

2009 DRAFTING REQUEST

Bill

Received: **01/07/2010**

Received By: **tdodge**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Michael Tierney / OCI**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact: **OCI**

Addl. Drafters:

Subject: **Insurance - other insurance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Wirch@legis.wisconsin.gov**

Carbon copy (CC:) to: **tamara.dodge@legis.wisconsin.gov**
Jim.Guidry@wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Life settlement regulation

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 01/14/2010	csicilia 01/15/2010		_____			
/P1			rschluet 01/15/2010	_____	sbasford 01/15/2010		S&L
/1	tdodge 01/29/2010	csicilia 02/01/2010	jfrantze 02/01/2010	_____	lparisi 02/01/2010	sbasford 02/02/2010	

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intro

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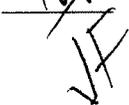
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				<END>			

Dodge, Tamara

From: Guidry, Jim R - OCI [Jim.Guidry@wisconsin.gov]
Sent: Friday, December 18, 2009 3:34 PM
To: Dodge, Tamara; Kahler, Pam - LEGIS
Cc: Mallow, Eileen K - OCI; Harris, James W - OCI
Subject: LRB 3347-P1 Life Settlements
Attachments: Life Settlement Act Final Response To LRB Notes December 14 2009.doc

Tami,

Attached is a memo from OCI staff attorney Jim Harris to Commissioner Dilweg that addresses the drafting notes that were included in the LRB 3347-P1 draft you sent to OCI. The memo attempts to answer your questions and respond to your drafting changes. For the most part there were no issues with your draft with a few exceptions which I've itemized as follows:

1. Memo page 1, 4 (Draft, page 6, 45). Definition of Fraudulent Life Settlement
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3. Memo page 2, 4 (Draft, page 12, 45 item (15)(a) 3) Definition of STOLI
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For item 4, Jim Harris has provided an additional clarification of legislative intent to help with the structure of that provision.

If possible, I would appreciate your estimation of the time needed to complete the draft.

Thank you for all of your work with this and with OCI.

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Cell: (608) 209-6309



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: ocl.wi.gov

Date: December 14, 2009
To: Sean Dilweg, Commissioner
From: Jim Harris, Attorney
Subject: Response to LRB Preliminary Draft Notes; Life Settlement legislation

I have reviewed the LRB preliminary draft (LRB-3347/P1) of the proposed life settlement legislation and would offer the following response to the notes of the drafter, Tamara Dodge:

✓ Draft, page 6, item (1)(e) Note: "What is NONACCREDITED INVESTOR AND CAN THAT TERM BE FURTHER DEFINED?"

As the drafter reveals later in the regulation, "accredited investor" is defined in 17 CFR 230.501(a), Federal Security Act of 1933, so its meaning is clear to industry, and no further definition should be necessary.

Draft, page 6, The definition of Fraudulent Life Settlement is moved from general definitions to page 45 of the LRB draft at item (15)(a) 1., and is further dissected by the drafter into definitional and substantive subparts as will be noted later. This differs from the model law.

Draft, page 6, item (1)(i) "Life Settlement". And Note: "I changed the wording slightly. Is that okay?"

The drafter deletes the word *contract* from the definition, which is okay, and changes the order of the terms of the definition, leaving out some of the detail. On balance the drafter's result is okay, but differs from the model language, and may lead to confusion or inquiry by interested parties during legislative process.

Draft, page 8, item (1)(h) Note: "I changed the wording of the exclusion...."

The change is okay.

Draft, page 9, item (1)(k) Note: "This definition restricts the owner to those who reside in this state...."

The definition is correct as written. The later conflict of law reference has to do with the situation where there is more than one owner, one of whom may not be a resident of this state. OCI has jurisdiction over the resident owner's interest.

- × Draft, page 10, item (1)(o)(2) Note: *"Please specify what the 'premium' finance law' is so this provision can be further clarified."*

Premium finance law means s. 138.12, Stat.

- × Draft, page 10, item (1)(o) 9. Note: *"Please note that I changed the wording...."*

The change is okay.

- × Draft, page 12 The definition of Stranger Originate Life Insurance, STOLI, has been moved by the drafter from the general definition section to page 45, item (15)(a) 3., and is further dissected by the drafter into definitional and substantive subparts as noted later. This differs from the model law.

- × Draft, page 13, item (2)(d) Note: *"I added 'or renew' to these provisions, okay?"*

The change is okay.

- × Draft, page 14, item (2)(f) Note: *"I changed the 'and' to 'or' in the last line of this provision. Is that okay?"*

The change is okay.

- × Draft, page 15, item (2)(h) Note: *"Should the commissioner be able to request the information from licensees as well?"*

The Commissioner has authority to request such information from licensees under s. 601.42, Stat.

- × Draft, page 17, item (3)(b) Note: *"In the first sentence of this provision, I assumed that the education provider must also be approved by the commissioner even though the original language said 'department'. Is that correct?"*

Correct.

- × Draft, page 18, item (3)(e) Note: *"Is the last sentence intended to require training before obtaining a license under this section? If so may I add this to the requirements for an application and change the training requirements to apply to applicants too?"*

The intention is that the initial training course be completed by an applicant before an initial license is granted. Licensees currently holding a license under the existing viatical statute would have 6 months to complete the required initial training.

Draft, page 20, item (5) Note: *"I combined two paragraphs in this subsection and added in some of the provisions from s. 631.20....Is that okay?"*

The change is okay.

Draft, page 20, item (6) The drafter changes the order of the language, but meaning remains the same.

Draft, page 27, item (16)(2)(b) 6. Note: *"Later in the draft, in the general requirements subsection, it appears that use of an independent escrow agent is required so I changed this paragraph accordingly. Is that correct?"*

Correct.

Draft, page 28, item (9)(a)1.d. Note: *"Is the change to this provision okay?"*

The change is from *"during the term of the the life settlement investment"* to *"before the death of the insured"*. Technically the insured could die but at a later date before the proceeds are paid out the insurer could fail, and the term of the contract would still be in effect. The original language is better.

