  
18 thirty-five thousand dollars;
- 19           b. A class B felony if the value of a ~~vatical~~ life settlement contract is more than  
20 two thousand five hundred dollars but not more than thirty-five thousand  
21 dollars;
- 22           c. A class C felony if the value of a ~~vatical~~ life settlement contract is more than  
23 five hundred dollars but not more than two thousand five hundred dollars; or
- 24           d. A class A misdemeanor if the value of a ~~vatical~~ life settlement contract is five  
25 hundred dollars or less.
- 26           9. In any prosecution under this section under subdivisions a, b, c, and d of  
27 subsection 8, the value of the ~~vatical~~ life settlement contracts within any six-month  
28 period may be aggregated and the defendant charged accordingly in applying in  
29 the provisions of this section; provided that when two or more offenses are  
30 committed by the same person in two or more counties, the accused may be  
31 prosecuted in any county in which one of the offenses was committed for all of the

1 offenses aggregated under this section. The applicable statute of limitations  
2 provision ~~shall~~ does not begin to run until the insurance company or law  
3 enforcement agency is aware of the fraud, but in no event may the prosecution be  
4 commenced later than seven years after the act has occurred.

5 **SECTION 16. AMENDMENT.** Section 26.1-33.3-15 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **26.1-33.3-15. Unfair trade practices.** A violation of this chapter, including the  
8 commission of a fraudulent ~~viatical life~~ life settlement act, ~~shall be~~ is considered an unfair trade  
9 practice under section 26.1-04-03 subject to the penalties contained in that section.

10 **SECTION 17. AMENDMENT.** Section 26.1-33.3-16 of the North Dakota Century Code  
11 is amended and reenacted as follows:

12 **26.1-33.3-16. Authority to promulgate regulations.** The commissioner ~~shall have~~  
13 ~~the authority to~~ may:

- 14 1. Promulgate regulations implementing this chapter;
- 15 2. Establish standards for evaluating reasonableness of payments under ~~viatical life~~  
16 life settlement contracts for ~~persons~~ individuals who are terminally or chronically ill.  
17 This authority includes regulation of discount rates used to determine the amount  
18 paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit  
19 under a life insurance policy insuring the life of ~~a person that~~ an individual who is  
20 chronically or terminally ill;
- 21 3. Establish appropriate licensing requirements, fees, and standards for continued  
22 licensure for ~~viatical settlement~~ providers and brokers;
- 23 4. Require a bond or other mechanism for financial accountability for ~~viatical~~  
24 settlement providers and brokers; and
- 25 5. Adopt rules governing the relationship and responsibilities of both insurers and  
26 ~~viatical settlement~~ providers and ~~viatical settlement~~ brokers during the ~~viatication~~  
27 settlement of a life insurance policy or certificate.

28 **SECTION 18. AMENDMENT.** Section 26.1-33.3-17 of the North Dakota Century Code  
29 is amended and reenacted as follows:

30 **26.1-33.3-17. Effective date.** This chapter takes effect on August 1, 2007. A ~~viatical~~  
31 ~~settlement~~ provider or ~~viatical settlement~~ broker transacting business in this state may continue

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- 1 to do so pending approval or disapproval of the provider or broker application for a license as
- 2 long as the application is filed with the commissioner by August 1, 2007.