

HOUSE No. 04296

House bill No. 3877, as changed by the committee on Bills in the Third Reading, and as amended and passed to be engrossed by the House. July 19, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 2010 Official Edition, and inserting in place thereof the
3 following 19 sections:

4 Section 212. As used in sections 212 to 223H inclusive, the following words shall, unless the
5 context clearly requires otherwise, have the following meanings:-

6 “Advertisement”, any written, electronic, or printed communication or any communication by
7 means of recorded telephone messages or transmitted on radio, television, the Internet, or similar
8 communications media, published, disseminated, circulated or placed before the public, directly
9 or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell,
10 assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an
11 interest in a life insurance policy pursuant to a life settlement contract.

12 “Business of life settlements”, an activity including, but not limited to, offering to enter into,
13 soliciting, negotiating, procuring, effectuating, monitoring or tracking of life settlement
14 contracts.

15 “Chronically ill”, an individual who has been certified by a licensed health care practitioner as:
16 (1) being unable to perform at least 2 activities of daily living; (2) requiring substantial
17 supervision to protect the individual from threats to health and safety due to severe cognitive
18 impairment; or (3) having a level of disability similar to that described in clause (1) as
19 determined under regulations promulgated by the United States Secretary of Health and Human
20 Services pursuant to 26 U.S.C. section 7702B(2).

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

28 “Financing transaction”, a transaction in which a licensed life settlement provider obtains
29 financing from a financing entity including, but not limited to, secured or unsecured financing, a
30 securitization transaction or a securities offering which either is registered or exempt from
31 registration under federal and state securities law.

32 “Fraudulent life settlement act”, (1) acts or omissions committed by a person who, in connection
33 with a life settlement contract, knowingly and with an intent to defraud, for the purpose of

34 depriving another of property or for pecuniary gain, commits or permits its employees or its
35 agents to engage in acts, including, but not limited to, the following:

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

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

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

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

43 (D) premiums paid on an insurance policy;

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

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

47 (G) the solicitation, offer to enter into or effectuation of, a life settlement contract or insurance
48 policy;

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

50 (I) an application for, or the existence of or any payments related to, a loan secured directly or
51 indirectly by any interest in a life insurance policy; or

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

53 (ii) Failing to disclose to the insurer, where the request for such disclosure has been asked for by
54 the insurer, that the prospective insured has undergone a life expectancy evaluation by a person
55 or entity other than the insurer or its authorized representatives in connection with the issuance
56 of the policy.

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

58 (2) acts committed by a person, or that such person permits an employee or agent to commit, in
59 the furtherance of a fraud, or to prevent the detection of fraud:

60 (i) to remove, conceal, alter, destroy or sequester from the commissioner the assets or records of
61 a licensee or other person engaged in the business of life settlements;

62 (ii) to misrepresent or conceal the financial condition of a licensee, financing entity, insurer or
63 other person;

64 (iii) to transact the business of life settlements in violation of laws requiring a license, certificate
65 of authority or other legal authority for the transaction of the business of life settlements;

66 (iv) to file with the commissioner or the chief insurance regulatory official of another jurisdiction
67 a document containing false information or otherwise concealing information about a material
68 fact from the commissioner;

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

72 (vi) to knowingly and with an intent to defraud, enter into, broker or otherwise deal in a life
73 settlement contract, the subject of which is a life insurance policy that was obtained by

74 presenting false information concerning any fact material to the policy or by concealing, for the
75 purpose of misleading another, information requested concerning any fact material to the policy,
76 where the owner or the owner's agent intended to defraud the policy's issuer;

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

79 (viii) to misrepresent the state of residence of an owner to be a state or jurisdiction that does not
80 have a law substantially similar to sections 212 to 223H, inclusive, for the purpose of evading or
81 avoiding the provisions of said sections 212 to 223H, inclusive

82 "Insured", a person covered under the policy being considered for sale in a life settlement
83 contract.

84 "Licensee", a person licensed as a life settlement provider or life settlement broker by the
85 commissioner of insurance.

86 "Life insurance producer", any person licensed as a resident or nonresident insurance producer
87 who has received qualification for a license in a line of authority for life insurance coverage
88 pursuant to sections 162H to 162X, inclusive.

89 "Life settlement broker", a person who, on behalf of an owner and for a fee, commission or other
90 consideration, offers or attempts to negotiate life settlement contracts between an owner and life
91 settlement providers. Irrespective of the manner in which the life settlement broker is
92 compensated, a life settlement broker represents only the owner and owes a fiduciary duty to the
93 owner to act according to the owner's instructions, and in the best interest of the owner.

