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2
3 Chairman Vincent C. Gray
4 at the request of the Mayor
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8 A BILL
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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14 Chairman Vincent C. Gray, at the request of the Mayor, introduced the following bill, which was
15 referred to the Committee on _____.
16

17 To establish An Act to regulate persons and entities, other than the owners of life insurance
18 policies or certificates, that offer, solicit, negotiate, procure or effectuate viatical
19 settlement contracts for a fee, commission or other valuable consideration either for
20 themselves or on behalf of owners of life insurance policies or certificates.
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22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
23 act may be cited as the “Viatical Settlements Licensing Act of 2007”.

24 Sec. 2. Definitions.

25 For the purposes of this act, the term:

26 (1)(a) “Advertising” means any written, electronic, or printed communication or
27 any communication by means of recorded telephone messages or transmitted on radio, television,
28 the Internet, or similar communications media, including film strips, motion pictures, and videos,
29 published, disseminated, circulated, or placed directly before the public, in the District, for the
30 purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer
31 the death benefit or ownership of a policy pursuant to a viatical settlement contract.

32 (b) “Advertising” does not include materials of an educational nature,
33 which do not name or identify any person engaged in the business of viatical settlements.

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

5 (3) “Chronically ill” means:

6 (a) Being unable to perform at least two (2) activities of daily living (i.e., eating,
7 toileting, transferring, bathing, dressing, or continence);

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

10 (c) Having a level of disability similar to that described in paragraph (a) as
11 determined by the Secretary of the United States Department of Health and Human Services;

12 (4) “Commissioner” means the Commissioner of the Department of Insurance,
13 Securities, and Banking..

14 (5)(a) “Financing entity” means an underwriter, placement agent, lender, purchaser of
15 securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer,
16 or any entity that has a direct ownership in a policy that is the subject of a viatical settlement
17 contract, but:

18 (i) Whose principal activity related to the transaction is providing funds to
19 effect the viatical settlement, or purchase of one or more viaticated policies, or to provide credit
20 enhancement; and

1 (ii) Who has an agreement in writing with one or more licensed viatical
2 settlement providers to finance the acquisition of viatical settlement contracts or to provide stop
3 loss insurance.

4 (b) "Financing entity" does not include a non-accredited investor.

5 (6) "Fraudulent viatical settlement act" includes:

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

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

14 (A) An application for the issuance of a viatical settlement
15 contract or policy;

16 (B) The underwriting of a viatical settlement contract or policy;

17 (C) A claim for payment or benefit pursuant to a viatical
18 settlement contract or policy;

19 (D) Premiums paid on a policy;

20 (E) Payments and changes in ownership or beneficiary made in
21 accordance with the terms of a viatical settlement contract, or policy;

22 (F) The reinstatement or conversion of a policy;

1 (G) In the solicitation, offer, effectuation, or sale of a viatical
2 settlement contract, policy;

3 (H) The issuance of written evidence of viatical settlement
4 contract, or a policy; or

5 (I) A financing transaction;

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

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

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

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

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

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

20 (c) Embezzlement, theft, misappropriation, or conversion of monies, funds,
21 premiums, credits, or other property of a viatical settlement provider, viatical settlement broker,

1 life insurance producer, insurer, insured, viator, policy owner, or any other person engaged in the
2 business of viatical settlements or insurance;

3 (d) Recklessly entering into, negotiating, brokering, negotiating, or otherwise
4 dealing in a viatical settlement contract, the subject of which is a policy that was obtained by
5 presenting false information concerning any fact material to the policy or by concealing, for the
6 purpose of misleading another, information concerning any fact material to the policy, where the
7 person or the persons intended to defraud the policy's issuer, the viatical settlement provider, or
8 the viator. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable
9 disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard
10 involving a gross deviation from acceptable standards of conduct;

11 (e) Facilitating, directly or indirectly, the change of state of ownership of a policy
12 or the state of residency of a viator to a state or jurisdiction that does not have a law similar to
13 this act for the express purposes of evading or avoiding the provisions of this act; or

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

16 (6) "Life insurance producer" means any person licensed in the District as a resident or
17 nonresident insurance producer who has received qualification or authority for a life insurance
18 line of authority pursuant to the Producer Licensing Act of 2002," effective Mar. 27, 2003 (D.C.
19 Law 14-264; D.C. Official Code § 31-1131.01 *et seq.*).

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

1 (8) “Policy” means an individual or group policy, group certificate, contract, or
2 arrangement of life insurance owned by a resident of the District, regardless of whether delivered
3 or issued for delivery in the District.

4 (9) “Related provider trust” means a titling trust or other trust established by a licensed
5 viatical settlement provider or a financing entity for the sole purpose of holding the ownership or
6 beneficial interest in viaticated policies in connection with a financing transaction. The trust
7 shall have a written agreement with the licensed viatical settlement provider under which the
8 licensed viatical settlement provider is responsible for ensuring compliance with all statutory and
9 regulatory requirements and under which the trust agrees to make all records and files related to
10 viatical settlement transactions available to the Commissioner as if those records and files were
11 maintained directly by the licensed viatical settlement provider.

12 (10) “Special purpose entity” means a corporation, partnership, trust, limited liability
13 company, or other similar entity formed solely to provide either directly or indirectly access to
14 institutional capital markets for a financing entity or licensed viatical settlement provider.

15 (11) “Terminally ill” means having an illness or sickness that can reasonably be expected
16 to result in death in twenty-four (24) months or less.

17 (12) “Viatical settlement broker” means a person, including a life insurance producer as
18 provided in Section 3 of this act, that, working exclusively on behalf of a viator and for a fee,
19 commission, or other valuable consideration, offers or attempts to negotiate viatical settlement
20 contracts between a viator and one or more viatical settlement providers. Notwithstanding the
21 manner in which the viatical settlement broker is compensated, a viatical settlement broker is
22 deemed to represent only the viator, and not the insurer or the viatical settlement provider, and

1 owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best
2 interest of the viator. The term does not include an attorney, certified public accountant, or a
3 financial planner accredited by a nationally recognized accreditation agency, who is retained to
4 represent the viator and whose compensation is not paid directly or indirectly by the viatical
5 settlement provider or purchaser.

6 (13)(a) “Viatical settlement contract” means a written agreement between a viator and a
7 viatical settlement provider establishing the terms under which compensation or anything of
8 value is or will be paid, which compensation or value is less than the expected death benefits of
9 the policy, in return for the viator’s present or future assignment, transfer, sale, devise, or bequest
10 of the death benefit or ownership of any portion of the policy.

11 (b) “Viatical settlement” contract includes a premium finance loan made for a life
12 insurance policy, on or before the date of issuance of the policy, by a lender to a viator where:

13 (i) The loan proceeds are not used solely to pay:

14 (A) Premiums for the policy; or

15 (B) The costs of the loan;

16 (ii) The viator agrees on the date of such premium finance loan to sell the
17 policy or any portion of its death benefit on any date following the issuance of the policy.

18 (c) “Viatical Settlement contract” also includes any transaction involving a
19 policy, or a policy and an annuity, where a person or entity which is not closely related to the
20 insured by blood or law, funds premium payments and, at policy inception, takes a guaranteed
21 interest, or arranges to take a guaranteed interest, other than a collateral assignment or other

1 mechanism which guarantees repayment of a loan principal and interest, in any of the proceeds of
2 the policy or annuity.

3 (14)(a) “Viatical settlement provider” means a person, other than a viator, that enters
4 into a viatical settlement contract with a viator living in, or who is a resident of, the District.

5 (b) “Viatical settlement provider” does not include:

6 (i) A bank, savings bank, savings and loan association, credit union or
7 other licensed lending institution, or premium finance company making premium finance loans
8 and exempted by the Commissioner from the licensing requirement under the premium finance
9 laws, that takes an assignment of a policy as collateral for a loan;

10 (ii) The issuer of the life insurance policy;

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

14 (c) A natural person who enters into or effectuates no more than one agreement in
15 a calendar year for the transfer of policies for any value less than the expected death benefit;

16 (d) A financing entity;

17 (e) A special purpose entity;

18 (f) A related provider trust; or

19 (g) A qualified institutional buyer as defined by Rule 144A of the Federal
20 Securities Act of 1933, as amended, and who purchases viaticated policies from a viatical
21 settlement provider.

