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The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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An Act relative to life settlements and stranger originated life insurance.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 175 of the General Laws is hereby amended by striking out sections 212 to  
2 223, inclusive, as appearing in the 2008 Official Edition, and inserting in place thereof the  
3 following sections:

4 Section 212. Sections 212 to 223G, inclusive, shall be known and may be cited as the  
5 Massachusetts Life Settlements Act.

6 Section 213. As used in sections 212 to 223G, inclusive, the following words shall, unless the  
7 context clearly requires otherwise, have the following meanings:-

8 “Act”, the Massachusetts Life Settlement Act, sections 212 to 223G, inclusive.

9 “Advertisement”, any written, electronic, or printed communication or any communication by  
10 means of recorded telephone messages or transmitted on radio, television, the Internet, or similar

11 communications media, including film strips, motion pictures and videos, published,  
12 disseminated, circulated or placed before the public, directly or indirectly, for the purpose of  
13 creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer  
14 the death benefit or ownership of a life insurance policy or an interest in a life insurance policy  
15 pursuant to a life settlement contract.

16 “Business of life settlements”, an activity involved in, but not limited to, offering to enter into,  
17 soliciting, negotiating, procuring, effectuating, monitoring or tracking of life settlement  
18 contracts.

19 “Chronically ill”, an individual: (1) unable to perform at least 2 activities of daily living; (2)  
20 requiring substantial supervision to protect the individual from threats to health and safety due to  
21 severe cognitive impairment; or (3) having a level of disability similar to that described in clause  
22 (1) as determined by federal regulations promulgated pursuant to 26 U.S.C. section 7702B.

23 “Financing entity”, an underwriter, placement agent, lender, purchaser of securities, purchaser of  
24 a policy or certificate from a life settlement provider, credit enhancer or any entity that has a  
25 direct ownership in a policy or certificate that is the subject of a life settlement contract, whose  
26 principal activity related to the transaction is providing funds to effect the life settlement contract  
27 or purchase of 1 or more policies and who has an agreement in writing with 1 or more life  
28 settlement providers to finance the acquisition of life settlement contracts. A financing entity  
29 shall not include a non-accredited investor or purchaser.

30 “Financing transaction”, a transaction in which a licensed life settlement provider obtains  
31 financing from a financing entity including, but not limited to, secured or unsecured financing, a

32 securitization transaction or a securities offering which either is registered or exempt from  
33 registration under federal and state securities law.

34 “Fraudulent life settlement act”, an act described in section 223B.

35 “Insured”, the person covered under the policy being considered for sale in a life settlement  
36 contract.

37 “Licensee”, a person or entity licensed as a life settlement provider by the commission of  
38 insurance.

39 “Life insurance producer”, any person licensed as a resident or nonresident insurance producer  
40 who has received qualification or authority for life insurance coverage or a life line of coverage  
41 pursuant to this life settlement act.

42 “Life settlement broker”, a person who, on behalf of an owner and for a fee, commission or other  
43 valuable consideration, offers or attempts to negotiate life settlement contracts between an owner  
44 and life settlement providers . A life settlement broker represents only the owner and owes a  
45 fiduciary duty to the owner to act according to the owner’s instructions, and in the best interest of  
46 the owner, notwithstanding the manner in which the life settlement broker is compensated. A  
47 life settlement broker does not include an attorney, certified public accountant or financial  
48 planner retained in the type of practice customarily performed in their professional capacity to  
49 represent the owner and whose compensation is not paid directly or indirectly by the life  
50 settlement provider or any other person, except the owner.

51 “Life settlement contract”, (a) (1) a written agreement entered into between a life settlement  
52 provider and an owner, establishing the terms under which compensation or anything of value

53 will be paid, which compensation or thing of value is less than the expected death benefit of the  
54 insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or  
55 bequest of the death benefit or any portion of an insurance policy or certificate of insurance for  
56 compensation; provided, however, that the minimum value for a life settlement contract shall be  
57 greater than a cash surrender value or accelerated death benefit available at the time of an  
58 application for a life settlement contract;

59 (2) the transfer for compensation or value of ownership or beneficial interest in a trust or other  
60 entity that owns such policy if the trust or other entity was formed or availed of for the principal  
61 purpose of acquiring one or more life insurance contracts, which life insurance contract insures  
62 the life of a person residing in the commonwealth; or

63 (3) a premium finance loan made for a policy on or before the date of issuance of the policy  
64 where: (i) the loan proceeds are not used solely to pay premiums for the policy and any costs or  
65 expenses incurred by the lender or the borrower in connection with the financing; (ii) on the date  
66 of the premium finance loan, the owner receives a guarantee of the future life settlement value of  
67 the policy; or (iii) the owner agrees on the date of the premium finance loan to sell the policy or a  
68 portion of its death benefit on any date following the issuance of the policy.

69 (b) A life settlement contract shall not include:

70 (i) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or  
71 accelerated death provisions contained in the life insurance policy, whether issued with the  
72 original policy or as a rider;

73 (ii) a premium finance loan or a loan made by a bank or other licensed financial institution;

74 provided that neither a default on such loan nor the transfer of a policy in connection with such

75 default is pursuant to an agreement or understanding with another person for the purpose of  
76 evading regulation under this act;

77 (iii) a collateral assignment of a life insurance policy by an owner;

78 (iv) a loan made by a lender that does not violate chapter 255C; provided such loan is not  
79 described in paragraph (3) and is not otherwise within the definition of life settlement contract;

80 (v) an agreement where all parties (A) are closely related to the insured by blood or law; or (B)  
81 have a lawful substantial economic interest in the continued life, health and bodily safety of the  
82 person insured, or are trusts established primarily for the benefit of such parties;

83 (vi) a designation, consent or agreement by an insured who is an employee of an employer in  
84 connection with the purchase by the employer or trust established by the employer, of life  
85 insurance on the life of the employee;

86 (vii) A bona fide business succession planning arrangement: (A) between 1 or more  
87 shareholders in a corporation or between a corporation and 1 or more of its shareholders or 1 or  
88 more trusts established by its shareholders; (B) between 1 or more partners in a partnership or  
89 between a partnership and 1 or more of its partners or 1 or more trust established by its partners;  
90 or (C) between 1 or more members in a limited liability company or between a limited liability  
91 company and 1 or more of its members or 1 or more trust established by its members;

92 (viii) an agreement entered into by a service recipient or a trust established by the service  
93 recipient and a service provider, or a trust established by the service provider that performs  
94 significant services for the service recipient's trade or business; or

95 (ix) any other contract, transaction or arrangement from the definition of life settlement contract  
96 that the commissioner determines is not of the type intended to be regulated by this act.

97 “Life settlement provider”, a person, other than an owner, who enters into a life settlement  
98 contract with an owner. A life settlement provider shall not include:

99 (1) a bank, savings bank, savings and loan association or credit union;

100 (2) a licensed lending institution or creditor or secured party pursuant to a premium finance loan  
101 agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a  
102 group life insurance policy as collateral for a loan;

103 (3) the issuer of a life insurance policy or rider which provides accelerated death benefits  
104 pursuant to the contract or cash surrender value;

105 (4) a natural person who enters into or effectuates not more than 1 agreement in a calendar year  
106 for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance  
107 policy, for compensation or anything of value less than the expected death benefit payable under  
108 the policy;

109 (5) a financing entity;

110 (6) a purchaser;

111 (7) an authorized or eligible insurer that provides stop loss coverage to a life settlement provider,  
112 purchaser, financing entity, special purpose entity or related provider trust;

113 (8) a related provider trust;

114 (9) a special purpose entity;

115 (10) a life settlement broker; or

116 (11) an accredited investor or qualified institutional buyer as defined in regulation D, rule 501 or  
117 rule 144A of the federal Securities Act of 1933, as amended, who purchases a life settlement  
118 policy from a life settlement provider.

