

940 CMR 18.00: VIATICAL SETTLEMENTS AND VIATICAL LOANS

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18:01: Purpose

The Attorney General promulgates 940 CMR 18.00 relating to Viatical Settlements and Viatical Loans pursuant to his authority in M.G.L. c. 93A, § 2(c). 940 CMR 18.00 is designed to protect Massachusetts consumers seeking Viatical Settlements or Viatical Loans and to ensure that the Viatical Settlement and Viatical Loan industries operate fairly and honestly by means of legitimate and responsible business acts and practices that are neither unfair nor deceptive.

18:02: Scope

The Attorney General's regulations define unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a), and they do not legitimize acts not specifically prohibited by 940 CMR 18.00.

940 CMR 18.00 shall cover any Viatical Settlement Company, Broker, Provider, or Representative and any Viatical Loan Company, Broker, Provider, or Representative, as defined herein, advertising or doing business within Massachusetts, regardless of whether such Persons or entities maintain an office in Massachusetts.

18:03: Definitions

Advertisement (including the terms "advertise" and "advertising") shall be defined in a manner which is consistent with the definition provided by the applicable sections of the Attorney General's Retail Advertising Regulations, 940 CMR 6.00, and means any oral, written, graphic, or pictorial statement made by a Viatical Settlement Company, Broker, Provider, or Representative, or Viatical Loan Company, Broker, Provider, or Representative in any manner in the course of the solicitation of business. Advertisement includes any representations made in a newspaper, magazine, or other publication or on radio or television or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog, or letter. Advertisement includes any representation disseminated within Massachusetts if the advertisement is directed to consumers in Massachusetts.

Certificate means any certificate of group life insurance or other evidence of coverage under a life insurance policy. "Certificateholder" means the Person who owns such a certificate or other indicia of coverage under a life insurance policy.

Clear and conspicuous (including the terms "clearly and conspicuously") shall be defined in a manner which is consistent with the definition provided by the applicable sections of the Attorney General's Retail Advertising Regulations, 940 CMR 6.00. 940 CMR 6.00 provides that clear and conspicuous (including the terms "clearly and conspicuously") shall mean that:  
the material representation being disclosed is of such size, color, contrast, or audibility and is presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Without limiting the requirements of the preceding sentence, 940 CMR 6.00 states that a representation in an advertisement is not clear and conspicuous unless:

- (a) for a printed, written, typed or graphic advertisement, such material representation appears in type which is at least 1/3 the size of the largest type of information which it modifies and is a minimum of eight point type;
- (b) for the video of a television advertisement, such material representation:

18.03: continued

1. is displayed in type not less than 14 scan lines in height;
  2. contains letters of a color or shade that noticeably contrast with the background, and the background does not consist of colors and/or images which obscure or detract attention from the representation or are disparaging to its meaning or importance; and
  3. appears on the screen for a duration equal to at least one second for every three words of the material representation but not less than a total of five seconds.
- (c) for a radio advertisement or the audio portion of a television advertisement, such material representation complies with the requirements of 940 CMR 6.00.

Financing Entity means any underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a Viatical Settlement Provider or Viatical Loan Provider, credit enhancer, or any Person who may be a party to a Viatical Settlement or Viatical Loan and has a direct ownership or security interest in any policy or certificate which is the subject of a Viatical Settlement Contract or Viatical Loan Agreement, but whose sole activity related to the transaction is providing funds to effect the Viatical Settlement or Viatical Loan, and who has an agreement in writing with a Viatical Settlement Provider or Viatical Loan Provider to act as a participant in a Financing Transaction.

Financing Transaction means any transaction in which a Viatical Settlement Provider, Viatical Loan Provider or a Financing Entity obtains financing for Viatical Settlement Contracts, Viatical Loan Agreements, or Viaticated Policies, or interests therein, including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate provided such Financing Transaction complies with federal and state securities law.