Draft, page 29, item (9)(a) 1. i. Note: *I changed 'life settlement contract' to purchase agreement.' Is that correct?"*

The change is okay.

Draft, page 31, item (11)(a)1. a. Note: *If you intend this section to provide an evidentiary statement...."*

The provision should remain as drafted without alteration.

Draft, page 32, item (11)(a) 4. Note: *Should 'or broker' be omitted....?"*

Because under 6. a broker may perform the function under 1.,2.,3., or 5.,(even tho the responsibility remains that of the provider) the language should remain as it is.

Draft, page 37, item (12)(a) 3. a. Note: *The wording of this provision seems unclear as I do not know how the assets, liability and the insured relate. Perhaps you could break the 'full recourse liability incurred by' clause out into a separate sentence."*

The word *insured* is incorrect and should be replaced by the word *owner*. The balance of the language should stay as it is in the draft. A main aspect of STOLI, which is the evil to be prevented, is the use of non-recourse liability, that is although the owner signs a promissory note to obtain the premium money, the debt is "forgiven" as to any amount in excess of the cash value of the policy at the time the note becomes due. The concept of full recourse is well known to regulators and the industry.

Draft, page 37, item (12)(a) 3. b. Note: *"Does the liability in this provision refer to the 'full recourse liability' in subdivision 3. a.?"*

Subdivision 3.b. refers to the guarantee by a third person of *any* liability of the owner for the borrowing of premium funds.

Draft, page 38, item (12)(f) Note: *where to place provision.*

Since the title to Section (12) includes "fiduciary duty" the draft placement is okay .

Draft, page 45 and following, treatment of Fraudulent life settlement act and STOLI

The drafter has employed a drafting convention that *substantive provisions* should not be included in a *definition*. Therefore, the drafter has dissected the definitions from the OCI draft, and as used in the Model Laws, and other state's life settlement laws, and separated out the *operational* elements from the *definitional* elements.

As we all know, the Model Law drafters often do not follow drafting conventions.

The danger is this. The OCI draft definitions of *fraudulent life settlement act* and *stranger-originated life insurance* are a product of lengthy and sometimes contentious deliberations in the work group. The OCI definitions and placement of the definitions follow generally the model law, and as such are recognizable to most industry and regulator viewers.

Another danger is that through the lobbying process, the separated strands of the provisions may receive different treatment by the legislators, without realizing the effect or relationship of one subpart to another.

Draft, page 45, item (15)(a)1. "*Fraudulent life settlement act.*" The LRB draft takes the first sentence from OCI draft(1)(h) as the definition. The drafter then designates the balance of the OCI definition (the "includes" portion) as separate fraudulent life settlement acts.

I personally like the drafter's treatment in the LRD version. However, OCI folks should scrutinize the language and determine a comfort level.

Draft, page 45, item (15)(a) 3. "*Stranger-originated life insurance.*" The LRB draft defines STOLI as a *policy*, and then lists an *act practice plan or arrangement individually or in concert with others* to initiate a STOLI as a fraudulent life settlement act. The OCI draft treats STOLI as a *process* and lumps all of the language into the single paragraph definition.

Likewise, the LRB draft separates the *trusts* created to give the appearance of an insurable interest as a fraudulent life settlement act.

I personally like the drafter's treatment. However this represents a great departure from the Model Law structure, and OCI folks should carefully review the language and placement of the terms in the LRB draft.

Draft, page 48, item (15)(am) 10. Note: "*Could I add a reference to s. 631.07 to this section since this is our insurable interest law? Also, is the prohibition against wagering on life part of a federal or state statute or rule or is it a common law prohibition?*"

A reference to 631.07 is okay.

The prohibition against wagering on human life is a common law concept evolving from the speculation upon the loss of ships and crew by the British during their rulers of the seas days, and the phrase has been recited in case law for hundreds of years.

Dodge, Tamara

From: Mallow, Eileen K - OCI [Eileen.Mallow@wisconsin.gov]
Sent: Monday, December 21, 2009 10:57 AM
To: Dodge, Tamara
Cc: Dilweg, Sean - OCI; Guidry, Jim R - OCI; Harris, James W - OCI; Tierney, Michael
Subject: FW: LRB 3347-P1 Life Settlements
Follow Up Flag: Follow up
Flag Status: Red

Hi Tami – we are working directly with Sen. Wirsch's office on the draft legislation. Please feel free to share drafts, comments etc with them.

Thanks.

Eileen Mallow
Assistant Deputy Commissioner
608-266-7843
608-261-8579 (fax)
eileen.mallow@wisconsin.gov

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Jim,

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Attorney

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632.68 Regulation of life settlement contracts

(1) DEFINITIONS. In this section:

- (a) "Advertisement" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed, directly or indirectly, before the public in this state for the purpose of creating an interest in or inducing a person to purchase, sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
- (b) "Broker" means a person, who working exclusively on behalf of an owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and one or more providers, or one or more brokers. Notwithstanding the manner in which the broker is compensated, a broker is deemed to represent only the owner, and not the insurer or the provider, and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner. Broker does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the provider or purchaser.
- (c) "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a life settlement contract.

(d) "Chronically ill" means:

1. being unable to perform at least two activities of daily living, including eating, toileting, transferring, bathing, dressing or continence; or
2. requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
3. having a level of disability similar to that described in par. 1 as determined by the U.S. secretary of health and human services.

(e) "Commissioner" means the insurance commissioner of this state.

(f) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

1. whose principal activity related to the transaction is providing funds to effect the life settlement or purchase of one or more settled policies, and
2. who has an agreement in writing with one or more licensed providers to finance the acquisition of life settlement contracts.

"Financing entity" does not include a non-accredited investor or a purchaser.