1 (15) “Viaticated policy” means a policy that has been acquired by a viatical settlement
2 provider pursuant to a viatical settlement contract.

3 (16)(a) “Viator” means the owner of a policy who resides in the District and enters or
4 seeks to enter into a viatical settlement contract. For the purposes of this act, a viator shall not be
5 limited to a policy insuring the life of an individual with a terminal or chronic illness or condition
6 except where specifically addressed. If there is more than one viator on a single policy and the
7 viators are residents of different states, the transaction shall be governed by the law of the state in
8 which the viator having the largest percentage ownership resides or, if the viators hold equal
9 ownership, the state of residence of one viator agreed upon in writing by all viators.

10 (b) Viator does not include:

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

13 (ii) An accredited investor or qualified institutional buyer as defined,
14 respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933,
15 as amended;

16 (iii) A financing entity;

17 (iv) A special purpose entity; or

18 (v) A related provider trust.

19 Sec. 3. License Requirements.

20 (a)(1) A person shall not operate as a viatical settlement provider or viatical settlement
21 broker in the District without first obtaining a license from the Commissioner.

1 (2)(i) A life insurance producer who has either held such license or had held a
2 resident license in his or her home state for at least one year shall be deemed to meet the
3 licensing requirements of this section and shall be permitted to operate as a viatical settlement
4 broker.

5 (ii) Not less than thirty (30) days from the first day of operating as a
6 viatical settlement broker, such life insurance producer shall notify the Commissioner, on a form
7 and in a manner as so prescribed, that he or she is acting as a viatical settlement broker, and shall
8 pay any applicable fee to be determined by the Commissioner. Notification shall include
9 acknowledgement by the life insurance producer that he or she will operate as a viatical
10 settlement broker in accordance with the act.

11 (iii) The insurer that issued the policy being viaticated shall not be
12 responsible for any act or omission of a viatical settlement broker or viatical settlement provider
13 arising out of, or in connection with, the viatical settlement transaction, unless the insurer
14 receives compensation for the placement of a viatical settlement contract from the viatical
15 settlement provider or viatical settlement broker in connection with the viatical settlement
16 contract.

17 (3) A person licensed as an attorney, certified public accountant, or financial
18 planner accredited by a nationally recognized accreditation organization, who is retained to
19 represent the viator, whose compensation is not paid directly or indirectly by the viatical
20 settlement provider, may negotiate viatical settlement contracts on behalf of the viator without
21 having to obtain a license as a viatical settlement broker.

1 (b) Application for a viatical settlement provider license shall be made to the
2 Commissioner by the applicant on a form prescribed by the Commissioner and shall be
3 accompanied by the applicable fee.

4 (c) Licenses under this act may be renewed from year to year on the anniversary date
5 upon payment of the annual renewal fees. Failure to pay the fees by the renewal date results in
6 expiration of the license.

7 (d) The applicant for a viatical settlement provider license shall provide information on
8 forms prescribed by the Commissioner. The Commissioner shall have authority, at any time, to
9 require an applicant for a viatical settlement provider license to fully disclose the identity of all
10 stockholders, partners, officers, members, and employees, except such stockholders owning few
11 than ten (10) percent of the shares of the applicant whose shares are publicly traded, and the
12 Commissioner may, in the exercise of the Commissioner's discretion, refuse to issue a license in
13 the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or
14 member thereof who may materially influence the applicant's conduct meets the standards of this
15 act.

16 (e) A viatical settlement provider license issued to a legal entity authorizes all partners,
17 officers, members, and designated employees to act as viatical settlement providers or viatical
18 settlement brokers, as applicable, under the license, and all those persons shall be named in the
19 application and any supplements to the application.

20 (f) Upon the filing of an application and the payment of the license fee, the
21 Commissioner shall make an investigation of each applicant for a license as a viatical settlement
22 provider and issue a license if the Commissioner finds that the applicant:

- 1 (1) Has provided a detailed plan of operation;
- 2 (2) Is competent and trustworthy and intends to act in good faith in the capacity
3 involved by the license applied for;
- 4 (3) Has a good business reputation and has had experience, training, or education
5 so as to be qualified in the business for which the license is applied for;
- 6 (4)(A) Has demonstrated financial accountability as evidenced by surety bond,
7 deposit of cash, certificates of deposit, securities, a policy of errors and omissions insurance, or
8 any combination thereof in the amount of \$250,000.
- 9 (B) The Commissioner shall accept as evidence of financial responsibility
10 a certificate of good standing, or other proof deemed acceptable, that financial instruments, as set
11 forth in this paragraph, have been filed with one or more states where the applicant is licensed as
12 a viatical settlement provider.
- 13 (5) If a legal entity, provides a certificate of good standing from the state of its
14 domicile; and
- 15 (6) Has provided an anti-fraud plan that meets the requirements of section 14(g).
- 16 (g) The Commissioner shall not issue a viatical settlement provider license to a
17 nonresident applicant unless a written designation of an agent for service of process is filed and
18 maintained with the Commissioner, or the applicant has filed with the Commissioner the
19 applicant's written irrevocable consent that any action against the applicant may be commenced
20 against the applicant by service of process on the Commissioner.
- 21 (h) A viatical settlement provider shall provide to the Commissioner new or revised
22 information about officers, ten percent (10%) or more stockholders, partners, directors, members,

1 or designated employees within thirty (30) days of the change. The Commissioner may refuse to
2 issue a license in the name of the legal entity if not satisfied that all individuals herein referenced,
3 and those that may materially influence the applicant, meet the standards of this act.

4 Sec. 4. License Revocation, Suspension and Denial.

5 (a) The Commissioner may refuse to issue, suspend, revoke, or refuse to renew the
6 license of a viatical settlement provider or the license of a life insurance producer operating as a
7 viatical settlement broker if the Commissioner finds that:

8 (1) There was any material misrepresentation in the application for the license;

9 (2) The licensee or any officer, partner, member, or key management personnel
10 has been convicted of fraudulent or dishonest practices, is subject to a final administrative action,
11 or is otherwise shown to be untrustworthy or incompetent;

12 (3) The viatical settlement provider demonstrates a pattern of unreasonable
13 payments to viators;

14 (4) The licensee or any officer, partner, member, or key management personnel
15 has been found guilty of, or has pleaded guilty or *nolo contendere* to any felony, or to a
16 misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction
17 has been entered by the court;

18 (5) The viatical settlement provider or viatical settlement broker utilizes any
19 viatical settlement contract form or other form required to be approved pursuant to this act that
20 has not been approved pursuant to this act;

21 (6) The viatical settlement provider has failed to honor contractual obligations set
22 out in a viatical settlement contract;

1 (7) The licensee no longer meets the requirements for initial licensure;

2 (8) The viatical settlement provider has assigned, transferred, or pledged a
3 viaticated policy to a person other than a viatical settlement provider licensed in this District, an
4 accredited investor, or qualified institutional buyer as defined respectively in Rule 501(a) or Rule
5 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity,
6 special purpose entity, or related provider trust; or

7 (9) The applicant, licensee or any officer, partner, member, or key management
8 personnel has violated any provision of this act.

9 (b) The Commissioner may suspend, revoke, or refuse to renew the license of a life
10 insurance producer operating as a viatical settlement broker pursuant to this act if the
11 Commissioner finds that the life insurance producer has violated the provisions of this act or has
12 otherwise engaged in bad faith conduct with one or more viators.

13 (c) If the Commissioner denies a license application or suspends, revokes, or refuses to renew
14 the license of a viatical settlement provider or suspends, revokes, or refuses to renew a license of
15 a life insurance producer operating as a viatical settlement broker pursuant to this act, the
16 Commissioner shall conduct a hearing in accordance with section 10 of the District of Columbia
17 Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code §
18 2-509), or in the instance of a life insurance producer pursuant to section 12 of the Producer
19 Licensing Act of 2002,” effective Mar. 27, 2003 (D.C. Law 14-264; D.C. Official Code § 31-
20 1131.12).