Insured means any Person who is the subject of a life insurance policy. For purposes of 940 CMR 18.00, the Insured's privacy shall be protected, regardless of whether or not the Insured is the Policyowner.

Patient Identifying Information means an Insured's name, address, telephone number(s), facsimile number(s), electronic mail address(es), photograph or likeness, employer, employment status, social security number, or any other information which is likely to lead to the identification of the Insured.

Person means a natural or artificial entity, including, but not limited to, individual, partnership, limited liability company, association, trust or corporation or other legal entities.

Policyowner means any Person that has an ownership interest in a life insurance policy or owns or is covered under a group policy insuring the life of a Person.

Viatical Loan means a transaction through which a Policyowner who owns a life insurance policy insuring the life of a Person who has a catastrophic or life-threatening illness or condition or an Insured who has a catastrophic or life-threatening illness or condition secures a loan from a Viatical Loan Provider by using the policy as collateral. The secured loan shall be an amount less than the face value of the policy, with the difference between the loan principal and the face value of the policy being used to pay, among other things, the accrued loan interest. Upon repayment of the Viatical Loan, the Viatical Loan Provider's collateral interest in the policy terminates and the security interest is released to the original Policyholder, or his or her designee. "Viatical Loan" shall not include:

- (a) loans taken against the cash value of a life insurance policy for the purpose of paying premiums due; or
- (b) loans made by any natural person who enters into no more than one loan agreement in a calendar year for any value less than the expected death benefit; or
- (c) loans made by a family member or friend, who is not in the business of providing or obtaining Viatical Loans, who enters into a loan agreement for any value less than the expected death benefit.

Viatical Loan Agreement means the written contract between the Viatical Loan Provider and the Viatical Loan Applicant or Borrower.

18.03: continued

Viatical Loan Borrower (hereinafter also referred to in 940 CMR 18.00 as the "Borrower") means the owner of a life insurance policy insuring the life of a Person with a catastrophic or life-threatening illness or condition or the Certificateholder who enters into a Viatical Loan. For purposes of 940 CMR 18.00, the Viatical Loan Borrower is referred to as the "Applicant" during the viatical loan application process and prior to receiving the Viatical Loan. "Viatical Loan Borrower" shall not include Viatical Loan Providers, Viatical Loan Brokers, Viatical Loan Representatives or Financing Entities.

Viatical Loan Broker means a Person that, on behalf of a Viatical Loan Borrower and for a fee, commission or other valuable consideration, offers or attempts to negotiate Viatical Loan Agreements between a Viatical Loan Borrower and one or more Viatical Loan Providers. Irrespective of the manner in which the Viatical Loan Broker is compensated, a Viatical Loan Broker is deemed to represent only the Borrower and owes a fiduciary duty to the Borrower to act according to the Borrower's instructions and in the best interest of the Borrower. "Viatical Loan Broker" shall not include an attorney, accountant, or financial advisor or planner retained to represent the Borrower whose compensation is paid directly by or at the direction of the Borrower.

Viatical Loan Company means a company that engages in the practice of providing and/or servicing Viatical Loans.

Viatical Loan Provider means a Person, other than a Viatical Loan Borrower, that enters into a Viatical Loan Arrangement with a Policyowner who owns a policy insuring the life of a Person who has a catastrophic or life-threatening illness or condition or with an Insured who has a catastrophic or life-threatening illness or condition. Upon repayment of the Viatical Loan, the Viatical Loan Provider's collateral interest in the policy terminates and the security interest is released to the Borrower, or his or her designee.

