

§ 58-58-205. Definitions.

As used in this Article:

- (1) "Advertising" 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 filmstrips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy under a viatical settlement contract.
- (2) "Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts. "Business of viatical settlements" does not include an activity involving viatical settlement contracts as investments as regulated by Chapter 78A of the General Statutes.
- (3) "Chronically ill" means:
 - a. Being unable to perform at least two activities of daily living (i.e., eating, toileting, transferring, bathing, dressing, or continence);
 - b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
 - c. Having a level of disability similar to that described in sub-subdivision a. of this subdivision as determined by the Secretary of Health and Human Services.
- (4) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract, but:
 - a. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
 - b. Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts."Financing entity" does not include a nonaccredited investor or viatical settlement purchaser.
- (5) "Fraudulent viatical settlement act" includes:
 - a. Acts or omissions committed by any person who, knowingly and with intent to defraud, 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:
 1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, viator, insured 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 viatical settlement contract or insurance policy.
 - II. The underwriting of a viatical settlement contract or insurance policy.
 - III. A claim for payment or benefit under a viatical 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 viatical settlement contract or insurance policy.
 - VI. The reinstatement or conversion of an insurance policy.
 - VII. The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.
 - VIII. The issuance of written evidence of viatical settlement contract or insurance.
 - IX. A financing transaction.
2. Employing any device, scheme, or artifice to defraud related to viaticated policies.
- b. In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits the person's employees or agents to:
 1. Remove, conceal, alter, destroy, or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 3. Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
 4. File with the Commissioner or the insurance regulator of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the Commissioner.
 - c. Embezzlement, theft, misappropriation, or conversion of monies, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of viatical settlements or insurance; or
 - d. Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit, the acts or omissions specified in this subdivision.
- (6) "Policy" means an individual or group life insurance policy, group life insurance certificate, group life insurance contract, or any other arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.
- (7) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement 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.
- (8) "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 for a financing entity or licensed viatical settlement provider.
- (9) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or fewer.
- (10) "Viatical settlement broker" or "broker" means a person that on behalf of a viator and for a fee, commission, or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. The term 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 viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.
- (11) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, or devise of the death benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.
- (12) "Viatical settlement provider" or "provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract on residents of this State or residents of another state from offices within this State. "Viatical settlement provider" or "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 as collateral for a loan;
 - b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
 - c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
 - d. 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;
 - e. A financing entity;
 - f. A special purpose entity;
 - g. A related provider trust;
 - h. A viatical settlement purchaser; or
 - i. 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, and who purchases a viaticated policy from a viatical settlement provider.
- (13) "Viatical settlement purchase agreement" or "purchase agreement" means an agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.
- (14) "Viatical settlement purchaser" or "purchaser" means a person who gives 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 viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include:
- a. A licensee under this Part;
 - b. 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;
 - c. A financing entity;
 - d. A special purpose entity; or
 - e. A related provider trust.
- (15) "Viaticated policy" means a policy that has been acquired by a viatical settlement provider under a viatical settlement contract.
- (16) "Viator" means the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this Part, a viator 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. "Viator" does not include:
- a. A licensee under this Part;
 - b. 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;
 - c. A financing entity;
 - d. A special purpose entity; or
 - e. A related provider trust. (2001-436, s. 3; 2007-298, s. 7.7; 2007-484, s. 43.5; 2011-284, s. 56.)