119 “Net death benefit”, the amount of the life insurance policy or certificate to be settled less any  
120 outstanding debts or liens.

121 “Owner”, the owner of a life insurance policy or a certificate holder under a group policy who  
122 enters or seeks to enter into a life settlement contract. For the purposes of this act, an owner  
123 shall not be limited to an owner of a life insurance policy or a certificate holder under a group  
124 policy that insures the life of an individual with a terminal illness or chronic illness or condition  
125 except where specifically addressed. The term “owner” shall not include:

126 (1) a life settlement provider or broker under this act;

127 (2) a qualified institutional buyer as defined in rule 144A of the federal Securities Act of 1933, as  
128 amended;

129 (3) a financing entity;

130 (4) a special purpose entity; or

131 (5) a related provider trust.

132 “Patient identifying information”, an insured’s address, telephone number, facsimile number,  
133 electronic mail address, photograph or likeness, employer, employment status, social security  
134 number or any other information that is likely to lead to the identification of the insured.

135 “Person”, a natural person or legal entity, including but not limited to, a partnership, limited  
136 liability company, association, trust or corporation.

137 “Policy”, an individual or group policy, group certificate, contract or arrangement of life  
138 insurance owned by a resident of the commonwealth, regardless of whether delivered or issued  
139 for delivery in the commonwealth.

140 “Premium finance loan”, a loan made primarily for the purpose of making premium payments on  
141 a life insurance policy, which loan is secured by an interest in such life insurance policy.

142 “Purchaser”, a person who pays compensation or anything of value as consideration for a  
143 beneficial interest in a trust which is vested with, or for the assignment, transfer or sale of, an  
144 ownership or other interest in a life insurance policy or a certificate issued pursuant to a group  
145 life insurance policy that has been the subject of a life settlement contract.

146 “Related provider trust”, a titling trust or other trust established by a licensed life settlement  
147 provider or a financing entity for the sole purpose of holding the ownership or beneficial interest  
148 in purchased policies in connection with a financing transaction. In order to qualify as a related  
149 provider trust, the trust must have a written agreement with the licensed life settlement provider  
150 under which the licensed life settlement provider is responsible for ensuring compliance with all  
151 statutory and regulatory requirements and under which the trust agrees to make all records and  
152 files relating to life settlement transactions available to the commissioner as if those records and  
153 files were maintained directly by the licensed life settlement provider.

154 “Settled policy”, a life insurance policy or certificate that has been acquired by a provider  
155 pursuant to a life settlement contract.

156 “Special purpose entity”, a corporation, partnership, trust, limited liability company or other  
157 legal entity formed solely to provide, either directly or indirectly, access to institutional capital  
158 markets: (i) for a financing entity or life settlement provider; or (ii) in connection with a  
159 transaction in which the securities in the special purpose entity are acquired by the owner or by a  
160 qualified institutional buyer as defined in Rule 144 promulgated under the federal Securities Act  
161 of 1933, as amended, or the securities pay a fixed rate of return commensurate with established  
162 asset-backed institutional capital markets.

163 “Stranger-originated life insurance”, an act, practice or arrangement to initiate the issuance of a  
164 life insurance policy for the benefit of a third-party investor who, at the time of policy  
165 origination, has no insurable interest in the life of the insured. Such acts, practices or  
166 arrangements include, but are not limited to, cases in which life insurance is purchased with  
167 resources or guarantees from or through a person, who, at the time of policy inception, could not  
168 lawfully initiate the policy himself and where, at the time of inception, there is an arrangement or  
169 agreement, whether verbal or written, to directly or indirectly transfer the ownership of the  
170 policy or the policy benefits to a third party. Trusts that are created to give the appearance of  
171 insurable interest and that are used to initiate policies for investors violate insurable interest laws  
172 and the prohibition against wagering on life. Stranger-originated life insurance arrangements do  
173 not include lawful life settlement contracts as permitted by this act or those practices set forth in  
174 subsection (b) of the definition of life settlement contract , provided that such life settlement  
175 contracts or practices are not part of a transaction otherwise prohibited by this act.

176 “Terminally ill”, having an illness or sickness that can reasonably be expected to result in death  
177 in 24 months or less.

178 Section 214. (a) No person, wherever located, shall act as a life settlement provider or, except  
179 as provided for in subdivisions (C) and (D) of this subsection, a life settlement broker with an  
180 owner or multiple owners who is a resident of the commonwealth, without first having obtained  
181 a license from the commissioner.

182 (b) (i) A life insurance producer who has been duly licensed as a resident insurance producer  
183 with a life line of authority in the commonwealth, or in his home state, for at least 1 year and is  
184 licensed as nonresident producer shall be deemed to meet the licensing requirements of this  
185 section and shall be permitted to operate as a life settlement broker.

186 (ii) Not later than 30 days from the first day of operating as a life settlement broker, the life  
187 insurance producer shall notify the commissioner that he is acting as a life settlement broker, on  
188 a form prescribed by the commissioner, and shall pay a reasonable fee as determined by the  
189 secretary of administration and finance pursuant to section 3B of chapter 7. Notification shall  
190 include an acknowledgment by the life insurance producer that he will operate as a life  
191 settlement broker in accordance with this act.

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

197 (c) A person licensed as an attorney, certified public accountant or financial planner accredited  
198 by a nationally recognized accreditation agency, who is retained to represent the owner and  
199 whose compensation is not paid directly or indirectly by the life settlement provider or

200 purchaser, may negotiate life settlement contracts on behalf of the owner without having to  
201 obtain a license as a life settlement broker.

202 (d) The term and fees for a life settlement provider license shall be equal to that of a foreign  
203 stock life insurance company and the term and fees of a life settlement broker license shall be  
204 equal to that of an insurance producer license. Licenses may be renewed on their anniversary  
205 date upon payment of a renewal fee as determined by the secretary of administration and finance.  
206 Failure to pay the fees on or before the renewal date shall result in expiration of the license.

207 (e) An applicant for a license under this section shall provide such information as the  
208 commissioner may require on forms prepared by the commissioner. The commissioner may  
209 require such applicant to fully disclose the identity of its stockholders owning 10 per cent or  
210 more of the shares of an applicant whose shares are publicly traded, partners, officers and  
211 employees. The commissioner may, in his sole discretion, refuse to issue a license to a qualified  
212 applicant if the commissioner determines that an officer, employee, stockholder or partner  
213 thereof, who may materially influence the applicant's conduct, does not meet the standards of  
214 this act.

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

218 (i) Upon the filing of an application for initial licenseure and the payment of the application fee,  
219 the commissioner shall examine each applicant and may issue a license if the commissioner finds  
220 that the applicant:

221 (i) if the applicant is a life settlement provider, has provided a detailed plan of operation;

222 (ii) is competent and trustworthy and intends to transact its business in good faith;

223 (iii) has a good business reputation and has experience, training or education so as to be qualified

224 in the business for which the license is applied;

225 (iv) if the applicant is a legal entity, is formed or organized pursuant to the laws of this state or is

226 a foreign legal entity authorized to transact business in this state, or provides a certificate of good

227 standing from the state of its domicile; and

228 (v) if the applicant is a life settlement provider, has provided to the commissioner an anti-fraud

229 plan that meets the requirements in subsection (g) of section 223D.