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

(h) "Fraudulent life settlement act" includes:

1. Acts or omissions committed by any person that, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:

- a. Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a provider, broker, purchaser, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
- (i) An application for the issuance of a life settlement contract or insurance policy.
 - (ii) The underwriting of a life settlement contract or insurance policy.
 - (iii) A claim for payment or benefit pursuant to a life settlement contract or insurance policy.
 - (iv) Premiums paid on an insurance policy.
 - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy.
 - (vi) The reinstatement or conversion of an insurance policy.
 - (vii) The solicitation, offer, effectuation or sale of a life settlement contract or insurance policy.
 - (viii) The issuance of written evidence of life settlement contracts or insurance.
 - (ix) A financing transaction.
- b. Employing any plan, device, scheme or artifice to defraud in the business of life settlements.
- c. Failing to disclose to an insurer where the request for such disclosure has been made by the insurer that the prospective owner has undergone a life expectancy evaluation by any person or entity other than the insurer or

its authorized representatives in connection with the issuance of the policy.

2. Any of the following acts that any person does, or permits its employees or agents to do in the furtherance of a fraud or to prevent the detection of a fraud:
 - a. Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements.
 - b. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person.
 - c. Transact the business of life settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of life settlements.
 - d. File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.
3. Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a life settlement provider, insurer, insured, owner or any other person engaged in the business of life settlements or insurance.
4. Recklessly entering into, negotiating, brokering or otherwise dealing 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 person or the persons intended to defraud the policy's issuer, the provider or the owner. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial

likelihood of the existence of the relevant facts or risks, the disregard involving a gross deviation from acceptable standards of conduct.

5. Attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
6. Misrepresent the state of residence of an owner to be a state that does not have a law substantially similar to this section for the purpose of evading or avoiding the provisions of this section.
7. Stranger-originated life insurance.

(i) "Life expectancy" means the arithmetic mean of the number of months an insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.

(j) 1. "Life settlement contract" means a written agreement entered into between an owner and a provider or any affiliate of the provider 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 any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender or accelerated death benefit available at the time of an application for a life settlement contract.

2. "Life settlement contract includes:

- a. The transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance

policies or certificates of insurance, which life insurance policy or certificate of insurance insures the life of a person residing in this state.

b. A written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy.

c. A premium finance loan made for a policy on, before or after the date of issuance of the policy where:

- (i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing; or
- (ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
- (iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

3. "Life settlement contract" does not include:

- a. A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death benefit provisions contained in the life insurance policy, whether issued with the original policy or as a rider.
- b. A premium finance loan as defined in par. 3.(n), or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any

other person for the purpose of evading regulation under this section.

- c. A collateral assignment of a life insurance policy by an owner.
- d. A loan made by a lender that does not violate s. 138.12, Stats., provided such loan is not described in paragraph 2. c., and is not otherwise within the definition of life settlement contract.
- e. An agreement where all the parties are closely related to the insured by blood or law, or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties.
- f. Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee.
- g. A bona fide business succession planning agreement:
 - (i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by or for the benefit of its shareholders.
 - (ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by or for the benefit of its partners.
 - (iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its

members or one or more trusts established
by or for the benefit of its members.

- h. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business.
 - i. Any other contract, transaction or arrangement from the definition of life settlement agreement that the commissioner determines is not of the type intended to be regulated by this section.
- (k) 1. "Owner" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purpose of this section, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

2. "Owner" does not include:

- a. A licensee under this section, including a life insurance producer acting as a broker pursuant to this section.
- b. A qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933 (17 CFR 230.144A), as amended.
- c. A financing entity.
- d. A special purpose entity.
- e. A related provider trust.

- (l) "Person" means a natural person or legal entity including an individual, partnership, limited liability company, association, trust or corporation.
- (m) "Policy" means an individual or group policy, certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.
- (n) "Premium finance loan" means a loan made primarily for the purpose of making premium payments on a life insurance policy and secured by an interest in the life insurance policy.
- (o) "Producer" means any person licensed in this state as a resident or nonresident insurance intermediary, agent or producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to s. 628.04, Stats.
- (p) 1. "Provider" means a person, other than an owner, that enters into or effectuates a life settlement contract with an owner resident in this state.
 - 2. "Provider" does not include:
 - a. A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan.
 - b. A premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance law that takes an assignment of a life insurance policy solely as collateral for a loan.
 - c. The issuer of the life insurance policy.
 - d. An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a provider, purchaser, financing entity, special purpose entity or related provider trust.
 - e. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of

life insurance policies for any value less than the expected death benefit.

- f. A financing entity.
- g. A special purpose entity.
- h. A related provider trust.
- i. A purchaser.
- j. Any other person that the commissioner determines is not the type of person intended to be covered by the definition of provider.

(q) 1. "Purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract, for the purpose of deriving an economic benefit.

2. "Purchaser does not include:

- a. A licensee under this section.
- b. An accredited investor or qualified institutional buyer as defined, respectively, in rule 501(a) or Rule 144A promulgated under the federal Securities Act of 1933, as amended.
- c. A financing entity.
- d. A special purpose entity.
- e. A related provider trust.

(r) "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. To qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory

and regulatory requirements and under which the trust agrees to make all records and files related to the life settlement transactions available to the commissioner as if those records were maintained directly by the licensed provider.

- (s) "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.
- (t) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:
 - 1. For a financing entity or licensed provider; or
 - 2. In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, as amended, or the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
- (u) "Stranger-originated life insurance" or "STOLI" means an act, practice, plan or arrangement, individually or in concert with others, to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy by the person or entity, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against

Keep all language

wagering on life. Stranger-originated life insurance arrangements do not include the practices set forth in par. (1)(j) 3.

