

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1284

Introduced by

Representatives Keiser, Wald

Senator Klein

1 A BILL for an Act to create and enact chapter 26.1-33.4 of the North Dakota Century Code,
2 relating to the national conference of insurance legislators Life Settlements Model Act; to
3 amend and reenact subsection 21 of section 10-04-02 of the North Dakota Century Code,
4 relating to the definition of the term viatical settlement contract; to repeal chapter 26.1-33.3 of
5 the North Dakota Century Code, relating to viatical settlement contracts; and to provide a
6 penalty.

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

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

- 10 21. "Viatical settlement contract" means an agreement for the purchase, sale,
11 assignment, transfer, devise, or bequest of any portion of the death benefit or
12 ownership of a life insurance policy or certificate, for consideration that is less than
13 the expected death benefit of the life insurance policy or certificate. "Viatical
14 settlement contract" does not include:
- 15 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life
16 insurance policy, or certificate of insurance by the viator to the viatical
17 settlement provider pursuant to chapter ~~26.1-33.3~~ 26.1-33.4;
 - 18 b. The assignment of a life insurance policy to a bank or depository institution; or
 - 19 c. The exercise of accelerated benefits pursuant to the terms of a life insurance
20 policy issued in accordance with the insurance laws of this state.

21 **SECTION 2.** Chapter 26.1-33.4 of the North Dakota Century Code is created and
22 enacted as follows:

23 **26.1-33.4-01. Definitions.** As used in this chapter, unless the context requires
24 otherwise:

- 1 1. "Advertisement" means any written, electronic, or printed communication or any
2 communication by means of recorded telephone messages or transmitted on
3 radio; television; the internet; or similar communications media, including filmstrips,
4 motion pictures, and videos; published, disseminated, circulated, or placed before
5 the public, directly or indirectly, for the purpose of creating an interest in or
6 inducing a person to purchase or sell, assign, devise, bequest, or transfer the
7 death benefit or ownership of a life insurance policy or an interest in a life
8 insurance policy pursuant to a life settlement contract.
- 9 2. "Broker" means an individual who, on behalf of an owner and for a fee,
10 commission, or other valuable consideration, offers or attempts to negotiate life
11 settlement contracts between an owner and providers. A broker represents only
12 the owner and owes a fiduciary duty to the owner to act according to the owner's
13 instructions, and in the best interest of the owner, notwithstanding the manner in
14 which the broker is compensated. The term does not include an attorney, certified
15 public accountant, or financial planner retained in the type of practice customarily
16 performed in that individual's professional capacity to represent the owner whose
17 compensation is not paid directly or indirectly by the provider or any other person,
18 except the owner.
- 19 3. "Business of life settlements" includes an activity involved in offering to enter,
20 soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life
21 settlement contracts.
- 22 4. "Chronically ill" means:
 - 23 a. Being unable to perform at least two activities of daily living, such as eating,
24 toileting, transferring, bathing, dressing, or continence;
 - 25 b. Requiring substantial supervision to protect the individual from threats to
26 health and safety due to severe cognitive impairment; or
 - 27 c. Having a level of disability similar to that described in subdivision a as
28 determined by the United States secretary of health and human services.
- 29 5. "Financing entity" means an underwriter, a placement agent, a lender, a purchaser
30 of securities, a purchaser of a policy or certificate from a provider, a credit
31 enhancer, or any entity that has a direct ownership in a policy or certificate that is

1 the subject of a life settlement contract, but whose principal activity related to the
2 transaction is providing funds to effect the life settlement contract or purchase of
3 one or more policies, and who has an agreement in writing with one or more
4 providers to finance the acquisition of life settlements contracts. The term does
5 not include a nonaccredited investor or purchaser.

6 6. "Financing transaction" means a transaction in which a licensed provider obtains
7 financing from a financing entity, including any secured or unsecured financing,
8 any securitization transaction, or any securities offering which either is registered
9 or exempt from registration under federal and state securities law.

10 7. "Fraudulent life settlement act" includes:

11 a. Any act or omission committed by any person that, knowingly and with intent
12 to defraud, for the purpose of depriving another of property or for pecuniary
13 gain, commits or permits the person's employees or agents to engage in acts,
14 including:

15 (1) Presenting, causing to be presented, or preparing with knowledge and
16 belief that it will be presented to or by a provider, premium finance
17 lender, broker, insurer, insurance producer, or any other person, false
18 material information, or concealing material information, as part of, in
19 support of, or concerning a fact material to one or more of the following:

20 (a) An application for the issuance of a life settlement contract or
21 insurance policy;

22 (b) The underwriting of a life settlement contract or insurance policy;

23 (c) A claim for payment or benefit pursuant to a life settlement
24 contract or insurance policy;

25 (d) Premiums paid on an insurance policy;

26 (e) Payments and changes in ownership or beneficiary made in
27 accordance with the terms of a life settlement contract or
28 insurance policy;

29 (f) The reinstatement or conversion of an insurance policy;

30 (g) In the solicitation, offer to enter, or effectuation of a life
31 settlement contract or insurance policy;

- 1 (h) The issuance of written evidence of life settlement contracts or
2 insurance;
- 3 (i) Any application for, the existence of, or any payments related to
4 a loan secured directly or indirectly by any interest in a life
5 insurance policy; or
- 6 (j) Enter into any practice or plan which involves stranger-originated
7 life insurance;
- 8 (2) Failing to disclose to the insurer where the request for such disclosure
9 has been asked for by the insurer that the prospective insured has
10 undergone a life expectancy evaluation by any individual or entity other
11 than the insurer or the insurer's authorized representatives in
12 connection with the issuance of the policy.
- 13 (3) Employing any device, scheme, or artifice to defraud in the business of
14 life settlements.
- 15 (4) In the solicitation, application, or issuance of a life insurance policy,
16 employing any device, scheme, or artifice in violation of state insurable
17 interest laws.
- 18 b. In the furtherance of a fraud or to prevent the detection of a fraud, any person
19 commits or permits the person's employees or agents to:
- 20 (1) Remove, conceal, alter, destroy, or sequester from the commissioner
21 the assets or records of a licensee or other person engaged in the
22 business of life settlements;
- 23 (2) Misrepresent or conceal the financial condition of a licensee, financing
24 entity, insurer, or other person;
- 25 (3) Transact the business of life settlements in violation of laws requiring a
26 license, certificate of authority, or other legal authority for the
27 transaction of the business of life settlements;
- 28 (4) File with the commissioner or the chief insurance regulatory official of
29 another jurisdiction a document containing false information or
30 otherwise concealing information about a material fact from the
31 commissioner;

- (5) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, an insurer, an insured, an owner, an insurance, a policyowner, or any other person engaged in the business of life settlements or insurance;
- (6) Knowingly and with intent to defraud, enter, broker, or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;
- (7) Attempt to commit, assist, aid, or abet in the commission of or conspiracy to commit the acts or omissions specified in this subsection;
or
- (8) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.
8. "Insured" means the individual covered under the policy being considered for sale in a life settlement contract.
9. "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.
10. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer that has received qualification or authority for life insurance coverage or a life line of coverage pursuant to chapter 26.1-26.
11. "Life settlement contract" means a written agreement entered between a provider, or any affiliate of the provider, and an owner establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of an insurance policy or

1 certificate of insurance for compensation; provided, however, that the minimum
2 value for a life settlement contract must be greater than a cash surrender value or
3 accelerated death benefit available at the time of an application for a life settlement
4 contract. The term includes the transfer for compensation or value of ownership or
5 beneficial interest in a trust or other entity that owns such policy if the trust or other
6 entity was formed or availed of for the principal purpose of acquiring one or more
7 life insurance contracts, which life insurance contract insures the life of an
8 individual residing in this state.