94 “Life settlement contract”, (a)(1) a written agreement entered into between a life settlement
95 provider and an owner, establishing the terms under which compensation or anything of value
96 shall be paid, which compensation or thing of value is less than the expected death benefit of the
97 insurance policy or certificate, in return for the owner’s assignment, transfer, sale, devise or
98 bequest of the death benefit or any portion of an insurance policy or certificate of insurance for
99 compensation; provided, however, that the minimum value for a life settlement contract shall be
100 greater than a cash surrender value or accelerated death benefit available at the time of an
101 application for a life settlement contract;

102 (2) the transfer for compensation or value of ownership or beneficial interest in a trust or other
103 entity that owns such policy if the trust or other entity was formed or availed of for the principal
104 purpose of acquiring 1 or more life insurance contracts, which life insurance contract insures the
105 life of a person residing in the commonwealth; or

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

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

113 (1) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or
114 accelerated death provisions contained in the life insurance policy, whether issued with the
115 original policy or as a rider;

116 (2) a premium finance loan or a loan made by a bank or other licensed financial institution;
117 provided that neither a default on such loan nor the transfer of a policy in connection with such
118 default is pursuant to an agreement or understanding with another person for the purpose of
119 evading regulation under sections 212 to 223H, inclusive;

120 (3) a collateral assignment of a life insurance policy by an owner;

121 (4) a loan made by a lender pursuant to chapter 255C; provided, however, that such loan is not
122 described in paragraph (a)(3) and is not otherwise within the definition of life settlement
123 contract;

124 (5) an agreement where all parties: (i) are closely related to the insured by blood or law; or (ii)
125 have a lawful substantial economic interest in the continued life, health and bodily safety of the
126 person insured, or are trusts established primarily for the benefit of such parties;

127 (6) a designation, consent or agreement by an insured who is an employee of an employer in
128 connection with the purchase by the employer or trust established by the employer, of life
129 insurance on the life of the employee;

130 (7) a bona fide business succession planning arrangement: (i) between 1 or more shareholders in
131 a corporation or between a corporation and 1 or more of its shareholders or 1 or more trusts
132 established by its shareholders; (ii) between 1 or more partners in a partnership or between a
133 partnership and 1 or more of its partners or 1 or more trusts established by its partners; or (iii)
134 between 1 or more members in a limited liability company or between a limited liability
135 company and 1 or more of its members or 1 or more trusts established by its members;

136 (8) an agreement entered into by a service recipient or a trust established by the service recipient
137 and a service provider, or a trust established by the service provider that performs significant
138 services for the service recipient's trade or business; or

139 (9) any other contract, transaction or arrangement from the definition of life settlement contract
140 that the commissioner determines is not of the type intended to be regulated by sections 212 to
141 223H, inclusive.

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

147 "Life settlement provider", a person who enters into a life settlement contract with an owner. A
148 life settlement provider shall not include: (1) a bank, savings bank, savings and loan association
149 or credit union; (2) a licensed lending institution or creditor or secured party pursuant to a
150 premium finance loan agreement which takes an assignment of a life insurance policy or
151 certificate issued pursuant to a group life insurance policy as collateral for a loan; (3) the issuer
152 of a life insurance policy or rider which provides accelerated death benefits pursuant to the
153 contract or cash surrender value; (4) a natural person who enters into or effectuates not more than
154 1 agreement in a calendar year for the transfer of a life insurance policy or certificate issued
155 pursuant to a group life insurance policy for compensation or anything of value less than the
156 expected death benefit payable under the policy; (5) a financing entity; (6) a purchaser; (7) an
157 authorized or eligible insurer that provides stop loss coverage to a life settlement provider,

158 purchaser, financing entity, special purpose entity or related provider trust; (8) a related provider
159 trust; (9) a special purpose entity; (10) a life settlement broker; or (11) an accredited investor or
160 qualified institutional buyer as defined in regulation D, rule 501 or rule 144A of the federal
161 Securities Act of 1933, as amended, who purchases a life settlement policy from a life settlement
162 provider.

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

165 “Owner”, the owner of a life insurance policy or a certificate holder under a group policy who
166 enters or seeks to enter into a life settlement contract. For the purposes of this act, an owner shall
167 not be limited to an owner of a life insurance policy or a certificate holder under a group policy
168 that insures the life of an individual with a terminal illness or chronic illness or condition except
169 where specifically addressed. The term “owner” shall not include:- (1) a life settlement provider
170 or broker; (2) a qualified institutional buyer as defined in rule 144A of the federal Securities Act
171 of 1933 P.L. 73-22, 4B Stat. 74, as amended; (3) a financing entity; (4) a special purpose entity;
172 or (5) a related provider trust.

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

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

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

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

183 “Purchaser”, a person who pays compensation or consideration for a beneficial interest in a trust
184 which is vested with, or for the assignment, transfer or sale of, an ownership or other interest in a
185 life insurance policy or a certificate issued pursuant to a group life insurance policy that has been
186 the subject of a life settlement contract.