- (v) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(2) LICENSE REQUIREMENTS

(a) No person, wherever located, shall act as a provider or broker with an owner who is a resident of this state, without first having obtained a license from the commissioner. Provided, that a person licensed as an attorney or certified public accountant, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(b) *Application and fee.* Application for a license shall be made to the commissioner by the applicant on a form prescribed by the commissioner. For a broker's license the application shall be accompanied by the fee specified in s. 601.31(1)(mr). For a provider's license the application shall be accompanied by the fee specified in s. 601.31(1)(mm).

(c) *Social security and federal employer identification numbers on applications.* An application for a license shall contain the applicant's social security number, if the applicant is a natural person unless the applicant does not have a social security number, or the applicant's federal employer identification number, if the applicant is not a natural person. If an applicant who is a natural person does not have a social security number, the applicant shall provide to the commissioner, along with the application for a license and on a form prescribed by the department of children and families, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The licensee's social security number, statement the licensee does not have a social security number, or federal employment identification number of the licensee shall be provided to the commissioner at the time that the annual license fee is paid, if not previously disclosed. The

commissioner may not issue a license under this subsection unless the applicant who is a natural person provides the applicant's social security number or statement that the applicant does not have a social security number, or provides the applicant's federal employer identification number, if the applicant is not a natural person. The commissioner shall disclose a social security number obtained from an applicant or licensee to the department of children and families in the administration of s. 49.22, as provided in a memorandum of understanding entered into under s. 49.587. The commissioner may disclose the social security number or federal employment identification number of an applicant or licensee to the department of revenue for the purpose of requesting certifications under s. 73.0301.

(d) *Refusal to issue license: failure to pay support or to comply with subpoena or warrant; tax delinquency.* 1. The commissioner shall refuse to issue to a natural person a license under this subsection if the natural person is delinquent in court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or if the natural person fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53(5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

2. The commissioner shall refuse to issue a license under this subsection if the department of revenue certifies under s. 73.0301 that the applicant for the license is liable for delinquent taxes.

(e) The applicant shall provide information the commissioner may require on forms prepared by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of its stockholders, except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded, partners, officers and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue a license in the name of any person if not

satisfied that any officer, employee, stockholder or partner thereof who may materially influence the applicant's conduct meets the standards of this section.

(f) A license issued to a partnership, corporation or other entity authorizes all members, officers and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(g) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the commissioner finds that the applicant:

1. If a provider, has provided a detailed plan of operation;
2. Is competent and trustworthy and intends to transact its business in good faith;
3. Has a good business reputation and has either the experience, training or education so as to be qualified in the business for which the license is applied;
4. a. If a provider, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000. Any surety bond issued pursuant to this paragraph shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the provider. Notwithstanding any provision of this section to the contrary, the commissioner shall accept as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with one state where the applicant is licensed as a provider.

b. If a broker, has provided proof of the acquisition of a policy of professional liability insurance in an amount that is satisfactory to the commissioner.

c. The commissioner may request evidence of financial responsibility from an applicant at any time the commissioner deems necessary.

4. If the applicant is a legal entity, is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile;

5. Has provided to the commissioner an anti-fraud plan that meets all of the requirements of subs. (14).

(h) The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner in accordance with the procedures set forth in s. 601.72 and 601.73.

(i) *Renewal.* Licenses may be renewed annually on July 1 upon payment of the fee specified ins. 601.31(1)(ms) by a broker, or the fee specified in s. 601.31(1)(mp) by a provider. Failure to pay the fees by the renewal date shall result in the automatic revocation of the license requiring periodic renewal.

(j) Each licensee shall file with the commissioner on or before the first day of March of each year an annual statement containing any information the commissioner requires by rule.

(k) 1. Individuals licensed as brokers or providers who engage in the business of life settlements in this state shall receive training to ensure: the individuals understand the relation of life settlement transactions to the integrity of a comprehensive financial plan of a policy owner, the individuals have adequate knowledge to competently discuss the material aspects of life settlements with

a policy owner, and the individuals comply with the laws of this state relating to life settlements.

2. Training required under this paragraph must be approved by the commissioner and provided by a department approved education provider. The commissioner may approve the training required under this paragraph for continuing education under s. 628.04(3). Training required under this paragraph shall not increase the credit hours of continuing education required by statute or rule. Certification and reporting of completion of the required training shall comply with the requirements of ch. Ins 28, Wis. Adm. Code. Any person failing to meet the requirements of this paragraph shall be subject to the penalties imposed by the commissioner.

3. The satisfaction of the training requirements of another state that are substantially similar to the requirements set forth in this paragraph, and are approved by the commissioner, shall be deemed to satisfy the requirements of this paragraph.

4. Training provided under this paragraph shall at a minimum include: legal structuring of life settlement transactions, legal relationships among the parties to a life settlement transaction, required consumer disclosures and privacy requirements, ethical considerations in selling, soliciting and negotiating life settlements, contract requirements, advertising, consumer remedies, licensing requirements, and such additional matters as determined by the commissioner.

5. The individual broker or provider shall complete an initial training course of not less than 8 hours, and ongoing training of not less than 4 hours every 24 months thereafter. Initial training shall be completed within 6 months after the effective date of this section.

(L) A provider may not use any person to perform the functions of a broker as defined in this section unless the person holds a current, valid license as a broker, and as provided in this section.

(m) A broker may not use any person to perform the functions of a provider as defined in this section unless the person holds a current, valid license as a provider, and as provided in this section.

(n) A provider or broker shall provide to the commissioner new or revised information about officers, stockholders, except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded, partners, directors, members or designated employees within 30 days of the change.

(o) The insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker or provider arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider or purchaser or broker in connection with the life settlement contract.

(3) LICENSE SUSPENSION, REVOCATION OR REFUSAL TO RENEW

(a) The commissioner may suspend, revoke or refuse to renew the license of any licensee if, after a hearing, the commissioner finds any of the following:

1. There was any material misrepresentation in the application for the license;
2. 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;
3. The provider demonstrates a pattern of unreasonably withholding payments to policy owners;
4. The licensee no longer meets the requirements for initial licensure;
5. 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 other than not guilty with respect to any felony or misdemeanor of which criminal fraud or moral turpitude is an

element, regardless of whether a judgment of conviction has been entered by the court;

6. The provider has entered into any life settlement contract that has not been approved pursuant to this section;

7. The provider has failed to honor contractual obligations set out in a life settlement contract;

8. 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, financing entity, special purpose entity, or related provider trust;

9. The licensee or any officer, partner, member or key management personnel has violated any of the provisions of this section.