230 (g) The commissioner shall not issue a license to a nonresident applicant, unless a written

231 designation of an agent for service of process is filed and maintained with the commissioner or

232 unless the applicant has filed with the commissioner the applicant's written irrevocable consent

233 that any action against the applicant may be commenced against the applicant by service of

234 process on the commissioner.

235 (h) A life settlement provider shall not use any person to perform the functions of a life

236 settlement broker unless the person holds a current, valid license as a broker.

237 (i) A life settlement broker shall not use any person to perform the functions of a life settlement

238 provider unless such person holds a current, valid license as a life settlement provider.

239 (j) All licensees under this section shall provide to the commissioner new or revised information

240 about officers, 10 per cent or more stockholders, partners, directors, members or designated

241 employees within 30 days of a change.

242 (k) An individual licensed as a life settlement broker shall complete, on a biennial basis, 15 hours  
243 of training related to the business of life settlements and life settlement transactions as required  
244 by the commissioner; provided, however, that a life insurance producer who is operating as a life  
245 settlement broker shall not be subject to the requirements of this subsection. An individual  
246 failing to meet the requirements of this subsection shall be subject to the penalties imposed by  
247 the commissioner.

248 Section 215. (a) The commissioner may suspend, revoke or refuse to renew the license of a  
249 licensee if the commissioner finds that:

250 (i) there was a material misrepresentation in the application for the license;

251 (ii) the licensee or any officer, partner, member or director has been convicted or determined by  
252 a regulator to have committed a fraudulent or dishonest practices, is subject to a final  
253 administrative action or is otherwise shown to be untrustworthy or incompetent to act as a  
254 licensee;

255 (iii) if a life settlement provider, the licensee demonstrates a pattern of unreasonably withholding  
256 payments to policy owners;

257 (iv) the licensee no longer meets the requirements for initial licensure;

258 (v) the licensee or any officer, partner, member or director has been convicted of a felony or a  
259 misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo  
260 contendere with respect to a felony or a misdemeanor of which criminal fraud or moral turpitude  
261 is an element, regardless of whether a judgment of conviction has been entered by the court;

262 (vi) the life settlement provider has entered into a life settlement contract using a form that has  
263 not been approved pursuant to this act;

264 (vii) the life settlement provider has failed to honor contractual obligations set out in a life  
265 settlement contract;

266 (viii) the life settlement provider has assigned, transferred or pledged a settled policy to a person  
267 other than a life settlement provider licensed in the commonwealth, a purchaser, an accredited  
268 investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or  
269 Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special purpose  
270 entity or related provider trust; or

271 (ix) the licensee or any officer, partner, member or key management personnel has violated any  
272 of the provisions of this act.

273 (b) Before the commissioner denies a license application or suspends, revokes or refuses to  
274 renew the license of a licensee under this act, the commissioner shall conduct a hearing in  
275 accordance with chapter 30A.

276 Section 216. (a) No person shall use any form of life settlement contract unless it has been filed  
277 with and approved by the commissioner. or provide to an owner a disclosure statement form  
278 unless first filed with and approved by the commissioner. The commissioner shall disapprove a  
279 life settlement contract form or disclosure statement form if, in the commissioner's opinion, the  
280 contract or provisions contained therein fail to meet the requirements of sections 220, 221, 223,  
281 and subsection (b) of section 223D or are unreasonable, contrary to the interests of the public or  
282 otherwise misleading or unfair to the owner.

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

288 Section 217. Each life settlement provider shall file with the commissioner annually on or  
289 before March 1, an annual statement containing such information as the commissioner may  
290 prescribe by regulation. In addition to any other requirements, the annual statement shall: (i)  
291 specify the total number, aggregate face amount and life settlement proceeds of policies settled  
292 during the immediately preceding calendar year, together with a breakdown of the information  
293 by policy issue year for each carrier; (ii) include the names of the insurance companies whose  
294 policies have been settled; and (iii) include only those transactions where the owner is a resident  
295 of this state and shall not include individual transaction data regarding the business of life  
296 settlements or information that there is a reasonable basis to believe could be used to identify the  
297 owner or the insured.

298 A life settlement provider that willfully fails to file an annual statement or willfully fails to reply  
299 within 30 days to a written inquiry by the commissioner in connection therewith, shall, in  
300 addition to other penalties provided in this act, be subject, upon due notice and opportunity to be  
301 heard, to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for  
302 each such failure.

303 Section 218. (a) Except as otherwise allowed or required by law, a life settlement provider, life  
304 settlement broker, insurance company, life insurance producer, information bureau, rating

305 agency or company, or any other person with actual knowledge of an insured's identity, shall not  
306 disclose the identity of an insured or information that there is a reasonable basis to believe could  
307 be used to identify the insured or the insured's financial or medical information to any other  
308 person unless the disclosure:

309 (1) is necessary to effect a life settlement contract between the owner and a life settlement  
310 provider and the owner and insured have provided prior written consent to the disclosure;

311 (2) is necessary to effectuate the sale of a life settlement contract, or interests therein, as  
312 investments; provided the sale is conducted in accordance with applicable state and federal  
313 securities law; and provided further that the owner and the insured have both provided prior  
314 written consent to the disclosure;

315 (3) is provided in response to an investigation or examination by the commissioner or any other  
316 governmental officer or agency;

317 (4) is a term or condition to the transfer of a policy by 1 life settlement provider to another life  
318 settlement provider;

319 (5) is necessary to allow the life settlement provider or life settlement broker, or an authorized  
320 representative to make contacts for the purpose of determining health status. For the purposes of  
321 this section, the term "authorized representative" shall not include any person who has or may  
322 have any financial interest in the life settlement contract other than a licensed life settlement  
323 provider, licensed life settlement broker, financing entity, related provider trust or special  
324 purpose entity; provided further that a life settlement provider or life settlement broker shall  
325 require its authorized representative to agree in writing to adhere to the privacy provisions of this  
326 act; or

327 (6) is required to purchase stop loss coverage.

328 (b) Non-public personal information solicited or obtained in connection with a proposed or  
329 actual life settlement contract shall be subject to the provisions applicable to financial institutions  
330 under the Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other state and federal laws  
331 relating to confidentiality of non-public personal information.

332 Section 219. (a) The commissioner may, when the commissioner deems it reasonably necessary  
333 to protect the interests of the public, examine the business and affairs of any licensee or applicant  
334 for a license. The commissioner may order a licensee or applicant to produce records, books,  
335 files or other information reasonably necessary to ascertain whether such licensee or applicant is  
336 acting or has acted in violation of the law or otherwise contrary to the interests of the public.  
337 The expenses incurred in conducting an examination shall be paid by the licensee or applicant.

338 (b) For a foreign or alien licensee, the commissioner may, at the commissioner's discretion,  
339 accept an examination report on the licensee as prepared by the commissioner for the licensee's  
340 state of domicile or port-of-entry state.

341 (c) Names and individual identification data for all owners, purchasers and insured shall be  
342 considered private and confidential information and shall not be disclosed by the commissioner  
343 unless the disclosure is required by law or is disclosed to the National Association of Insurance  
344 Commissioners, to the insurance department of any other state or country or to law enforcement  
345 officials of the commonwealth or any other state or agency of the federal government at any  
346 time, so long as the agency or office receiving the information agrees in writing to hold such  
347 material confidential.

348 (d) Records of all completed transactions and life settlement contracts shall be maintained by the  
349 life settlement provider for 3 years after the death of the insured and shall be available to the  
350 commissioner for inspection during reasonable business hours.