187 “Related provider trust”, a titling trust or other trust established by a licensed life settlement
188 provider or a financing entity for the sole purpose of holding the ownership or beneficial interest
189 in purchased policies in connection with a financing transaction. In order to qualify as a related
190 provider trust, the trust shall have a written agreement with a licensed life settlement provider
191 under which the licensed life settlement provider shall be responsible for ensuring compliance
192 with all statutory and regulatory requirements and under which the trust agrees to make all
193 records and files relating to life settlement transactions available to the commissioner as if those
194 records and files were maintained directly by the licensed life settlement provider.

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

197 “Special purpose entity”, a person other than a natural person formed solely to provide, either
198 directly or indirectly, access to institutional capital markets: (i) for a financing entity or life
199 settlement provider; or (ii) in connection with a transaction in which the securities in the special

200 purpose entity are acquired by the owner or by a qualified institutional buyer as defined in Rule
201 144 promulgated under the federal Securities Act of 1933, as amended, or the securities pay a
202 fixed rate of return commensurate with established asset-backed institutional capital markets.

203 “Stranger-originated life insurance”, an act, practice or arrangement to initiate the issuance of a
204 life insurance policy for the benefit of a third-party investor who, at the time of policy
205 origination, has no insurable interest in the life of the insured. Such acts, practices or
206 arrangements include, but are not limited to, cases in which life insurance is purchased with
207 resources or guarantees from or through a person, who, at the time of policy inception, could not
208 lawfully initiate the policy and where, at the time of inception, there is an arrangement or
209 agreement, whether verbal or written, to directly or indirectly transfer the ownership of the
210 policy or the policy benefits to a third party. Trusts that are created to give the appearance of
211 insurable interest and that are used to initiate policies for investors violate insurable interest laws
212 and the prohibition against wagering on life. Stranger-originated life insurance arrangements
213 shall not include lawful life settlement contracts as permitted by sections 212 to 223H, inclusive,
214 or those practices set forth in subsection (b) of the definition of life settlement contract , provided
215 that such life settlement contracts or practices are not part of a transaction otherwise prohibited
216 by sections 212 to 223H, inclusive.”

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

219 Section 214. (a) No person may act as a life settlement provider or, except as provided for in
220 clauses (b) and (c) of this section, a life settlement broker with an owner or multiple owners who
221 is a resident of the commonwealth, without first obtaining a license from the commissioner.

222 (b) The secretary of administration and finance shall determine the fee for a life settlement
223 provider license and life settlement broker license pursuant to section 3B of chapter 7 provided,
224 however, that the term and fees for a life settlement provider license shall be equal to that of a
225 foreign stock life insurance company and the term and fees of a life settlement broker license
226 shall be equal to that of an insurance producer license. Licenses may be renewed on their
227 anniversary date upon payment of a renewal fee as determined by the secretary. Failure to pay
228 the fees on or before the renewal date shall result in expiration of the license.

229 (c) A life insurance producer duly licensed as a resident insurance producer with a life line of
230 authority in the commonwealth, or in his home state, for at least 1 year and is licensed as
231 nonresident producer in the commonwealth shall be deemed to meet the licensing requirements
232 of this section and shall be permitted to operate as a life settlement broker; provided, however,
233 that not later than 30 days from the first day of operating as a life settlement broker, the life
234 insurance producer shall notify the commissioner that the producer is acting as a life settlement
235 broker, on a form prescribed by the commissioner and shall pay the prescribed fee as determined
236 by the secretary of administration pursuant to section 3B of chapter 7. Notification shall include
237 an acknowledgment by the life insurance producer that the producer shall operate as a life
238 settlement broker in accordance with this section.

239 (d) A licensed attorney, certified public accountant or financial planner accredited by a nationally
240 recognized accreditation agency, who is retained in the type of practice customarily performed in
241 their professional capacity to represent the owner and whose compensation is not paid directly or
242 indirectly by the life settlement provider or purchaser, may negotiate life settlement contracts on
243 behalf of the owner without obtaining a license as a life settlement broker.

244 (e) Upon the filing of an application for initial licensure and payment of the application fee, the
245 commissioner shall examine each applicant and may issue a license if the commissioner finds
246 that the applicant:-

247 (1) is a life settlement provider and has provided a detailed plan of operation;

248 (2) is competent, trustworthy and intends to transact its business in good faith;

249 (3) has a good business reputation and has the experience, training or education to be qualified in
250 the business for which the license is applied;

251 (4) if a legal entity, is formed or organized pursuant to the laws of the commonwealth or is a
252 foreign legal entity authorized to transact business in the commonwealth, or provides a certificate
253 of good standing from the state of its domicile; and

254 (5) if a life settlement provider, has provided to the commissioner an anti-fraud plan that meets
255 the requirements in subsection (g) of section 223D.