9 a. "Life settlement contract" also includes:

- 10 (1) A written agreement for a loan or other lending transaction, secured
11 primarily by an individual or group life insurance policy; or
12 (2) A premium finance loan made for a policy on or before the date of
13 issuance of the policy when:
14 (a) The loan proceeds are not used solely to pay premiums for the
15 policy and any costs or expenses incurred by the lender or the
16 borrower in connection with the financing;
17 (b) The owner receives on the date of the premium finance loan a
18 guarantee of the future life settlement value of the policy; or
19 (c) The owner agrees on the date of the premium finance loan to sell
20 the policy or any portion of the policy's death benefit on any date
21 following the issuance of the policy.

22 b. "Life settlement contract" does not include:

- 23 (1) A policy loan by a life insurance company pursuant to the terms of the
24 life insurance policy or accelerated death provisions contained in the
25 life insurance policy, whether issued with the original policy or as a
26 rider;
27 (2) A premium finance loan, as defined herein, or any loan made by a bank
28 or other licensed financial institution, provided that neither default on
29 such loan nor the transfer of the policy in connection with such default
30 is pursuant to an agreement or understanding with any other person for
31 the purpose of evading regulation under this chapter;

- 1 (3) A collateral assignment of a life insurance policy by an owner;
- 2 (4) A loan made by a lender that does not violate chapter 26.1-20.1,
- 3 provided the loan is not described in paragraph 1, and is not otherwise
- 4 within the definition of life settlement contract;
- 5 (5) An agreement where all the parties:
- 6 (a) Are closely related to the insured by blood or law; or
- 7 (b) Have a lawful substantial economic interest in the continued life,
- 8 health, and bodily safety of the individual insured, or are trusts
- 9 established primarily for the benefit of such parties;
- 10 (6) Any designation, consent, or agreement by an insured who is an
- 11 employee of an employer in connection with the purchase by the
- 12 employer, or trust established by the employer, of life insurance on the
- 13 life of the employee;
- 14 (7) A bona fide business succession planning arrangement:
- 15 (a) Between one or more shareholders in a corporation or between a
- 16 corporation and one or more of the corporation's shareholders or
- 17 one or more trusts established by the corporation's shareholders;
- 18 (b) Between one or more partners in a partnership or between a
- 19 partnership and one or more of the partnership's partners or one
- 20 or more trusts established by the partnership's partners; or
- 21 (c) Between one or more members in a limited liability company or
- 22 between a limited liability company and one or more of the
- 23 limited liability company's members or one or more trusts
- 24 established by the limited liability company's members;
- 25 (8) An agreement entered by a service recipient, or a trust established by
- 26 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 (9) Any other contract, transaction, or arrangement from the definition of
- 30 life settlement contract that the commissioner determines is not of the
- 31 type intended to be regulated by this chapter.

- 1 12. "Net death benefit" means the amount of the life insurance policy or certificate to
2 be settled less any outstanding debt or lien.
- 3 13. "Owner" means the owner of a life insurance policy or a certificate holder under a
4 group policy, with or without a terminal illness, who enters or seeks to enter a life
5 settlement contract. For the purposes of this definition, an owner is not limited to
6 an owner of a life insurance policy or a certificate holder under a group policy that
7 insures the life of an individual with a terminal or chronic illness or condition except
8 where specifically addressed. The term does not include:
- 9 a. Any provider or other licensee under this chapter;
10 b. A qualified institutional buyer as defined in rule 144A of the federal Securities
11 Act of 1933, as amended [15 U.S.C. 77a et seq.];
12 c. A financing entity;
13 d. A special purpose entity; or
14 e. A related provider trust.
- 15 14. "Patient identifying information" means an insured's address, telephone number,
16 facsimile number, electronic mail address, photograph or likeness, employer,
17 employment status, social security number, or any other information that is likely to
18 lead to the identification of the insured.
- 19 15. "Policy" means an individual or group policy, group certificate, contract, or
20 arrangement of life insurance owned by a resident of this state, regardless of
21 whether delivered or issued for delivery in this state.
- 22 16. "Premium finance loan" means a loan made primarily for the purposes of making
23 premium payments on a life insurance policy, which loan is secured by an interest
24 in such life insurance policy.
- 25 17. "Provider" means a person, other than an owner, that enters or effectuates a life
26 settlement contract with an owner. The term does not include:
- 27 a. Any bank, savings bank, savings and loan association, or credit union;
28 b. A licensed lending institution, creditor, or secured party pursuant to a
29 premium finance loan agreement which takes an assignment of a life
30 insurance policy or certificate issued pursuant to a group life insurance policy
31 as collateral for a loan;

- 1 c. The insurer of a life insurance policy or rider to the extent of providing
2 accelerated death benefits or riders or cash surrender value;
- 3 d. Any individual who enters or effectuates no more than one agreement in a
4 calendar year for the transfer of a life insurance policy or certificate issued
5 pursuant to a group life insurance policy, for compensation or anything of
6 value less than the expected death benefit payable under the policy;
- 7 e. A purchaser;
- 8 f. Any authorized or eligible insurer that provides stop-loss coverage to a
9 provider, purchaser, financing entity, special purpose entity, or related
10 provider trust;
- 11 g. A financing entity;
- 12 h. A special purpose entity;
- 13 i. A related provider trust;
- 14 j. A broker; or
- 15 k. An accredited investor or qualified institutional buyer as defined respectively
16 in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as
17 amended [15 U.S.C. 77a et seq.], that purchases a life settlement policy from
18 a provider.
- 19 18. "Purchased policy" means a policy or group certificate that has been acquired by a
20 provider pursuant to a life settlement contract.
- 21 19. "Purchaser" means a person that pays compensation or anything of value as
22 consideration for a beneficial interest in a trust which is vested with, or for the
23 assignment, transfer, or sale of, an ownership or other interest in a life insurance
24 policy or a certificate issued pursuant to a group life insurance policy which has
25 been the subject of a life settlement contract.
- 26 20. "Related provider trust" means a titling trust or other trust established by a licensed
27 provider or a financing entity for the sole purpose of holding the ownership or
28 beneficial interest in purchased policies in connection with a financing transaction.
29 In order to qualify as a related provider trust, the trust must have a written
30 agreement with the licensed provider under which the licensed provider is
31 responsible for ensuring compliance with all statutory and regulatory requirements

1 and under which the trust agrees to make all records and files relating to life
2 settlement transactions available to the insurance department as if those records
3 and files were maintained directly by the licensed provider.

