

WEST VIRGINIA CODE: §33-13C-2

§33-13C-2. Definitions.

As used in this article:

(1) "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 film strips, motion pictures and videos, 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 sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

(2) "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.

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

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

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

(C) Having a level of disability similar to that described in paragraph (A) of this subdivision 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.

(4) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. "Financing entity" does not include a nonaccredited investor or a viatical settlement purchaser.

(5) "Fraudulent viatical settlement act" includes:

(A) Acts or omissions committed by any person who knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:

(i) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

(I) An application for the issuance of a viatical settlement contract or insurance policy;

(II) The underwriting of a viatical settlement contract or insurance policy;

(III) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(IV) Premiums paid on an insurance policy;

(V) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

(VI) The reinstatement or conversion of an insurance policy;

(VII) In the solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;

(VIII) The issuance of written evidence of viatical settlement contract or insurance; or

(IX) A financing transaction; and

(ii) Employing any plan, financial structure, device, scheme or artifice to defraud related to viaticated policies;

(B) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(i) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(iii) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or

(iv) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;

(C) Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlements or insurance;

(D) Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator;

(E) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this article for the express purposes of evading or avoiding the provisions of this article;

(F) Issuing, soliciting, marketing or otherwise promoting stranger-originated life insurance; or

(G) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

(6) "Life insurance producer" means any person licensed in accordance with the provisions of article twelve of this chapter as a resident or nonresident insurance producer who has received qualification or authority for a license in the life insurance coverage line of authority.

(7) "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust or corporation.

(8) "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(9) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have 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

commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(10) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access, either directly or indirectly, to institutional capital markets for a financing entity or licensed viatical settlement provider or in connection with a transaction in which the securities in the special purpose entity are acquired by qualified institutional buyers.

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

(12) "Viatical settlement broker" means a person who, working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser, provided that the viatical settlement activities are incidental to the professional practice of the attorney, certified public accountant or financial planner.

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

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

(B) A premium finance loan made for a life insurance 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 a future viatical settlement value of the policy; or

(ii) The viator or the insured agrees to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(C) The transfer or acquisition for compensation or anything of value for ownership or

beneficial interest in a trust or other 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.

(D) "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 article:

(i) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(ii) 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;

(iii) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance 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 the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this article;

(iv) An agreement where all the 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 trusts established primarily for the benefit of such parties;

(v) 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;

(vi) Any of the following business succession planning arrangements if those 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 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; or

(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;

(vii) An agreement entered into by a service recipient, or 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; or

(viii) Any other contract, transaction or arrangement exempted from the definition of a viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this article.

(14) (A) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.

(B) "Viatical settlement provider" does not include:

(i) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) The issuer of the life insurance policy;

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

(iv) An individual who enters into or effectuates no more than one viatical settlement contract in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(v) A financing entity;

(vi) A special purpose entity;

(vii) A related provider trust;

(viii) A viatical settlement purchaser; or

(ix) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

(15)(A) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(B) "Viatical settlement purchaser" does not include:

(i) A licensee under this article;

(ii) An accredited investor or qualified institution buyer as defined in, respectively, Rule

501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(16) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(17)(A) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of this article, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(B) "Viator" does not include:

(i) A licensee under this article, including a life insurance producer acting as a viatical settlement broker pursuant to this article;

(ii) Qualified institution buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(18) "Stranger-originated life insurance" or "STOLI" means a plan or agreement that provides for both of the following at the time of the origination of a life insurance policy.

(A) The purchase of a life insurance policy by an applicant primarily for the benefit of a third-party investor that lacks insurable interest in the insured person; and

(B) The subsequent accrual, directly or indirectly, to that third-party investor of the legal or beneficial ownership of the policy or the benefits of the policy.