



Ohio Revised Code

Section 3916.01 Viatical settlements model act definitions.

Effective: September 11, 2008

Legislation: House Bill 404 - 127th General Assembly

As used in this chapter:

(A) "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including, but not limited to, film strips, motion pictures, and videos, that is published, disseminated, circulated, or placed directly or indirectly before the public in this state for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy pursuant to a viatical settlement contract.

(B) "Business of viatical settlements" means an activity involved, but not limited to, in the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any other manner acquiring an interest in a policy by means of viatical settlement contracts.

(C) "Chronically ill" means having been certified within the preceding twelve-month period by a licensed health professional as:

(1) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing, or continence for at least ninety days due to a loss of functional capacity; or

(2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(3) Having a level of disability similar to that described in division (C)(1) of this section, as determined under regulations prescribed by the United States secretary of the treasury in consultation with the United States secretary of health and human services.



(D) "Escrow agent" means an independent third-party person who, pursuant to a written agreement signed by the viatical settlement provider and viator, provides escrow services related to the acquisition of a policy pursuant to a viatical settlement contract. "Escrow agent" does not include any person associated with, affiliated with, or under the control of a person licensed under this chapter or described in division (C) of section 3916.02 of the Revised Code.

(E)(1) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any other person that has a direct ownership interest in a policy that is the subject of a viatical settlement contract and to which both of the following apply:

(a) Its principal activity related to the transaction is providing funds to effect the business of viatical settlements or the purchase of one or more viaticated policies.

(b) It has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

(2) "Financing entity" does not include a non-accredited investor or viatical settlement purchaser.

(F) "Recklessly" has the same meaning as in section 2901.22 of the Revised Code.

(G) "Defraud" has the same meaning as in section 2913.01 of the Revised Code.

(H) "Life expectancy" means an opinion or evaluation as to how long a particular person is going to live.

(I) Notwithstanding section 1.59 of the Revised Code, "person" means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, limited liability partnership, association, trust, business trust, or corporation.

(J) "Policy" means an individual or group policy, group certificate, or other contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this



state, regardless of whether delivered or issued for delivery in this state.

(K) "Related provider trust" means a titling trust or any other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding ownership or beneficial interest in purchased policies in connection with a financing transaction, provided that the trust has a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the superintendent of insurance as if those records and files were maintained directly by the licensed viatical settlement provider.

(L) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely for one of the following purposes:

(i) To provide access, either directly or indirectly, to institutional capital markets for a financing entity or licensed viatical settlement provider;

(ii) In connection with a transaction in which the securities in the special purpose entity are acquired by qualified institutional buyers.

(M) "Terminally ill" means certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in twenty-four months or less.

(N) "Viatical settlement broker" means a person that, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers or viatical settlement brokers.

"Viatical settlement broker" does not include an attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

(O)(1) "Viatical settlement contract" means any of the following:



(a) A written agreement between a viator and a viatical settlement provider that establishes the terms under which compensation or anything of value, that is less than the expected death benefit of the policy is or will be paid in return for the viator's present or future assignment, transfer, sale, release, devise, or bequest of the death benefit or ownership of any portion of the policy or any beneficial interest in the policy or its ownership;

(b) The transfer or acquisition for compensation or anything of value for ownership or beneficial interest in a trust or an interest in another person that owns such a policy if the trust or other person was formed or availed of for the principal purpose of acquiring one or more life insurance policies;

(c) A premium finance loan made for a policy by a lender to a viator on, before, or after the date of issuance of the policy in either of the following situations:

(i) The viator or the insured receives a guarantee of the viatical settlement value of the policy.

(ii) The viator or the insured agrees on, before, or after the issuance of the policy to sell the policy or any portion of the policy's death benefit.

(2) "Viatical settlement contracts" include but are not limited to contracts that are commonly termed "life settlement contracts" and "senior settlement contracts."