Viatical Loan Representative means a Person who is an authorized agent of a Viatical Loan Provider or Viatical Loan Broker who acts or aids in any manner in the solicitation of a Viatical Loan. "Viatical Loan Representative" shall not include:

- (a) an attorney, an accountant, a financial advisor or planner, or any person exercising a power of attorney granted by a Viatical Loan Borrower; or
- (b) any Person who is retained to represent the Viatical Loan Borrower and whose compensation is paid by or at the discretion of the Borrower regardless of whether the Viatical Loan is consummated; or
- (c) a credit union, trade union, not-for-profit entity, or an employer or association, that makes general information regarding viatical loans and viatical settlements available to its employees or members, at no charge, unless such information is distributed in exchange for financial consideration from a Viatical Loan Provider or Broker.

The Viatical Loan Representative is deemed to represent only the Viatical Loan Provider or Viatical Loan Broker.

Viatical Settlement means a transaction for the sale, absolute assignment, transfer, or bequest of the death benefit payable under, or ownership of, a life insurance policy entered into between a Viatical Settlement Provider and a Policyowner who owns a life insurance policy insuring the life of a Person who has a catastrophic or life-threatening illness or condition or an Insured who has a catastrophic or life-threatening illness or condition.

Viatical Settlement 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 Settlements between a Viator and one or more Viatical Settlement Providers. Irrespective of the manner in which the Viatical Settlement Broker is compensated, a Viatical Settlement Broker is deemed to represent only the Viator and owes a fiduciary duty to the Viator to act according to the Viator's instructions and in the best interest of the Viator. "Viatical Settlement Broker" shall not include an attorney, an accountant, or a financial advisor or planner retained to represent the Viator whose compensation is paid directly by or at the direction of the Viator.

Viatical Settlement Company means any company that engages in the practice of providing and/or servicing Viatical Settlements.

18.03: continued

Viatical Settlement Contract means a written agreement entered into between a Viatical Settlement Provider and a Viator. The agreement shall establish the terms under which the Viatical Settlement Provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the Viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the Viatical Settlement Provider.

Viatical Settlement Provider means a Person, other than a Viator, that enters into a Viatical Settlement Contract. Viatical Settlement Provider also means a Person that obtains financing from a Financing Entity for the purchase, acquisition, transfer or other assignment of one or more Viatical Settlement Contracts, Viaticated Policies or interests therein or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more Viatical Settlement Contracts, Viaticated Policies or interests therein. "Viatical Settlement Provider" shall 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 made to a Person other than a Viator for which the life insurance policy is not the primary collateral;
- (b) the issuer of a life insurance policy providing accelerated benefits and pursuant to the contract;
- (c) a natural person who enters into 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; or
- (d) any Financing Entity or Viatical Settlement Broker.

Viatical Settlement Representative means a Person who is an authorized agent of a Viatical Settlement Provider or Viatical Settlement Broker who acts or aids in any manner in the solicitation of a Viatical Settlement. "Viatical Settlement Representative" does not include:

- (a) an attorney, an accountant, a financial advisor or planner, or any Person exercising a power of attorney granted by a Viator; or
- (b) any Person who is retained to represent the Viator and whose compensation is paid by or at the discretion of the Viator regardless of whether the Viatical Settlement is consummated; or
- (c) a credit union, trade union, not-for-profit entity, or an employer or association that makes general information regarding viatical loans and viatical settlements available to its member or employees, at no charge, unless such information is distributed in exchange for financial consideration from a Viatical Settlement Provider or Broker.

A Viatical Settlement Representative is deemed to represent only the Viatical Settlement Provider or Viatical Settlement Broker.

Viaticated Policy means any life insurance policy or certificate that has been acquired by a Viatical Settlement Provider pursuant to a Viatical Settlement Contract.

Viator means the owner of a life insurance policy or a certificateholder under a group policy insuring the life of a Person with a catastrophic, life-threatening or chronic illness or condition who enters or seeks to enter into a Viatical Settlement Contract. For purposes of 940 CMR 18.00, a Viatical Settlement Provider shall not be considered a Viator in any subsequent transaction involving a policy for which it initially served as a Viatical Settlement Provider. "Viator" shall not include a Viatical Settlement Provider, Viatical Settlement Broker, Viatical Settlement Representative, or Financing Entity.