256 (f) An applicant for a license under this section shall provide such information as the
257 commissioner may require on forms authorized by the commissioner. The commissioner may
258 require such applicant to fully disclose the identity of its stockholders owning 10 per cent or
259 more of the shares of an applicant whose shares are publicly traded, partners, officers and
260 employees. The commissioner shall refuse to issue a license to a qualified applicant if the
261 commissioner determines that an officer, employee, stockholder or partner thereof, who may
262 materially influence the applicant's conduct, has failed to establish their individual qualifications
263 for licensure under this chapter.

264 (g) A license issued to a legal entity authorizes all members, officers and designated employees
265 to act as a licensee under the license, provided, however, that those persons were identified in the
266 initial application and any supplements to the application.

267 (h) The commissioner shall not issue a license to a nonresident applicant, unless a written
268 designation of an agent for service of process is filed and maintained with the commissioner or
269 unless the applicant has filed with the commissioner the applicant's written irrevocable consent
270 that any action against the applicant may be commenced against the applicant by service of
271 process on the commissioner.

272 (i) A life settlement provider shall not use any person to perform the functions of a life
273 settlement broker unless the person holds a current, valid life settlement broker license.

274 (j) A life settlement broker shall not use any person to perform the functions of a life settlement
275 provider unless such person holds a current, valid life settlement provider license.

276 (k) All licensees under this section shall provide to the commissioner within 30 days new or
277 revised information about officers, 10 per cent or more stockholders, partners, directors,
278 members or designated employees.

279 (l) A person licensed as a life settlement broker shall, on a biennial basis, complete 15 hours of
280 training related to the business of life settlements and life settlement transactions as required by
281 the commissioner; provided, however, that a life insurance producer who is operating as a life
282 settlement broker shall not be subject to the requirements of this subsection. Failure to meet the
283 requirements of this subsection may result in suspension or nonrenewal of license by the
284 commissioner.

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

287 (1) there was a material misrepresentation in the application for the license;

288 (2) the licensee or any officer, partner, member or director has been convicted or determined by a
289 regulator to have committed a fraudulent or dishonest practices, is subject to a final
290 administrative action or is otherwise shown to be untrustworthy or incompetent to act as a
291 licensee;

292 (3) if a life settlement provider, the licensee demonstrates a pattern of unreasonably withholding
293 payments to policy owners;

294 (4) the licensee no longer meets the requirements for initial licensure;

295 (5) the licensee or any officer, partner, member or director has been convicted of a felony or a
296 misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or had the
297 case continued without a finding with respect to a felony or a misdemeanor of which criminal
298 fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been
299 entered by the court;

300 (6) the life settlement provider has entered into a life settlement contract using a form that has
301 not been approved pursuant to this act;

302 (7) the life settlement provider has failed to honor contractual obligations set out in a life
303 settlement contract;

304 (8) the life settlement provider has assigned, transferred or pledged a settled policy to a person
305 other than a life settlement provider licensed in the commonwealth, a purchaser, an accredited

306 investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or
307 Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special purpose
308 entity or related provider trust; or

309 (9) the licensee or any officer, partner, member or key management personnel has violated any
310 of the provisions of this act.

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

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

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

325 Section 217. (a) Each life settlement provider shall file with the commissioner, on or before
326 March 1, an annual statement containing such information as the commissioner may prescribe by
327 regulation. In addition to any other requirements, the annual statement shall: (i) specify the total

328 number, aggregate face amount and life settlement proceeds of policies settled during the
329 immediately preceding calendar year, together with a breakdown of the information by policy
330 issue year for each carrier; (ii) include the names of the insurance companies whose policies
331 have been settled; and (iii) include only those transactions where the owner is a resident of the
332 commonwealth and shall not include individual transaction data regarding the business of life
333 settlements or information that there is a reasonable basis to believe could be used to identify the
334 owner or the insured.

335 (b) A life settlement provider that willfully fails to file an annual statement or willfully fails to
336 reply within 30 days to a written inquiry by the commissioner in connection therewith, shall, in
337 addition to other penalties prescribed by law, be subject, upon due notice and opportunity to be
338 heard, to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for
339 each such failure.

340 Section 218. (a) Except as otherwise allowed or required by law, a life settlement provider, life
341 settlement broker, insurance company, life insurance producer, information bureau, rating
342 agency or company, or any other person with actual knowledge of an insured's identity, shall not
343 disclose the identity of an insured or information that there is a reasonable basis to believe could
344 be used to identify the insured or the insured's financial or medical information to any other
345 person unless the disclosure is:

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

348 (2) necessary to effectuate the sale of a life settlement contract, or interests therein, as
349 investments; provided the sale is conducted in accordance with applicable state and federal

350 securities law; and provided further that the owner and the insured have both provided prior
351 written consent to the disclosure;

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

354 (4) a term or condition to the transfer of a policy by 1 life settlement provider to another life
355 settlement provider;

356 (5) necessary to allow the life settlement provider or life settlement broker, or an authorized
357 representative to make contacts for the purpose of determining health status. For the purposes of
358 this section, the term "authorized representative" shall not include any person who has or may
359 have any financial interest in the life settlement contract other than a licensed life settlement
360 provider, licensed life settlement broker, financing entity, related provider trust or special
361 purpose entity; provided further that a life settlement provider or life settlement broker shall
362 require its authorized representative to agree in writing to adhere to the privacy provisions of this
363 act; or

364 (6) required to purchase stop loss coverage.