351 (e) (1) In conducting an examination, the examiner shall use methods common to the  
352 examination of licensees and should use those guidelines and procedures set forth in the  
353 examiners' handbook adopted by the by the National Association of Insurance Commissioners.

354 (2) Every licensee or person from whom information is sought, its officers, directors and agents  
355 shall provide to the examiners timely, convenient and free access at its offices to all books,  
356 records, accounts, papers, documents, assets and computer or other recordings relating to the  
357 property, assets, business and affairs of the licensee being examined. The officers, directors,  
358 employees and agents of the licensee or person shall facilitate the examination and aid in the  
359 examination so far as it is in their power to do so. The refusal of a licensee, by its officers,  
360 directors, employees or agents, to submit to examination or to comply with any reasonable  
361 written request of the commissioner shall be grounds for suspension, refusal or nonrenewal of a  
362 license or authority held by the licensee to engage in the life settlement business or other  
363 business subject to the commissioner's jurisdiction. All proceedings for suspension, revocation or  
364 refusal of a license or authority shall be conducted pursuant to chapter 30A.

365 (3) The commissioner shall have the power to issue subpoenas, to administer oaths and to  
366 examine under oath any person as to any matter pertinent to the examination. Upon the failure or  
367 refusal of a person to obey a subpoena, the commissioner may petition a court of competent  
368 jurisdiction, and upon proper showing, the court may enter an order compelling the witness to  
369 appear and testify or produce documentary evidence.

370 (4) When making an examination the commissioner may retain attorneys, appraisers,  
371 independent actuaries, independent certified public accountants or other professionals and  
372 specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the  
373 subject of the examination.

374 (5) Nothing contained in this act shall be construed to limit the commissioner's authority to  
375 terminate or suspend an examination in order to pursue other legal or regulatory action pursuant  
376 to the insurance laws of the commonwealth. Findings of fact and conclusions made pursuant to  
377 an examination shall be prima facie evidence in a legal or regulatory action.

378 (6) Nothing contained in this act shall be construed to limit the commissioner's authority to use  
379 and, if the commissioner deems appropriate, to make public any final or preliminary examination  
380 report, any examiner or licensee work papers or other documents or any other information  
381 discovered or developed during the course of an examination in the furtherance of a legal or  
382 regulatory action.

383 (f) (1) Examination reports shall be comprised of only facts appearing upon the books, from the  
384 testimony of its officers or agents or other persons examined concerning its affairs and such  
385 conclusions and recommendations as the examiners find reasonably warranted from the facts.

386 (2) No later than 60 days following completion of the examination, the examiner in charge shall  
387 file with the commissioner a verified written report of examination under oath. Upon receipt of  
388 the verified report, the commissioner shall transmit the report to the licensee examined, together  
389 with a notice that shall afford the licensee examined a reasonable opportunity of not more than  
390 30 days to make a written submission or rebuttal with respect to any matters contained in the

391 examination report, which shall become part of the report, or to request a hearing on any matter  
392 in dispute.

393 (g) Except as otherwise provided, all examination reports, working papers, recorded information,  
394 documents and copies thereof produced by, obtained by or disclosed to the commissioner or any  
395 other person in the course of an examination, or in the course of analysis or investigation by the  
396 commissioner of the financial condition or market conduct of a licensee shall be confidential by  
397 law and privileged, shall not be subject to chapter 66 and clause 26 of section 7 of chapter 4,  
398 shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence  
399 in any private civil action. The commissioner is authorized to use the documents, materials or  
400 other information in the furtherance of any regulatory or legal action brought as part of the  
401 commissioner's official duties. The licensee being examined may have access to all documents  
402 used to make the report.

403 (h) (1) An examiner shall not be appointed by the commissioner if the examiner, either directly  
404 or indirectly, has a conflict of interest or is affiliated with the management of or owns a  
405 pecuniary interest in any person subject to examination; provided, however, that an examiner  
406 may be: (i) an owner; (ii) an insured in a life settlement contract or insurance policy; or (iii) a  
407 beneficiary in an insurance policy that is proposed for a life settlement contract.

408 (2) Notwithstanding the requirements of this subsection, the commissioner may retain from time  
409 to time, on an individual basis, qualified actuaries, certified public accountants or other similar  
410 individuals who are independently practicing their professions, even though these persons may  
411 from time to time be similarly employed or retained by persons subject to examination under this  
412 life settlement act.

413 (i) (1) No cause of action shall arise, nor shall any liability be imposed against the commissioner,  
414 the commissioner's authorized representatives or any examiner appointed by the commissioner  
415 for statements made or conduct performed in good faith while carrying out the provisions of this  
416 act.

417 (2) No cause of action shall arise, nor shall any liability be imposed against a person for the act  
418 of communicating or delivering information or data to the commissioner, the commissioner's  
419 authorized representative or an examiner related to an examination if the act of communication  
420 or delivery was performed in good faith and without fraudulent intent or the intent to deceive.  
421 This paragraph does not abrogate or modify any common law or statutory privilege or immunity  
422 enjoyed by any person identified in paragraph (1).

423 (3) A person identified in paragraph (1) or (2) shall be entitled to an award of attorney's fees and  
424 costs if that person is the prevailing party in a civil cause of action for libel, slander or any other  
425 relevant tort arising out of activities in carrying out the provisions of this act and the party  
426 bringing the action was not substantially justified in doing so. For purposes of this section a  
427 proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it  
428 was initiated.

429 (j) The charge for each such examination shall be determined annually by the secretary of  
430 administration and finance under the provision of section 3B of chapter 7 and shall be paid by  
431 each licensee within 30 days after notice from the commissioner of such charge. Such charge  
432 shall include an amount equal to the cost of fringe benefits as established by the secretary of  
433 administration and finance pursuant to section 6B of chapter 29. If in the course of an  
434 examination of a domestic or foreign licensee that maintains a branch office outside the

435 commonwealth, it becomes necessary or expedient for the commissioner or any deputies or  
436 examiners to travel outside the commonwealth, such licensee shall pay the proper expenses of  
437 the commissioner or any deputies or examiners incurred. Whenever the commissioner deems it  
438 advisable, the commissioner shall cause a complete audit of the books of the licensee to be made  
439 by a disinterested expert accountant, and such licensee shall pay the proper expenses of such  
440 audit.

441 Section 220. (a) A licensed life settlement broker or life settlement provider may conduct or  
442 participate in advertisements. Such advertisements shall comply with all advertising laws or  
443 rules and regulations promulgated by the commissioner that are applicable to insurers, life  
444 insurance producers, brokers and providers.

445 (b) Advertisements shall be accurate, truthful and not misleading in fact or by implication.

446 (c) No person in the business of insurance or the business of life settlements shall:

447 (1) directly or indirectly market, advertise or solicit the purchase of a new policy for the purpose  
448 of or with a significant emphasis on settling the policy; or

449 (2) use the words “free”, “no cost” or words of similar import in the marketing, advertising,  
450 soliciting or otherwise promoting of the purchase of a policy.

451 (3) with respect to a life settlement provider, enter into a life settlement contract unless the  
452 related advertisements, as may be prescribed by regulation, have been filed with the  
453 commissioner;

454 (d) At the commissioner’s discretion, the commissioner may require the submission of  
455 advertising material.

456 (e) The commissioner shall require delivery of a buyer's guide or a similar consumer advisory  
457 package in the form prescribed by the commissioner to owners during the solicitation process.