18.04: Advertising Practices

(1) It is an unfair or deceptive act or practice for a Viatical Settlement Provider or Broker, or Viatical Loan Provider or Broker to make any representation or statement of fact in an advertisement if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the Viatical Settlement Provider or Broker, or Viatical Loan Provider or Broker does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

18.04: continued

(2) It is an unfair or deceptive act or practice for a Viatical Settlement Provider or Broker, or Viatical Loan Provider or Broker to advertise without clearly and conspicuously disclosing its business name.

(3) It is an unfair or deceptive act or practice for a Viatical Settlement Provider or Broker, or Viatical Loan Provider or Broker, to advertise itself as "licensed," in a state in which it is not licensed, including, if applicable, Massachusetts, without accompanying information regarding the state(s) in which it is licensed.

18.05: Viatical Settlement Disclosures

(1) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to mail to the last known address(es) of, or to provide in person to, the Viator and the Insured the following Attorney General's Viatical Settlement Disclosure Form (the "Form"). This Form shall be completed and mailed to the last known address(es) of, or provided in person to, the Viator and the Insured pursuant to 940 CMR 18.05(7), on a separate document, in at least ten point type or ten pitch courier.

VIATICAL SETTLEMENT DISCLOSURES REQUIRED BY  
THE ATTORNEY GENERAL'S CONSUMER PROTECTION REGULATIONS

Business Name:

Business or Mailing Address:

Viatical Settlement Provider/Broker/Representative Massachusetts License Number: (if applicable)

Date License Issued:

License Expiration Date:

I am/We are a Viatical Settlement Provider/Broker/Representative. I/We shall not divulge Patient Identifying Information without the express, written consent of the Insured. I/We shall take every reasonable precaution to ensure that those individuals or entities who rightfully obtain Patient Identifying Information do not further divulge such information without the express, written consent of the Insured.

We shall provide the Insured with a copy of this completed disclosure form. We shall attempt to obtain the consent of the Insured to the dissemination of his/her Patient Identifying Information in connection with this Viatical Settlement.

As part of the Viatical Settlement, the health of the Insured will/ will not be monitored. We must obtain the Insured's consent to the following method of monitoring prior to the execution of the Viatical Settlement Contract: (state method in specific, detailed terms).

You will/will not pay an application fee of \$ . This fee is/is not refundable.

You will/will not pay a brokerage fee of \$ . This fee is/is not refundable.

The Viatical Settlement proceeds shall be maintained in an escrow account until final payment is made to you. We will provide you with the name, address and telephone number of the escrow account agent who will maintain the proceeds pending execution of the Viatical Settlement within two business days of our identifying that escrow account agent.

The proceeds will be sent to you within two business days after the Viatical Settlement Provider, (insert name here, if known) has received your insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the Viatical Settlement Contract.

If you have any questions about your legal rights, you should consult your own lawyer, especially before you sign any documents or pay any money or anything of value.

18.05: continued

DO NOT sign any application forms with blank spaces or with incorrect information.

PLEASE NOTE:

You do/do not have the RIGHT TO CANCEL this contract within        days following any of the following events: [Provide detailed method for cancellation and for effective notification. Include notice of the effects of cancellation and the Viator's responsibilities thereunder.]

We shall not pay a finder's fee to any Person who is providing, or has previously provided, care or services to the Insured, including, but not limited to, any medical or mental health provider, social services provider, attorney, accountant, financial advisor or planner, investment advisor or planner, or any other Person who has a demonstrable conflict of interest in collecting a finder's fee.

Receipt of the proceeds of a Viatical Settlement may adversely affect your eligibility for Medicaid or other government benefits or entitlements. You should obtain advice from the appropriate government agencies regarding the impact such a settlement may have on your eligibility for such benefits before executing the Viatical Settlement Contract.