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

369 Section 219. (a) The commissioner may, when the commissioner deems it reasonably necessary
370 to protect the interests of the public, examine the business and affairs of any licensee or applicant

371 for a license. The commissioner may order a licensee or applicant to produce records, books,
372 files or other information reasonably necessary to ascertain whether such licensee or applicant is
373 acting or has acted in violation of the law or otherwise contrary to the interests of the public. The
374 expenses incurred in conducting an examination shall be paid by the licensee or applicant.

375 (b) For a foreign or alien licensee, the commissioner may accept an examination report on the
376 licensee as prepared by the appropriate licensing authority for the licensee's state of domicile or
377 port-of-entry state.

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

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

388 (e) (1) In conducting an examination, the commissioner shall use methods common to the
389 examination of licensees including guidelines and procedures for examinations as adopted by the
390 National Association of Insurance Commissioners.

391 (2) Every licensee or person from whom information is sought, its officers, directors and agents
392 shall provide to the commissioner timely, convenient and free access at its offices to all books,

393 records, accounts, papers, documents, assets and computer or other recordings relating to the
394 property, assets, business and affairs of the licensee being examined. The officers, directors,
395 employees and agents of the licensee or person shall facilitate the examination and aid in the
396 examination so far as it is in their power to do so. The refusal of a licensee, by its officers,
397 directors, employees or agents, to submit to examination or to comply with any reasonable
398 written request of the commissioner shall be grounds for suspension, refusal or nonrenewal of a
399 license or authority held by the licensee to engage in the life settlement business or other
400 business subject to the commissioner's jurisdiction.

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

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

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

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

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

422 (2) No later than 60 days following completion of the examination, the commissioner shall
423 transmit a report of the examination to the licensee examined, together with a notice that shall
424 afford the licensee examined a reasonable opportunity of not more than 30 days to make a
425 written submission or rebuttal with respect to any matters contained in the examination report,
426 which shall become part of the report, or to request a hearing on any matter in dispute.

427 (g) Except as otherwise provided, all examination reports, working papers, recorded information,
428 documents and copies thereof produced by, obtained by or disclosed to the commissioner or any
429 other person in the course of an examination, or in the course of analysis or investigation by the
430 commissioner of the financial condition or market conduct of a licensee shall be confidential by
431 law and privileged, shall not be subject to chapter 66 and clause Twenty-sixth of section 7 of
432 chapter 4, shall not be subject to subpoena and shall not be subject to discovery or admissible in
433 evidence in any private civil action. The commissioner is authorized to use the documents,
434 materials or other information in the furtherance of any regulatory or legal action brought as part

435 of the commissioner's official duties. The licensee being examined may have access to all
436 documents used to make the report.

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

442 (2) Notwithstanding the requirements of this subsection, the commissioner may retain from time
443 to time, on an individual basis, qualified actuaries, certified public accountants or other similar
444 individuals who are independently practicing their professions, even though these persons may
445 from time to time be similarly employed or retained by persons subject to examination under
446 sections 212 to 223H, inclusive.

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

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

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

463 (j) The charge for each such examination shall be determined annually by the secretary of
464 administration and finance under the provision of section 3B of chapter 7 and shall be paid by
465 each licensee within 30 days after notice from the commissioner of such charge. Such charge
466 shall include an amount equal to the cost of fringe benefits as established by the secretary of
467 administration and finance pursuant to section 6B of chapter 29. If in the course of an
468 examination of a domestic or foreign licensee that maintains a branch office outside the
469 commonwealth, it becomes necessary or expedient for the commissioner or any deputies or
470 examiners to travel outside the commonwealth, such licensee shall pay the proper expenses of
471 the commissioner or any deputies or examiners incurred. Whenever the commissioner deems it
472 advisable, the commissioner shall cause a complete audit of the books of the licensee to be made
473 by a disinterested expert accountant, and such licensee shall pay the proper expenses of such
474 audit.

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

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

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

481 (1) directly or indirectly market, advertise or solicit the purchase of a new policy for the purpose

482 of or with a significant emphasis on settling the policy; or

483 (2) use the words “free” or “no cost” or words of similar import in the marketing, advertising,

484 soliciting or otherwise promoting of the purchase of a policy.

485 (3) with respect to a life settlement provider, enter into a life settlement contract unless the

486 related advertisements, as may be prescribed by regulation, have been filed with the

487 commissioner;

488 (d) Prior to publication, the commissioner may require the submission of advertising material.

489 (e) The commissioner shall require delivery of a buyer’s guide or a similar consumer advisory

490 package in the form prescribed by the commissioner to owners during the solicitation process.

