

An Introduction to the Use of Viatical and Life Settlements

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The viatical settlement market provides a valuable alternative to policyowners who no longer wish to keep their life insurance policies, but are not satisfied with the financial return of surrendering the policy to the insurer.

For many years, split-dollar insurance arrangements were popular, effective plans for acquiring and financing life insurance for an array of purposes, ranging from employee compensation to estate planning. In recent years, numerous changes concerning split-dollar insurance (including the Sarbanes-Oxley Act of 2002,¹ several IRS notices and final Treasury Regulations concerning the tax treatment of split-dollar arrangements) have spurred many split-dollar participants and their advisors to re-examine the prudence of continuing existing split-dollar arrangements and maintaining the insurance policies underlying those arrangements. Most recently, the “safe harbor” provisions set forth in Notice 2002-8,² concerning “equity split-dollar” arrangements,³ prompted many policyowners to terminate their split-dollar plans prior to 12/31/03, in some cases, even where the arrangement was not an equity split-dollar arrangement.

The aftermath of the split-dollar termination frenzy, and the accompanying re-examination of the underlying policies, have led many policyowners to realize that they are holding policies that they no longer want or need, or that are no longer efficiently priced. For those policyowners, there are three options: (1) surrender the policy, (2) exchange the policy for a new and more efficiently priced policy, or (3) sell the policy (often referred to as a “life settlement” or a “viatical settlement”).

For some policyowners, surrendering the policy and recapturing the policy's “cash surrender value” may be the most prudent option. Other policyowners, though, may be able to realize far more than their policy's cash surrender value either by exchanging the policy for new coverage (often referred to as a “Section 1035 exchange”) or by selling their policies on the secondary market (often referred to as the “life settlement market” or the “viatical settlement market”). This article focuses on the latter option.

Life settlements and viatical settlements,⁴ while conceptually straightforward, are not well-known by some policyowners and advisors. Consequently, these advisors may be

hesitant to recommend, and policyowners may be hesitant to participate in, any such transactions. This article highlights some important considerations associated with viatical settlements and explains the basic components of viatical settlements.⁵

The components and considerations relevant to a particular transaction will vary based on the applicable state law, the identity and goals of the parties, the insured's life expectancy, and other factors specific to the transaction. For example, most states regulate viatical settlements. Many of those states require that the policy purchaser deposit the funds that will be used to purchase the policy into an escrow account immediately upon receiving the signed and completed documents necessary to transfer the policy from the policyowner to the policy purchaser. If the laws of a state that does not regulate viatical settlements govern a viatical settlement, the parties might elect not to use an escrow account.

Another example is the contrast between “traditional” and “hedged” settlements. In a traditional settlement transaction, the policy purchaser simply purchases a policy and holds the policy until maturity (i.e., the insured's death). Under that scenario, the policy purchaser may have to continue paying premiums until the policy matures and, consequently, must bear the risk that the insured will live so long that the purchaser will lose money on the transaction. However, as more sophisticated purchasers enter the settlement market, various hedging techniques have been developed, allowing some purchasers to be indifferent to the timing of the insured's death. Although these transactions give some insureds comfort because the policy purchaser is not “waiting” for the insured to die, these transactions, as one might expect, are generally much more complex.

Important considerations

Before entering into any settlement transaction, it is important that the policyowner, and the policyowner's advisors, evaluate the policyowner's needs. As is the case with all financial transactions, it is also prudent to consider all options available to the policyowner. A policyowner will benefit from fully understanding the process involved in the specific transaction that is being considered. In addition, the policyowner should know what rights the policyowner has under applicable law and the governing documents.

Moreover, it would be prudent for the policyowner or the advisors to determine whether the viatical settlement is a regulated transaction under applicable state law and whether the purchaser must be licensed to purchase the policy. If a license is required, the policyowner or advisor should verify that the purchaser has the appropriate license by either requesting a copy of the license from the purchaser or contacting the division of insurance in the appropriate state. Lastly, the policyowner should consult his or her advisors concerning the tax consequences of the viatical settlement, the effect that the receipt of the viatical settlement proceeds may have on the policyowner's eligibility for government aid, and any effect the viatical settlement may have on the policyowner's rights against creditor's claims.

