

WEST VIRGINIA CODE: §33-13C-11

§33-13C-11. Prohibited practices.

(a) It is a violation of this article for any person to enter into a viatical settlement contract at any time prior to the application for or issuance of a policy that is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period after issuance of the policy or certificate:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty (60) months. The time covered under a group policy shall be computed without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator certifies and submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within that five-year period:

(A) The viator or insured is terminally or chronically ill;

(B) The viator's spouse dies;

(C) The viator divorces his or her spouse;

(D) The viator retires from full-time employment;

(E) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or

(F) A court of competent jurisdiction enters a final order, judgment or decree on the application of a creditor of the viator and adjudicates the viator bankrupt or insolvent or approves a petition seeking reorganization of the viator or appoints a receiver, trustee or liquidator to all or a substantial part of the viator's assets; or

(3) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, at all times during that two-year period, all of the following conditions are true with respect to the policy;

(A) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured on a person described in subparagraph (iv), paragraph (C), subdivision (13), section two of this article;

(B) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and

(C) Neither the insured nor the policy has been evaluated for settlement.

(b) Copies of the independent evidence described in subdivision (2), subsection (a) of this section and documents required by subsection (a), section ten of this article shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(c) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by subdivision (2), subsection (a) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

(d) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

(e) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the request change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.