(b) Nothing in this subsection limits the authority of the commissioner to suspend summarily a license under s. 227.51(3).

(c) The commissioner shall suspend the license of a licensee who is a natural person if the natural person is delinquent in court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or if the natural person fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53(5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(d) The commissioner shall revoke the license of a licensee if the department of revenue certifies under s.73.0301 that the licensee is liable for delinquent taxes.

(4) CONTRACT REQUIREMENTS

(a) No person may use any form of life settlement contract in this state unless it has been filed and approved by the commissioner in accordance with the provisions of s. 631.20.

(b) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider or broker sign any form, disclosure, consent, waiver or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(c) No person may use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, the commissioner determines the form or provisions contained therein fail to meet the requirements of this section, or are unreasonable, contrary to the interests of the public, or are otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material.

(5) REPORTING REQUIREMENTS AND PRIVACY

(a) For any policy settled within five years of policy issuance, each provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the brokers that have settled the policies.

1. Information provided in the annual statement shall be limited to those transactions where the owner is a resident of this state and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

2. Every provider that willfully fails to file an annual statement as required in this section, or willfully fails to reply within 30 days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this section be subject to a forfeiture under s. 601.64(3)(c).

(b) Except as otherwise allowed or required by law, a provider, broker, insurance company, producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

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

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

3. Is provided in response to an investigation or examination by the commissioner or any other government officer or agency or pursuant to the requirements of subs. (14).

4. Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this subsection;

5. Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For purposes of this paragraph the term authorized representative shall not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust or special purpose entity. A provider or broker shall

require its authorized representative to agree in writing to adhere to the privacy provisions of this section;

6. Is required to purchase stop loss coverage.

(c) Non-public personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to all applicable laws of this state relating to confidentiality of non-public personal information.

(6) EXAMINATIONS AND ALTERNATIVES

(a) The commissioner may, whenever the commissioner deems it necessary in order to be informed about any matter related to the enforcement of this section, examine the business and affairs of any licensee or applicant for a license, under the provisions of ss. 601.43 to 601.45.

(b) Names and individual identification data for all owners, purchasers and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(c) A person required to be licensed by this section shall for five years retain copies of all of the following, which shall be available to the commissioner for inspection at all reasonable times in accordance with s. 601.42:

1. Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of a contract or purchase agreement, whichever is later;

2. All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction;

3. All other records and documents related to the requirements of this section.

4. Records required to be retained must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical or

electronic media, or by any process that accurately reproduces or forms a durable medium for reproduction of a record.

(7) DISCLOSURE TO OWNER^{insured} (a) With each application for a life settlement, a provider or broker shall provide the owner with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the owner and the provider or broker, and shall provide the following information:

1. There are possible alternatives to life settlement contracts including any accelerated death benefits or policy loans offered under the owner's life insurance policy.
2. The broker represents exclusively the owner, and not the insurer or the provider, and owes a fiduciary duty to the owner, including the duty to act according to the owner's instructions and in the best interest of the owner.
3. Some or all of the proceeds of the life settlement may be taxable under federal income tax and state franchise and income tax laws, and assistance should be sought from a professional tax advisor.
4. Proceeds of the life settlement could be subject to the claims of creditors.
5. Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
6. The owner has the right to rescind a life settlement contract before the earlier of 30 calendar days after the date upon which the life settlement contract is executed by all parties or 15 calendar days after the life settlement proceeds have been paid to the owner, as provided in subs. (10) (d). 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 life settlement within the rescission period. If the owner dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the owner's estate of all life settlement proceeds and any premiums, loans and loan interest paid on account of the life settlement within the rescission period.

7. Funds will be sent to the owner within 3 business days after the provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
8. Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial advisor.
9. Disclosure to an owner shall include distribution of a brochure approved by the commissioner describing the process of life settlements.
10. The disclosure form shall contain the following language: "All medical, financial or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or significant other may be disclosed as necessary to effect the life settlement between the owner and the provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the

policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”

11. Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured’s health status and to confirm the insured’s residential or business street address and telephone number, or as otherwise provided in this section. This contact shall be limited to once every 3 months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed provider.

(b) A provider shall provide the owner with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner, and shall provide the following information:

1. The affiliation, if any, between the provider and the issuer of the insurance policy to be settled.
2. The name, business address and telephone number of the provider.
3. Any affiliation or contractual arrangements between the provider and the purchaser.
4. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the owner shall be informed of the possible loss of coverage on the other lives under the policy, and shall be advised to consult with the owner’s insurance producer or the insurer issuing the policy for advice concerning the proposed life settlement.

5. State the dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract.

6. Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A broker shall provide the owner with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

1. The name, business address and telephone number of the broker.
2. A full, complete and accurate description of all offers, counteroffers, acceptances and rejections relating to the proposed life settlement contract.
3. A written disclosure of any affiliation or contractual arrangement between the broker and any person making an offer in connection with the proposed life settlement contract.
4. The amount of the broker's compensation, the term compensation includes anything of value paid or given to a broker for the placement of the policy.
5. Where any portion of the broker's compensation, as defined in subd. 4. of this subsection, is taken from a proposed life settlement offer, the broker shall disclose the total amount of the life

settlement offer and the percentage of the life settlement offer comprised by the broker's compensation.