21 Sec. 5. Approval of Viatical Settlement Contracts and Disclosure Statements.

1 (a) A person shall not use a viatical settlement contract form or provide to a viator a
2 disclosure statement form in the District unless first filed with and approved by the
3 Commissioner. The Commissioner shall disapprove a viatical settlement contract form or
4 disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained
5 therein fail to meet the requirements of sections 8,10, 13 and 14(b) of this act, or are
6 unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the
7 viator.

8 (b) At the Commissioner's discretion, the Commissioner may require the submission of
9 advertising material.

10 Sec. 6. Reporting requirements and privacy.

11 (a) Each viatical settlement provider shall file with the Commissioner on or before
12 March 1 of each year an annual statement containing such information as the Commissioner may
13 prescribe by regulation; provided, however, that such information shall be limited to only those
14 transactions where the viator is a resident of the District and shall not include individual
15 transaction data regarding the business of viatical settlements or data which comprises the
16 privacy of personal, financial, and health information of the viator or insured.

17 (b) Except as otherwise allowed or required by law, a viatical settlement provider,
18 viatical settlement broker, insurance company, insurance producer, information bureau, rating
19 agency or company, or any other person with actual knowledge of a viator or insured's identity,
20 shall not disclose that identity as a viator or an insured, or the viator's or insured's financial or
21 medical information to any other person unless the disclosure:

1 (1) Is necessary to effect a viatical settlement contract between the viator and a
2 viatical settlement provider, and the viator or insured, or both, as may be required, have provided
3 prior written consent to the disclosure;

4 (2) Is provided in response to an investigation or examination by the
5 Commissioner or any other governmental officer or agency or pursuant to the requirements of
6 section 14(c);

7 (3) Is a term of or condition to the transfer of a policy by one viatical settlement
8 provider to another viatical settlement provider;

9 (4) Is necessary to permit a financing entity, related provider trust, or special
10 purpose entity to finance the purchase of policies by a viatical settlement provider and the viator
11 and insured have provided prior written consent to the disclosure;

12 (5) Is necessary to allow the viatical settlement provider, or their authorized
13 representatives to make contacts for the purpose of determining health status; or

14 (6) Is required to purchase stop loss coverage or financial guaranty insurance.

15 Sec. 7. Examination or investigations.

16 (a)(1)(A) The Commissioner may conduct an examination under this act of a licensee as
17 often as the Commissioner in his or her discretion deems appropriate after considering the factors
18 set forth in this paragraph.

19 (B) In scheduling and determining the nature, scope, and frequency of the
20 examinations, the Commissioner shall consider such matters as the consumer complaints, results
21 of financial statement analyses and ratios, changes in management or ownership, actuarial

1 opinions, reports of independent certified public accountants, and any other information deemed
2 relevant by the Commissioner.

3 (2) For purposes of completing an examination of a licensee under this act, the
4 Commissioner may examine or investigate any person, or the business of any person, in so far as
5 the examination or investigation is, in the sole discretion of the Commissioner, necessary or
6 material to the examination of the licensee.

7 (3) In lieu of an examination under this act of any foreign or alien licensee
8 licensed in this District, the Commissioner may, at the Commissioner's discretion, accept an
9 examination report on the licensee as prepared by the Commissioner for the licensee's state of
10 domicile or port-of-entry state.

11 (4) To the extent practical, the examination of a foreign or alien insurer shall be
12 made in cooperation with the insurance supervisory officials of the other states in which the
13 insurer transacts business.

14 (b)(1) A person required to be licensed by this act shall for five (5) years retain copies of
15 all:

16 (A) Proposed, offered, or executed viatical settlement contracts,
17 underwriting documents, policy forms, and applications from the date of the proposal, offer, or
18 execution of the viatical settlement contract, whichever is later;

19 (B) All checks, drafts, or other evidence and documentation related to the
20 payment, transfer, deposit, or release of funds from the date the transaction; and

21 (C) All other records and documents related to the requirements of this
22 act.

1 (2) This section does not relieve a person of the obligation to produce these
2 documents to the Commissioner after the retention period has expired if the person has retained
3 the documents.

4 (3) Records subject to this section must be legible and complete and may be
5 retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by
6 any process that accurately reproduces or forms a durable medium for the reproduction of a
7 record.

8 (c)(1) Upon determining that an examination should be conducted, the Commissioner
9 shall issue an examination warrant appointing one or more examiners to perform the examination
10 and instructing them as to the scope of the examination. In conducting the examination, the
11 examiner shall observe those guidelines and procedures set forth in the *Examiners Handbook*
12 adopted by the National Association of Insurance Commissioners (“NAIC”). The Commissioner
13 may also employ such other guidelines or procedures as deemed appropriate.

14 (2) Neither the Commissioner nor any examiner shall remove any record,
15 account, document, file, or other property of the person being examined from the office or place
16 of such person except with the written consent of such person in advance of such removal or
17 pursuant to an order of court duly obtained. This subparagraph shall not be deemed to affect the
18 making and removal of copies or abstracts of any such record, account, document, or file.

19 (3) Every licensee or person from whom information is sought, its officers,
20 directors, and agents shall provide to the examiners timely, convenient, and free access at all
21 reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and
22 computer or other recordings relating to the property, assets, business and affairs of the licensee

1 being examined. The officers, directors, employees, and agents of the licensee or person shall
2 facilitate the examination and aid in the examination so far as it is in their power to do so. The
3 refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or
4 to comply with any reasonable written request of the Commissioner shall be grounds for
5 suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage
6 in the viatical settlement business or other business subject to the Commissioner's jurisdiction.
7 Any proceedings for suspension, revocation, or refusal of any license or authority shall be
8 conducted pursuant to provisions referenced in section 4 of this act.

9 (4) The Commissioner shall have the power to issue subpoenas, to administer
10 oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon
11 the failure or refusal of a person to obey a subpoena, the Commissioner may petition a court of
12 competent jurisdiction, and upon proper showing, the Court may enter an order compelling the
13 witness to appear and testify or produce documentary evidence. Failure to obey the court order
14 shall be punishable as contempt of court.

15 (5) When making an examination under this act, the Commissioner may retain
16 attorneys, appraisers, independent actuaries, independent certified public accountants, or other
17 professionals and specialists as examiners, the reasonable cost of which shall be borne by the
18 licensee that is the subject of the examination.

19 (6) Nothing contained in this act shall be construed to limit the Commissioner's
20 authority to terminate or suspend an examination in order to pursue other legal or regulatory
21 action pursuant to the insurance laws of this District. Findings of fact and conclusions made
22 pursuant to any examination shall be *prima facie* evidence in any legal or regulatory action.

1 (7) Nothing contained in this act shall be construed to limit the Commissioner's
2 authority to use and, if appropriate, to make public any final or preliminary examination report,
3 any examiner or licensee workpapers or other documents, or any other information discovered or
4 developed during the course of any examination in the furtherance of any legal or regulatory
5 action which the Commissioner may, in his or her sole discretion, deem appropriate.

6 (d)(1) Examination reports shall be comprised of only facts appearing upon the books,
7 records, or other documents of the licensee, its agents, or other persons examined, or as
8 ascertained from the testimony of its officers or agents or other persons examined concerning its
9 affairs, and such conclusions and recommendations as the examiners find reasonably warranted
10 from the facts.

11 (2) No later than sixty (60) days following completion of the examination, the
12 examiner in charge shall file with the Commissioner a verified written report of examination
13 under oath. Upon receipt of the verified report, the Commissioner shall transmit the report to the
14 licensee examined, together with a notice that shall afford the licensee examined a reasonable
15 opportunity of not more than thirty (30) days to make a written submission or rebuttal with
16 respect to any matters contained in the examination report.