Understanding and evaluating the policyowner's needs. Life insurance can be a very valuable asset that can be used to address many financial planning needs. Before a policyowner sells a policy, the owner and the owner's advisors should understand and evaluate whether the policyowner's insurance needs have changed since the policy was purchased. For example, many companies purchase insurance on the lives of their executives to insure against financial loss that might occur when the executives die. This is particularly important when an executive provides value-added services that cannot easily be replaced upon the executive's death.

If the executive resigns or retires, the company will no longer need to insure against that risk of loss and might not need the policy any longer. If, however, the company will be required to repurchase company stock owned by the executive when the executive dies, or if the company would like to exercise a repurchase option it may have upon the executive's death, retaining some or all of the insurance might be prudent (assuming the insurance is efficiently priced).

If an individual purchased insurance to replace his or her salary in the event of death, but the individual is now retired, the policy may no longer be a useful part of his or her portfolio. On the other hand, if the policy proceeds could be used to pay estate taxes upon the individual's death, the policy may continue to be a valuable part of the policyowner's financial planning.

A policyowner might not be able to replace insurance coverage that is either sold or surrendered. Even if new insurance coverage is available in the future, because the cost of insurance increases with increases in the insured's age or a deterioration in the insured's health, if the policyowner sells a policy and tries to obtain new coverage in the future, the coverage may be much more expensive than the policyowner's current policy. Therefore, any analysis of a policyowner's insurance needs should include an analysis of potential future insurance needs.

Once a policyowner determines that the policy does not meet the owner's insurance needs, the policyowner and the advisors should consider the policyowner's options.

Understanding the options. While viatical settlements offer policyowners an opportunity to access the value of their policy during the insured's life, other alternatives are available. Policyowners and their advisors should contact their life insurance agents or life insurance company to obtain guidance concerning the options available under the policy.

A common alternative to selling a policy is accessing the policy's cash value. A policy may permit the policyowner to borrow from the cash value and still keep the insurance in force. Alternatively, the policyowner may be able to use the policy cash value to collateralize a loan from a bank or other financial institution. If the insured dies before the loan is due, the policyowner may use some of the insurance proceeds to repay the loan. Alternatively, if the policyowner no longer needs the insurance, the owner may simply cancel the policy for its current cash surrender value.

A policyowner who wishes to access the policy cash value should contact his or her life insurance agent or life insurance company to find out how much cash value is available. Significantly, a policy's cash surrender value (which is the amount that a policyowner would receive upon surrender of the policy) is usually less than the policy cash value (often called the "account value"), because the insurance company calculates the cash surrender value by deducting fees and surrender charges from the policy cash value.

Another option available under some life insurance policies is an accelerated death benefit. Many policies have an accelerated death benefit option, which permits a policyowner to receive a large part of the policy's death benefit from the insurance company during the insured's life while keeping the policy in force. When the insured dies, the policy beneficiary receives the remaining death benefit. Generally, this option is available only if the insured is terminally ill, afflicted with certain diseases, or permanently confined to a nursing home.

The range of insurance products available today is far greater than the range of policies available just a few years ago. Some existing policies are so inefficiently priced compared to products available today that it would be beneficial for the policyowner to exchange the old policy for a new policy or sell the old policy and buy a new one. Policyowners should consult their insurance advisors to learn more about their insurance planning options.

If a policyowner decides to settle a policy, it is important to consider the options available in the viatical settlement market. As the viatical settlement market matures, more purchasers are becoming available to acquire life insurance policies.⁶ While not every purchaser will be willing to purchase every policy, it is important to learn the policy's market value by contacting more than one viatical settlement provider. Alternatively, the policyowner can use a viatical settlement broker, who will contact and obtain bids from numerous settlement companies for the policyowner.

Understanding the viatical and life settlement process

Viatical settlement transactions involve four general phases. First, the policy purchaser will underwrite the policy. Next, the policy purchaser uses the underwriting information to determine the policy's value and make an offer to the policyowner. Then the parties prepare and execute the transaction documents. Lastly, the policy purchaser becomes the owner and beneficiary of the policy and the policyowner receives the sale proceeds.

Underwriting. A policy purchaser will need information about the policyowner, the insurance policy and the insured before making an offer to purchase the policy. Most policy purchasers require the policyowner to complete a policy application form in which the policyowner provides basic information about the policyowner, the insured (if the insured is not the policyowner), and the policy.