Some or all of the proceeds of the Viatical Settlement may be free from federal income tax and from state franchise and income taxes. You should obtain advice from a qualified professional tax advisor regarding the tax implications of entering into the Viatical Settlement Contract.

We do/do not meet the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners. We do/do not meet the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

Entering into a Viatical Settlement Contract may cause other rights or benefits, including, but not limited to, conversion rights and waiver of premium benefits which may exist under the policy or certificate to be forfeited by you. You should seek assistance regarding the effect of entering into this Viatical Settlement from a qualified, independent financial advisor.

The proceeds of the Viatical Settlement may be subject to the claims of your creditors.

If you have any problems, please call us at:.

Printed Name and Address of Viator

Please sign and date below after you have received these disclosures.

Signature of Viator

Date:

(2) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to disclose, during the initial meeting with the Viator, its licensing status in Massachusetts.

(3) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to take reasonable steps to communicate the material facts of the transaction(s) in a language that is understood by the Viator and the Insured, respectively. Reasonable steps which shall comply with 940 CMR 18.00 may include, but shall not be limited to:

- (a) using adult interpreters; and
- (b) providing the Viator and the Insured with a translated copy of the Attorney General's Viatical Settlement Disclosure Form described in 940 CMR 18.05(1) in a language understood by the Viator and the Insured, respectively.

18.05: continued

(4) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to mail to the last known address(es) of, or to provide in person to, the Viator and the Insured, prior to the execution of the settlement, written notice of the names of any Persons or entities who shall be paid the death benefit proceeds as a result of the settlement and also the amounts which shall be paid. In the event a Viaticated Policy is sold, transferred or assigned, it is an unfair or deceptive act or practice for each successive Policyowner or Certificateholder to fail to mail its name and address to the last known address of the Insured within 14 days of the transfer of ownership.

(5) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to disclose to the Viator, prior to the execution of the settlement, whether the Viator has the right to cancel the settlement contract in compliance with applicable state law or with a right to cancel provision included by the Viatical Settlement Provider within the contract, and, if such a right to cancel provision is available to the Viator, the disclosure must include the specific method for cancellation and effective notification of such cancellation and the responsibilities of the Viator thereunder.

(6) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to mail to the last known address of, or to provide in person to, the Viator legible copies of the Viatical Settlement application and contract within 48 hours of the contract execution.

(7) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative to fail to mail to the last known address(es) of, or to provide in person to, the Viator and the Insured, respectively, legible copies of the disclosures described in 940 CMR 18.05(1), within 48 hours after the earliest of the following events:

- (a) the receipt by the Viatical Settlement Broker or Viatical Settlement Representative of a written application for a Viatical Settlement; or
- (b) the receipt by the Viatical Settlement Provider of a written application for a Viatical Settlement; or
- (c) any communication which leads the Provider or Broker to incur any expenses on behalf of the Viator.

(8) It is an unfair or deceptive act or practice for a Viatical Settlement Provider to fail to mail to the last known address of, or to provide in person to, the Viator the following information, at two business days prior to the date the Viatical Settlement Contract is signed by all parties:

- (a) the affiliation, if any, between the Viatical Settlement Provider and the issuer of an insurance policy to be viaticated;
- (b) if an insurance policy to be viaticated 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 viaticated, the possible loss of coverage on the other lives and that the Viator should consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication;
- (c) the dollar amount of the current death benefit payable to the Viatical Settlement Provider under the policy or certificate; and
- (d) the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under such policy or certificate and the Viatical Settlement Provider's interest in those benefits.

(9) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to conceal or to fail to disclose to a Viator any fact within the knowledge of the Provider, Broker, or Representative relating to the Viatical Settlement Contract, disclosure of which may have influenced the Viator not to enter into a contract with the Viatical Settlement Provider or Broker.

