

# WEST VIRGINIA CODE: §33-13C-8

## **§33-13C-8. Disclosure to viator.**

(a) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

- (1) That there are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
- (2) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.
- (3) That some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
- (4) That proceeds of the viatical settlement could be subject to the claims of creditors.
- (5) That receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- (6) The viator has the right to rescind a viatical settlement contract by providing notice of rescission and repaying all viatical settlement proceeds paid to the viator pursuant to the escrow agreement by the earlier of sixty calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been paid to the viator, as provided in subsection (e), section ten of this article. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds to the viatical settlement provider within sixty days of the insured's death.
- (7) That funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- (8) That entering into a viatical settlement contract may cause other rights or benefits,

including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.

(9) Disclosure to a viator shall include distribution of a brochure prescribed by the commissioner describing the process of viatical settlements.

(10) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(11) That following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number or as otherwise provided in this article. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and not more than once per month if the insured has a life expectancy of one year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

(b) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(2) The document shall include the name, business address and telephone number of the viatical settlement provider;

(3) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

(4) If an insurance policy to be viaticated has been issued as a point policy or involved family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

(5) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

(6) State whether the funds will be escrowed with an independent third party during the transfer process and, if so, provide the name, business address and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) The name, business address and telephone number of the viatical settlement broker;

(2) A full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract;

(3) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;

(4) The amount and method of calculating the broker's compensation, which term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and

(5) Where any portion of the viatical settlement broker's compensation, as defined in subdivision (4) of this subsection, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

(d) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.