

HOUSE BILL NO.

Introduced by

Representative Kasper

1 A BILL for an Act to amend and reenact sections 26.1-33.3-01, 26.1-33.3-02, 26.1-33.3-08, and
2 26.1-33.3-10 of the North Dakota Century Code, relating to viatical settlement contracts.

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

4 **SECTION 1. AMENDMENT.** Section 26.1-33.3-01 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **26.1-33.3-01. Definitions.** As used in this chapter, unless the context requires
7 otherwise:

- 8 1. "Advertising" means any written, electronic, or printed communication or any
9 communication by means of recorded telephone messages or transmitted on radio,
10 television, the internet, or similar communications media, including film strips,
11 motion pictures, and videos, published, disseminated, circulated, or placed directly
12 before the public, in this state, for the purpose of creating an interest in or inducing
13 a person to sell, assign, devise, bequest, or transfer the death benefit or ownership
14 of a life insurance policy pursuant to a viatical settlement contract.
- 15 2. "Business of viatical settlements" means an activity involved in, but not limited to,
16 the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing,
17 financing, monitoring, tracking, underwriting, selling, transferring, assigning,
18 pledging, hypothecating, or in any other manner, acquiring an interest in a life
19 insurance policy by means of a viatical settlement contract.
- 20 3. "Chronically ill" means:
 - 21 a. Being unable to perform at least two activities of daily living, such as eating,
22 toileting, transferring, bathing, dressing, or continence;
 - 23 b. Requiring substantial supervision to protect the individual from threats to
24 health and safety due to severe cognitive impairment; or

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

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

- 1 d. Recklessly entering ~~into~~, negotiating, brokering, or otherwise dealing in a
2 viatical settlement contract, the subject of which is a life insurance policy that
3 was obtained by presenting false information concerning any fact material to
4 the policy or by concealing, for the purpose of misleading another, information
5 concerning any fact material to the policy, if the person or the persons
6 intended to defraud the policy's issuer, the viatical settlement provider or the
7 viator. "Recklessly" means engaging in the conduct in conscious and clearly
8 unjustifiable disregard of a substantial likelihood of the existence of the
9 relevant facts or risks, such disregard involving a gross deviation from
10 acceptable standards of conduct; or
- 11 e. Attempting to commit, assisting, aiding, or abetting in the commission of, or
12 conspiracy to commit the acts or omissions specified in this subsection.
- 13 ~~6. "Person" means a natural person or a legal entity, including an individual,
14 partnership, limited liability company, association, trust, or corporation.~~
- 15 ~~7.~~ "Policy" means an individual or group policy, group certificate, contract, or
16 arrangement of life insurance owned by a resident of this state, regardless of
17 whether delivered or issued for delivery in this state.
- 18 ~~8.~~ 7. "Related provider trust" means a titling trust or other trust established by a licensed
19 viatical settlement provider or a financing entity for the sole purpose of holding the
20 ownership or beneficial interest in purchased policies in connection with a financing
21 transaction. The trust must have a written agreement with the licensed viatical
22 settlement provider under which the licensed viatical settlement provider is
23 responsible for ensuring compliance with all statutory and regulatory requirements
24 and under which the trust agrees to make all records and files related to viatical
25 settlement transactions available to the commissioner as if those records and files
26 were maintained directly by the licensed viatical settlement provider.
- 27 ~~9.~~ 8. "Special purpose entity" means a corporation, partnership, trust, limited liability
28 company, or other similar entity formed solely to provide either directly or indirectly
29 access to institutional capital markets:
- 30 a. For a financing entity or licensed viatical settlement provider; or