4 21. "Settled policy" means a life insurance policy or certificate that has been acquired
5 by a provider pursuant to a life settlement contract.

6 22. "Special purpose entity" means an organization formed solely to provide either
7 directly or indirectly access to institutional capital markets for a financing entity or
8 provider; or in connection with a transaction in which the securities in the special
9 purpose entity are acquired by the owner or by a "qualified institutional buyer" as
10 defined in rule 144 promulgated under the federal Securities Act of 1933, as
11 amended [15 U.S.C. 77a et seq.]; or the securities pay a fixed rate of return
12 commensurate with established a set-backed institutional capital markets.

13 23. "Stranger-originated life insurance" is a practice or plan to initiate a life insurance
14 policy for the benefit of a third-party investor that at the time of policy origination
15 has no insurable interest in the insured. Stranger-originated life insurance
16 practices include cases in which life insurance is purchased with resources or
17 guarantees from or through a person that at the time of policy inception could not
18 lawfully initiate the policy on its own, and where at the time of inception there is an
19 arrangement or agreement, whether verbal or written, to directly or indirectly
20 transfer the ownership of the policy or the policy benefits or both to a third party.
21 Trusts that are created to give the appearance of insurable interest, and are used
22 to initiate policies for investors, violate insurable interest laws and the prohibition
23 against wagering on life. Stranger-originated life insurance arrangements do not
24 include those practices set forth in subdivision b of subsection 11.

25 24. "Terminally ill" means having an illness or sickness that can reasonably be
26 expected to result in death in twenty-four months or less.

27 **26.1-33.4-02. Licensing and bonding requirements.**

28 1. A person, wherever located, may not act as a provider or broker with an owner or
29 multiple owners who is a resident of this state without first having obtained a
30 license from the commissioner. If there is more than one owner on a single policy
31 and the owners are residents of different states, the life settlement contract must

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

4 2. Application for a provider or broker license must be made to the commissioner by
5 the applicant on a form prescribed by the commissioner, and the application must
6 be accompanied by a fee in an amount established by the commissioner; provided,
7 however, that the license and renewal fees for a provider license must be
8 reasonable and that the license and renewal fees for a broker license may not
9 exceed those established for an insurance producer, as such fees are otherwise
10 provided for in this title.

11 3. A life insurance producer who has been duly licensed as a resident insurance
12 producer with a life line of authority in this state or the producer's home state for at
13 least one year and is licensed as a nonresident producer in this state is deemed to
14 meet the licensing requirements of this section and must be permitted to operate
15 as a broker.

16 4. Not later than thirty days from the first day of operating as a broker, the life
17 insurance producer shall notify the commissioner that the broker is acting as a
18 broker on a form prescribed by the commissioner, and shall pay any applicable fee
19 to be determined by the commissioner. Notification must include an
20 acknowledgement by the life insurance producer that the broker will operate as a
21 broker in accordance with this chapter.

22 5. The insurer that issued the policy that is the subject of a life settlement contract
23 may not be responsible for any act or omission of a broker, provider, or purchaser
24 arising out of or in connection with the life settlement transaction, unless the
25 insurer receives compensation for the placement of a life settlement contract from
26 the provider, purchaser, or broker in connection with the life settlement contract.

27 6. An individual licensed as an attorney, certified public accountant, or financial
28 planner accredited by a nationally recognized accreditation agency, who is
29 retained to represent the owner, whose compensation is not paid directly or
30 indirectly by the provider or purchaser, may negotiate life settlement contracts on
31 behalf of the owner without having to obtain a license as a broker.

- 1 7. Licenses may be renewed annually on the anniversary date upon payment of the
2 periodic renewal fee. As specified in subsection 2, the renewal fee for a provider
3 may not exceed a reasonable fee. Failure to pay the fee within the terms
4 prescribed results in the automatic revocation of the license requiring periodic
5 renewal.
- 6 8. The term of provider license must be equal to that of a domestic stock life
7 insurance company and the term of a broker license must be equal to that of an
8 insurance producer license. Licenses requiring periodic renewal may be renewed
9 on their anniversary date upon payment of the periodic renewal fee as specified in
10 subsection 2. Failure to pay the fees before the expiration of the renewal date
11 results in expiration of the license.
- 12 9. The applicant shall provide such information as the commissioner may require on
13 forms prepared by the commissioner. The commissioner, at any time, may require
14 the applicant to fully disclose the identity of the applicant's stockholders (except
15 stockholders owning fewer than ten percent of the shares of an applicant whose
16 shares are publicly traded), partners, officers, and employees, and the
17 commissioner may refuse to issue the license in the name of any person if not
18 satisfied that any officer, employee, stockholder, or partner thereof who may
19 materially influence the applicant's conduct meets the standards of this chapter.
- 20 10. A license issued to a partnership, corporation, or other entity authorizes all
21 members, officers, and designated employees to act as a licensee under the
22 license, if those individuals are named in the application and any supplements to
23 the application.
- 24 11. Upon the filing of an application and the payment of the license fee, the
25 commissioner shall make an investigation of each applicant and may issue a
26 license if the commissioner finds that the applicant:
- 27 a. If a provider, has provided a detailed plan of operation;
28 b. Is competent and trustworthy and intends to transact the applicant's business
29 in good faith;

- 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
3 applied;
- 4 d. If the applicant is a legal entity, is formed or organized pursuant to the laws of
5 this state, or is a foreign legal entity authorized to transact business in this
6 state, or provides a certificate of good standing from the state of its domicile;
- 7 e. Has provided to the commissioner an antifraud plan that meets the
8 requirements of section 26.1-33.4-12 and includes:
- 9 (1) A description of the procedures for detecting and investigating possible
10 fraudulent acts and procedures for resolving material inconsistencies
11 between medical records and insurance applications;
- 12 (2) A description of the procedures for reporting fraudulent insurance acts
13 to the commissioner;
- 14 (3) A description of the plan for antifraud education and training of the
15 applicant's underwriters and other personnel; and
- 16 (4) A written description or chart outlining the arrangement of the antifraud
17 personnel who are responsible for the investigation and reporting of
18 possible fraudulent insurance acts and investigating unresolved
19 material inconsistencies between medical records and insurance
20 applications; and
- 21 f. If a provider or broker, has demonstrated evidence of financial responsibility
22 in a format prescribed by the commissioner through a surety bond executed
23 and issued by an insurer authorized to issue surety bonds in this state or
24 through a deposit of cash, certificates of deposit, or securities or any
25 combination thereof in the amount of one hundred fifty thousand dollars. The
26 commissioner shall accept, as evidence of financial responsibility under this
27 subdivision, proof that financial instruments in accordance with the
28 requirements in this subdivision have been filed with one or more states in
29 which the applicant is licensed as a provider or broker. The commissioner
30 may ask for evidence of financial responsibility at any time the commissioner
31 determines necessary. Any surety bond issued pursuant to this subdivision

1 must specifically authorize recovery by the commissioner on behalf of any
2 person in this state which sustained damages as the result of erroneous acts,
3 failure to act, conviction of fraud, or conviction of unfair practices by the
4 provider or broker.