- (d) If the provider transfers ownership or changes the beneficiary of the life insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

(8) DISCLOSURE TO PURCHASER. (a) A provider shall provide the purchaser with at least the following disclosures prior to the date the life settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any life settlement purchase contract or in a separate document signed by the purchaser and the provider, and shall make the following disclosure to the purchaser:

1. The purchaser will receive no returns, for example, dividends and interest, until the insured dies and a death claim payment is made.
2. The actual rate of return on a life settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual guaranteed rate of return is not determinable.
3. The settled life insurance policy should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of a settled life insurance policy by the purchaser.
4. The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the life settlement investment.
5. The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the life settlement purchase agreement. The payments may reduce the purchaser's return. If a party other than the

purchaser is responsible for the payment, the name and address of the party responsible for payment shall be disclosed.

6. The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of the premiums, if applicable.
7. The name, business address and telephone number of the independent third party providing escrow services and the relationship to the broker.
8. The amount of any trust fees or expenses to be charged the purchaser.
9. Whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the life settlement contract if the policy is later determined to be null and void.
10. That group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of additional premiums and, if a group policy is terminated and replaced by another group policy, there may be no right to convert the original coverage.
11. The risks associated with policy contestability including the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.
12. Whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including the risk that the beneficiary may be changed or the premium may not be paid.
13. The experience and qualifications of the person who determines the life expectancy of the insured, for example, in-house staff, independent physicians and specialty firms that weigh medical and

actuarial data, the information the projection is based on, and the relationship of the projection maker to the provider, if any.

14. Disclosure to a purchaser shall include distribution of a brochure approved by the commissioner describing the process of the purchase of a life settlement.

(b) A provider shall provide the purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of a life insurance policy. The disclosures shall be contained in a document signed by the purchaser and the provider, and shall make the following disclosures to the purchaser:

1. All the life expectancy certifications obtained by the provider in the process of determining the price to be paid to the owner.
2. Whether the premium payments or other costs related to the policy have been escrowed. If escrowed, the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter, and if so, the amount of the premiums.
3. Whether the premiums or other costs related to the policy have been waived. If waived, whether the purchaser will be responsible for payment of the premiums if the insurer that issued the policy terminates the waiver after purchase, and the amount of the premiums.
4. The type of policy offered or sold, for example, whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.
5. If the policy is term insurance, disclose the special risks associated with term insurance including, the purchaser's responsibility for additional premiums if the owner continues the term policy at the end of the current term.
6. Whether the policy is contestable.

7. Whether the insurer that issued the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the life settlement contract, what the rights are, and under what conditions the rights are activated.
8. The name and address of the person responsible for monitoring the insured's condition, how often the monitoring is done, how the date of death is determined, and how and when the information will be transmitted to the purchaser.

(9) DISCLOSURE TO INSURER. No plan, transaction, or series of transactions may be initiated without a broker or a provider first fully disclosing to an insurer a plan, transaction or series of transactions, to which the broker or provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of life settlements at any time prior to, or during the first 5 years after, issuance of the policy.

(10) GENERAL RULES. (a) 1. A provider entering into a life settlement contract shall first obtain all of the following:

- a. If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract.
 - b. A document in which the insured consents to the release of the insured's medical records to a licensed provider, broker and the insurer that issued the life insurance policy covering the life of the insured.
2. Within 20 days after an owner executes documents necessary to transfer any rights under a life insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, express or implied, to settle the policy, the provider shall give written notice to the insurer that issued the policy that

the policy has or will become a settled policy. The notice shall be accompanied by the documents required by paragraph 3.

3. The provider shall deliver a copy of the medical release required under paragraph (a) 1. b., a copy of the owner's application for the life settlement contract, the notice required under paragraph 2. and a request for verification of coverage to the insurer that issued the policy that is the subject of the life settlement transaction. The NAIC form for verification of coverage shall be used unless another form is developed and approved by the commissioner.
4. The insurer shall respond to a request for verification of coverage submitted on an approved form by a provider or broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original, facsimile or electronic copy of the request and any accompanying signed authorization.
5. Prior to or at the time of execution of the life settlement contract, the provider shall obtain a witnessed document in which the owner consents to the viatical settlement contract, represents that the owner has a full and complete understanding of the life settlement contract, that the owner has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the owner is entering into the life settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness or condition and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

6. If a broker performs any of the activities required of the provider in paragraphs (12) (a) 1. through 5., the provider is deemed to have fulfilled the requirements.
- (b) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information, including s. 610.70, Stats.
- (c) All life settlement contracts entered into in this state shall provide the owner with an absolute right to rescind the contract before the earlier of 30 calendar days after the date upon which the life settlement contract is executed by all parties or 15 calendar days after the life settlement proceeds have been sent to the owner as provided in par.(d). Rescission by the owner may be conditioned upon the owner both giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds, and any premiums, loans and loan interest that have been paid by the provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. If a life settlement contract is rescinded under this paragraph, ownership of the insurance policy or certificate shall revert to the owner or the owner's estate if the owner is deceased, irrespective of any transfer of ownership of the policy or certificate by the owner, provider, or any other person. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund the commissions and compensation to the provider within five business days following receipt of written demand from the provider, the demand shall be accompanied by the applicable document initiating the rescission within the rescission

period, either the owner's notice of rescission or the notice of death of the insured.

- (d) The provider shall instruct the owner to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the independent escrow agent receives the documents, or from the date the provider receives the documents, if the owner erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account managed by an independent trustee or escrow agent maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the independent escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the provider or related provider trust or other designated representative of the provider. Upon the escrow agent's receipt of acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurer, the independent escrow agent shall pay the settlement proceeds to the owner.
- (e) Failure to tender the life settlement contract proceeds to the owner within the time set forth in the disclosure pursuant to paragraph (7) (a) 7., renders the life settlement contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. Funds shall be deemed sent by a provider to an owner as of the date that the escrow agent either releases funds for wire transfer to the owner or places a check for delivery to the owner via the United States Postal Service or other nationally recognized delivery service.
- (f) Contacts with the insured for the purpose of determining the health status of the insured by the provider or broker after the life settlement has occurred shall only be made by the provider or broker licensed in this

state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for the contacts at the time the life settlement contract is entered into. The limitations set forth in this paragraph shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Providers and brokers shall be responsible for the actions of their authorized representatives.