After obtaining a general profile of the insured and the policy (e.g., the insured's age, gender, general health status, and the policy's face amount), the policy purchaser will ask

the policyowner and the insured to sign authorization forms. The insured will be asked to sign a medical release form authorizing the policy purchaser to contact the insured's medical providers and obtain a copy of the insured's medical records. These forms typically are revocable by delivering a written notice of revocation to the policy purchaser. As discussed below, the policy purchaser or an actuarial firm hired by the policy purchaser will review the insured's medical records as part of the pricing process.

To avoid delays, the insured should call his or her medical providers and inform them that the policy purchaser will be contacting them to obtain a copy of the insured's medical records. Although the medical providers will likely release the medical records only upon receiving a copy of the insured's signed authorization, putting the medical providers on notice will give them an opportunity to begin gathering and copying the records, and offers the medical providers some reassurance that the insured is aware that someone will be requesting a copy of the insured's medical records.

The policyowner will be asked to sign an authorization form allowing the policy purchaser to contact the insurance company to confirm policy information, including (1) whether the policyowner is the owner of record, (2) the policy benefits, including the amount of insurance coverage, (3) the premiums that must be paid to keep the policy in force, (4) the policy cash value (i.e., the account value), (5) the policy cash surrender value, (6) whether the policy is subject to any liens, and (7) whether a policy loan is outstanding and the terms of any outstanding policy loan.

The offer. Numerous factors are considered by a policy purchaser before making an offer. The amount of life insurance coverage is the starting point for any pricing model. All other factors being equal, a larger death benefit will yield a larger offer, because the death benefit is the starting point for the policy purchaser's expected return calculation.

Loans or advances made against the policy (including accrued interest) will likely reduce the amount of the offer dollar-for-dollar. Therefore, if a policyowner has borrowed \$10,000 from the policy's cash value, the policy purchaser will offer \$10,000 less for the policy than the policy purchaser would have offered absent the borrowing.

The insured's life expectancy and the premiums needed to keep the policy in force during the insured's life will affect the policy pricing. For that reason, the policy purchaser will likely send the medical records to an actuarial firm, which will use the medical information to determine the insured's life expectancy. A shorter life expectancy will yield a larger offer because the policy purchaser will expect to receive the proceeds sooner, decreasing the discount applicable for the time value of money, and the policy purchaser will expect to pay few premiums before the policy matures.

In addition to using the medical information and policy information obtained during the underwriting process to determine the policy's value, the policy purchaser will consider several other factors. For example, the prevailing interest rate may affect the offer price for several reasons. First, if the policy purchaser is financing the policy acquisition, higher interest rates will result in a higher cost for the policy purchaser. The policy

purchaser will reduce its offer to reflect the higher cost of borrowing. In contrast, when interest rates are low, the cost of borrowing will be lower and, consequently, the policy purchaser will reduce its offer by a smaller amount. Moreover, the discount for the time value of money should be less when interest rates are lower than it would be if interest rates were higher. Nevertheless, where a policy requires additional premiums, low interest rates may adversely affect the policy's "crediting rate," which is the rate at which the policy's cash value increases. Under those circumstances, lower interest rates may adversely affect the policy pricing.

The insurance company's financial rating (e.g., S&P or Moody's rating) will affect the policy pricing. If an insurance company is financially strong and has a high rating, the policy purchaser will assume that the risk that the insurance company will become insolvent prior to paying the death benefit due under the policy when it matures will be small. If, however, an insurance company has a low rating, the policy purchaser will discount the purchase price to reflect the higher risk of default by the insurance company.

Policy purchasers will also consider any restrictions or rider benefits in determining the purchase price.

Once the policy purchaser has determined the appropriate purchase price, it will make a formal offer to the policyowner.

Advisors who are not familiar with the settlement market may have a difficult time determining whether the offer made by the policy purchaser is fair. Those advisors should consider learning the market value of the policy by contacting at least three viatical settlement providers. Alternatively, the advisor could hire a viatical settlement broker to contact several viatical settlement providers on behalf of the policyowner. In addition to contacting several viatical settlement providers, a good settlement broker will negotiate on behalf of the policyowner to obtain the highest offer for the policy. Often, the policy purchaser will pay the broker's fee.