17 (3) Within 30 days of the end of the period allowed for the receipt of written
18 submissions or rebuttals, the Commissioner shall fully consider and review the report, together
19 with any written submissions or rebuttals and any relevant portions of the examiner's
20 workpapers, and enter an order:

21 (A) Adopting the examination report as filed or with modification or
22 corrections. If the examination report reveals that the company is operating in violation of any

1 law, rule, or prior order of the Commissioner, the Commissioner may order the company to take
2 any action the Commissioner considers necessary and appropriate to cure the violation; or

3 (B) Rejecting the examination report with directions to the examiners to
4 reopen the examination for purposes of obtaining additional data, documentation, or information
5 and refiling as provided in subparagraph (b); or

6 (C) Calling for an investigatory hearing with no less than 20 days' notice
7 to the company for purposes of obtaining additional documentation, data, information, and
8 testimony;

9 (4)(A) Upon the adoption of the examination report, the Commissioner shall continue
10 to hold the content of the examination report as private and confidential information for a period
11 of 20 days, except to the extent provided in subparagraph (b). Thereafter, the Commissioner may
12 open the report for public inspection if no court of competent jurisdiction has stayed its
13 publication.

14 (B) Nothing contained in this act shall prevent or be construed as
15 prohibiting the Commissioner from disclosing the content of an examination report, preliminary
16 examination report or results, or any matter relating thereto, to the insurance department of the
17 District or any other state or country, or to law enforcement officials of the District or any other
18 state or agency of the federal government at any time, so long as such agency or office receiving
19 the report or matters relating thereto agrees in writing to hold it confidential and in a manner
20 consistent with this act.

1 (5) In the event the Commissioner determines that regulatory action is appropriate
2 as a result of an examination, the Commissioner may initiate any proceedings or actions provided
3 by law.

4 (e)(1) Names and individual identification data for all viators or insureds shall be
5 considered private and confidential information and shall not be disclosed by the Commissioner,
6 unless required by law.

7 (2) Except as otherwise provided in this act, all examination reports, working
8 papers, recorded information, documents, and copies thereof produced by, obtained by, or
9 disclosed to the Commissioner or any other person in the course of an examination made under
10 this act, or in the course of analysis or investigation by the Commissioner of the financial
11 condition or market conduct of a licensee shall be confidential by law and privileged, shall not be
12 subject to section 201 of the District of Columbia Administrative Procedures Act, effective March
13 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), shall not be subject to subpoena,
14 and shall not be subject to discovery nor admissible in evidence in any private civil action. The
15 Commissioner is authorized to use the documents, materials, or other information in the
16 furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

17 (3) Documents, materials, or other information, including, but not limited to, all
18 working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and
19 subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall
20 not be subject to discovery or admissible in evidence in any private civil action if they are:

21 (A) Created, produced, or obtained by or disclosed to the NAIC and its
22 affiliates and subsidiaries in the course of assisting an examination made under this Act, or

1 assisting a Commissioner in the analysis or investigation of the financial condition or market
2 conduct of a licensee; or

3 (B) Disclosed to the NAIC and its affiliates and subsidiaries under
4 subsection (e)(4) by a Commissioner.

5 (C) For the purposes of subsection (e)(2), any examination reports,
6 working papers, recorded information, documents, and copies thereof obtained pursuant to a law
7 of another state or jurisdiction that is substantially similar to this act shall receive the same
8 protections as provided in subsection (e)(2).

9 (4) Neither the Commissioner nor any person that received documents, materials,
10 or other information while acting under the authority of the Commissioner, including the NAIC
11 and its affiliates and subsidiaries, shall be permitted to testify in any private civil action
12 concerning any confidential documents, materials, or information subject to subsection (e)(1).

13 (5) In order to assist in the performance of the Commissioner's duties, the
14 Commissioner:

15 (A) May share documents, materials, or other information, including the
16 confidential and privileged documents, materials, or information subject to subsection (e)(1),
17 with other local, state, federal, and international regulatory agencies, with the NAIC and its
18 affiliates and subsidiaries, and with local, state, federal, and international law enforcement
19 authorities, provided that the recipient agrees to maintain the confidentiality and privileged status
20 of the document, material, communication, or other information. Such parties shall agree in
21 writing prior to receiving the information to provide to it the same confidential treatment as
22 required by this paragraph, unless prior written consent of the company to which it pertains has

1 been obtained;

2 (B) May receive documents, materials, communications, or information,
3 including otherwise confidential and privileged documents, materials or information, from the
4 NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of
5 other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any
6 document, material, or information received with notice or the understanding that it is
7 confidential or privileged under the laws of the jurisdiction that is the source of the document,
8 material, or information; and

9 (C) May enter into agreements governing sharing and use of information
10 consistent with this subsection.

11 (6) No waiver of any applicable privilege or claim of confidentiality in the
12 documents, materials, or information shall occur as a result of disclosure to the Commissioner
13 under this section or as a result of sharing as authorized in subsection (e)(4).

14 (7) A privilege established under the law of any state or jurisdiction that is
15 substantially similar to the privilege established under this subsection shall be available and
16 enforced in any proceeding in, and in any court of, the District.

17 (8) Nothing contained in this act shall prevent or be construed as prohibiting the
18 Commissioner from disclosing the content of an examination report, preliminary examination
19 report or results, or any matter relating thereto, to the Commissioner of any other state or country,
20 or to law enforcement officials of this or any other state or agency of the federal government at
21 any time, or to the NAIC, so long as such agency or office receiving the report or matters relating
22 thereto agrees in writing to hold it confidential and in a manner consistent with this act.

1 (f)(1) An examiner may not be appointed by the Commissioner if the examiner, either
2 directly or indirectly, has a conflict of interest, or is affiliated with the management of, or owns a
3 pecuniary interest in any person subject to examination under this act. This section shall not be
4 construed to automatically preclude an examiner from being:

5 (a) A viator;

6 (b) An insured in a viaticated insurance policy; or

7 (c) A beneficiary in an insurance policy that is proposed to be viaticated.

8 (2) Notwithstanding the requirements of this subsection, the Commissioner may
9 retain from time to time, on an individual basis, qualified actuaries, certified public accountants,
10 or other similar individuals who are independently practicing their professions, even though these
11 persons may from time to time be similarly employed or retained by persons subject to
12 examination under this act.

13 (g) All reasonable and proper expenses of the examinations shall be paid by the entity
14 examined, and the entity shall timely pay the Mayor the actual expense of such an examination
15 upon receipt of itemized bills provided by the Mayor. Such expense shall be limited to a
16 reasonable per diem allowance for compensation and expenses as determined by the
17 Commissioner. As to the per diem expense allowance and compensation allowance involved in
18 any such examination, the Commissioner may give due consideration to scales and limitations
19 recommended by the National Association of Insurance Commissioners and outlined in the
20 examination manual sponsored by that association.

21 (h)(1) No cause of action shall arise nor shall any liability be imposed against the
22 Commissioner, the Commissioner's authorized representatives, or any examiner appointed by the

1 Commissioner for any statements made or conduct performed in good faith while carrying out
2 the provisions of this act.

3 (2) No cause of action shall arise, nor shall any liability be imposed against any
4 person for the act of communicating or delivering information or data to the Commissioner or the
5 Commissioner's authorized representative or examiner pursuant to an examination made under
6 this act, if the act of communication or delivery was performed in good faith and without
7 fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way
8 any common law or statutory privilege or immunity heretofore enjoyed by any person identified
9 in paragraph (1).

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

16 (i) The Commissioner may investigate suspected fraudulent viatical settlement acts and
17 persons engaged in the business of viatical settlements.

18 Sec. 8. Disclosure to viator.

19 (a) With each application for a viatical settlement contract, a viatical settlement provider
20 or viatical settlement broker shall provide the viator with at least the following disclosures no
21 later than the time the application for the viatical settlement contract is signed by all parties. The

1 disclosures shall be provided in a separate document that is signed by the viator and the viatical
2 settlement provider or viatical settlement broker, and shall provide the following information:

3 (1) There are possible alternatives to viatical settlement contracts including any
4 accelerated death benefits or policy loans offered under the viator's life insurance policy.

5 (2) That a viatical settlement broker represents only the viator, and not the insurer
6 or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act
7 according to the viator's instructions and in the best interest of the viator.

8 (3) Some or all of the proceeds of the viatical settlement contract may be taxable
9 under federal income tax and District franchise and income taxes, and assistance should be
10 sought from a professional tax advisor.