- 1 viator and whose compensation is not paid directly or indirectly by the viatical
2 settlement provider or purchaser.
- 3 12. a. "Viatical settlement contract" means a written agreement between a viator
4 and a viatical settlement provider or any affiliate of the viatical settlement
5 provider establishing the terms under which compensation or anything of
6 value is or will be paid, which compensation or value is less than the expected
7 death benefits of the policy, in return for the viator's present or future
8 assignment, transfer, sale, devise, or bequest of the death benefit or
9 ownership of any portion of the insurance policy or certificate of insurance.
- 10 b. "Viatical settlement contract" includes a premium finance loan made for a life
11 insurance policy by a lender to a viator on, before, or after the date of
12 issuance of the policy if:
- 13 (1) The loan proceeds are not used solely to pay:
- 14 (a) Premiums for the policy; or
- 15 (b) The costs of the loan, including interest, arrangement fees,
16 utilization fees and similar fees closing costs, legal fees and
17 expenses, trustee fees and expenses, and third-party collateral
18 provider fees and expenses, including fees payable to letter of
19 credit issuers;
- 20 (2) The viator or the insured receives on the date of the premium finance
21 loan a guarantee of a future viatical settlement value of the policy; or
- 22 (3) The viator or the insured agrees on the date of the premium finance
23 loan to sell the policy or any portion of its death benefit on any date
24 following the issuance of the policy.
- 25 c. "Viatical settlement contract" does not include:
- 26 (1) A policy loan or accelerated death benefit made by the insurer pursuant
27 to the policy's terms;
- 28 (2) A loan made by a bank or other licensed financial institution in which
29 the lender takes an interest in a life insurance policy solely to secure
30 repayment of the loan or, if there is a default on the loan and the policy
31 is transferred, the further assignment of the policy by the lender,

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

1 a determination that the contract, transaction, or arrangement is not of
2 the type intended to be regulated by this chapter.

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

8 a. A viatical settlement investment agent shall not have any contact directly or
9 indirectly with the viator or insured or have knowledge of the identity of the
10 viator or insured.

11 b. A viatical settlement investment agent is deemed to represent the viatical
12 settlement provider of whom the viatical settlement investment agent is an
13 appointed or contracted agent.

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

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

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

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

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

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

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

30 (6) A financing entity;

31 (7) A special purpose entity;

- 1 (8) A related provider trust;
- 2 (9) A viatical settlement purchaser; or
- 3 (10) Any other person that the commissioner determines is not the type of
- 4 person intended to be covered by the definition of viatical settlement
- 5 provider.
- 6 15. "Viatical settlement purchase agreement" means a contract or agreement, entered
- 7 into by a viatical settlement purchaser, to which the viator is not a party, to
- 8 purchase a life insurance policy or an interest in a life insurance policy, that is
- 9 entered into for the purpose of deriving an economic benefit. A viatical settlement
- 10 purchase agreement is a viatical settlement contract as defined in section
- 11 10-04-02.
- 12 16. a. "Viatical settlement purchaser" means a person who provides a sum of money
- 13 as consideration for a life insurance policy or an interest in the death benefits
- 14 of a life insurance policy that has been or will be the subject of a viatical
- 15 settlement contract, or a person who owns or acquires or is entitled to a
- 16 beneficial interest in a trust that owns a viatical settlement contract or is the
- 17 beneficiary of a life insurance policy that has been or will be the subject of a
- 18 viatical settlement contract, for the purpose of deriving an economic benefit.
- 19 b. "Viatical settlement purchaser" does not include:
- 20 (1) A licensee under this chapter;
- 21 (2) An accredited investor or qualified institutional buyer as defined,
- 22 respectively, in rule 501(a) or rule 144A adopted under the Securities
- 23 Act of 1933, as amended;
- 24 (3) A financing entity;
- 25 (4) A special purpose entity; or
- 26 (5) A related provider trust.
- 27 17. "Viaticated policy" means a life insurance policy or certificate that has been
- 28 acquired by a viatical settlement provider pursuant to a viatical settlement contract.
- 29 18. a. "Viator" means the owner of a life insurance policy or a certificate holder
- 30 under a group policy who resides in this state and enters or seeks to enter
- 31 into a viatical settlement contract. For the purposes of this chapter, a viator

1 shall not be limited to an owner of a life insurance policy or a certificate holder
2 under a group policy insuring the life of an individual with a terminal or chronic
3 illness or condition except where specifically addressed. If there is more than
4 one viator on a single policy and the viators are residents of different states,
5 the transactions shall be governed by the law of the state in which the viator
6 having the largest percentage ownership resides or, if the viators hold equal
7 ownership, the state of residence of one viator agreed upon in writing by all
8 the viators.