Transaction documents. If the policyowner accepts the offer, the policy purchaser will prepare a closing package. If the laws of a state that regulates viatical settlements govern the transaction, it is likely that the policy purchaser will send the policyowner and/or insured a state-approved disclosure. This disclosure will give the policyowner and the insured a brief summary of their rights, a brief description of the settlement transaction, important considerations in connection with the settlement of a policy, and other information required by the state's department of insurance.

Additional documentation generally includes a settlement contract, an assignment and waiver of claims to be signed by the policyowner, a consent to be signed by the insured consenting to the sale of the policy, a new medical release form signed by the insured authorizing the policy purchaser to contact the insured's medical providers and obtain a copy of the insured's medical records, a limited power of attorney signed by the policyowner and the insured authorizing the policy purchaser to effect the change of policy ownership and beneficiary and to exercise any policy rights, the forms the

insurance company requires to transfer ownership of the policy to the viatical settlement provider, a list of people whom the policy purchaser can contact from time to time to obtain the insured's health status, an IRS Form W-9 to be completed by the policyowner, and an escrow agreement.

Once the documents have been signed and returned to the policy purchaser, the purchaser will deposit into an escrow account the funds that will be used to acquire the policy—usually immediately upon receiving the documents. The policy purchaser then submits the signed change of policyowner and beneficiary forms to the insurance company to record the change.

Receiving the payment. Once the insurance company notifies the escrow agent or policy purchaser that the changes of policyowner and beneficiary have been recorded, the escrow agent releases the funds to the policyowner. Typically, the funds are released within three business days of the escrow agent's receipt of the notification from the insurance company. Under the regulations of many states, once the policyowner receives the funds from the policy purchaser, the policyowner has 15 days to rescind the transaction by providing written notice to the policy purchaser and returning the policy sale proceeds. These regulations also generally provide that if the insured dies during the rescission period, the policyowner will be deemed to have rescinded the transaction within the rescission period, in which case the policy purchaser must give the insurance proceeds to the policyowner, less the purchase price and any policy premiums or loans paid by the policy purchaser.

Know your rights

Twenty-three states regulate life settlement transactions,⁷ and 37 states regulate viatical settlement transactions.⁸ States that regulate settlement transactions often provide important consumer protection. While the degree of consumer protection varies from state to state, the following discussion highlights some of the common protections provided under state laws and regulations.

In regulated states, consumer protection begins with a state's licensing requirements. States that regulate viatical settlements require the policy purchaser, the broker, and sometimes the transaction's financial backer, to obtain a license prior to conducting any viatical settlement business in that state or with a resident of that state. In addition to obtaining background information on the policy purchasers, brokers and financial backers, states generally require the policy purchasers and brokers to submit their settlement contract forms, disclosure statements, and advertising materials to the state's department of insurance for approval. Licensed settlement participants are not permitted to use such materials unless they have been approved by the state's department of insurance, and participants may not alter the approved materials unless the alterations have also been approved by the state's department of insurance.

Regulated states also protect policyowners and insureds against unauthorized dissemination of personal information gathered during the underwriting process. With

few exceptions,⁹ the policy purchaser and broker must keep confidential any information obtained during the underwriting process concerning the policyowner, the insured, and family members of either, unless the policyowner or insured provides written consent for additional disclosure.

Often, the definition of confidential information is very broad, offering a great deal of protection. It is important to note, though, that most policy purchasers will require, at minimum, that the policyowner and insured sign a written consent permitting disclosure of the confidential information in connection with the policy purchase, the administration of the policy, the exercise of any rights under the policy, and any resale of the policy. Many policy purchasers will require broader consents. The policyowner, the insured, and their respective advisors should assess the degree of permitted disclosure, and consider the degree to which dissemination of the confidential information by subsequent recipients will be restricted.