11 (4) Proceeds of the viatical settlement contract could be subject to the claims of
12 creditors.

13 (5) Receipt of the proceeds of a viatical settlement contract may adversely affect
14 the viator's eligibility for Medicaid or other government benefits or entitlements, and advice
15 should be obtained from the appropriate government agencies.

16 (6) The viator has the right to rescind a viatical settlement contract before the
17 earlier of thirty (30) calendar days after the date upon which the viatical settlement contract is
18 executed by all parties or for fifteen (15) calendar days after the viatical settlement proceeds have
19 been paid to the viator, as provided in subsection 10(f). Rescission, if exercised by the viator, is
20 effective only if both notice of the rescission is given and the viator repays all proceeds and any
21 premiums, loans or loan interest paid on account of the viatical settlement within the rescission
22 period. If the insured dies during the rescission period, the viatical settlement contract shall be

1 deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all
2 viatical settlement proceeds and any premiums, loans, and loan interest paid on account of the
3 viatical settlement within sixty (60) days of the insured's death.

4 (7) Funds will be sent to the viator within three (3) business days after the viatical
5 settlement provider has received the insurer or group administrator's written acknowledgment
6 that ownership of the viaticated policy has been transferred and the beneficiary has been
7 designated.

8 (8) Entering into a viatical settlement contract may cause other rights or benefits,
9 including conversion rights and waiver of premium benefits that may exist under the policy, to be
10 forfeited by the viator. Assistance should be sought from a financial adviser.

11 (9) Disclosure to a viator shall include distribution of a brochure describing the
12 process of viatical settlements. The NAIC's form for the brochure shall be used unless another
13 form is developed or approved by the Commissioner.

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

1 (11) Following consummation of a viatical settlement, the insured may be
2 contacted by the viatical settlement provider or its authorized representative for the purpose of
3 determining the insured’s health status and to confirm the insured’s residential or business
4 address and telephone number. This contact shall be limited to once every three (3) months if the
5 insured has a life expectancy of more than one year, and no more than once per month if the
6 insured has a life expectancy of one year or less.

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

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

13 (2) The document shall include the name, address, and telephone number of the
14 viatical settlement provider.

15 (3) That a viatical settlement broker shall disclose to a prospective viator:

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

19 (B) the amount and method of calculating the broker’s compensation, for
20 which the term “compensation” includes anything of value paid or given to a viatical settlement
21 broker for the placement of a policy;

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

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

12 (6) State the name, business address, and telephone number of the independent
13 third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the
14 relevant escrow or trust agreements or documents.

15 (c) If the viatical settlement provider transfers ownership or changes the beneficiary of
16 the insurance policy, the viatical settlement provider shall communicate the change in ownership
17 or beneficiary to the insured within twenty (20) days after the change.

18 Sec. 9. Disclosure to insurer.

19 (a) Insurance carriers may determine in the application for insurance if the proposed
20 owner intends to pay premiums with the assistance of a loan by a lending institution which uses
21 the policy as collateral for the loan as follows:

1 (1) If a premium finance loan is a loan as described in Section 2(13)(b), the insurer
2 may reject the application for insurance as a violation of section 11 of this act.

3 (2) If the loan does not violate Section 11 in this manner, the insurance carrier:

4 (A) may not reject the application based on this method of payment;

5 (B) may make the following disclosure to the applicant and the insured,

6 either on the application or an amendment to the application to be completed no later than the

7 delivery of the policy:

8

9 “If you have entered into a loan arrangement where the policy is used as collateral,

10 and the policy does change ownership at some point in the future in satisfaction of the

11 loan, the following may be true:

12 (i) A change of ownership could lead to a stranger owning an

13 interest in the insured’s life;

14 (ii) A change of ownership could in the future limit your ability to

15 purchase future insurance on the insured’s life because there is a limit to how much coverage

16 insurers will issue on one life;

17 (iii) Should there be a change of ownership and you wish to obtain

18 more insurance coverage on the insured’s life in the future, the insured’s higher issue age, a

19 change in health status, and/or other factors may reduce the ability to obtain coverage and/or may

20 result in significantly higher premiums;

1 (iv) You should consult a professional advisor, since a change in
2 ownership in satisfaction of the loan may result in tax consequences to the owner, depending on
3 the structure of the loan.”; and

4 (3) May require the following certification from the applicant and/or the insured:

5 “This policy is being purchased in order to meet a need for death benefit coverage
6 determined in consultation with financial and/or legal advisors;

7 (A) I have not entered into any agreement or arrangement providing for
8 the future sale of this life insurance policy;

9 (B) My loan arrangement for this policy provides funds sufficient to pay
10 for some or all of the premiums, costs, and expenses associated with obtaining and maintaining
11 my life insurance policy, but I have not entered into any agreement by which I am to receive
12 consideration in exchange for procuring this policy; and

13 (C) The borrower has an insurable interest in the insured.”

14 Sec. 10. General rules.

15 (a)(1) A viatical settlement provider entering into a viatical settlement contract shall first
16 obtain:

17 (A) If the viator is the insured, a written statement from a licensed
18 attending physician that the viator is of sound mind and under no constraint or undue influence to
19 enter into a viatical settlement contract; and

20 (B) A document in which the insured consents to the release of his or her
21 medical records to a licensed viatical settlement provider, viatical settlement broker, and if the
22 policy was issued less than two (2) years from the date of the application for a viatical settlement

1 contract, to the insurance company that issued the life insurance policy covering the life of the
2 insured.

3 (2) The insurer shall respond to a request for verification of coverage submitted
4 on a form approved by the Commissioner by a viatical settlement provider or a viatical
5 settlement broker within thirty (30) calendar days of the date the request is received and shall
6 indicate whether, based on the medical evidence and documents provided, the insurer intends to
7 pursue an investigation at this time regarding the validity of the insurance contract or possible
8 fraud. The insurer shall accept a request for verification of coverage on an NAIC form or any
9 other form approved by the Commissioner. The insurer shall accept an original or facsimile or
10 electronic copy of such request and any accompanying authorization signed by the viator.
11 Failure by the insurer to meet its obligations under this subsection shall constitute a violation of
12 section 11(c) and section 16 of this act.

13 (3) Prior to or at the time of execution of the viatical settlement contract, the
14 viatical settlement provider shall obtain a witnessed document in which the viator consents to
15 the viatical settlement contract, represents that the viator has a full and complete understanding
16 of the viatical settlement contract, that he or she has a full and complete understanding of the
17 benefits of the life insurance policy, acknowledges that he or she is entering into the viatical
18 settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or
19 condition, acknowledges that the insured has a terminal or chronic illness and that the terminal
20 or chronic illness or condition was diagnosed after the life insurance policy was issued.

1 (4) If a viatical settlement broker performs any of these activities required of the
2 viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the
3 requirements of this section.

4 (b) All medical information solicited or obtained by any licensee shall be subject to the
5 Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor
6 Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code §
7 31-3301.01 *et seq.*).

8 (c) All viatical settlement contracts entered into in the District shall provide the viator
9 with an absolute right to rescind the contract before the earlier of thirty (30) calendar days after
10 the date upon which the viatical settlement contract is executed by all parties or fifteen (15)
11 calendar days after the viatical settlement proceeds have been sent to the viator as provided in
12 section 10(f). Rescission, if exercised by the viator, may be conditioned upon the viator both
13 giving notice and repaying to the viatical settlement provider within the rescission period all
14 proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the
15 viatical settlement provider in connection with or as a consequence of the viatical settlement. If
16 the insured dies during the rescission period, the viatical settlement contract shall be deemed to
17 have been rescinded, subject to repayment to the viatical settlement provider or purchaser of the
18 viatical settlement proceeds, and any premium payments, loans, and loan interest that have been
19 paid by the viatical settlement provider or purchaser, which shall be paid within sixty (60)
20 calendar days of the death of the insured. In the event of any rescission, if the viatical settlement
21 provider has paid commissions or other compensation to a viatical settlement broker in
22 connection with the rescinded transaction, the viatical settlement broker shall refund all such

1 commissions and compensation to the viatical settlement provider within five (5) business days
2 following the receipt of written demand from the viatical settlement provider, which shall be
3 accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or
4 notice of the death of the insured if rescinded by reason of the death of the insured within the
5 applicable rescission period.