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

10 13. Each licensee shall file with the commissioner before March first of each year an
11 annual statement containing such information as the commissioner by rule may
12 prescribe.

13 14. A provider may not use any person to perform the functions of a broker, as
14 provided under this chapter, unless the person holds a current, valid license as a
15 broker, and as provided in this section.

16 15. A broker may not use any person to perform the functions of a provider as defined
17 in this chapter unless such person holds a current, valid license as a provider and
18 as provided in this section.

19 16. A provider or broker shall provide to the commissioner new or revised information
20 about officers, ten percent or more stockholders, partners, directors, members, or
21 designated employees within thirty days of the change.

22 17. An individual licensed as a broker shall complete on a biennial basis fifteen hours
23 of training related to life settlements and life settlement transactions as required by
24 the commissioner; provided, however, that a life insurance producer who is
25 operating as a broker pursuant to this section is not subject to the requirements of
26 this subsection. Any person failing to meet the requirements of this subsection
27 shall be subject to the penalties imposed by the commissioner.

28 **26.1-33.4-03. License suspension, revocation, or refusal to renew.**

29 1. The commissioner may suspend, revoke, or refuse to renew the license of any
30 licensee if the commissioner finds that:

31 a. There was any material misrepresentation in the application for the license;

- b. The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
 - c. The provider demonstrates a pattern of unreasonably withholding payments to policyowners;
 - d. The licensee no longer meets the requirements for initial licensure;
 - e. The licensee or any officer, partner, member, or director has been convicted of a felony or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;
 - f. The provider has entered any life settlement contract that has not been approved pursuant to this chapter;
 - g. The provider has failed to honor contractual obligations set out in a life settlement contract;
 - h. The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], financing entity, special purpose entity, or related provider trust; or
 - i. The licensee or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter.
2. The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.
3. Before the commissioner denies a license application or suspends, revokes, or refuses to renew the license of any licensee under this chapter, the commissioner shall conduct a hearing.

26.1-33.4-04. Contract requirements.

- 1 1. A person may not use any form of life settlement contract in this state unless the
2 contract has been filed with and approved, if required, by the commissioner in a
3 manner that conforms with the filing procedures and any time restrictions or
4 deeming provisions, if any, for life insurance forms, policies, and contracts.
- 5 2. An insurer may not require, as a condition of responding to a request for
6 verification of coverage or in connection with the transfer of a policy pursuant to a
7 life settlement contract, that the owner, insured, provider, or broker sign any form,
8 disclosure, consent, waiver, or acknowledgment that has not been expressly
9 approved by the commissioner for use in connection with life settlement contracts
10 in this state.
- 11 3. A person may not use a life settlement contract form or provide to an owner a
12 disclosure statement form in this state unless first filed with and approved by the
13 commissioner. The commissioner shall disapprove a life settlement contract form
14 or disclosure statement form if, in the commissioner's opinion, the contract or
15 provisions contained therein fail to meet the requirements of sections 26.1-33.4-07,
16 26.1-33.4-08, and 26.1-33.4-10 and subsection 2 of section 26.1-33.4-14 or are
17 unreasonable, contrary to the interests of the public, or otherwise misleading or
18 unfair to the owner. The commissioner may require the submission of advertising
19 material.

20 **26.1-33.4-05. Reporting requirements and privacy.**

- 21 1. For any policy settled within five years of policy issuance, each provider shall file
22 with the commissioner before March first of each year an annual statement
23 containing such information as the commissioner may prescribe by regulation. In
24 addition to any other requirements, the annual statement must specify the total
25 number, aggregate face amount, and life settlement proceeds of policies settled
26 during the immediately preceding calendar year, together with a breakdown of the
27 information by policy issue year. The annual statement also must include the
28 names of the insurance companies whose policies have been settled and the
29 brokers that have settled said policies.
- 30 a. Such information must be limited to only those transactions where the insured
31 is a resident of this state and may not include individual transaction data

1 regarding the business of life settlements or information that there is a
2 reasonable basis to believe could be used to identify the owner or the
3 insured.

4 b. Every provider that willfully fails to file an annual statement as required in this
5 section, or willfully fails to reply within thirty days to a written inquiry by the
6 commissioner in connection therewith, shall, in addition to other penalties
7 provided by this chapter, be subject, upon due notice and opportunity to be
8 heard, to a penalty of up to two hundred fifty dollars per day of delay, not to
9 exceed twenty-five thousand dollars in the aggregate, for each such failure.

10 2. Except as otherwise allowed or required by law, a provider, broker, insurance
11 company, insurance producer, information bureau, rating agency or company, or
12 any other person with actual knowledge of an insured's identity, may not disclose
13 the identify of an insured or information that there is a reasonable basis to believe
14 could be used to identify the insured or the insured's financial or medical
15 information to any other person unless the disclosure:

16 a. Is necessary to effect a life settlement contract between the owner and a
17 provider and the owner and insured have provided prior written consent to the
18 disclosure;

19 b. Is necessary to effectuate the sale of life settlement contracts, or interests
20 therein, as investments, provided the sale is conducted in accordance with
21 applicable state and federal securities law, and provided further that the
22 owner and the insured have both provided prior written consent to the
23 disclosure;

24 c. Is provided in response to an investigation or examination by the
25 commissioner or any other governmental officer or agency or pursuant to the
26 requirements of section 26.1-33.4-12;

27 d. Is a term or condition to the transfer of a policy by one provider to another
28 provider, in which case the receiving provider shall comply with the
29 confidentiality requirements of subsection 2 of section 26.1-33.4-05;

30 e. Is necessary to allow the provider or broker or its authorized representative to
31 make contacts for the purpose of determining health status. For the purposes

1 of this section, the term "authorized representative" does not include any
2 person that has or may have any financial interest in the settlement contract
3 other than a provider, licensed broker, financing entity, related provider trust,
4 or special purpose entity; further, a provider or broker shall require its
5 authorized representative to agree in writing to adhere to the privacy
6 provisions of this chapter; or

7 f. Is required to purchase stop-loss coverage.

- 8 3. Nonpublic personal information solicited or obtained in connection with a proposed
9 or actual life settlement contract is subject to the provisions applicable to financial
10 institutions under the federal Gramm Leach Bliley Act [Pub. L. 106-102] and all
11 other state and federal laws relating to confidentiality of nonpublic personal
12 information.

13 **26.1-33.4-06. Examination.**

- 14 1. The commissioner, when the commissioner deems it reasonably necessary to
15 protect the interests of the public, may examine the business and affairs of any
16 licensee or applicant for a license. The commissioner may order any licensee or
17 applicant to produce any records, books, files, or other information reasonably
18 necessary to ascertain whether such licensee or applicant is acting or has acted in
19 violation of the law or otherwise contrary to the interests of the public. The
20 expenses incurred in conducting any examination must be paid by the licensee or
21 applicant.
- 22 2. In lieu of an examination under this chapter of any foreign or alien licensee
23 licensed in this state, the commissioner may, at the commissioner's discretion,
24 accept an examination report on the licensee as prepared by the commissioner for
25 the licensee's state of domicile or port-of-entry state.
- 26 3. Names of and individual identification data for all owners and insureds must be
27 considered private and confidential information and may not be disclosed by the
28 commissioner unless required by law.
- 29 4. Records of all consummated transactions and life settlement contracts must be
30 maintained by the provider for three years after the death of the insured and must
31 be available to the commissioner for inspection during reasonable business hours.