(10) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative to fail to disclose to a Viator, as soon as practicable, any information contained in the disclosures mandated by 940 CMR 18.05(1) which has been changed by the Viatical Settlement Provider or Broker prior to execution of, or within any period provided for the cancellation of, the Viatical Settlement Contract.

18.06: Viatical Loan Disclosures

(1) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker, or Representative to fail to mail to the last known address(es) of, or to provide in person to, the Viatical Loan Applicant/Borrower and the Insured the following Attorney General's Viatical Loan Disclosure Form (the "Form"). This Form shall be completed and mailed to the last known address(es) of, or provided in person to, the Viatical Loan Applicant/Borrower and the Insured pursuant to 940 CMR 18.06(6), on a separate document in at least ten point type or ten pitch courier.

VIATICAL LOAN DISCLOSURES REQUIRED BY  
THE ATTORNEY GENERAL'S CONSUMER PROTECTION REGULATIONS

Business Name:

Business or Mailing Address:

Viatical Loan Provider/Broker/Representative Massachusetts License Number: (if applicable)

Date License Issued:

License Expiration Date:

I am/We are a Viatical Loan Provider/Broker/Representative. With this application, you are applying for a Viatical Loan. I/We shall not divulge Patient Identifying Information of the Insured without the express, written consent of the Insured. I/We shall take every reasonable precaution to ensure that those individuals or entities who rightfully obtain Patient Identifying Information do not further divulge such information without the express, written consent of the Insured.

We shall provide the Insured with a copy of this completed disclosure form. We shall attempt to obtain the consent of the Insured to the dissemination of his/her Patient Identifying Information, if necessary to effectuate this Viatical Loan.

As part of the Viatical Loan process, the health of the Insured may be monitored. If monitoring is required, we must obtain the consent of the Insured to the method of monitoring prior to the execution of the Viatical Loan Agreement. (If monitoring is required, state method in specific, detailed terms).

You will/will not pay an application fee of \$ . This fee is/is not refundable.  
You will/will not pay a brokerage fee of \$ . This fee is/is not refundable.

The loan proceeds will be sent to you within two business days after the Viatical Loan Provider, (insert name here, if known) has received confirmation from your insurer or group administrator that you own the policy or are the certificateholder and the beneficiary has been designated pursuant to the Viatical Loan Contract.

We will provide you with the name, address and telephone number of the source of the loan proceeds within two business days of our identifying that source.

The Annual Percentage Rate ("APR") of interest charged against this loan is: . You shall be responsible for the following payment schedule: . You will have/not have to pay an additional fee ("prepayment penalty") if you pay off this loan early or re-negotiate the loan.

Additional estimated fees that you will pay in connection with the above described loan which are not included in the APR are listed below: (Specify in detail any additional fees.)

The maturity date of the loan is: . Upon reaching the loan maturity date, if you wish to renegotiate the loan, the following terms and conditions apply:

If you have any question about your legal rights, you should consult your own lawyer, especially before you sign any documents or pay any money or anything of value.

18.06: continued

DO NOT sign any application forms with blank spaces or with incorrect information.

PLEASE NOTE:

You do/do not have the RIGHT TO CANCEL this contract within        days following any of the following events: [Provide detailed method for cancellation and for effective notification. Include notice of the effects of cancellation and the Applicant's responsibilities thereunder.]

We shall not pay a finder's fee to any Person who is providing, or has previously provided, care or services to the Insured, including, but not limited to, any medical or mental health provider, social services provider, attorney, accountant, financial advisor or planner, investment advisor or planner, or any other Person who has a demonstrable conflict of interest in collecting a finder's fee.

The Viatical Loan proceeds may be subject to the claims of your creditors.

If you have any problems, please call us at:

Printed Name and Address of Viatical Loan Applicant/Borrower

Please sign and date below after you receive these disclosures.

Signature of Viatical Loan Applicant/Borrower ,

Date:

(2) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to fail to disclose, during the initial meeting with the Viatical Loan Applicant, its licensing status in Massachusetts.