6 (d) The viatical settlement provider shall instruct the viator to send the executed
7 documents required to effect the change in ownership, assignment, or change in beneficiary
8 directly to the independent escrow agent. Within three (3) business days after the date the escrow
9 agent receives the document (or from the date the viatical settlement provider receives the
10 documents, if the viator erroneously provides the documents directly to the provider), the viatical
11 settlement provider shall pay or transfer the proceeds of the viatical settlement into an escrow or
12 trust account maintained in a state or federally-chartered financial institution whose deposits are
13 insured by the Federal Deposit Insurance Corporation. Upon payment of the viatical settlement
14 proceeds into the escrow account, the escrow agent shall deliver the original change in
15 ownership, assignment, or change in beneficiary forms to the viatical settlement provider or
16 related provider trust or other designated representative of the viatical settlement provider. Upon
17 the escrow agent's receipt of the acknowledgment of the properly completed transfer of
18 ownership, assignment, or designation of beneficiary from the insurance company, the escrow
19 agent shall pay the settlement proceeds to the viator.

20 (e) Failure to tender consideration to the viator for the viatical settlement contract within
21 the time set forth in the disclosure pursuant to section 8(a)(7) renders the viatical settlement
22 contract voidable by the viator for lack of consideration until the time consideration is tendered

1 to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a
2 viator as of the date that the escrow agent either releases funds for wire transfer to the viator or
3 places a check for delivery to the viator via United States Postal Service or other nationally
4 recognized delivery service.

5 (f) Contacts with the insured for the purpose of determining the health status of the
6 insured by the viatical settlement provider after the viatical settlement has occurred shall only be
7 made by a licensed viatical settlement provider or its authorized representatives and shall be
8 limited to once every three (3) months for insureds with a life expectancy of more than one year,
9 and to no more than once per month for insureds with a life expectancy of one year or less. The
10 viatical settlement provider shall explain the procedure for these contacts at the time the viatical
11 settlement contract is entered into. The limitations set forth in this subsection shall not apply to
12 any contacts with an insured for reasons other than determining the insured's health status.
13 Viatical settlement providers shall be responsible for the actions of their authorized
14 representatives.

15 Sec. 11. Prohibited practices.

16 It is a violation of this act for any person to enter into a viatical settlement contract at any
17 time prior to the application or issuance of a policy which is the subject of a viatical settlement
18 contract or within a two-year period commencing with the date of issuance of the policy, unless
19 the viator certifies to the viatical settlement provider that one or more of the following
20 conditions have been met within the two-year period:

21 (a) The policy was issued upon the viator's exercise of conversion rights arising out of a
22 group or individual policy, provided the total time covered under the conversion policy and prior

1 policy is at least twenty-four (24) months. The time covered under a group policy shall be
2 calculated without regard to any change in insurance carriers, provided the coverage has been
3 continuous and under the same group sponsorship; or

4 (b)(1) The viator submits independent evidence to the viatical settlement provider that
5 one or more of the following conditions have been met within the two-year period:

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

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

9 (C) The viator's spouse dies;

10 (D) The viator divorces his or her spouse;

11 (E) The viator was the insured's employer at the time the policy or
12 certificate was issued and the employment relationship terminated;

13 (F) A final order, judgment, or decree is entered by a court of competent
14 jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or
15 insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver,
16 trustee, or liquidator to all or a substantial part of the viator's assets;

17 (G) The viator experiences a significant decrease in income that is
18 unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

19 (H) The viator or insured disposes of his or her ownership interests in a
20 closely held corporation.

21 (c) Copies of the independent evidence described in subsection (b) and documents
22 required by section 10(a) shall be submitted to the insurer when the viatical settlement provider

1 or other party entering into a viatical settlement contract with a viator submits a request to the
2 insurer for verification of coverage. A letter of attestation shall accompany the copies from the
3 viatical settlement provider that the copies are true and correct copies of the documents received
4 by the viatical settlement provider.

5 (d) If the viatical settlement provider submits to the insurer a copy of the independent
6 evidence described in and the independent evidence required by subsection (b) above when the
7 viatical settlement provider submits a request to the insurer to effect the transfer of the policy to
8 the viatical settlement provider, the copy shall be deemed to conclusively establish that the
9 viatical settlement contract satisfies the requirements of this section and the insurer shall timely
10 respond to the request.

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

16 (f) Upon receipt of a properly completed request for change of ownership or beneficiary
17 of a policy, the insurer shall respond in writing within thirty (30) calendar days with written
18 acknowledgement confirming that the change has been effected or specifying the reasons why the
19 requested change cannot be processed. The insurer shall not unreasonably delay effecting change
20 of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement
21 contract lawfully entered into in the District.

1 (g) It is unlawful for an insurance company to prohibit, restrict, limit, or impair a life
2 insurance producer from lawfully negotiating a viatical settlement on behalf of a viator, aiding
3 and assisting a seller with a viatical settlement, or otherwise participating in a viatical settlement
4 transaction under this Act, or to engage in any transaction, act, practice, or course of business or
5 dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of
6 beneficiary, or assignment of a policy to effectuate a viatical settlement contract.

7 Sec. 12. Prohibited practices and conflicts of interest.

8 (a) With respect to any viatical settlement contract or insurance policy, no viatical
9 settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with, or
10 make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or
11 related provider that is controlling, controlled by, or under common control with such viatical
12 settlement broker.

13 (b) With respect to any viatical settlement contract or insurance policy, no viatical
14 settlement provider shall knowingly enter into a viatical settlement contract with a viator, if, in
15 connection with such viatical settlement contract, anything of value will be paid to a viatical
16 settlement broker that is controlling, controlled by, or under common control with such viatical
17 settlement provider or the viatical settlement purchaser, financing entity, or related provider trust
18 that is involved in such viatical settlement contract.

19 (c) A violation of subsections (a) or (b) shall be deemed a fraudulent viatical settlement
20 act.

1 Sec. 13. Advertising for viatical settlements.

2 The purpose of this section is to provide prospective viators with clear and unambiguous
3 statements in the advertisement of viatical settlements and to assure the clear, truthful, and
4 adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement
5 contract. This purpose is intended to be accomplished by the establishment of guidelines and
6 standards of permissible and impermissible conduct in the advertising of viatical settlements to
7 assure that product descriptions are presented in a manner that prevents unfair, deceptive, or
8 misleading advertising and is conducive to accurate presentation and description of viatical
9 settlements through the advertising media and material used by viatical settlement licensees.

10 (a) This section shall apply to any advertising of viatical settlement contracts or related
11 products or services intended for dissemination in the District, including internet advertising
12 viewed by persons located in the District. Where disclosure requirements are established
13 pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate
14 conflict with federal regulation wherever possible.

15 (b) Every viatical settlement licensee shall establish and at all times maintain a system of
16 control over the content, form, and method of dissemination of all advertisements of its contracts,
17 products and services. All advertisements, regardless of by whom written, created, designed, or
18 presented, shall be the responsibility of the viatical settlement licensee, as well as the individual
19 who created or presented the advertisement. A system of control shall include regular routine
20 notification, at least once a year, to agents and others authorized by the viatical settlement
21 licensees who disseminate advertisements of the requirements and procedures for approval prior
22 to the use of any advertisements not furnished by the viatical settlement licensee.

1 (c) Advertisements shall be truthful and not misleading in fact or by implication. The
2 form and content of an advertisement of a viatical settlement contract shall be sufficiently
3 complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead
4 or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be
5 determined by the Commissioner from the overall impression that the advertisement may be
6 reasonably expected to create upon a person of average education or intelligence within the
7 segment of the public to which it is directed.

8 (d) The information required to be disclosed under this section shall not be minimized,
9 rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the
10 advertisement so as to be confusing or misleading.