9 b. "Viator" does not include:

- 10 (1) A licensee under this chapter;
11 (2) Qualified institutional buyer as defined, respectively, in rule 144A
12 adopted under the Securities Act of 1933, as amended;
13 (3) A financing entity;
14 (4) A special purpose entity; or
15 (5) A related provider trust.

16 **SECTION 2. AMENDMENT.** Section 26.1-33.3-02 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **26.1-33.3-02. License and bond requirements.**

- 19 1. a. A person ~~shall~~ may not operate as a viatical settlement provider or viatical
20 settlement broker without first obtaining a license from the commissioner of
21 the state of residence of the viator. A person may not operate as a viatical
22 settlement broker without first obtaining an insurance producer license from
23 the commissioner.
24 b. The insurer that issued the policy being viaticated ~~shall~~ is not be responsible
25 for any act or omission of a viatical settlement broker or viatical settlement
26 provider arising out of or in connection with the viatical settlement transaction,
27 unless the insurer receives compensation for the placement of a viatical
28 settlement contract from the viatical settlement provider or viatical settlement
29 broker in connection with the viatical settlement contract.
30 c. A person licensed as an attorney, certified public accountant, or financial
31 planner accredited by a nationally recognized accreditation agency, who is

1 retained to represent the viator, whose compensation is not paid directly or
2 indirectly by the viatical settlement provider, may negotiate viatical settlement
3 contracts on behalf of the viator without having to obtain a license as a viatical
4 settlement broker.

5 2. Application for a viatical settlement provider or viatical settlement broker license
6 ~~shall~~ must be made to the commissioner by the applicant on a form prescribed by
7 the commissioner, and these applications ~~shall~~ must be accompanied by a two
8 hundred fifty dollar fee for a provider license and a two hundred dollar fee for a
9 broker license.

10 3. Licenses may be renewed from year to year on the anniversary date upon payment
11 of the annual renewal fee of one hundred dollars. Failure to pay the fees by the
12 renewal date results in expiration of the license.

13 4. The applicant shall provide information on forms required by the commissioner.
14 The commissioner ~~shall have authority~~, at any time, ~~to~~ may require the applicant to
15 fully disclose the identity of all stockholders, partners, officers, members, and
16 employees, and the commissioner may refuse to issue a license in the name of a
17 legal entity if not satisfied that any officer, employee, stockholder, partner, or
18 member thereof who may materially influence the applicant's conduct meets the
19 standards of this chapter.

20 5. A license issued to a legal entity authorizes all partners, officers, members, and
21 designated employees to act as viatical settlement providers or viatical settlement
22 brokers, as applicable, under the license, and all those persons ~~shall~~ must be
23 named in the application and any supplements to the application.

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

- 27 a. If a viatical settlement provider, has provided a detailed plan of operation;
28 b. Is competent and trustworthy and intends to act in good faith in the capacity
29 involved by the license applied for;

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

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

15 **SECTION 3. AMENDMENT.** Section 26.1-33.3-08 of the North Dakota Century Code
16 is amended and reenacted as follows:

17 **26.1-33.3-08. Disclosure to insurer.** ~~Prior to the initiation of a viatical settlement plan,~~
18 ~~viatical settlement transaction, or series of viatical settlement transactions, a viatical settlement~~
19 ~~broker or viatical settlement provider shall fully disclose all nonproprietary information to an~~
20 ~~insurer the details of the plan, transaction, or series of transactions, to which the viatical~~
21 ~~settlement broker or viatical settlement provider is a party, to originate, renew, continue, or~~
22 ~~finance a life insurance policy with the insurer for the purpose of engaging in the business of~~
23 ~~viatical settlements at any time prior to, or during the first five years after, issuance of the policy.~~
24 Any disclosure required under this section must be in writing. Without limiting the ability of an
25 insurer from assessing the insurability of a policy applicant and determining whether to issue
26 the policy, and in addition to other questions an insurance carrier may lawfully pose to a life
27 insurance applicant, insurance carriers may inquire in the application for insurance whether the
28 proposed owner intends to pay premiums with the assistance of financing from a lender that will
29 use the policy as collateral to support the financing.