(3) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to fail to take reasonable steps to communicate the material facts of the Viatical Loan Agreement in a language that is understood by the Applicant/Borrower and the Insured, respectively. Reasonable steps which shall comply with 940 CMR 18.00 may include, but shall not be limited to: 2

(a) using adult interpreters; and

(b) providing the Applicant/Borrower and the Insured, respectively, with a translated copy of the Attorney General's Disclosure Forms described in 940 CMR 18.06(1) in a language understood by the Applicant/Borrower and the Insured, respectively.

(4) It is an unfair or deceptive act or practice for a Viatical Loan Provider or Broker to fail to disclose to the Applicant/Borrower, prior to the execution of the Viatical Loan Agreement, whether the Applicant/Borrower has the right to cancel in compliance with applicable state law or with a right to cancel provision included by the Viatical Loan Provider or Broker within the contract, and, if such a right to cancel provision is available to the Applicant/Borrower, the disclosure must include the specific method for cancellation and effective notice of such cancellation and the responsibilities of the Applicant/Borrower thereunder.

(5) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to fail to mail to the last known address of, or to provide in person to, the Applicant/Borrower, legible copies of the application and loan agreement within 48 hours of the contract execution.

(6) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to fail to mail to the last known address(es) of, or to provide in person to, the Applicant/Borrower and the Insured, legible copies of the disclosures described in 940 CMR 18.06(1), within 48 hours after the earliest of the following events:

(a) the receipt by the Viatical Loan Broker of a written application for a Viatical Loan;

(b) the receipt by the Viatical Loan Provider of a written application for a Viatical Loan; or

(c) any communication which leads the Viatical Loan Provider or Broker to incur any expenses on behalf of the Applicant/Borrower.

18.06: continued

(7) It is an unfair or deceptive act or practice for a Viatical Loan Provider to fail to mail to the last known address of, or to provide in person to, the Viatical Loan Applicant/Borrower, the following written information, at least two business days prior to the date the Viatical Loan Agreement is signed by all parties:

- (a) the affiliation, if any, between the Viatical Loan Provider and the issuer of an insurance policy which is the subject of a Viatical Loan;
- (b) the dollar amount of the current death benefit payable to the Viatical Loan Provider, as beneficiary, under the policy or certificate; and
- (c) the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under such policy or certificate and the Viatical Loan Provider's interest in those benefits.

(8) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to conceal or to fail to disclose to an Applicant/ Borrower any fact within the knowledge of the Viatical Loan Provider, Broker or Representative relating to the Viatical Loan Agreement, disclosure of which may have influenced the Applicant/Borrower not to enter into the Agreement with the Viatical Loan Provider or Broker.

(9) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker, or Representative to fail to disclose to an Applicant/Borrower, as soon as practicable, any information contained on the disclosures mandated by 940 CMR 18.06(1) which has been changed by the Viatical Loan Provider or Broker.

18.07: Prohibited Practices

(1) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or a Viatical Loan Provider, Broker or Representative to make any representation or statement of fact if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or representations include, but are not limited to, the availability, terms, conditions, or charges, incident to the Viatical Settlement or Viatical Loan Agreement. In addition, other such claims and representations by the Viatical Settlement Provider, or Broker or Representative, or the Viatical Loan Provider, or Broker or Representative may include the amount of the brokerage fee, if any, the services which will be provided or performed for the brokerage fee, whether the Viator or Viatical Loan Applicant/Borrower has the right to cancel any agreement with the Viatical Settlement Provider or Broker or Viatical Loan Provider or Broker, the Viator's or Viatical Loan Applicant's or Borrower's right to refund of the brokerage fee, and the identity of the Viatical Settlement Provider or Viatical Loan Provider that will provide the Settlement or Loan.

(2) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to fail to comply with all applicable federal and state laws, including licensing requirements.