Many states that regulate settlement transactions require that the policy purchaser deposit the purchase price into an escrow account immediately upon, or soon after, receiving the documents necessary to transfer ownership of the policy.¹⁰ Generally, the escrow agreement governing the escrow funds must be approved by the state and must provide that the funds will be released to the policyowner immediately when, or soon after, the escrow agent or policy purchaser receives confirmation from the insurance company that the changes in the policy beneficiary designation and policy ownership have been recorded on the books and records of the insurance company.¹¹

Realizing that the sale of life insurance policies can frequently be as much of an emotional decision as it is a financial decision, many states grant policyowners a 15-day rescission period.¹² Thus, the policyowner has the unilateral right to rescind the policy sale within 15 days of receiving the purchase proceeds. (Of course, a policyowner who decides to rescind the sale must return the sale proceeds to the policy purchaser, and reimburse the policy purchaser for any policy loans or policy premiums paid by the policy purchaser during the rescission period.) In addition, if the insured dies during the rescission period, many states mandate that the policyowner automatically be deemed to have rescinded the sale, and that the policy purchaser pay over the policy death benefits to the policyowner (less the purchase price and any policy loans or policy premiums paid by the policy purchaser during the rescission period).¹³

Many states also limit the frequency with which a policy purchaser may contact the insured about his or her health status. A policy purchaser has an economic interest in knowing when the insured's health changes because the policy's value is closely related to the insured's health (i.e., the policy value increases as the insured's health deteriorates). Furthermore, the insured's death will cause the policy to mature, permitting the policy purchaser to recapture its investment in the policy and realize any profit. To protect against over-zealous investors harassing the insured when the insured becomes ill, state regulations generally limit the frequency that a policyowner may contact an insured, even when death is imminent.

Other important considerations

Before entering into a viatical settlement arrangement, the policyowner should consult his or her advisors concerning the tax consequences of the settlement, the effect the sale may have on the policyowner's eligibility for government aid, and any effect the settlement may have on the policyowner's rights against creditor's claims.

Tax implications. The disposition of a life insurance policy, like the disposition of any other asset, may trigger gain to the extent the settlement proceeds exceed the policyowner's investment in the policy. Although IRC Section 101(g) permits two groups of people to receive benefits from a viatical settlement without owing federal income taxes, the scope of that exemption is very limited. Specifically, the exemption applies to (1) persons who have been diagnosed with a terminal illness and have a life expectancy of 24 months or less, and (2) certain chronically ill individuals. Before entering into a viatical settlement contract, the policyowner should consult his or her tax advisor about the federal, state, and local tax consequences of the settlement.

Government assistance. Eligibility for benefits under many government programs, such as Medicaid, supplementary Social Security income, and other public assistance, is based, in part, on the applicant's income. Receipt of viatical settlement proceeds may affect a policyowner's eligibility for benefits under these government programs. Before entering into a settlement contract, the policyowner should consult his or her legal or financial advisor about how the policyowner's eligibility for any such assistance may be affected by the receipt of viatical settlement proceeds.

Creditor protection. In many states, a life insurance policy (including the policy cash value) may be exempt from creditors' claims. The proceeds from a settlement generally will not be exempt from creditors' claims. Before entering into a viatical settlement contract, the policyowner should consult his or her legal or financial advisor about potential claims by creditors against the settlement proceeds.

Conclusion

The viatical settlement market provides a valuable alternative to policyowners who no longer wish to keep their life insurance policies, but are not satisfied with the financial return that may be available if the policyowner surrenders the policy to the insurance company. Nevertheless, before entering into a viatical settlement contract, it is prudent that the policyowner and the policyowner's advisors consider all options available to the policyowner, and fully understand the process involved in a viatical settlement. In addition, the policyowner should know what rights the policyowner has under applicable law and the governing documents (including the right to receive payment within a maximum period of time, and the extent to which the policyowner's and the insured's personal information will be protected from future dissemination).

The policyowner or the policyowner's advisors should determine whether the viatical settlement is a regulated transaction under applicable state law and whether the purchaser

must be licensed to purchase the policy. If a license is required, the policyowner or advisor should verify that the purchaser has the appropriate license by either requesting a copy of the license from the purchaser or contacting the division of insurance in the appropriate state. Lastly, the policyowner should consult his or her advisors concerning the tax consequences of the viatical settlement, the effect that the receipt of the viatical settlement proceeds may have on the policyowner's eligibility for government assistance, and any effect the viatical settlement may have on the policyowner's rights against creditor's claims.

PRACTICE NOTES

Before entering into a viatical settlement arrangement, the policyowner should consult his or her advisors concerning the tax consequences of the settlement, the effect the sale may have on the policyowner's eligibility for government aid, and any effect the settlement may have on the policyowner's rights against creditor's claims.