(11) PROHIBITED PRACTICES. (a) It is a violation of this section for any person to enter into a life settlement contract at any time prior to the application or issuance of a policy which is the subject of a life settlement contract or within a 5 year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider that one or more of the following conditions have been met within the 5 year period:

1. 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 60 months. The time covered under the group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.
2. The owner submits independent evidence to the provider that one or more of the following conditions have been met within the 5 year period:
 - a. The owner or insured is terminally or chronically ill.
 - b. The owner's spouse or child dies.
 - c. The owner divorces the owner's spouse.
 - d. The owner retires from full-time employment.

- e. The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment.
 - f. A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all or a substantial part of the owner's assets.
 - g. The sole beneficiary of the policy is a family member of the owner and the beneficiary dies .
 - h. The owner is a charitable organization with an insurable interest, that has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the charitable organization is exempt from federal income taxation under s. 501(a) and described in s. 501(c)(3) of the Internal Revenue Code.
 - i. The owner or insured disposes of ownership interests in a closely held corporation pursuant to the terms of a buy-out or other similar agreement in effect at the time the insurance policy was initially issued.
 - j. Other circumstances established as eligible exemptions by the commissioner by rule, including substantial adverse financial circumstances or other factors substantially affecting the owner.
3. The owner enters into a life settlement contract more than 2 years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is 2 years after policy issuance the following conditions are met:
- a. Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life

(e) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed.

(12) PROHIBITED PRACTICES AND CONFLICTS OF INTEREST. (a) No person may enter into a life settlement contract if the person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive or misleading application for the policy.

(b) No person may engage in any transaction, practice or course of business if the person knows or reasonably should have known that the intent was to avoid the notice requirements of this section.

(c) No person may engage in any fraudulent act or practice in connection with any transaction relating to any life settlement involving an owner who is a resident of this state.

(d) No person may issue, solicit, market or otherwise promote the purchase of a life insurance policy for the primary purpose of or with a primary emphasis on settling the policy.

(e) No person may enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which the person shall receive any proceeds, fees or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any life settlement contract or other transaction related to the policy that are in addition to the amounts required to pay the principal, interest and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement. Any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the owner's estate if the owner is not living at the time of the determination of the overpayment.

(f) With respect to any life settlement contract or insurance policy, no broker may knowingly solicit an offer from, effectuate a life settlement with or make a sale to any provider, purchaser, financing entity or related provider trust that is controlling, controlled by, or under common control with the broker unless the relationship is disclosed to the owner.

(g) With respect to any life settlement contract or insurance policy, no provider may knowingly enter into a life settlement contract with an owner, if, in connection with the life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider or the purchaser, financing entity or related provider trust that is involved in the life settlement contract unless the relationship is disclosed to the owner.

(h) No life settlement promotional, advertising or marketing materials may expressly reference that the insurance is "free" for any period of time, or include any reference that would cause an owner to reasonably believe that the insurance is free for any period of time.

(i) No life insurance producer, insurer, broker or provider may make any statement or representation to an applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

(j) A violation of the provisions of subs. (12) shall be deemed to be a fraudulent life settlement act.

(13) ADVERTISEMENTS OF LIFE SETTLEMENT CONTRACTS AND PURCHASE AGREEMENTS. (a) This subsection shall apply to any advertising of life settlement contracts, purchase agreements, or related products or services intended for dissemination in this state, including internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this subsection shall be interpreted so as to minimize or eliminate conflict with federal regulation.

(b) Every life settlement licensee shall establish and maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the life settlement licensee, as well as the person who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to producers, brokers and others authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to use of any advertisements not furnished by the life settlement licensee.

(c) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract or purchase agreement, product or service shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(d) Information required to be disclosed under this section may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading. An advertisement may not:

1. Omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving owners, purchasers or prospective purchasers as to the nature or extent of any benefit, covered loss, premium payable, or state or federal tax consequences. The fact that the life settlement contract or purchase agreement is made available for inspection prior to consummation of the sale, or an offer is made to refund payment if the owner is

- not satisfied, or that the life settlement contract or purchase agreement includes a "free look" period that satisfies or exceeds the requirements of law, does not remedy misleading statements.
2. Use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
 3. Represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a life settlement contract or purchase agreement in order to maintain the policy unless that is the fact.
 4. State or imply that interest charged on an accelerated death benefit or loan is unfair, inequitable or in any manner an incorrect or improper practice.
 5. Use the words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the payment or use other appropriate language.
 6. Use testimonials, appraisals, analysis or endorsements in advertisements unless they are genuine, represent the current opinion of the author, are applicable to the life settlement contract or purchase agreement, product or service advertised, and are reproduced with sufficient completeness to avoid misleading or deceiving prospective owners or purchasers as to the nature or scope of the testimonial, appraisal, analysis or endorsement. Any financial interest in or benefit received from the life settlement licensee by the person making a testimonial, appraisal or analysis, directly or indirectly, shall be prominently disclosed in the advertisement. If an endorsement refers to benefits received under a life settlement contract or purchase agreement, all pertinent

information forming a basis of the endorsement shall be retained by the licensee for a period of five years following its use.

7. State or imply that a life settlement contract or purchase agreement, benefit or service has been approved or endorsed by a group, society, association or other organization unless that is the fact and unless any relationship between the organization and the licensee is disclosed. If the entity making the endorsement is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.
8. Contain statistical information unless the information accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
9. Disparage insurers, providers, brokers, insurance producers, policies, services or methods of marketing.
10. Use a trade name, group designation, name of the parent company of a life settlement licensee, name of a division of a life settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that any entity other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract or purchase agreement. The name of the actual licensee shall be stated in all advertisements.
11. Use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency that they tend to mislead or deceive prospective owners or purchasers into

believing the advertisement is in some manner connected with a government program or agency.