- 1 5. a. Upon determining that an examination should be conducted, the
2 commissioner shall issue an examination warrant appointing one or more
3 examiners to perform the examination and instructing the examiners as to the
4 scope of the examination. In conducting the examination, the examiner shall
5 use methods common to the examination of any life settlement licensee and
6 should use those guidelines and procedures set forth in an examiners'
7 handbook adopted by a national organization.
- 8 b. Every licensee or person from whom information is sought, its officers,
9 directors, and agents shall provide to the examiners timely, convenient, and
10 free access at all reasonable hours at its offices to all books, records,
11 accounts, papers, documents, assets, and computer or other recordings
12 relating to the property, assets, business, and affairs of the licensee being
13 examined. The officers, directors, employees, and agents of the licensee or
14 person shall facilitate the examination and aid in the examination so far as it
15 is in their power to do so. The refusal of a licensee, by its officers, directors,
16 employees, or agents, to submit to examination or to comply with any
17 reasonable written request of the commissioner is grounds for suspension or
18 refusal of, or nonrenewal of any license or authority held by the licensee to
19 engage in the life settlement business or other business subject to the
20 commissioner's jurisdiction. Any proceedings for suspension, revocation, or
21 refusal of any license or authority must be conducted pursuant to section
22 26.1-01-03.1.
- 23 c. The commissioner may issue subpoenas, administer oaths, and examine
24 under oath any person as to any matter pertinent to the examination. Upon
25 the failure or refusal of a person to obey a subpoena, the commissioner may
26 petition a court of competent jurisdiction, and upon proper showing, the court
27 may enter an order compelling the witness to appear and testify or produce
28 documentary evidence.
- 29 d. When making an examination under this chapter, the commissioner may
30 retain attorneys, appraisers, independent actuaries, independent certified
31 public accountants, or other professionals and specialists as examiners, the

1 reasonable cost of which must be borne by the licensee that is the subject of
2 the examination.

3 e. This chapter does not limit the commissioner's authority to terminate or
4 suspend an examination in order to pursue other legal or regulatory action
5 pursuant to the insurance laws of this state. Findings of fact and conclusions
6 made pursuant to any examination are prima facie evidence in any legal or
7 regulatory action.

8 f. This chapter does not limit the commissioner's authority to use and, if
9 appropriate, to make public any final or preliminary examination report, any
10 examiner or licensee workpapers, or other documents, or any other
11 information discovered or developed during the course of any examination in
12 the furtherance of any legal or regulatory action which the commissioner
13 determines appropriate.

14 6. a. Examination reports must be composed of only facts appearing upon the
15 books, from the testimony of its officers or agents, or other persons examined
16 concerning its affairs, and such conclusions and recommendations as the
17 examiners find reasonably warranted from the facts.

18 b. No later than sixty days following completion of the examination, the examiner
19 in charge shall file with the commissioner a verified written report of
20 examination under oath. Upon receipt of the verified report, the
21 commissioner shall transmit the report to the licensee examined, together
22 with a notice that shall afford the licensee examined a reasonable opportunity
23 of not more than thirty days to make a written submission or rebuttal with
24 respect to any matters contained in the examination report and which shall
25 become part of the report or to request a hearing on any matter in dispute.

26 c. If the commissioner determines that regulatory action is appropriate as a
27 result of an examination, the commissioner may initiate any proceedings or
28 actions provided by law.

29 7. a. Names and individual identification data for all owners, purchasers, and
30 insureds must be considered private and confidential information and may

1 not be disclosed by the commissioner, unless the disclosure is to another
2 regulator, is required under law, or is allowed under section 26.1-03-19.4.

3 b. Except as otherwise provided in this chapter, all examination reports, working
4 papers, recorded information, documents, and copies thereof produced by,
5 obtained by, or disclosed to the commissioner or any other person in the
6 course of an examination made under this chapter, or in the course of
7 analysis or investigation by the commissioner of the financial condition or
8 market conduct of a licensee must be confidential by law and privileged, is not
9 subject to the state's open records laws, is not subject to subpoena, and is
10 not subject to discovery or admissible in evidence in any private civil action.
11 The commissioner may use the documents, materials, or other information in
12 the furtherance of any regulatory or legal action brought as part of the
13 commissioner's official duties. The licensee being examined may have
14 access to all documents used to make the report.

15 8. a. An examiner may not be appointed by the commissioner if the examiner,
16 either directly or indirectly, has a conflict of interest or is affiliated with the
17 management of or owns a pecuniary interest in any person subject to
18 examination under this chapter. This section may not be construed to
19 automatically preclude an examiner from being:

20 (1) An owner;

21 (2) An insured in a life settlement contract or insurance policy; or

22 (3) A beneficiary in an insurance policy that is proposed for a life
23 settlement contract.

24 b. Notwithstanding the requirements of this subsection, the commissioner may
25 retain from time to time, on an individual basis, qualified actuaries, certified
26 public accountants, or other similar individuals who are independently
27 practicing their professions, even though these persons may from time to time
28 be similarly employed or retained by persons subject to examination under
29 this chapter.

30 9. a. No cause of action arises nor may any liability be imposed against the
31 commissioner, the commissioner's authorized representatives, or any

examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out this chapter.

b. No cause of action arises, nor may any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision a.

c. A person identified in subdivision a or b is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

10. The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

11. The commissioner may charge for examinations as provided for under section 26.1-01-07.

26.1-33.4-07. Advertising.

1. A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this state. Advertisements must comply with all advertising and marketing laws or rules adopted by the commissioner which are applicable to life insurers or to brokers and providers licensed pursuant to this chapter.

2. Advertisements must be accurate and truthful, and may not be misleading in fact or by implication.

3. A person or trust may not:

- a. Directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or
- b. Use the words "free" or "no cost" or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

26.1-33.4-08. Disclosures to owners.

1. The provider shall provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner no later than the date the life settlement contract is signed by all parties:
 - a. The fact that possible alternatives to life settlement contracts exist, including accelerated benefits offered by the issuer of the life insurance policy.
 - b. The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax adviser.
 - c. The fact that the proceeds from a life settlement contract could be subject to the claims of creditors.
 - d. The fact that receipt of proceeds from a life settlement contract may adversely affect the recipient's eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies.
 - e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10.
Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

- 1 f. The fact that proceeds will be sent to the owner within three business days
2 after the provider has received the insurer or group administrator's
3 acknowledgement that ownership of the policy or interest in the certificate has
4 been transferred and the beneficiary has been designated in accordance with
5 the terms of the life settlement contract.
- 6 g. The fact that entering into a life settlement contract may cause other rights or
7 benefits, including conversion rights and waiver of premium benefits, that may
8 exist under the policy or certificate of a group policy to be forfeited by the
9 owner and that assistance should be sought from a professional financial
10 adviser.
- 11 h. The amount and method of calculating the compensation paid or to be paid to
12 the broker, or any other person acting for the owner in connection with the
13 transaction, wherein the term compensation includes anything of value paid
14 or given.
- 15 i. The date by which the funds will be available to the owner and the transmitter
16 of the funds.
- 17 j. The fact that the commissioner shall require delivery of a buyer's guide or a
18 similar consumer advisory package in the form prescribed by the
19 commissioner to owners during the solicitation process.
- 20 k. The disclosure document must contain the following language:
21 All medical, financial, or personal information solicited or obtained by a
22 provider or broker about an insured, including the insured's identity or
23 the identity of family members, a spouse, or a significant other may be
24 disclosed as necessary to effect the life settlement contract between
25 the owner and provider. If you are asked to provide this information,
26 you will be asked to consent to the disclosure. The information may be
27 provided to someone who buys the policy or provides funds for the
28 purchase. You may be asked to renew your permission to share
29 information every two years.