491 Section 221. (a) No later than the date of application for a life settlement contract, a life

492 settlement provider shall provide to the owner in writing, in a separate document signed by the

493 owner, the following information:

494 (1) that possible alternatives to life settlement contracts exist, including, but not limited to,

495 accelerated benefits offered by the issuer of the life insurance policy;

496 (2) that some or all of the proceeds of a life settlement contract may be taxable and that

497 assistance should be sought from a professional tax advisor;

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

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

502 (5) that the owner has a right to terminate a life settlement contract within 15 days of the date it
503 is executed by all parties; that the owner has received the disclosures required by this section;
504 and that the following statement regarding rescission is included: "Rescission, if exercised by the
505 owner, is effective only if both notice of the rescission is given, and the owner repays all
506 proceeds and any premiums, loans, and loan interest paid on account of the life settlement
507 provider within the rescission period. If the insured dies during the rescission period, the life
508 settlement contract shall be deemed to have been rescinded subject to repayment by the owner or
509 the owner's estate of all proceeds and any premiums, loans, and loan interest to the life
510 settlement provider";

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

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

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

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

522 (10) that the commissioner shall require delivery of a buyer's guide or a similar consumer
523 advisory package in the form prescribed by the commissioner to owners during the solicitation
524 process;

525 (11) the following statement: "All medical, financial or personal information solicited or
526 obtained by a life settlement provider or life settlement broker about an insured, including the
527 insured's identity or the identity of family members, a spouse or a significant other, may be
528 disclosed as necessary to effect the life settlement contract between the owner and life settlement
529 provider. If you are asked to provide this information, you will be asked to consent to the
530 disclosure. The information may be provided to someone who buys the policy or provides funds
531 for the purchase. You may be asked to renew your permission to share information every 2
532 years.";

533 (12) that the commissioner shall require life settlement providers and life settlement brokers to
534 print separate signed fraud warnings on their applications and on their life settlement contracts is
535 as follows: "Any person who knowingly presents false information in a life settlement
536 application or contract may be found guilty of a crime and may be subject to fines and
537 confinement in prison."

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

543 (14) the affiliation, if any, between the life settlement provider and the issuer of the insurance
544 policy to be settled;

545 (15) that a life settlement broker represents exclusively the owner and not the insurer, the life
546 settlement provider or any other person, and owes a fiduciary duty to the owner, including a duty
547 to act according to the owner's instructions and in the best interest of the owner;

548 (16) the name, address and telephone number of the provider;

549 (17) the name, business address and telephone number of the independent third party escrow
550 agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust
551 agreements or documents; and

552 (18) that a change of ownership may, in the future, limit the insured's ability to purchase future
553 insurance on the insured's life because there is a limit to how much coverage insurers will issue
554 on 1 life.

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

558 (b) A life settlement broker shall provide the owner and the life settlement provider with the
559 following disclosures no later than the date the life settlement contract is signed by all parties.

560 The disclosures shall be conspicuously displayed in the life settlement contract or in a separate
561 document signed by the owner and provide the following information:

562 (1) the name, business address and telephone number of the life settlement broker;

563 (2) a complete and accurate description of all the offers, counter-offers, acceptances and
564 rejections relating to the proposed life settlement contract;

565 (3) any affiliations or contractual arrangements between the life settlement broker and any
566 person making an offer in connection with the proposed life settlement contracts;

567 (4) the name of each life settlement broker involved in the life settlement agreement who
568 receives compensation and the amount of compensation received by that broker, which
569 compensation includes anything of value paid or given to the life settlement broker in connection
570 with the life settlement contract;

571 (5) a complete reconciliation of the gross offer or bid by the life settlement provider to the net
572 amount of proceeds or value to be received by the owner. For the purpose of this section, gross
573 offer or bid shall mean the total amount or value offered by the life settlement provider for the
574 purchase of 1 or more life insurance policies, inclusive of commissions and fees; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

610 (1) if the owner is the insured, a written statement from a licensed attending physician that the
611 owner is of sound mind; and

612 (2) a document in which the insured consents to the release of his medical records to a life
613 settlement provider, life settlement broker or insurance producer and, if the policy was issued
614 less than 2 years from the date of application for a life settlement contract, to the insurance
615 company that issued the policy.

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

620 (b) The insurer shall respond to a request for verification of coverage submitted by a life
621 settlement provider, life settlement broker or life insurance producer not later than 30 calendar
622 days of the date the request is received. The request for verification of coverage shall be made on
623 a form approved by the commissioner. The insurer shall complete and issue the verification of

624 coverage or indicate in which respects it is unable to respond. In its response, the insurer shall
625 indicate whether, based on the medical evidence and documents provided, the insurer intends to
626 pursue an investigation regarding the validity of the insurance contract.