- 30 1. If, as described in subsection 12 of section 26.1-33.3-01, the loan provides funds
31 that can be used for a purpose other than paying for the premiums, costs, and

1 expenses associated with obtaining and maintaining the life insurance policy and
2 loan, the application must be rejected as a prohibited practice under section
3 26.1-33.3-10.

4 2. If the financing does not violate section 26.1-33.3-10 in this manner, the insurance
5 carrier:

6 a. May make disclosures, such as the following, to the applicant and the insured,
7 either on the application or an amendment to the application to be completed
8 no later than the delivery of the policy:

9 "If you have entered a loan arrangement where the policy is used as
10 collateral, and the policy does change ownership at some point in the
11 future in satisfaction of the loan, the following may be true:

12 (1) A change of ownership could lead to a stranger owning an interest in
13 the insured's life;

14 (2) A change of ownership could in the future limit your ability to purchase
15 future insurance on the insured's life because there is a limit to how
16 much coverage insurers will issue on one life;

17 (3) Should there be change of ownership and you wish to obtain more
18 insurance coverage on the insured's life in the future, the insured's
19 higher issue age, a change in health status, and other factors may
20 reduce the ability to obtain coverage and may result in significantly
21 higher premiums; or

22 (4) You should consult a professional advisor because a change in
23 ownership in satisfaction of the loan may result in tax consequences to
24 the owner, depending on the structure of the loan;" and

25 b. May require certifications, such as the following, from the applicant or the
26 insured or both:

27 (1) "I have not entered any agreement or arrangement providing for the
28 future sale of this life insurance policy;

29 (2) My loan arrangement for this policy provides funds sufficient to pay for
30 some or all of the premiums, costs, and expenses associated with
31 obtaining and maintaining my life insurance policy, but I have not

1 entered any agreement by which I am to receive consideration in
2 exchange for procuring this policy; and

3 (3) The borrower has an insurable interest in the insured."

4 **SECTION 4. AMENDMENT.** Section 26.1-33.3-10 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **26.1-33.3-10. Prohibited practices.**

7 1. It is in violation of this chapter for any person to enter ~~into~~ a viatical settlement
8 contract at any time prior to the application for or issuance of a policy which is the
9 subject of a viatical settlement contract or within a five-year period commencing
10 with the date of issuance of the insurance policy or certificate unless the viator
11 certifies to the viatical settlement provider or it is otherwise conclusively shown by
12 the viatical settlement provider that one or more of the following conditions have
13 been met within the five-year period:

14 a. The policy was issued upon the viator's exercise of conversion rights arising
15 out of a group or individual policy, provided the total of the time covered under
16 the conversion policy plus the time covered under the prior policy is at least
17 sixty months. The time covered under a group policy ~~shall~~ must be calculated
18 without regard to any change in insurance carriers, provided the coverage has
19 been continuous and under the same group sponsorship;

20 b. The viator submits independent evidence to the viatical settlement provider
21 that one or more of the following conditions have been met within the five-year
22 period:

23 (1) The viator or insured is terminally or chronically ill;

24 (2) The viator's spouse dies or no remaining beneficiaries are then
25 surviving;

26 (3) ~~The viator divorces a spouse;~~

27 (4) The viator retires from full-time employment; or

28 (5) (4) The viator becomes physically or mentally disabled and a physician
29 determines that the disability prevents the viator from maintaining
30 full-time employment;