1 l. The fact that the commissioner shall require providers and brokers to print
2 separate signed fraud warnings on their applications and on their life
3 settlement contracts the following statement:

4 Any person that knowingly presents false information in an application
5 for insurance or life settlement contract is guilty of a crime and may be
6 subject to fines and confinement in prison.

7 m. The fact that the insured may be contacted by either the provider or broker or
8 its authorized representative for the purpose of determining the insured's
9 health status or to verify the insured's address. This contact is limited to once
10 every three months if the insured has a life expectancy of more than one
11 year, and no more than once per month if the insured has a life expectancy of
12 one year or less. This contact may be made only by a provider or broker
13 licensed in the state in which the owner resided at the time of the settlement
14 or by the authorized representative of such a provider or broker.

15 n. The affiliation, if any, between the provider and the issuer of the insurance
16 policy to be settled.

17 o. That a broker represents exclusively the owner, and not the insurer or the
18 provider or any other person, and owes a fiduciary duty to the owner,
19 including a duty to act according to the owner's instructions and in the best
20 interest of the owner.

21 p. The document must include the name, address, and telephone number of the
22 provider.

23 q. The name, business address, and telephone number of the independent
24 third-party escrow agent, and the fact that the owner may inspect or receive
25 copies of the relevant escrow or trust agreements or documents.

26 r. The fact that a change of ownership could in the future limit the insured's
27 ability to purchase future insurance on the insured's life because there is a
28 limit to how much coverage insurers will issue on one life.

29 s. If an insurance policy to be settled has been issued as a joint policy or
30 involves family riders or any coverage of a life other than the insured under
31 the policy to be settled, that the owner must be informed of the possible loss

1 of coverage on the other lives under the policy and must be advised to
2 consult with the owner's insurance producer or the insurer issuing the policy
3 for advice on the proposed settlement.

4 t. The dollar amount of the current death benefit payable to the provider under
5 the policy or certificate. If known, the provider also shall disclose the
6 availability of any additional guaranteed insurance benefits, the dollar amount
7 of any accidental death and dismemberment benefits under the policy or
8 certificate, and the extent to which the owner's interest in those benefits will
9 be transferred as a result of the viatical settlement contract.

10 u. Any affiliations or contractual arrangements between the provider and the
11 purchaser.

12 2. The written disclosures must be conspicuously displayed in any life settlement
13 contract furnished to the owner by a provider, including any affiliations or
14 contractual arrangements between the provider and the broker.

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

20 a. The name, business address, and telephone number of the broker.

21 b. A full, complete, and accurate description of all the offers, counteroffers,
22 acceptances, and rejections relating to the proposed life settlement contract.

23 c. A written disclosure of any affiliations or contractual arrangements between
24 the broker and any person making an offer in connection with the proposed
25 life settlement contracts.

26 d. The name of each broker who receives compensation and the amount of
27 compensation received by that broker, which compensation includes anything
28 of value paid or given to the broker in connection with the life settlement
29 contract.

30 e. A complete reconciliation of the gross offer or bid by the provider to the net
31 amount of proceeds or value to be received by the owner. For the purpose of

1 this section, gross offer or bid means the total amount or value offered by the
2 provider for the purchase of one or more life insurance policies, inclusive of
3 commissions and fees.

- 4 f. The failure to provide the disclosures or rights described in this section is
5 deemed an unfair trade practice pursuant to section 26.1-33.4-16.

6 **26.1-33.4-09. Disclosure to insurer.** Without limiting the ability of an insurer from
7 assessing the insurability of a policy applicant and determining whether to issue the policy, and
8 in addition to other questions an insurance carrier may lawfully pose to a life insurance
9 applicant, insurance carriers may inquire in the application for insurance whether the proposed
10 owner intends to pay premiums with the assistance of financing from a lender that will use the
11 policy as collateral to support the financing.

- 12 1. If, as described in subsection 11 of section 26.1-33.4-01, the loan provides funds
13 that can be used for a purpose other than paying for the premiums, costs, and
14 expenses associated with obtaining and maintaining the life insurance policy and
15 loan, the application must be rejected as a violation of the prohibited practices in
16 section 26.1-33.4-12.

- 17 2. If the financing does not violate section 26.1-33.4-12 in this manner, the insurance
18 carrier:

- 19 a. May make disclosures, such as the following, to the applicant and the
20 insured, either on the application or an amendment to the application to be
21 completed no later than the delivery of the policy: "If you have entered a loan
22 arrangement where the policy is used as collateral, and the policy does
23 change ownership at some point in the future in satisfaction of the loan, the
24 following may be true:

- 25 (1) A change of ownership could lead to a stranger owning an interest in
26 the insured's life;
27 (2) A change of ownership could in the future limit your ability to purchase
28 future insurance on the insured's life because there is a limit to how
29 much coverage insurers will issue on one life;
30 (3) Should there be a change of ownership and you wish to obtain more
31 insurance coverage on the insured's life in the future, the insured's

- 1 higher issue age, a change in health status, and other factors may
2 reduce the ability to obtain coverage and may result in significantly
3 higher premiums; and
4 (4) You should consult a professional adviser, since a change in ownership
5 in satisfaction of the loan may result in tax consequences to the owner,
6 depending on the structure of the loan;" and
7 b. May require certifications, such as the following, from the applicant or the
8 insured or both:

9 I have entered into any agreement or arrangement providing for
10 the future sale of this life insurance policy;

11 My loan arrangement for this policy provides funds sufficient to
12 pay for some or all of the premiums, costs, and expenses associated
13 with obtaining and maintaining my life insurance policy, but I have not
14 entered into any agreement by which I am to receive consideration in
15 exchange for procuring this policy; and

16 The borrower has an insurable interest in the insured.

17 **26.1-33.4-10. General rules.**

- 18 1. A provider entering a life settlement contract with any owner of a policy, wherein
19 the insured is terminally or chronically ill, first shall obtain:
20 a. If the owner is the insured, a written statement from a licensed attending
21 physician that the owner is of sound mind and under no constraint or undue
22 influence to enter into a settlement contract; and
23 b. A document in which the insured consents to the release of the insured's
24 medical records to a provider, settlement broker, or insurance producer and, if
25 the policy was issued less than two years from the date of application for a
26 settlement contract, to the insurance company that issued the policy.
27 2. The insurer shall respond to a request for verification of coverage submitted by a
28 provider, settlement broker, or life insurance producer not later than thirty calendar
29 days from the date the request is received. The request for verification of
30 coverage must be made on a form approved by the commissioner. The insurer
31 shall complete and issue the verification of coverage or indicate in which respects

1 it is unable to respond. In its response, the insurer shall indicate whether, based
2 on the medical evidence and documents provided, the insurer intends to pursue an
3 investigation at this time regarding the validity of the insurance contract.