(3) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative or Viatical Loan Provider, Broker or Representative to include false, misleading or deceptive representations in advertising, promotional, or informational publications regarding Viatical Settlements or Viatical Loans.

(4) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to mass produce and/or distribute brochures or advertisements containing Patient Identifying Information.

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(5) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to fail to mail to the last known address of, or to provide in person to, a prospective Viator or Borrower, a written offer of a Viatical Settlement Contract or Viatical Loan Agreement, respectively, containing all terms of the offer detailed therein in accordance with the terms contained in 940 CMR 18.05 and 18.06.

(6) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to provide Patient Identifying Information to any Person who is not the owner of the policy, unless the Insured has provided informed, written consent to the release of such information.

(7) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, Representative, or Viatical Loan Provider, Broker, or Representative to fail to obtain from any Person or entity who is provided with Patient Identifying Information a signed affirmation that such Person or entity shall not further divulge such information without procuring the express, written consent of the Insured in each instance in which the information is to be divulged. Notwithstanding the foregoing, if a Viatical Settlement Provider, Broker or Representative or Viatical Loan Provider, Broker or Representative is served with a subpoena and, therefore, compelled to produce records containing Patient Identifying Information, it shall notify the Viator or Viatical Loan Applicant/ Borrower and the Insured within five business days after receiving notice of such subpoena.

(8) It is an unfair or deceptive act or practice for a Viatical Settlement Provider to fail to maintain the funds for the purchase of the insurance policy death benefit in an escrow account controlled by a third party escrow agent prior to the final payment, whether by lump sum or by installments, and transfer of ownership of the policy.

(9) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker, or Representative, or Viatical Loan Provider, Broker, or Representative to pay a finder's fee to any Person who is providing, or has previously provided, care or services to the Insured, including, but not limited to, any medical or mental health provider, social services provider, attorney, accountant, financial advisor or planner, investment advisor or planner or any other Person who has a demonstrable conflict of interest in collecting a finder's fee.

(10) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to charge an application and/or brokerage fee which significantly deviates from industry-wide standards or is otherwise unconscionable.

(11) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to accept any brokerage fee, application fee or other fee, prior to the Viator's receipt of the applicable disclosure forms mandated by 940 CMR 18.05(1) or 18.06(1) at the times specified in 940 CMR 18.05(7) or 18.06(6). Notwithstanding the foregoing, an application or brokerage fee may be accepted if the Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative provides written notice, prior to the receipt of such fee, as to whether the fee is refundable.

(12) It is an unfair or deceptive act or practice for a Viatical Loan Provider, Broker or Representative to procure or negotiate for a Borrower a Viatical Loan with rates or other terms which significantly deviate from industry-wide standards or which are otherwise unconscionable.

(13) It is an unfair or deceptive act or practice for a Viatical Settlement Provider or Viatical Loan Provider to act also as a Broker, whether entitled to collect a fee directly or indirectly, in the same Viatical Settlement or Viatical Loan Agreement.

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(14) It is an unfair or deceptive act or practice for a Viatical Settlement or Viatical Loan Provider to fail to disburse funds in accordance with any commitment or agreement with the Viator.

(15) It is an unfair or deceptive act or practice for a Viatical Settlement Provider, Broker or Representative, or Viatical Loan Provider, Broker or Representative to accept any fees which were not disclosed in accordance with 940 CMR 18.00 or applicable law.

(16) It is an unfair or deceptive act or practice for a Viatical Settlement Provider or Broker to fail to mail to the last known address of, or to provide in person to, the Viator, written notice of the names of any Brokers or Representatives who shall be paid a fee, commission or any other valuable consideration by the Viatical Settlement Provider as a result of the settlement and the amounts which shall be paid prior to execution of the settlement.

18.08: Severability

If any provision of 940 CMR 18.00 or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of 940 CMR 18.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 18.00: M.G.L. c. 93A, § 2(c).