11 (1) An advertisement shall not omit material information or use words, phrases,
12 statements, references, or illustrations if the omission or use has the capacity, tendency, or effect
13 of misleading or deceiving viators as to the nature or extent of any benefit, loss covered,
14 premium payable, or District or federal tax consequence. The fact that the viatical settlement
15 contract offered is made available for inspection prior to consummation of the sale, or an offer is
16 made to refund the payment if the viator is not satisfied, or that the viatical settlement contract
17 includes a “free look” period that satisfies or exceeds legal requirements, does not remedy
18 misleading statements.

19 (2) An advertisement shall not use the name or title of a life insurance company
20 or a life insurance policy unless the insurer has approved the advertisement.

1 (3) An advertisement shall not state or imply that interest charged on an
2 accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or
3 improper practice.

4 (4) The words “free,” “no cost,” “without cost,” “no additional cost,” at no extra
5 cost,” or words of similar import shall not be used with respect to any benefit or service unless
6 true. An advertisement may specify the charge for a benefit or a service or may state that a charge
7 is included in the payment or use other appropriate language.

8 (5) Testimonials, appraisals or analysis used in advertisements must be genuine,
9 represent the current opinion of the author, be applicable to the viatical settlement contract
10 product or service advertised, if any, and be accurately reproduced with sufficient completeness
11 to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials,
12 appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee
13 under this act makes as its own all the statements contained therein, and the statements are
14 subject to all the provisions of this section.

15 (A) If the individual making a testimonial, appraisal, analysis, or an
16 endorsement has a financial interest in the party making use of the testimonial, appraisal,
17 analysis, or endorsement, either directly or through a related entity as a stockholder, director,
18 officer, employee, or otherwise, or receives any benefit directly or indirectly other than required
19 union scale wages, that fact shall be prominently disclosed in the advertisement.

20 (B) An advertisement shall not state or imply that a viatical settlement
21 contract benefit or service has been approved or endorsed by a group of individuals, society,
22 association, or other organization unless that is the fact and unless any relationship between an

1 organization and the viatical settlement licensee is disclosed. If the entity making the
2 endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee,
3 or receives any payment or other consideration from the viatical settlement licensee for making
4 an endorsement or testimonial, that fact shall be disclosed in the advertisement.

5 (C) When an endorsement refers to benefits received under a viatical
6 settlement contract, all pertinent information shall be retained for a period of five (5) years after
7 its use.

8 (e) An advertisement shall not contain statistical information unless it accurately reflects
9 recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

10 (f) An advertisement shall not disparage insurers, viatical settlement providers, viatical
11 settlement brokers, insurance producers, policies, services, or methods of marketing.

12 (g) The name of the viatical settlement licensee shall be clearly identified in all
13 advertisements about the licensee or its viatical settlement contract, products, or services, and if
14 any specific viatical settlement contract is advertised, the viatical settlement contract shall be
15 identified either by form number or some other appropriate description. If an application is part
16 of the advertisement, the name of the viatical settlement provider shall be shown on the
17 application.

18 (h) An advertisement shall not use a trade name, group designation, name of the parent
19 company of a viatical settlement licensee, name of a particular division of the viatical settlement
20 licensee, service mark, slogan, symbol, or other device or reference without disclosing the name
21 of the viatical settlement licensee, if the advertisement would have the capacity or tendency to
22 mislead or deceive as to the true identity of the viatical settlement licensee, or to create the

1 impression that a company other than the viatical settlement licensee would have any
2 responsibility for the financial obligation under a viatical settlement contract.

3 (i) An advertisement shall not use any combination of words, symbols, or physical
4 materials that by their content, phraseology, shape, color, or other characteristics are so similar to
5 a combination of words, symbols, or physical materials used by a government program or
6 agency, or otherwise appear to be of such a nature that they tend to mislead prospective viators
7 into believing that the solicitation is in some manner connected with a government program or
8 agency.

9 (j) An advertisement may state that a viatical settlement licensee is licensed in the state
10 where the advertisement appears, provided it does not exaggerate that fact or suggest or imply
11 that competing viatical settlement licensee may not be so licensed. The advertisement may ask
12 the audience to consult the licensee's web site or contact the department of insurance to find out
13 if the state requires licensing and, if so, whether the viatical settlement provider or viatical
14 settlement broker is licensed.

15 (k) An advertisement shall not create the impression that the viatical settlement provider,
16 its financial condition or status, the payment of its claims, or the merits, desirability, or
17 advisability of its viatical settlement contracts are recommended or endorsed by any government
18 entity.

19 (l) The name of the actual licensee shall be stated in all of its advertisements. An
20 advertisement shall not use a trade name, any group designation, name of any affiliate or
21 controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that
22 would have the capacity or tendency to mislead or deceive as to the true identity of the actual

1 licensee or create the false impression that an affiliate or controlling entity would have any
2 responsibility for the financial obligation of the licensee.

3 (m) An advertisement shall not directly or indirectly create the impression that any
4 division or agency of the state or of the U. S. government endorses, approves, or favors:

5 (1) Any viatical settlement licensee or its business practices or methods of
6 operation;

7 (2) The merits, desirability, or advisability of any viatical settlement contract;

8 (3) Any viatical settlement contract; or

9 (4) Any life insurance policy or life insurance company.

10 (n) If the advertiser emphasizes the speed with which the viatication will occur, the
11 advertising must disclose the average time frame from completed application to the date of
12 offer, and from acceptance of the offer to receipt of the funds by the viator.

13 (o) If the advertising emphasizes the dollar amounts available to viators, the advertising
14 shall disclose the average purchase price as a percent of face value obtained by viators
15 contracting with the licensee during the past six (6) months.

16 Sec. 14. Fraud prevention and control.

17 (a)(1) A person shall not commit a fraudulent viatical settlement act.

18 (2) A person shall not knowingly or intentionally interfere with the enforcement
19 of the provisions of this act or investigations of suspected or actual violations of this act.

20 (3) A person in the business of viatical settlements shall not knowingly or
21 intentionally permit any person convicted of a felony involving dishonesty or breach of trust to

1 participate in the business of viatical settlements, unless that person obtains written consent from
2 the Commissioner pursuant to 18 U.S.C. § 1033.

3 (b)(1) Viatical settlements contracts and applications for viatical settlements, regardless
4 of the form of transmission, shall contain the following statement or a substantially similar
5 statement:

6 “Any person who knowingly presents false information in an application for
7 insurance or viatical settlement contract is guilty of insurance fraud and may be
8 subject to the penalties found in the District of Columbia Theft and White Collar
9 Crimes Act of 1982,” effective Dec. 1, 1982 (D.C. Law 4-164; D.C. Official Code
10 § 22-3225.01 *et seq.*).

11 (2) The lack of a statement as required in paragraph (1) of this subsection does not
12 constitute a defense in any prosecution for a fraudulent viatical settlement act.

13 (c)(1) Any person engaged in the business of viatical settlements having knowledge or a
14 reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been
15 committed shall provide to the Commissioner such information as required by, and in a manner
16 prescribed by, the Commissioner.

17 (2) Any other person having knowledge or a reasonable belief that a fraudulent
18 viatical settlement act is being, will be, or has been committed may provide to the Commissioner
19 the information required by, and in a manner prescribed by, the Commissioner.

20 (d)(1) No civil liability shall be imposed on and no cause of action shall arise from a
21 person’s furnishing information concerning suspected, anticipated, or completed fraudulent

1 viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is
2 provided to or received from:

3 (A) The Commissioner or the Commissioner's employees, agents, or
4 representatives;

5 (B) Federal, state, or local law enforcement or regulatory officials or their
6 employees, agents or representatives;

7 (C) A person involved in the prevention and detection of fraudulent
8 viatical settlement acts or that person's agents, employees, or representatives;

9 (D) The National Association of Insurance Commissioners, National
10 Association of Securities Dealers, the North American Securities Administrators Association, or
11 their employees, agents, or representatives, or other regulatory body overseeing life insurance,
12 viatical settlements, securities or investment fraud; or

13 (E) The life insurer that issued the life insurance policy covering the life
14 of the insured.

15 (2) Paragraph (1) of this subsection shall not apply to statements made with
16 actual malice. In an action brought against a person for filing a report or furnishing other
17 information concerning a fraudulent viatical settlement act, the party bringing the action shall
18 plead specifically any allegation that paragraph (1) of this subsection does not apply because the
19 person filing the report or furnishing the information did so with actual malice.