4 3. Before or at the time of execution of the settlement contract, the provider shall
5 obtain a witnessed document in which the owner consents to the settlement
6 contract, represents that the owner has a full and complete understanding of the
7 settlement contract, that the owner has a full and complete understanding of the
8 benefits of the policy, acknowledges that the owner is entering into the settlement
9 contract freely and voluntarily, and, for persons with a terminal or chronic illness or
10 condition, acknowledges that the insured has a terminal or chronic illness and that
11 the terminal or chronic illness or condition was diagnosed after the policy was
12 issued.

13 4. The insurer may not unreasonably delay effecting change of ownership or
14 beneficiary with any life settlement contract lawfully entered in this state or with a
15 resident of this state.

16 5. If a settlement broker or life insurance producer performs any of these activities
17 required of the provider, the provider is deemed to have fulfilled the requirements
18 of this section.

19 6. If a broker performs the verification of coverage activities required of the provider,
20 the provider is deemed to have fulfilled the requirements of subsection 1 of section
21 26.1-33.4-08.

22 7. Within twenty days after an owner executes the life settlement contract, the
23 provider shall give written notice to the insurer that issued that insurance policy
24 that the policy has become subject to a life settlement contract. The notice must
25 be accompanied by the documents required by subdivision b of subsection 1 of
26 section 26.1-33.4-09.

27 8. All medical information solicited or obtained by any licensee must be subject to the
28 applicable provision of state law relating to confidentiality of medical information if
29 not otherwise provided in this chapter.

30 9. All life settlement contracts entered in this state must provide the owner with a right
31 to rescind the contract before the earlier of sixty calendar days after the date upon

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

19 10. Within three business days after receipt from the owner of documents to effect the
20 transfer of the insurance policy, the provider shall pay the proceeds of the
21 settlement to an escrow or trust account managed by a trustee or escrow agent in
22 a state or federally chartered financial institution pending acknowledgment of the
23 transfer by the issuer of the policy. The trustee or escrow agent must be required
24 to transfer the proceeds due to the owner within three business days of the later to
25 occur of the expiration of any then remaining rescission period or the escrow
26 agent's receipt of the acknowledgment of the properly completed transfer of
27 ownership, assignment, or designation of beneficiary from the insurance company.

28 11. Failure to tender the life settlement contract proceeds to the owner by the date
29 disclosed to the owner renders the contract voidable by the owner for lack of
30 consideration until the time the proceeds are tendered to and accepted by the
31 owner. A failure to give written notice of the right of rescission tolls the right of

rescission until sixty days after the written notice of the right of rescission has been given.

12. Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract must be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing such broker's fee below this percentage if the broker so chooses.

13. The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.

14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider or the provider otherwise conclusively shows that one or more of the following conditions have been met within the five-year period:

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

b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:

(1) The owner or insured is terminally or chronically ill;

(2) The owner's spouse died or no remaining beneficiaries are then surviving;

(3) The owner retired from full-time employment; or

(4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;

1 c. A final order, judgment, or decree has been entered by a court of competent
2 jurisdiction, on the application of a creditor of the owner, adjudicating the
3 owner in default, bankrupt, or insolvent, or approving a petition seeking
4 reorganization of the owner or appointing a receiver, trustee, or liquidator to
5 all or a substantial part of the owner's assets; or

6 d. The owner entered a life settlement contract more than two years after the
7 date of issuance of a policy and, with respect to the policy, at all times before
8 the date that is two years after policy issuance, the following conditions are
9 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 the policy's net cash surrender value, provided by,
13 or fully recourse liability incurred by, the insured or a person described
14 in paragraph 5 of subdivision b of subsection 11 of section
15 26.1-33.4-01;

16 (2) There is no agreement or understanding with any other person to
17 guarantee any such liability or to purchase, or stand ready to purchase,
18 the policy, including through an assumption or forgiveness of the loan;
19 and

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

22 15. Copies of the independent evidence described in subdivision b of subsection 14
23 and documents required by subsection 1, 2, 3, or 7 must be submitted to the
24 insurer when the provider submits a request to the insurer for verification of
25 coverage. The copies must be accompanied by a letter of attestation from the
26 provider that the copies are true and correct copies of the documents received by
27 the provider.

28 16. If the provider submits to the insurer a copy of the owner's or insured's certification
29 described in and the independent evidence required by subdivision b of
30 subsection 14 when the provider submits a request to the insurer to effect the
31 transfer of the policy or certificate to the provider, the copy is deemed to establish

1 conclusively that the life settlement contract satisfies the requirements of this
2 section and the insurer timely shall respond to the request.

3 **26.1-33.4-11. Authority to adopt regulations - Conflict of laws.**

4 1. The commissioner may adopt rules implementing this chapter and regulating the
5 activities and relationships of providers, brokers, and insurers and their agents.

6 2. The commissioner may establish standards for evaluating reasonableness of a
7 payment under a life settlement contract for an individual who is terminally or
8 chronically ill. This authority includes regulation of discount rates used to
9 determine the amount paid in exchange for assignment, transfer, sale, devise, or
10 bequest of a benefit under a life insurance policy insuring the life of an individual
11 who is chronically or terminally ill.

12 3. The commissioner may establish appropriate licensing requirements, fees, and
13 standards for continued licensure for providers and brokers.

14 4. a. If there is more than one owner on a single policy and the owners are
15 residents of different states, the life settlement contract must be governed by
16 the law of the state in which the owner having the largest percentage
17 ownership resides, or if the owners hold equal ownership, the state of
18 residence of one owner agreed upon in writing by all of the owners. The law
19 of the state of the insured governs if equal owners fail to agree in writing upon
20 a state of residence for jurisdictional purposes.

21 b. A provider from this state who enters a life settlement contract with an owner
22 who is a resident of another state that has enacted statutes or adopted
23 regulations governing life settlement contracts is governed in the effectuation
24 of that life settlement contract by the statutes and regulations of the owner's
25 state of residence. If the state in which the owner is a resident has not
26 enacted statutes or regulations governing life settlement contracts, the
27 provider shall give the owner notice that neither state regulates the
28 transaction upon which the owner is entering. For transactions in those
29 states, however, the provider is to maintain all records required if the
30 transactions were executed in the state of residence. The forms used in
31 those states need not be approved by the commissioner.

- 1 c. If there is a conflict in the laws that apply to an owner and a purchaser in any
2 individual transaction, the laws of the state that apply to the owner shall take
3 precedence and the provider shall comply with those laws.