[1](#)

Pub. L. 107-204. Generally, under section 402(a)(k) of the Sarbanes-Oxley Act, it is unlawful for a company subject to the Act, directly or indirectly, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer. (A consumer credit company may make home improvement and consumer credit loans and issue credit cards to its directors and executive officers in the ordinary course of business if the credit loans and issuance of credit cards are made on the same terms and conditions as made to the general public.) The Sarbanes-Oxley Act is silent as to whether a split-dollar arrangement between a company and a director or executive officer is a loan or an extension of credit from the company to the director or officer. Commentators expressed concern to the IRS and the Treasury about the possible application of section 402 of the Sarbanes-Oxley Act to split-dollar life insurance arrangements entered into by companies subject to that Act. In the Preamble to the final split-dollar Regulations, the Treasury stated that “[t]hese regulations do not address this issue, as interpretation and administration of Sarbanes-Oxley fall within the jurisdiction of the Securities and Exchange Commission.” In the absence of clear guidance regarding the applicability of section 402 of the Sarbanes-Oxley Act to split-dollar arrangements entered into by companies subject to the Sarbanes-Oxley Act, many of those companies have opted to terminate the split-dollar arrangements between the company and any director or executive officer.

[2](#)

2002-1 CB 398.

[3](#)

The final split-dollar Regulations apply to any split-dollar life insurance arrangement that is entered into or materially modified after 9/17/03. “In the case of any split-dollar life insurance arrangement entered into on or before September 17, 2003, taxpayers may continue to rely on [certain pre-existing] revenue rulings to the extent described in Notice

2002-8, but only if the arrangement is not materially modified after September 17, 2003.” Rev. Rul. 2003-105, 2003-40 IRB 696. Notice 2002-8, 2002-1 CB 398, provides that, for equity split-dollar arrangements entered into before 1/28/02, under which the “sponsor” has made premium or other payments under the arrangement and has received or is entitled to receive full repayment of all its payments, the IRS will not assert that there has been a taxable transfer of property to a benefited person upon termination of the arrangement if (1) the arrangement is terminated before 1/1/04, or (2) for all periods beginning on or after 1/1/04, all payments by the sponsor from inception of the arrangement (reduced by any repayments to the sponsor) are treated as loans for federal tax purposes, and the parties to the arrangement report the tax treatment in a manner consistent with this loan treatment, including IRC Sections 1271-1275 and Section 7872. Many split-dollar participants, including many whose split-dollar arrangements were not equity split-dollar arrangements, terminated their agreements before the end of the “safe harbor” termination date of 12/31/03.

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Generally, the sale of life insurance policies can be categorized into two groups: life settlements and viatical settlements. Many advisors are familiar with the definition of viatical settlements that is set forth in IRC Section 101. That section governs the income tax treatment of amounts received under a life insurance contract by reason of the death of the insured. Generally, those proceeds are not included in the recipient's gross income. Section 101(g) states that proceeds from the sale or assignment to a viatical settlement provider of any portion of the death benefit under a life insurance contract on the life of an insured person who is terminally or chronically ill are treated as an amount paid under the life insurance policy by reason of the insured's death, which, generally, is received free of income tax. These transactions are generally referred to as “viatical settlements.” A sale or assignment of a life insurance policy that is not a viatical settlement is generally referred to as a “life settlement.” State law definitions of viatical settlements and life settlements vary, but, like IRC Section 101, generally distinguish between the sale of policies insuring terminally ill individuals and the sale of policies insuring individuals who are not terminally ill. For example, New York state, which regulates viatical settlements but not life settlements, restricts the definition of viatical settlements to transactions in which the policyowner assigns, transfers, sells, devises, or bequeaths the death benefit or ownership of an insurance policy insuring the life of a person who has a catastrophic or life threatening illness or condition in exchange for compensation or anything of value, and such compensation or value is less than the expected death benefit of the insurance policy. N.Y. Ins. Law §7801.

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Although the definitions of life settlements and viatical settlements differ, this article will use the term “viatical settlement” to refer to both types of transactions unless a distinction is being made between the two types of settlements.