627 (c) Prior to or at the time of execution of the life settlement contract, the life settlement provider
628 shall obtain a witnessed document in which the owner: (1) consents to the life settlement
629 contract, (2) represents that the owner has a full and complete understanding of the life
630 settlement contract, (3) represents that the owner has a full and complete understanding of the
631 benefits of the policy, (4) acknowledges that the owner is entering into the life settlement
632 contract freely and voluntarily, and (5) for persons with a terminal or chronic illness or
633 condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or
634 chronic illness or condition was diagnosed after the policy was issued.

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

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

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

643 (g) All medical information solicited or obtained by a licensee shall be subject to any applicable
644 provisions of this act and state law relating to confidentiality of medical information, if not
645 otherwise provided in sections 212 to 223H, inclusive.

646 (h) All life settlement contracts shall provide that the owner may rescind the life settlement
647 contract on or before 15 days after the date it is executed by all parties. Rescission, if exercised
648 by the owner, shall be effective only if: (1) notice of the rescission is given, and (2) the owner
649 repays all proceeds and any premiums, loans and loan interest paid on account of the life
650 settlement provider within the rescission period. If the insured dies during the rescission period,
651 the life settlement contract shall be deemed to have been rescinded subject to repayment by the
652 owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life
653 settlement provider.

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

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

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

665 (k) Any fee paid by a life settlement provider, party, individual or from an owner to a life
666 settlement broker in exchange for services provided to the owner pertaining to a life settlement
667 contract shall be computed as a percentage of the offer obtained, not the face value of the policy.

668 Nothing in this section shall be construed as prohibiting a life settlement broker from reducing
669 such life settlement broker's fee below this percentage if the broker so chooses.

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

674 (m)(1) This prohibition shall not apply if:

675 (i) the owner certifies to the provider that the policy was issued upon the owner's exercise of
676 conversion rights arising out of a group or individual policy; provided that the total of the time
677 covered under the conversion policy plus the time covered under the prior policy is at least 24
678 months; provided, further that the time covered under a group policy shall be calculated without
679 regard to a change in insurance carriers, if the coverage has been continuous and under the same
680 group sponsorship; or

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

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

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

687 (C) the owner's spouse dies;

688 (D) the owner divorces their spouse;

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

690 (F) the owner becomes physically or mentally disabled and a physician determines that the

691 disability prevents the owner from maintaining full-time employment; or

692 (G) a final order, judgment or decree is entered by a court of competent jurisdiction on the

693 application of a creditor of the owner adjudicating the owner bankrupt or insolvent, or approving

694 a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all

695 or a substantial part of the owner's assets;

696 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the insurer

697 when the life settlement provider submits a request to the insurer for verification of coverage.

698 The copies shall be accompanied by a letter of attestation from the life settlement provider that

699 the copies are true and correct copies of the documents received by the life settlement provider.

700 Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of

701 any policy.

702 (3) If the life settlement provider submits to the insurer a copy of independent evidence provided

703 for in subclause (A) of clause (ii) when the life settlement provider submits a request to the

704 insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed to

705 establish that the life settlement contract satisfies the requirements of this section.

706 Section 223A. (a) (1) If there is more than 1 owner on a single policy, and the owners are

707 residents of different states, the life settlement contract shall be governed by the law of the state

708 in which the owner having the largest percentage ownership resides or, if the owners hold equal

709 ownership, the state of residence of 1 owner agreed upon in writing by all of the owners. The law

710 of the state of the insured shall govern in the event that equal owners fail to agree in writing upon
711 a state of residence for jurisdictional purposes.

712 (b) A life settlement provider from the commonwealth who enters into a life settlement contract
713 with an owner who is a resident of another state that has enacted statutes or adopted regulations
714 governing life settlement contracts, shall be governed in the effectuation of that life settlement
715 contract by the statutes and regulations of the owner's state of residence. If the state in which the
716 owner is a resident has not enacted statutes or regulations governing life settlement contracts, the
717 life settlement provider shall give the owner notice that neither state regulates the transaction
718 upon which he is entering. For transactions in those states, however, the life settlement provider
719 is to maintain all records required if the transactions were executed in the owner's state of
720 residence. The forms used in those states need not be approved by the commissioner.

721 (c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual
722 transaction, the laws of the state that apply to the owner shall take precedence and the provider
723 shall comply with those laws.

724 Section 223B. A person shall not commit a fraudulent life settlement act.

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

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

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

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

733 (4) issue, solicit or market the purchase of a new policy for the purpose of or with a significant
734 emphasis on settling the policy;

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

741 (6) with respect to any life settlement contract or insurance policy and a life settlement broker,
742 knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any
743 life settlement provider, financing entity or related provider trust that is controlling, controlled by
744 or under common control with such life settlement broker unless such relationship is disclosed to
745 the owner;

746 (7) with respect to a life settlement contract or insurance policy and a life settlement provider,
747 knowingly enter into a life settlement contract with an owner if, in connection with the life
748 settlement contract, anything of value will be paid to a life settlement broker that is controlling,
749 controlled by or under common control with the life settlement provider, the financing entity or a
750 related provider trust that is involved in the life settlement contract unless the relationship is
751 disclosed to the owner;

752 (8) create a trust that gives the appearance of insurable interest and is used to initiate policies for
753 investors;

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

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

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

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

763 Section 223D. (a) (1) A person shall not knowingly and intentionally interfere with the
764 enforcement or investigations of suspected or actual violations of sections 212 to 223H.