458 Section 221. (a) The life settlement provider shall provide to the owner in writing, in a separate  
459 document signed by the owner, the following information no later than the date of application for  
460 a life settlement contract:

461 (i) that possible alternatives to life settlement contracts exist, including, but not limited to,  
462 accelerated benefits offered by the issuer of the life insurance policy;

463 (ii) that some or all of the proceeds of a life settlement contract may be taxable and that  
464 assistance should be sought from a professional tax advisor;

465 (iii) that the proceeds from a life settlement contract may be subject to the claims of creditors;

466 (iv) that receipt of proceeds from a life settlement contract may adversely affect the recipients'  
467 eligibility for public assistance or other government benefits or entitlements and that advice  
468 should be obtained from the appropriate agencies;

469 (v) that the owner has a right to terminate a life settlement contract within 15 days of the date it  
470 is executed by all parties; that the owner has received the disclosures required by this section;  
471 and that the following statement regarding rescission is included: "Rescission, if exercised by  
472 the owner, is effective only if both notice of the rescission is given, and the owner repays all  
473 proceeds and any premiums, loans, and loan interest paid on account of the life settlement  
474 provider within the rescission period. If the insured dies during the rescission period, the life  
475 settlement contract shall be deemed to have been rescinded subject to repayment by the owner or

476 the owner's estate of all proceeds and any premiums, loans, and loan interest to the life  
477 settlement provider";

478 (vi) that proceeds will be sent to the owner within 3 business days after the life settlement  
479 provider has received the insurer or group administrator's acknowledgement that ownership of  
480 the policy or interest in the certificate has been transferred and the beneficiary has been  
481 designated in accordance with the terms of the life settlement contract;

482 (vii) that entering into a life settlement contract may cause other rights or benefits, including  
483 conversion rights and waiver of premium benefits that may exist under the policy or certificate of  
484 a group policy to be forfeited by the owner and that assistance should be sought from a  
485 professional financial advisor;

486 (viii) the amount and method of calculating the compensation paid, or to be paid, to the life  
487 settlement broker or any other person acting for the owner in connection with the transaction;

488 (ix) the date by which the funds will be available to the owner and the transmitter of the funds;

489 (x) the fact that the commissioner shall require delivery of a buyer's guide or a similar consumer  
490 advisory package in the form prescribed by the commissioner to owners during the solicitation  
491 process;

492 (xi) the following statement: "All medical, financial or personal information solicited or obtained  
493 by a life settlement provider or life settlement broker about an insured, including the insured's  
494 identity or the identity of family members, a spouse or a significant other, may be disclosed as  
495 necessary to effect the life settlement contract between the owner and life settlement provider. If  
496 you are asked to provide this information, you will be asked to consent to the disclosure. The

497 information may be provided to someone who buys the policy or provides funds for the  
498 purchase. You may be asked to renew your permission to share information every 2 years.”;

499 (xii) the fact that the commissioner shall require life settlement providers and life settlement  
500 brokers to print separate signed fraud warnings on their applications and on their life settlement  
501 contracts is as follows: “Any person who knowingly presents false information in a life  
502 settlement application or contract may be found guilty of a crime and may be subject to fines and  
503 confinement in prison.”

504 (xiii) that the insured may be contacted by either the life settlement provider or life settlement  
505 broker or its authorized representative for the purpose of determining the insured’s health status  
506 or to verify the insured's address; provided, that this contact is limited to once every 3 months if  
507 the insured has a life expectancy of more than 1 year and no more than once per month if the  
508 insured has a life expectancy of 1 year or less;

509 (xiv) the affiliation, if any, between the life settlement provider and the issuer of the insurance  
510 policy to be settled;

511 (xv) that a life settlement broker represents exclusively the owner and not the insurer, the life  
512 settlement provider or any other person, and owes a fiduciary duty to the owner, including a duty  
513 to act according to the owner’s instructions and in the best interest of the owner;

514 (xvi) the name, address and telephone number of the provider;

515 (xvii) the name, business address and telephone number of the independent third party escrow  
516 agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust  
517 agreements or documents; and

518 (xviii) that a change of ownership may, in the future, limit the insured's ability to purchase future  
519 insurance on the insured's life because there is a limit to how much coverage insurers will issue  
520 on 1 life;

521 The written disclosures shall be conspicuously displayed in any life settlement contract furnished  
522 to the owner by a life settlement provider including any affiliations or contractual arrangements  
523 between the life settlement provider and the life settlement broker.

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

528 (i) the name, business address and telephone number of the life settlement broker;

529 (ii) a complete and accurate description of all the offers, counter-offers, acceptances and  
530 rejections relating to the proposed life settlement contract;

531 (iii) any affiliations or contractual arrangements between the life settlement broker and any  
532 person making an offer in connection with the proposed life settlement contracts;

533 (iv) the name of each life settlement broker involved in the life settlement agreement who  
534 receives compensation and the amount of compensation received by that broker, which  
535 compensation includes anything of value paid or given to the life settlement broker in connection  
536 with the life settlement contract;

537 (v) a complete reconciliation of the gross offer or bid by the life settlement provider to the net  
538 amount of proceeds or value to be received by the owner. For the purpose of this section, gross

539 offer or bid shall mean the total amount or value offered by the life settlement provider for the  
540 purchase of 1 or more life insurance policies, inclusive of commissions and fees; and

541 (vi) that a failure to provide the disclosures or rights described in this section shall be deemed an  
542 unfair trade practice pursuant to chapter 176D.

543 (c) A life settlement broker shall disclose to the owner anything of value paid or given to a life  
544 settlement broker relating to a life settlement contract.

545 Section 222. (a) Insurance carriers may inquire in the application for insurance whether the  
546 proposed owner intends to pay premiums with the assistance of financing from a lender that will  
547 use the policy as collateral to support the financing.

548 (b) If the premium financing loan provides funds which can be used for a purpose other than  
549 paying for the premiums, costs and expenses associated with obtaining and maintaining the life  
550 insurance policy and loan, the application shall be rejected as a violation of this act.

551 (c) The insurance carrier may disclose certain information to the applicant and the insured, either  
552 on the application or an amendment to the application to be completed no later than the delivery  
553 of the policy, including, but not limited to the following disclosure:

554 “If you have entered into a loan arrangement where the policy is used as collateral and the policy  
555 changes ownership at some point in the future in satisfaction of the loan, the following may be  
556 true:

557 (1) a change of ownership could lead to a stranger owning an interest in the insured’s life;

558 (2) a change of ownership could in the future limit your ability to purchase future insurance on  
559 the insured’s life because there is a limit to how much coverage insurers will issue on one life;

560 (3) should there be a change of ownership and you wish to obtain more insurance coverage on  
561 the insured's life in the future, the insured's higher issue age, a change in health status, and other  
562 factors may reduce the ability to obtain coverage or may result in significantly higher premiums;

563 (4) you should consult a professional advisor, since a change in ownership in satisfaction of the  
564 loan may result in tax consequences to the owner, depending on the structure of the loan. ”

565 (d) The insurance carrier may require certifications from the applicant or the insured, including  
566 the following certified statement:

567 “(1) I have not entered into any agreement or arrangement providing for the future sale of this  
568 life insurance policy;

569 (2) my loan arrangement for this policy provides funds sufficient to pay for some or all of the  
570 premiums, costs, and expenses associated with obtaining and maintaining my life insurance  
571 policy; however, I have not entered into any agreement by which I am to receive consideration in  
572 exchange for procuring this policy; and

573 (3) the borrower has an insurable interest in the insured.”