4 **26.1-33.4-12. Prohibited practices.**

5 1. It is unlawful for any person to:

- 6 a. Enter a life settlement contract if such person knows or reasonably should
7 have known that the life insurance policy was obtained by means of a false,
8 deceptive, or misleading application for such policy;
- 9 b. Engage in any transaction, practice, or course of business if such person
10 knows or reasonably should have known that the intent was to avoid the
11 notice requirements of this chapter;
- 12 c. Engage in any fraudulent act or practice in connection with any transaction
13 relating to any settlement involving an owner who is a resident of this state;
- 14 d. Issue, solicit, market, or otherwise promote the purchase of an insurance
15 policy for the purpose of or with an emphasis on settling the policy;
- 16 e. Enter a premium finance agreement with any person or agency, or any
17 person affiliated with such person or agency, pursuant to which such person
18 shall receive any proceeds, fees, or other consideration, directly or indirectly,
19 from the policy or owner of the policy or any other person with respect to the
20 premium finance agreement or any settlement contract or other transaction
21 related to such policy that are in addition to the amounts required to pay the
22 principal, interest, and service charges related to policy premiums pursuant to
23 the premium finance agreement or subsequent sale of such agreement;
24 provided, further, that any payments, charges, fees, or other amounts in
25 addition to the amounts required to pay the principal, interest, and service
26 charges related to policy premiums paid under the premium finance
27 agreement must be remitted to the original owner of the policy or to the
28 original owner's estate if the original owner is not living at the time of the
29 determination of the overpayment;
- 30 f. With respect to any settlement contract or insurance policy and a broker,
31 knowingly solicit an offer from, effectuate a life settlement contract with, or

1 make a sale to any provider, financing entity, or related provider trust that is
2 controlling, controlled by, or under common control with such broker;

3 g. With respect to any life settlement contract or insurance policy and a provider,
4 knowingly enter into a life settlement contract with an owner, if, in connection
5 with such life settlement contract, anything of value will be paid to a broker
6 that is controlling, controlled by, or under common control with such provider
7 or the financing entity or related provider trust that is involved in such
8 settlement contract;

9 h. With respect to a provider, enter into a life settlement contract unless the life
10 settlement promotional, advertising, and marketing materials, as may be
11 prescribed by regulation, have been filed with the commissioner. In no event
12 may any marketing materials expressly reference that the insurance is "free"
13 for any period of time. The inclusion of any reference in the marketing
14 materials that would cause an owner to reasonably believe that the insurance
15 is free for any period of time must be considered a violation of this chapter; or

16 i. With respect to any life insurance producer, insurance company, broker, or
17 provider, make any statement or representation to the applicant or
18 policyholder in connection with the sale or financing of a life insurance policy
19 to the effect that the insurance is free or without cost to the policyholder for
20 any period of time unless provided in the policy.

21 2. A violation of this section is deemed a fraudulent life settlement act.

22 **26.1-33.4-13. Fraud prevention and control.**

23 1. a. A person may not commit a fraudulent life settlement act.

24 b. A person may not knowingly and intentionally interfere with the enforcement
25 of the provisions of this chapter or investigations of suspected or actual
26 violations of this chapter.

27 c. A person in the business of life settlements may not knowingly or intentionally
28 permit any person convicted of a felony involving dishonesty or breach of trust
29 to participate in the business of life settlements.

1 2. a. Life settlement contracts and applications for life settlement contracts,
2 regardless of the form of transmission, must contain the following statement
3 or a substantially similar statement:

4 Any person that knowingly presents false information in an application
5 for insurance or life settlement contract is guilty of a crime and may be
6 subject to fines and confinement in prison.

7 b. The lack of a statement as required in subdivision a does not constitute a
8 defense in any prosecution for a fraudulent life settlement act.

9 3. a. Any person engaged in the business of life settlements having knowledge or
10 a reasonable belief that a fraudulent life settlement act is being, will be, or has
11 been committed shall provide to the commissioner the information required by
12 and in a manner prescribed by the commissioner.

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

17 4. a. Civil liability may not be imposed on and no cause of action may arise from a
18 person's furnishing information concerning suspected, anticipated, or
19 completed fraudulent life settlement acts or suspected or completed
20 fraudulent insurance acts if the information is provided to or received from:

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

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

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

27 (4) Any regulatory body or its employees, agents, or representatives
28 overseeing life insurance, life settlements, securities, or investment
29 fraud;

30 (5) The life insurer that issued the life insurance policy covering the life of
31 the insured; or

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

c. Release of documents and evidence under subdivision b does not abrogate or modify the privilege granted in subdivision a.

6. This chapter does not:

a. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

b. Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;

c. Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

d. Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

7. a. Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives include:

(1) Fraud investigators, who may be provider or broker employees or independent contractors; and

(2) An antifraud plan, which must be submitted to the commissioner. The antifraud plan must include:

(a) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

- 1 (b) A description of the procedures for reporting possible fraudulent
2 life settlement acts to the commissioner;
3 (c) A description of the plan for antifraud education and training of
4 underwriters and other personnel; and
5 (d) A description or chart outlining the organizational arrangement of
6 the antifraud personnel who are responsible for the investigation
7 and reporting of possible fraudulent life settlement acts and
8 investigating unresolved material inconsistencies between
9 medical records and insurance applications.

- 10 b. Antifraud plans submitted to the commissioner are privileged and confidential
11 and are not a public record and may not be subject to discovery or subpoena
12 in a civil or criminal action.

13 **26.1-33.4-14. Injunctions - Civil remedies - Cease and desist.**

- 14 1. In addition to the penalties and other enforcement provisions of this chapter, if any
15 person violates this chapter or any rule implementing this chapter, the
16 commissioner may seek an injunction in a court of competent jurisdiction in the
17 county where the person resides or has a principal place of business and may
18 apply for temporary and permanent orders that the commissioner determines
19 necessary to restrain the person from further committing the violation.
20 2. Any person damaged by the acts of another person in violation of this chapter or
21 any rule or regulation implementing this chapter may bring a civil action for
22 damages against the person committing the violation in a court of competent
23 jurisdiction.
24 3. The commissioner may issue a cease and desist order upon a person that violates
25 any provision of this part, any rule or order adopted by the commissioner, or any
26 written agreement entered into with the commissioner in accordance with chapter
27 28-32.
28 4. When the commissioner finds that such an action presents an immediate danger to
29 the public and requires an immediate final order, the commissioner may issue an
30 emergency cease and desist order reciting with particularity the facts underlying
31 such findings. The emergency cease and desist order is effective immediately

upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease and desist proceedings under subsection 1, the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to chapter 28-32. In the event of a willful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. A choice of law provision may not be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a resident of this state.

26.1-33.4-15. Penalties.

1. It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.
2. For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud.
3. The commissioner may levy a civil penalty not exceeding fifty thousand dollars per violation and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have committed a fraudulent life settlement act or violated any other provision of this chapter.
4. The license of a person licensed under this chapter which commits a fraudulent life settlement act must be revoked.

26.1-33.4-16. Unfair trade practices. A violation of this chapter is considered an unfair trade practice pursuant to state law and subject to the penalties provided by state law.

SECTION 3. REPEAL. Chapter 26.1-33.3 of the North Dakota Century Code is repealed.