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For example, Alaska law requires that all viatical providers (i.e., any person that purchases policies pursuant to a life settlement or a viatical settlement) be licensed prior

to engaging in the viatical business in Alaska. In 2002, no one was licensed as a viatical settlement provider in Alaska. Consequently, policies owned by Alaska residents had no value in the viatical settlement market because no one was permitted to purchase them. In 2003, the state of Alaska issued viatical provider licenses to two firms, permitting those firms to enter into viatical settlements with Alaska residents. Consequently, policies owned by Alaska residents may now have value in the viatical market in excess of their cash surrender values.

[7](#)

The following states regulate life settlement transactions: Alaska, Ark., Conn., Fla., Iowa, Kan., Ky., La., Me., Md., Miss., Mont., Neb., Nev., N.C., N.D., Ohio, Okla., Pa., Tenn., Tex., Utah, and Va.

[8](#)

The following states regulate viatical settlement transactions: Alaska, Ark., Cal., Conn., Del., Fla., Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mass., Mich., Minn., Miss., Mont., Neb., Nev., N.J., N.M., N.Y., N.C., N.D., Ohio, Okla., Ore., Pa., Tenn., Tex., Utah, Vt., Va., Wash., and Wis.

[9](#)

One example of this exception can be found under Texas regulation. The Texas regulation (28 TX ADC §3.1714) provides that all confidential information solicited or obtained by a viatical settlement provider, viatical settlement broker, or viatical settlement representative about a policyowner and insured, including the policyowner's or insured's identity and the identity of family members, a spouse or a significant other of the policyowner or insured, is confidential unless disclosure is (1) provided to the Texas Department of Insurance in the form of statistical data from which the identity of the policyowner cannot be ascertained; (2) provided to the Texas Department of Insurance in response to a subpoena from the commissioner, pursuant to the enforcement powers made applicable by Insurance Code Article 3.50-6A, and 28 TX ADC §3.1716 (relating to denial, suspension, or revocation of certificate of registration; enforcement), or in response to a written request for information made pursuant to Insurance Code §38.001; or (3) provided to the Texas Department of Insurance during the course of an examination by the Texas Department of Insurance of the business and affairs of the viatical settlement provider. Of course, the regulations also permit disclosure of confidential information if a prior written consent from the policyowner on a form that identifies to whom the confidential information may be released, and the purpose for releasing the confidential information, authorizes the disclosure.

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For example, the Alaska regulation requires a policy purchaser to pay proceeds of the viatical settlement contract to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation within three business days after the policy purchaser's receipt of documents to effectuate the transfer of the insurance policy under a viatical settlement contract. Alaska Admin. Code tit. 3, §31.365. New York and Florida require the policy purchaser

to deposit any funds that will be paid by the policy purchaser to the policyowner under a viatical settlement transaction with an independent third-party trustee or escrow agent *immediately* upon receipt by the independent third-party trustee or escrow agent of documents from the policyowner to effectuate the transfer of the insurance policy to the policy purchaser. N.Y. Comp. Codes R. & Regs. tit. 11, §380.6(c)(4); Fla. Stat. ch. 626.9924.

[11](#)

The Alaska regulation requires that the viatical settlement proceeds be released from the escrow account and paid to the policyowner within three business days after the date that the viatical settlement provider receives an acknowledgement that (1) ownership of the policy has been transferred to the viatical settlement provider; and (2) the beneficiary has been designated under the viatical settlement contract. Alaska Admin. Code tit. 3, §31.365. Similarly, Florida law provides that the independent third-party trustee or escrow agent must transfer all proceeds of the viatical settlement contract within three business days after receiving an acknowledgment from the insurance company that the policy has been transferred to the policy purchaser. Fla. Stat. ch. 626.9924. New York regulation requires the trustee or escrow agent to transfer the viatical settlement proceeds to the policyowner *immediately* upon receipt of an acknowledgment from the insurance company of the policy transfer. N.Y. Comp. Codes R. & Regs. tit. 11, §380.6(c)(5).

[12](#)

See, e.g., Alaska Admin. Code tit. 3 § 31.370(f); Fla. Stat. ch. 626.9924(2); N.Y. Comp. Codes R. & Regs. tit. 11, §380.6(c)(2).

[13](#)

See, e.g., Alaska Admin. Code tit. 3 §31.370(f); N.Y. Comp. Codes R. & Regs. tit. 11, §380.6(c)(2).

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