574 Section 223. (a) A life settlement provider entering into a life settlement contract with an owner  
575 of a policy, where the insured is terminally or chronically ill, shall first obtain:

576 (i) if the owner is the insured, a written statement from a licensed attending physician that the  
577 owner is of sound mind; and

578 (ii) a document in which the insured consents to the release of his medical records to a life  
579 settlement provider, life settlement broker or insurance producer and, if the policy was issued

580 less than 2 years from the date of application for a life settlement contract, to the insurance  
581 company that issued the policy.

582 Within 20 days after an owner executes the life settlement contract, the life settlement provider  
583 shall give written notice to the insurer that issued that insurance policy that the policy has  
584 become subject to a life settlement contract. The notice shall be accompanied by the documents  
585 required by clauses (i) and (ii).

586 (b) The insurer shall respond to a request for verification of coverage submitted by a life  
587 settlement provider, life settlement broker or life insurance producer not later than 30 calendar  
588 days of the date the request is received. The request for verification of coverage shall be made  
589 on a form approved by the commissioner. The insurer shall complete and issue the verification  
590 of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall  
591 indicate whether, based on the medical evidence and documents provided, the insurer intends to  
592 pursue an investigation regarding the validity of the insurance contract.

593 (c) Prior to or at the time of execution of the life settlement contract, the life settlement provider  
594 shall obtain a witnessed document in which the owner: (i) consents to the life settlement contract,  
595 (ii) represents that the owner has a full and complete understanding of the life settlement  
596 contract, (iii) represents that the owner has a full and complete understanding of the benefits of  
597 the policy,(iv) acknowledges that the owner is entering into the life settlement contract freely  
598 and voluntarily, and,(v) for persons with a terminal or chronic illness or condition, acknowledges  
599 that the insured has a terminal or chronic illness and that the terminal or chronic illness or  
600 condition was diagnosed after the policy was issued.

601 (d) The insurer shall not unreasonably delay effecting a change of ownership or beneficiary with  
602 a life settlement contract lawfully entered into in this state or with a resident of this state.

603 (e) If a life settlement broker or life insurance producer performs any of the activities in  
604 subsections (a) or (c), the life settlement provider is deemed to have fulfilled the requirements of  
605 this section.

606 (f) If a life settlement broker performs those verification of coverage activities required of the  
607 life settlement provider, the life settlement provider is deemed to have fulfilled the requirements  
608 of this section.

609 (g) All medical information solicited or obtained by a licensee shall be subject to any applicable  
610 provisions of this act and state law relating to confidentiality of medical information, if not  
611 otherwise provided in this life settlement act.

612 (h) All life settlement contracts shall provide that the owner may rescind the life settlement  
613 contract on or before 15 days after the date it is executed by all parties. Rescission, if exercised  
614 by the owner, shall be effective only if: (i) notice of the rescission is given, and (ii) the owner  
615 repays all proceeds and any premiums, loans and loan interest paid on account of the life  
616 settlement provider within the rescission period. If the insured dies during the rescission period,  
617 the life settlement contract shall be deemed to have been rescinded subject to repayment by the  
618 owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life  
619 settlement provider.

620 Failure to give written notice of the right of rescission shall toll the right of rescission until 30  
621 days after the written notice of the right of rescission has been given.

622 (i) Within 3 business days after receipt from the owner of documents to effect the transfer of the  
623 policy pursuant to a life settlement contract, the life settlement provider shall pay the proceeds of  
624 the life settlement contract to an escrow or trust account managed by a trustee or escrow agent in  
625 a state or federally chartered financial institution pending acknowledgement of the transfer by  
626 the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds  
627 due to the owner within 3 business days of acknowledgement of the transfer from the insurer.

628 (j) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the  
629 owner renders the life settlement contract voidable by the owner for lack of consideration until  
630 the time the proceeds are tendered to and accepted by the owner.

631 (k) Any fee paid by a life settlement provider, party, individual or from an owner to a life  
632 settlement broker in exchange for services provided to the owner pertaining to a life settlement  
633 contract shall be computed as a percentage of the offer obtained, not the face value of the policy.  
634 Nothing in this section shall be construed as prohibiting a life settlement broker from reducing  
635 such life settlement broker's fee below this percentage if the broker so chooses.

636 (l) No person at any time prior to, or at the time of the application for, or issuance of a policy, or  
637 during a 2 year period commencing with the date of issuance of the policy, shall enter into a life  
638 settlement contract regardless of the date the compensation is to be provided and regardless of  
639 the date the assignment, transfer, sale, devise, bequest or surrender of the policy is to occur.

640 (m) This prohibition shall not apply if:

641 (i) the owner certifies to the provider that the policy was issued upon the owner's exercise of  
642 conversion rights arising out of a group or individual policy; provided that the total of the time  
643 covered under the conversion policy plus the time covered under the prior policy is at least 24

644 months; provided, further that the time covered under a group policy shall be calculated without  
645 regard to a change in insurance carriers, if the coverage has been continuous and under the same  
646 group sponsorship; or

647 (ii) the owner submits independent evidence to the life settlement provider that 1 or more of the  
648 following conditions have been met within the 2 year period:

649 (A) the owner or insured is terminally or chronically ill;

650 (B) the owner or insured disposes of his ownership interests in a closely held corporation,  
651 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance  
652 policy was initially issued;

653 (C) the owner's spouse dies;

654 (D) the owner divorces their spouse;

655 (E) the owner retires from full-time employment;

656 (F) the owner becomes physically or mentally disabled and a physician determines that the  
657 disability prevents the owner from maintaining full-time employment; or

658 (G) a final order, judgment or decree is entered by a court of competent jurisdiction on the  
659 application of a creditor of the owner adjudicating the owner bankrupt or insolvent, or approving  
660 a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all  
661 or a substantial part of the owner's assets;

662 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the insurer  
663 when the life settlement provider submits a request to the insurer for verification of coverage.

664 The copies shall be accompanied by a letter of attestation from the life settlement provider that  
665 the copies are true and correct copies of the documents received by the life settlement provider.  
666 Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of  
667 any policy.

668 (3) If the life settlement provider submits to the insurer a copy of independent evidence provided  
669 for in subclause (A) of clause (ii) when the life settlement provider submits a request to the  
670 insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed to  
671 establish that the life settlement contract satisfies the requirements of this section.

672 Section 223A. (a) The commissioner may promulgate regulations implementing this act.

673 (b) (i) If there is more than 1 owner on a single policy, and the owners are residents of different  
674 states, the life settlement contract shall be governed by the law of the state in which the owner  
675 having the largest percentage ownership resides or, if the owners hold equal ownership, the state  
676 of residence of 1 owner agreed upon in writing by all of the owners. The law of the state of the  
677 insured shall govern in the event that equal owners fail to agree in writing upon a state of  
678 residence for jurisdictional purposes.

679 (ii) A life settlement provider from the commonwealth who enters into a life settlement contract  
680 with an owner who is a resident of another state that has enacted statutes or adopted regulations  
681 governing life settlement contracts, shall be governed in the effectuation of that life settlement  
682 contract by the statutes and regulations of the owner's state of residence. If the state in which the  
683 owner is a resident has not enacted statutes or regulations governing life settlement contracts, the  
684 life settlement provider shall give the owner notice that neither state regulates the transaction  
685 upon which he is entering. For transactions in those states, however, the life settlement provider

686 is to maintain all records required if the transactions were executed in the owner's state of  
687 residence. The forms used in those states need not be approved by the commissioner.