20 (3) A person furnishing information as identified in paragraph (1) of this
21 subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing
22 party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities

1 in carrying out the provisions of this act and the party bringing the action was not substantially
2 justified in doing so. For purposes of this section, a proceeding is “substantially justified” if it
3 had a reasonable basis in law or fact at the time that it was initiated. However, such an award
4 does not apply to any person furnishing information concerning his or her own fraudulent
5 viatical settlement acts.

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

8 (5) Paragraph (1) does not apply to a person furnishing information concerning
9 his, her or its own suspected, anticipated, or completed fraudulent settlement acts or suspected,
10 anticipated, or completed fraudulent insurance acts.

11 (e)(1) The documents and evidence provided pursuant to subsection (d) or obtained by
12 the Commissioner in an investigation of suspected or actual fraudulent viatical settlement acts
13 shall be privileged and confidential and shall not be a public record and shall not be subject to
14 discovery or subpoena in a civil or criminal action.

15 (2) Paragraph (1) does not prohibit release by the Commissioner of documents
16 and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement
17 acts:

18 (A) In administrative or judicial proceedings to enforce laws administered
19 by the Commissioner;

20 (B) To federal, state, or local law enforcement or regulatory agencies, to
21 an organization established for the purpose of detecting and preventing fraudulent viatical
22 settlement acts, or to the NAIC; or

1 (C) At the discretion of the Commissioner, to a person in the business of
2 viatical settlements that is aggrieved by a fraudulent viatical settlement act.

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

5 (f) This act shall not:

6 (1) Preempt the authority or relieve the duty of other law enforcement or
7 regulatory agencies to investigate, examine, and prosecute suspected violations of law;

8 (2) Prevent or prohibit a person from disclosing voluntarily information
9 concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other
10 than the insurance department; or

11 (3) Limit the powers granted elsewhere by the laws of the District to the
12 Commissioner or an insurance fraud unit to investigate and examine possible violations of law
13 and to take appropriate action against wrongdoers.

14 (g) Viatical settlement providers and viatical settlement brokers shall have in place
15 antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical
16 settlement acts. At the discretion of the Commissioner, the Commissioner may order, or a
17 licensee may request and the Commissioner may grant, such modifications of the following
18 required initiatives as necessary to ensure an effective antifraud program. The modifications may
19 be more or less restrictive than the required initiatives so long as the modifications may
20 reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall
21 include:

1 (1) Fraud investigators, who may be a viatical settlement provider or employees
2 or independent contractors of those viatical settlement providers; and

3 (2) An antifraud plan, which shall be submitted to the Commissioner. The
4 antifraud plan shall include, but not be limited to:

5 (A) A description of the procedures for detecting and investigating
6 possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies
7 between medical records and insurance applications;

8 (B) A description of the procedures for reporting possible fraudulent
9 viatical settlement acts to the Commissioner;

10 (C) A description of the plan for antifraud education and training of
11 underwriters and other personnel; and

12 (D) A description or chart outlining the organizational arrangement of the
13 antifraud personnel who are responsible for the investigation and reporting of possible fraudulent
14 viatical settlement acts and investigating unresolved material inconsistencies between medical
15 records and insurance applications.

16 (3) Antifraud plans submitted to the Commissioner shall be privileged and
17 confidential and shall not be a public record and shall not be subject to discovery or subpoena in
18 a civil or criminal action.

19 Sec. 15. Injunctions; Civil remedies; cease and desist orders.

20 (a) In addition to the penalties and other enforcement provisions of this act, if any person
21 violates this act or any regulation implementing this act, the Commissioner may seek an
22 injunction in a court of competent jurisdiction and may apply for temporary and permanent

1 orders that the Commissioner determines are necessary to restrain the person from committing
2 the violation.

3 (b) Any person damaged by the acts of a person in violation of this act may bring a civil
4 action against the person committing the violation in a court of competent jurisdiction.

5 (c) The Commissioner may issue, in accordance with the section 10 of the District of
6 Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1208; D.C.
7 Official Code § 2-509), a cease and desist order upon a person that violates any provision of this
8 act, any regulation or order adopted by the Commissioner, or any written agreement entered into
9 with the Commissioner.

10 (d) When the Commissioner finds that an activity in violation of this act presents an
11 immediate danger to the public that requires an immediate final order, the Commissioner may
12 issue an emergency cease and desist order reciting with particularity the facts underlying the
13 findings. The emergency cease and desist order is effective immediately upon service of a copy
14 of the order on the respondent and remains effective for ninety (90) days. If the Commissioner
15 begins non-emergency cease and desist proceedings pursuant to section 10 of the District of
16 Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1208; D.C.
17 Official Code § 2-509), the emergency cease and desist order remains effective, absent an order
18 by a court of competent jurisdiction,

19 (e) In addition to the penalties and other enforcement provisions of this act, any person
20 who violates this act is subject to civil penalties of up to One Thousand Dollars (\$1,000.00) per
21 violation. Imposition of civil penalties shall be made pursuant to an order of the Commissioner
22 issued after a hearing conducted in accordance with section 10 of the District of Columbia

1 Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code §
2 2-509). The Commissioner's order may require a person found to be in violation of this act to
3 make restitution to persons aggrieved by violations of this act.

4 (f) In addition to any penalties and other enforcement provisions of this act, a
5 person may be prosecuted criminally under any applicable provision of the District of
6 Columbia Theft and White Collar Crimes Act of 1982, effective Dec. 1, 1982 (D.C. Law
7 4-164; D.C. Official Code § 22-3225.01 *et seq.*), and may be subject to the penalties
8 found therein. A person convicted of a violation of this act shall be ordered to pay
9 restitution to persons aggrieved by the violation of this act. Restitution shall be ordered
10 in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

11 Sec. 16. Unfair trade practices.

12 (a) A violation of this act, including the commission of a fraudulent viatical settlement
13 act, shall be considered an unfair trade practice pursuant to the Insurance Trade and Economic
14 Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official
15 Code § 31-2231.01 *et seq.*).

16 Sec. 17. Rulemaking Authority.

17 (a) The Commissioner may adopt rules and regulations as are necessary to implement the
18 provisions of this act, including, but not limited to:

19 (1) Establishing standards for evaluating reasonableness of payments under a
20 viatical settlement contract where the insured under the policy that is the subject of a viatical
21 settlement contract is terminally ill or chronically ill. This authority includes, but is not limited
22 to, regulation of discount rates used to determine the amount paid in exchange for assignment,

1 transfer, sale, devise, or bequest of a benefit under a policy. A viatical settlement provider,
2 where the insured is not terminally or chronically ill, shall pay an amount greater than the cash
3 surrender value or accelerated death benefit then available;

4 (2) Establishing appropriate licensing requirements, fees, and standards for
5 continued licensure for a viatical settlement provider, a viatical settlement broker, and a
6 notification fee for life insurance producers operating as viatical settlement brokers pursuant to
7 this act; and

8 (3) Adopting rules governing the relationship and responsibilities of an insurer
9 and a viatical settlement provider, viatical settlement broker, life insurance producer, and others
10 in the business of viatical settlements during the period of consideration or effectuation of a
11 viatical settlement contract.

12 Sec. 18. Application.

13 A viatical settlement provider or a viatical settlement broker lawfully transacting business
14 in the District may continue to do so pending approval or disapproval of the person's application
15 for a license as long as the application is filed with the Commissioner not later than 30 days after
16 publication by the Commissioner of an application form for licensure of these viatical settlement
17 providers or viatical settlement brokers. If the publication of the application form is prior to the
18 effective date of this act, then the filing of the application shall not be later than 30 days after the
19 effective date of this act.

20 Sec. 19. Fiscal impact statement.

21 The Council adopts the fiscal impact statement in the committee report as the fiscal
22 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,

1 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

2 Sec. 20. Effective date.

3 This act shall take effect following approval by the Mayor (or in the event of veto by the
4 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
5 provided in section 602(c)(3) of the District of Columbia Home Rule Act, approved December
6 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)), and publication in the District of
7 Columbia Register.