765 (2) A person in the business of life settlements shall not knowingly or intentionally permit any
766 person convicted of a felony involving dishonesty or breach of trust to participate in the business
767 of life settlements.

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

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

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

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

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

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

783 (i) the commissioner or the commissioner's employees, agents or representatives;

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

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

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

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

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

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

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

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

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

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

811 (i) in administrative or judicial proceedings to enforce laws administered by the commissioner;

812 (ii) to federal, state or local law enforcement or regulatory agencies or to an organization
813 established for the purpose of detecting and preventing fraudulent life settlement acts; or
814 (iii) at the discretion of the commissioner, to a person in the business of life settlements that is
815 aggrieved by a fraudulent life settlement act.

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

818 (f) Sections 212 to 223H shall not:

819 (1) preempt the authority or relieve the duty of law enforcement or regulatory agencies to
820 investigate, examine and prosecute suspected violations of law;

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

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

824 (4) limit the powers granted elsewhere by the laws of this state to the commissioner or an
825 insurance fraud unit to investigate and examine possible violations of law and to take appropriate
826 action against wrongdoers.

827 (g) (1) Life settlement providers and life settlement brokers shall have in place antifraud
828 initiatives to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the
829 commissioner, the commissioner may order, or a licensee may request and the commissioner
830 may grant, such modifications of the following required initiatives as necessary to ensure an
831 effective antifraud program. The modifications may be more or less restrictive than the required

832 initiatives so long as the modifications may reasonably be expected to accomplish the purpose of
833 this section. Antifraud initiatives shall include:

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

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

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

841 (B) a description of the procedures for reporting possible fraudulent life settlement acts to the
842 commissioner;

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

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

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

851 Section 223E. (a) If a person violates sections 212 to 223H or any rule or regulation promulgated
852 thereunder, the commissioner may seek an injunction in a court of competent jurisdiction in the

853 county where the person resides or has a principal place of business and may apply for temporary
854 and permanent orders that the commissioner determines necessary to restrain the person from
855 further committing the violation.

856 (b) A person damaged by the acts of another person in violation of sections 212 to 223H or any
857 rule or regulation promulgated thereunder may bring a civil action for damages against the
858 person committing the violation in a court of competent jurisdiction.

859 (c) The commissioner may issue a cease and desist order, in accordance with chapter 30A, upon
860 a person who violates any provision of sections 212 to 223H, any regulation, rule or order
861 adopted by the commissioner or any written agreement entered into with the commissioner.

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

871 (e) The provisions of sections 212 to 223H shall not be waived by any agreement. A choice of
872 law provision shall not be utilized to prevent the application of these sections to a life settlement
873 contract in which a party to the life settlement contract is a resident of the commonwealth.

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

877 (b) The commissioner may levy a civil penalty, not to exceed \$10,000 for each violation, upon
878 any person, including those persons and their employees licensed pursuant to sections 212 to
879 223H, who is found to have committed a fraudulent life settlement act or violated any other
880 provision of this act.

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

883 Section 223G. A violation of sections 212 to 223H shall be considered an unfair trade practice
884 under sections 3 and 4 of chapter 176D, and shall be subject to the penalties set forth in section 7
885 of said chapter 176D.

886 Section 223H. The commissioner may promulgate regulations to implement the provisions of
887 sections 212 to 223G.

888 SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical settlement
889 provider as of the effective date of this act, shall be deemed qualified for licensure as a life
890 settlement broker or life settlement provider, respectively, and shall be subject to all the
891 provisions of this article as if the person were originally licensed as a life settlement broker or
892 life settlement provider.

893 (b) A viatical settlement provider lawfully transacting business prior to the effective date of this
894 act may continue to do so pending approval or disapproval of the application for a license as long

895 as the application is filed with the commissioner not later than 30 days after publication by the
896 commissioner of an application form and instructions for licensure of life settlement providers.
897 During the time that an application is pending with the commissioner, the applicant may use any
898 form of life settlement contract that has been filed with the commissioner pending approval
899 thereof; provided that such form is otherwise in compliance with the provisions of this life
900 settlement act. Any person transacting business under this provision shall be obligated to comply
901 with all other requirements of this act.

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

909 SECTION 3. This act shall apply to all life settlement contracts entered into on or after January
910 1, 2013, involving a life insurance policy in effect, or entered into, on or after the effective date
911 of this act.

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