688 (iii) If there is a conflict in the laws that apply to an owner and a purchaser in any individual  
689 transaction, the laws of the state that apply to the owner shall take precedence and the provider  
690 shall comply with those laws.

691 Section 223B. A fraudulent life settlement act shall include:

692 (1) Acts or omissions committed by a person who, in connection with a life settlement contract,  
693 knowingly and with an intent to defraud, for the purpose of depriving another of property or for  
694 pecuniary gain, commits or permits its employees or its agents to engage in acts, including, but  
695 not limited to, the following:

696 (i) Presenting, causing to be presented or preparing with knowledge and belief that it will be  
697 presented to or by a life settlement provider, premium finance lender, life settlement broker,  
698 insurer, insurance producer or any other person, false material information or concealing material  
699 information, as part of, in support of or concerning a fact material to 1 or more of the following:

700 (A) an application for the issuance of a life settlement contract or insurance policy;

701 (B) the underwriting of a life settlement contract or insurance policy;

702 (C) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

703 (D) premiums paid on an insurance policy;

704 (E) payments and changes in ownership or beneficiary made in accordance with the terms of a  
705 life settlement contract or insurance policy;

706 (F) the reinstatement or conversion of an insurance policy;

707 (G) the solicitation, offer to enter into or effectuation of, a life settlement contract or insurance

708 policy;

709 (H) the issuance of written evidence of life settlement contracts or insurance;

710 (I) an application for, or the existence of or any payments related to, a loan secured directly or

711 indirectly by any interest in a life insurance policy; or

712 (J) engaging in stranger-originated life insurance.

713 (ii) Failing to disclose to the insurer, where the request for such disclosure has been asked for by

714 the insurer, that the prospective insured has undergone a life expectancy evaluation by a person

715 or entity other than the insurer or its authorized representatives in connection with the issuance

716 of the policy.

717 (iii) Employing any device, scheme, or artifice to defraud in the business of life settlements.

718 (2) The following acts committed by a person, or that such person permits an employee or agent

719 to commit, in the furtherance of a fraud, or to prevent the detection of fraud:

720 (i) remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a

721 licensee or other person engaged in the business of life settlements;

722 (ii) misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other

723 person;

724 (iii) transact the business of life settlements in violation of laws requiring a license, certificate of

725 authority or other legal authority for the transaction of the business of life settlements;

726 (iv) file with the commissioner or the chief insurance regulatory official of another jurisdiction a  
727 document containing false information or otherwise concealing information about a material fact  
728 from the commissioner;

729 (v) engage in embezzlement, theft, misappropriation or conversion of money, funds, premiums,  
730 credits or other property of a life settlement provider, insurer, insured, owner, insurance policy  
731 owner or other person engaged in the business of life settlements or insurance;

732 (vi) knowingly and with an intent to defraud, enter into, broker or otherwise deal in a life  
733 settlement contract, the subject of which is a life insurance policy that was obtained by  
734 presenting false information concerning any fact material to the policy or by concealing, for the  
735 purpose of misleading another, information requested concerning any fact material to the policy,  
736 where the owner or the owner's agent intended to defraud the policy's issuer;

737 (vii) attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts  
738 or omissions specified in this subsection; or

739 (viii) misrepresent the state of residence of an owner to be a state or jurisdiction that does not  
740 have a law substantially similar to this act for the purpose of evading or avoiding the provisions  
741 of this act.

742 Section 223C. (a) It is unlawful for a person to:

743 (i) enter into a life settlement contract if such person knows or reasonably should have known  
744 that the policy was obtained by means of a false, deceptive or misleading application for such  
745 policy;

746 (ii) engage in a transaction, practice or course of business if such person knows or reasonably  
747 should have known that the intent was to avoid the notice requirements of this act;

748 (iii) engage in any fraudulent act or practice in connection with any transaction relating to any  
749 settlement involving an owner who is a resident of the commonwealth;

750 (iv) issue, solicit or market the purchase of a new policy for the purpose of or with a significant  
751 emphasis on settling the policy;

752 (v) if providing premium financing, receive any proceeds, fees or other consideration from the  
753 policy or owner of the policy that are in addition to the amounts required to pay principal,  
754 interest and any reasonable costs or expenses incurred by the lender or borrower in connection  
755 with the premium finance agreement, except in the event of a default, unless either the default on  
756 the loan or transfer of the policy occurs pursuant to an agreement or understanding with another  
757 person for the purpose of evading regulation under this act;

758 (vi) with respect to any life settlement contract or insurance policy and a life settlement broker,  
759 knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any  
760 life settlement provider, financing entity or related provider trust that is controlling, controlled by  
761 or under common control with such life settlement broker unless such relationship is disclosed to  
762 the owner;

763 (vii) with respect to a life settlement contract or insurance policy and a life settlement provider,  
764 knowingly enter into a life settlement contract with an owner if, in connection with the life  
765 settlement contract, anything of value will be paid to a life settlement broker that is controlling,  
766 controlled by or under common control with the life settlement provider, the financing entity or a

767 related provider trust that is involved in the life settlement contract unless the relationship is  
768 disclosed to the owner;

769 (ix) include any reference in an advertisement that would cause an owner to reasonably believe  
770 that the insurance is free for any period of time; or

771 (x) with respect to any life insurance producer, insurance company, life settlement broker or life  
772 settlement provider, make a statement or representation to the applicant or policyholder in  
773 connection with the sale or financing of a policy to the effect that the policy is free or without  
774 cost to the policyholder for any period of time unless provided in the policy.

775 (b) A violation of this section shall be deemed a fraudulent life settlement act.

776 (c) The commissioner may investigate suspected fraudulent life settlement acts and persons  
777 engaged in the business of life settlements.

778 Section 223D. (a) (1) A person shall not commit a fraudulent life settlement act.

779 (2) A person shall not knowingly and intentionally interfere with the enforcement of the  
780 provisions of this act or investigations of suspected or actual violations of this act.

781 (3) A person in the business of life settlements shall not knowingly or intentionally permit any  
782 person convicted of a felony involving dishonesty or breach of trust to participate in the business  
783 of life settlements.

784 (b) (1) Life settlement contracts and applications for life settlement contracts, regardless of the  
785 form of transmission, shall contain the following statement or a substantially similar statement:

786 “Any person who knowingly presents false information in a life settlement application or  
787 contract may be found guilty of a crime and may be subject to fines and confinement in prison.”

788 (2) The lack of a statement as required in paragraph (1) shall not constitute a defense in a  
789 prosecution for a fraudulent life settlement act.

790 (c) (1) A person engaged in the business of life settlements having knowledge or a reasonable  
791 belief that a fraudulent life settlement act is being, will be or has been committed shall provide to  
792 the commissioner the information required by, and in a manner prescribed by, the commissioner.

793 (2) A person not engaged in the business of life settlements having knowledge or a reasonable  
794 belief that a fraudulent life settlement act is being, will be or has been committed may provide to  
795 the commissioner the information required by, and in a manner prescribed by, the commissioner.

796 (d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person  
797 furnishing information concerning suspected, anticipated or completed fraudulent life settlement  
798 acts or suspected or completed fraudulent insurance acts if the information is provided to:

799 (i) the commissioner or the commissioner’s employees, agents or representatives;

800 (ii) federal, state or local law enforcement or regulatory officials or their employees, agents or  
801 representatives;

802 (iii) a person involved in the prevention and detection of fraudulent life settlement acts or that  
803 person’s agents, employees or representatives;

804 (iv) a regulatory body or its employees, agents or representatives, overseeing life insurance, the  
805 business of life settlements, securities or investment fraud;

806 (v) the insurer that issued the life insurance policy covering the life of the insured; or

807 (vi) the licensee and its agents, employees or representatives.