- 1 c. A final order, judgment, or decree is entered by a court of competent
2 jurisdiction, on the application of a creditor of the viator, adjudicating the viator
3 in default, bankrupt, or insolvent, or approving a petition seeking
4 reorganization of the viator or appointing a receiver, trustee, or liquidator to all
5 or a substantial part of the viator's assets; or
- 6 d. The viator enters ~~into~~ a viatical settlement contract more than two years after
7 the date of issuance of a policy and, with respect to the policy, at all times
8 ~~prior to~~ before the date that is two years after policy issuance, the following
9 conditions are met:
- 10 (1) Policy premiums have been funded exclusively with unencumbered
11 assets, including an interest in the life insurance policy being financed
12 only to the extent of its net cash surrender value, provided by, or fully
13 recourse liability incurred by, the insured or a person described in
14 paragraph 4 of subdivision c of subsection 12 of section 26.1-33.3-01;
- 15 (2) There is no agreement or understanding with any other person to
16 guarantee any such liability or to purchase, or stand ready to purchase,
17 the policy, including through an assumption or forgiveness of the loan;
18 and
- 19 (3) Neither the insured nor the policy has been evaluated for settlement in
20 connection with the issuance of the policy.
- 21 2. Copies of the independent evidence described in subdivision b of subsection 1 and
22 documents required by subsection 1 of section 26.1-33.3-09 ~~shall~~ must be
23 submitted to the insurer when the viatical settlement provider submits a request to
24 the insurer for verification of coverage. The copies ~~shall~~ must be accompanied by
25 a letter of attestation from the viatical settlement provider that the copies are true
26 and correct copies of the documents received by the viatical settlement provider.
- 27 3. If the viatical settlement provider submits to the insurer a copy of the owner or
28 insured's certification described in and the independent evidence required by
29 subdivision b of subsection 1 when the provider submits a request to the insurer to
30 effect the transfer of the policy or certificate to the viatical settlement provider, the
31 copy ~~shall~~ must be deemed to conclusively establish that the viatical settlement

- 1 contract satisfies the requirements of this section and the insurer shall timely
2 respond to the request.
- 3 4. An insurer may not require, as a condition of responding to a request for
4 verification of coverage or effecting the transfer of a policy pursuant to a viatical
5 settlement contract, that the viator, insured, viatical settlement provider, or viatical
6 settlement broker sign any forms, disclosures, consent, or waiver form that has not
7 been expressly approved by the commissioner for use in connection with viatical
8 settlement contracts in this state.
- 9 5. Upon receipt of a properly completed request for change of ownership or
10 beneficiary of a policy, the insurer shall respond in writing within thirty calendar
11 days with written acknowledgement confirming that the change has been effected
12 or specifying the reasons why the requested change cannot be processed. The
13 insurer ~~shall~~ may not unreasonably delay effecting change of ownership or
14 beneficiary and ~~shall~~ may not otherwise seek to interfere with any viatical
15 settlement contract lawfully entered ~~into~~ in this state.

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

18 **26.1-33.3-05. Reporting requirements and privacy.**

- 19 1. ~~Each viatical~~ For any policy settled within five years of policy issuance, each life
20 settlement provider shall file with the commissioner on or before March first of each
21 year an annual statement containing such information as the commissioner may
22 prescribe by regulation. In addition to any other requirements, the annual
23 statement must specify the total number, aggregate face amount, and life
24 settlement proceeds of policies settled during the immediately preceding calendar
25 year, together with a breakdown of the information by policy issue year. The
26 annual statement must also include the names of the insurance companies with
27 which policies have been settled and the life settlement brokers that have settled
28 such policies. Such information ~~shall be~~ is limited to only those transactions ~~where~~
29 for what the viator owner is a resident of this state. Individual transaction data
30 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 viatical settlement business or other business
29 subject to the commissioner's jurisdiction. Any proceedings for suspension,
30 revocation, or refusal of any license or authority ~~shall~~ must be conducted
31 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 may from time to time
- 8 be similarly employed or retained by ~~persons~~ individuals 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~~ life
20 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~~ life has been issued as a joint policy or
28 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 providers 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. Funds ~~shall be~~ are deemed sent by a
31 ~~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~~
30 lifesettlement 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, or market, or otherwise promote the purchase of
21 an 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 services 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 viatical 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 ~~viatical~~ life settlements.** Every ~~viatical~~ 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 ~~viatical~~ 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 ~~viatical~~ 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 ~~viatical~~ 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 ~~viatical~~ life settlement acts, interference, and participation of convicted
27 felons prohibited.

28 a. A person ~~shall~~ may not commit a fraudulent ~~viatical~~ 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.