12. Exaggerate the fact that a life settlement licensee is licensed in the state where the advertisement appears or suggest or imply that competing life settlement licensees may not be so licensed. An advertisement may ask the audience to consult the licensee's web site or contact the office of the commissioner to determine licensing requirements and the status of a license.
13. Create the impression, directly or indirectly, that a life settlement licensee, its business practices or methods of operation, the merits, desirability or advisability of any life settlement contract or purchase agreement, or any life insurance company are recommended, approved or endorsed by any government entity.
14. Emphasize the speed with which the settlement will occur unless the advertisement discloses the average time frame from completion of the application to the date of offer and from acceptance of the offer to receipt of the settlement funds by the owner.
15. Emphasize the dollar amounts available to an owner unless the advertisement discloses the average purchase price as a percent of the face value obtained by owners contracting with the licensee during the prior six months.

(e) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee, its life settlement contracts, purchase agreements, products or services, and if any specific life settlement contract or purchase agreement is advertised, the contract or agreement shall be identified either by form number or other appropriate description. If an application is part of the advertisement, the name of the provider shall be shown on the application.

(14) FRAUD PREVENTION AND CONTROL (a) *Fraudulent life settlement acts, interference and participation of convicted felons prohibited.*

1. No person may commit a fraudulent life settlement act.
2. No person may knowingly or intentionally interfere with the enforcement of the provisions of this section or investigations of suspected or actual violations of this section.
3. No person in the business of life settlements may knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust participate in the business of life settlements.

(b) *Fraud warning required.*

1. Life settlement contracts, purchase agreements and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "any person who knowingly presents false information in an application for insurance, life settlement contract or purchase agreement commits an act which may subject such person to civil and criminal penalties."
2. Lack of a statement as required in subparagraph 1. does not constitute a defense in any prosecution for a fraudulent life settlement act.

(c) *Mandatory reporting of fraudulent life settlement acts.*

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

(c) *Immunity.* In the absence of actual malice, no civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from the commissioner or the commissioner's employees, agents or representatives, federal, state or local law enforcement or regulatory officials or their employees, agents or representatives, a person involved in prevention and detection of fraudulent life settlement acts or that person's employees, agents or representatives, the National Association of Insurance Commissioners, the Financial Industry Regulatory Authority, the North American Securities Administrators Association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, life settlements, securities or investment fraud, or the life insurer that issued the life insurance policy covering the life of the insured. This paragraph is not intended to abrogate or modify common law or statutory privileges or immunities enjoyed by a person who supplies information concerning suspected, anticipated or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts.

(e) *Nondisclosure of information.* Information, documents and evidence provided pursuant to paragraph (d) or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action. The commissioner may release information, documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts in administrative or judicial proceedings to enforce laws administered by the commissioner, to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, to the National Association of Insurance Commissioners, or, at the discretion of the commissioner, to a

person in the business of life settlements that is aggrieved by a fraudulent life settlement act. Release by the commissioner of information, documents and evidence as set forth in this paragraph does not abrogate, modify or waive the privilege established in this paragraph.

(f) *Other law enforcement or regulatory authority.* This section shall not: preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law, prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the commissioner, or limit the powers granted elsewhere by the laws of this state to the commissioner to investigate and examine possible violations of law and to take appropriate action.

(g) *Life settlement antifraud initiatives.* 1. Life settlement providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts.

The antifraud initiatives may at the discretion of the commissioner be modified from time to time as necessary to ensure an effective antifraud program and to accomplish the purpose of this paragraph.

2. Antifraud initiatives shall include fraud investigators, who may be employees of the provider or broker or who may be independent contractors, and an antifraud plan which shall be submitted to the commissioner and which shall include a description of the procedures for detecting and investigation possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications, a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner, a description of the plan for antifraud education and training of underwriters and other personnel, and a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent

life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

3. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

¹⁵
(16) FRATERNAL BENEFIT SOCIETIES. Nothing in this section shall prohibit a fraternal benefit society regulated under ch. 614 from enforcing the terms of its bylaws or rules regarding permitted beneficiaries and owners.

¹⁶
(17) UNFAIR TRADE PRACTICES. A violation of this section, including the commission of a fraudulent life settlement act, shall also be deemed an unfair trade practice under s. 628.34, Stats.

¹⁷
(18) CIVIL REMEDY. Any person damaged by the acts of a person in violation of this section may bring a civil action against the person committing the violation in a court of competent jurisdiction.

¹⁸
(19) PENALTIES. Any person who violates this section is subject to the penalties provided under s. 601.64, Stats., suspension or revocation of a license or certificate of authority, and an order under s. 601.41, Stats.

¹⁹
(20) ADDITIONAL REGULATORY AUTHORITY. The commissioner shall have the authority to do all of the following:

- (a) Adopt rules implementing and administering this section.
- (b) Establish standards for evaluating the reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. The authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is terminally or chronically ill.

(c) Establish appropriate licensing requirements and standards for continued licensure for providers and brokers.

(d) Require a bond or other mechanism for financial accountability for providers and brokers.

(e) Adopt rules governing the relationship and responsibilities of insurers, providers and brokers during settlement of a life insurance policy or certificate.

²⁰(21) effective date. This Act shall take effect on the first day of the 6th month following publication.

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REFERENCES IN OTHER STATUTES AFFECTED BY THIS SECTION

Revenue	71.05(1)(f)	tax exemption for "viatical" settlement
DFI	551.102(17)(d) & (e)	"issuer"
	551.102(28)	"security"
	551.102(32) & (a)	"viatical settlement investment"
OCI	601.31(1)(mm), (mp), (mr), (ms)	title and statutory reference
	601.72 & 601.73	include ref to life settlement?