(3) "Viatical settlement contract" does not include any of the following unless part of a plan, scheme, device, or artifice to avoid the application of this chapter:

(a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms whether issued with the original policy or a rider;

(b) Loan proceeds that are used solely to pay premiums for the policy and the costs of the loan including interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;



- (c) A loan made by a regulated financial institution in which the lender takes an interest in a policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;
- (d) A premium finance loan made by a lender that does not violate sections 1321.71 to 1321.83 of the Revised Code, if the premium finance loan is not described in division (O)(1)(c) of this section;
- (e) An agreement where all parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are persons or trusts established primarily for the benefit of such parties;
- (f) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee as described in section 3911.091 of the Revised Code;
- (g) Any business succession planning arrangement including, but not limited to all of the following if the arrangements are bona fide arrangements:
- (i) An arrangement between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more persons or trusts established by its shareholders;
- (ii) An arrangement between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners;
- (iii) An arrangement between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.
- (h) An agreement entered into by a service recipient, a trust established by the service recipient and a service provider, or a trust established by the service provider who performs significant services for the service recipient's trade or business;



- (i) An arrangement or agreement with a special purpose entity;

 - (j) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by rule adopted by the superintendent based on the superintendent's determination that the contract, transaction, or arrangement is not of the type regulated by this chapter.
- (P)(1) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract.
- (2) "Viatical settlement provider" does not include any of the following:
- (a) A bank, savings bank, savings and loan association, credit union, or other regulated financial institution that takes an assignment of a policy solely as a collateral for a loan;

 - (b) A premium finance company exempted under section 1321.72 of the Revised Code from the licensure requirements of section 3921.73 of the Revised Code that takes an assignment of a policy solely as collateral for a premium finance loan;

 - (c) The issuer of a policy;

 - (d) An individual who enters into or effectuates not more than one viatical settlement contract in any calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

 - (e) An authorized or eligible insurer that provides stop loss coverage or financial guarantee insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

 - (f) A financing entity;

 - (g) A special purpose entity;



(h) A related provider trust;

(i) A viatical settlement purchaser;

(j) Any other person the superintendent determines is not consistent with the definition of viatical settlement provider.

(Q) "Viaticated policy" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(R) "Viator" means the owner of a policy or a certificate holder under a group policy that has not previously been viaticated who, in return for compensation or anything of value that is less than the expected death benefit of the policy or certificate, assigns, transfers, sells, releases, devises, or bequests the death benefit or ownership of any portion of the policy or certificate of insurance. For the purposes of this chapter, a "viator" is not limited to an owner of a policy or a certificate holder under a group policy insuring the life of an individual who is terminally or chronically ill except where specifically addressed. "Viator" does not include any of the following:

(1) A licensee under this chapter;

(2) A qualified institutional buyer;

(3) A financing entity;

(4) A special purpose entity;

(5) A related provider trust.

(S) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a policy or an interest in the death benefits of a policy from a viatical settlement provider that is the subject of a viatical settlement contract, or a person who owns, acquires, or is entitled to a beneficial interest in a trust or person that owns a viatical settlement contract or is the beneficiary



of a policy that is the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include any of the following:

(1) A licensee under this chapter;

(2) A qualified institutional buyer;

(3) A financing entity;

(4) A special purpose entity;

(5) A related provider trust.

(T) "Qualified institutional buyer" has the same meaning as in 17 C.F.R. 230.144A as that regulation exists on the effective date of this amendment.

(U) "Licensee" means a person licensed as a viatical settlement provider or viatical settlement broker under this chapter.

(V) "NAIC" means the national association of insurance commissioners.

(X) "Regulated financial institution" means a bank, a savings association, or credit union operating under authority granted by the superintendent of financial institutions, the regulatory authority of any other state of the United States, the office of thrift supervision, the national credit union administration, or the office of the comptroller of the currency.

(W)(1) "Stranger-originated life insurance," or "STOLI," means a practice, arrangement, or agreement initiated at or prior to the issuance of a policy that includes both of the following:

(a) The purchase or acquisition of a policy primarily benefiting one or more persons who, at the time of issuance of the policy, lack insurable interest in the person insured under the policy;

(b) The transfer at any time of the legal or beneficial ownership of the policy or benefits of the



policy or both, in whole or in part, including through an assumption or forgiveness of a loan to fund premiums.

(2) "Stranger-originated life insurance" also includes trusts or other persons that are created to give the appearance of insurable interest and are used to initiate one or more policies for investors but violate insurable interest laws and the prohibition against wagering on life.

(3) "Stranger-originated life insurance" does not include viatical settlement transactions specifically described in division (O)(3) of this section.