808 (2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought  
809 against a person for filing a report or furnishing other information concerning a fraudulent life  
810 settlement act or insurance that was fraudulently obtained, the party bringing the action shall  
811 plead specifically any allegation that paragraph (1) does not apply because the person filing the  
812 report or furnishing the information did so with actual malice.

813 (3) A person identified in paragraph (1) shall be entitled to an award of attorney's fees and costs  
814 if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort  
815 arising out of activities in carrying out the provisions of this life settlement act and the party  
816 bringing the action was not substantially justified in doing so. For purposes of this paragraph a  
817 proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it  
818 was initiated.

819 (4) This section does not abrogate or modify common law or statutory privileges or immunities  
820 enjoyed by a person described in paragraph (1).

821 (e) (1) The documents and evidence provided pursuant to subsection (d) or obtained by the  
822 commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be  
823 privileged and confidential, shall not be a public record and shall not be subject to discovery or  
824 subpoena in a civil or criminal action.

825 (2) Paragraph (1) does not prohibit release by the commissioner of documents and evidence  
826 obtained in an investigation of suspected or actual fraudulent life settlement acts:

827 (i) in administrative or judicial proceedings to enforce laws administered by the commissioner;  
828 (ii) to federal, state or local law enforcement or regulatory agencies or to an organization  
829 established for the purpose of detecting and preventing fraudulent life settlement acts; or  
830 (iii) at the discretion of the commissioner, to a person in the business of life settlements that is  
831 aggrieved by a fraudulent life settlement act.

832 (3) Release of documents and evidence under paragraph (2) shall not abrogate or modify the  
833 privilege granted in paragraph (1).

834 (f) This act shall not:

835 (i) preempt the authority or relieve the duty of law enforcement or regulatory agencies to  
836 investigate, examine and prosecute suspected violations of law;

837 (ii) preempt, supersede or limit state securities law or any rule, order or notice issued thereunder;

838 (iii) prevent or prohibit a person from disclosing voluntarily information concerning life  
839 settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

840 (iv) limit the powers granted elsewhere by the laws of this state to the commissioner or an  
841 insurance fraud unit to investigate and examine possible violations of law and to take appropriate  
842 action against wrongdoers.

843 (g) (1) Life settlement providers and life settlement brokers shall have in place antifraud  
844 initiatives to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the  
845 commissioner, the commissioner may order, or a licensee may request and the commissioner  
846 may grant, such modifications of the following required initiatives as necessary to ensure an

847 effective antifraud program. The modifications may be more or less restrictive than the required  
848 initiatives so long as the modifications may reasonably be expected to accomplish the purpose of  
849 this section. Antifraud initiatives shall include:

850 (i) fraud investigators, who may be life settlement provider or life settlement broker employees  
851 or independent contractors; and

852 (ii) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall  
853 include, but not be limited to:

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

857 (B) a description of the procedures for reporting possible fraudulent life settlement acts to the  
858 Commissioner;

859 (C) a description of the plan for antifraud education and training of underwriters and other  
860 personnel; and

861 (D) a description or chart outlining the organizational arrangement of the antifraud personnel  
862 who are responsible for the investigation and reporting of possible fraudulent life settlement acts  
863 and investigating unresolved material inconsistencies between medical records and insurance  
864 applications.

865 (2) Antifraud plans submitted to the commissioner shall be privileged and confidential, shall not  
866 be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

867 Section 223E. (a) If a person violates this act or any rule or regulation implementing this act, the  
868 commissioner may seek an injunction in a court of competent jurisdiction in the county where  
869 the person resides or has a principal place of business and may apply for temporary and  
870 permanent orders that the commissioner determines necessary to restrain the person from further  
871 committing the violation.

872 (b) A person damaged by the acts of another person in violation of this act or any rule or  
873 regulation implementing this act may bring a civil action for damages against the person  
874 committing the violation in a court of competent jurisdiction.

875 (c) The commissioner may issue a cease and desist order, in accordance with chapter 30A, upon  
876 a person who violates any provision of this act, any regulation, rule or order adopted by the  
877 commissioner or any written agreement entered into with the commissioner.

878 (d) When the commissioner finds that an action presents an immediate danger to the public and  
879 requires immediate action, he may issue an emergency cease and desist order reciting with  
880 particularity the facts underlying such findings. The emergency cease and desist order shall be  
881 effective immediately upon service of a copy of the order on the respondent and shall remain  
882 effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings  
883 under subsection (c), the emergency cease and desist order shall remain effective, absent an order  
884 by an appellate court of competent jurisdiction pursuant to chapter 30A. In the event of a willful  
885 violation of this act, the trial court may award statutory damages in addition to actual damages in  
886 an amount up to 3 times the actual damage award.

887 (e) The provisions of this act shall not be waived by agreement. A choice of law provision shall  
888 not be utilized to prevent the application of this act to a life settlement contract in which a party  
889 to the life settlement contract is a resident of the commonwealth.

890 Section 223F. (a) If a person is found guilty of committing a fraudulent life settlement act, that  
891 person shall also be found guilty of committing insurance fraud and shall be subject to additional  
892 penalties.

893 (b) The commissioner may levy a civil penalty, not to exceed \$10,000 for each violation, upon  
894 any person, including those persons and their employees licensed pursuant to this act, who is  
895 found to have committed a fraudulent life settlement act or violated any other provision of this  
896 act.

897 (c) The license of a person licensed under this act that has committed a fraudulent life settlement  
898 act shall be revoked for a period of at least 1 year.

899 Section 223G. A violation of this act shall be considered an unfair trade practice under sections  
900 3 and 4 of chapter 176D, and shall be subject to the penalties set forth in section 7 of said chapter  
901 176D.

902 SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical settlement  
903 provider as of the effective date of this act, shall be deemed qualified for licensure as a life  
904 settlement broker or life settlement provider, respectively, and shall be subject to all the  
905 provisions of this article as if the person were originally licensed as a life settlement broker or  
906 life settlement provider.

907 (b) A viatical settlement provider lawfully transacting business prior to the effective date of this  
908 act may continue to do so pending approval or disapproval of the application for a license as long  
909 as the application is filed with the commissioner not later than 30 days after publication by the  
910 commissioner of an application form and instructions for licensure of life settlement providers.  
911 During the time that an application is pending with the commissioner, the applicant may use any  
912 form of life settlement contract that has been filed with the commissioner pending approval  
913 thereof; provided that such form is otherwise in compliance with the provisions of this life  
914 settlement act. Any person transacting business under this provision shall be obligated to comply  
915 with all other requirements of this act.

916 (c) A person who has lawfully negotiated life settlement contracts between an owner residing in  
917 the commonwealth and 1 or more life settlement providers for at least 1 year immediately prior  
918 to the effective date of this act may continue to do so pending approval or disapproval of that  
919 person's application for a license as long as the application is filed with the commissioner not  
920 later than 30 days after publication by the commissioner of an application form and instructions  
921 for licensure of life settlement brokers. Any person transacting business under this provision  
922 shall be obligated to comply with all other requirements of this act.

923 SECTION 3. This act shall apply to all life settlement contracts entered into on or after January  
924 1, 2011 involving a life insurance policy in effect, or entered into, on or after the effective date of  
925 this act.

926 SECTION 4: Nothing in this act shall be construed to limit the incontestability standard as set  
927 forth in section 132 of chapter 175 of the Massachusetts General Laws.