

Viatical and Life Settlements

Florida

Department of Financial Services

Office of Financial Regulation
Office of Insurance Regulation

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Look Before You Leap

Into Viatical and Life Settlement Investments

In 2005, Florida's Legislature put into place important consumer protections requiring full disclosure of the risks involved in viatical or life settlement transactions. A viatical or life settlement transaction is an agreement in which viatical settlement providers, securities issuers and securities dealers match those who want to sell their life insurance policies at a discount to investors willing to buy the rights to those policies. Although these agreements were originally limited to insured people who were terminally ill, any insured person — regardless of health or age — can viaticate their life insurance policy in Florida.

Extensive information regarding the investment opportunity must be disclosed to investors. It should include but not be limited to: all the material risks associated with the investment; a brief description of the business background of the executive personnel and promoters of the issuer of the viatical investments; a description of the business of the issuer; capitalization of the issuer; amount and nature of funded debt of the issuer; use of proceeds from the offering; compensation to promoters; executive remuneration; pending material litigation involving the issuer; underwriters' commissions and discounts; any adverse actions taken by any state, federal or self-regulatory agency, if material, against the issuer, underwriter, promoter, officer or director, or in which action they were named; and information, where appropriate, concerning the financial condition of the issuer.

Fraud in this industry has potentially cost investors up to \$2 billion in losses since 1996. The average age of the investor defrauded is 70 years and the average loss is \$40,000.

Effective July 1, 2005, there is no longer a "viatical settlement sales agent" as formerly defined in statute. The new law defines certain investments in viatical settlements as securities and subjects them to Florida's securities laws. This means investors must be given full and fair disclosure of all material facts surrounding the transaction.

In addition, determination of the investment's suitability for the investor must be considered by registered dealers and their agents, including the investor's financial and tax status, investment objectives, and other relevant factors.

Life agents are no longer authorized, by virtue of their life licenses, to sell such securities. Selling viatical settlement investments, unless performed pursuant to an exclusion or exemption, now requires a license from, and is regulated by, the Office of Financial Regulation.

An Introduction to Viatical and Life Settlements

Sales agents, who on July 1, 2005, had contracts in process, had a grace period of up to thirty days to complete them, if certain conditions existed. New business, however, (on and after July 1, 2005) is subject to securities laws set forth in Chapter 517, Florida Statutes.

Agents who sell viatical settlements should be aware that the Florida Securities and Investor Protection Act makes clear that it is unlawful for any person in the solicitation or sale of a viatical settlement purchase agreement to obtain money or property by means of an untrue statement of a material fact, to make misleading statements given the circumstances under which they were made, or to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a person. To do so could subject the individual agent to felony charges of the third or first degree, depending upon the face amount of the policy sold.

A viatical settlement or life settlement investment is a transaction in which a life insurance policyholder sells his policy before the death of the insured. Often, the insured has been diagnosed as terminally ill, and wishes to use the money to pay for living and medical expenses. Viatical settlements may also involve healthy policyholders who do not have a terminal illness.

When the viatical settlement transaction is complete, the policy owner (also known as the viator) gives up ownership and control of the policy to another party (typically the viatical settlement provider). The viator sells the insurance policy to the viatical settlement provider, at a discount; which means the viator receives less than the face value of the policy.

Typically, interests in these viaticated life insurance policies take the form of securities and are sold to investors by securities dealers. Multiple investors may invest in a single policy or the investors may own an interest in an underlying pool of viaticated policies. Depending on the way the security is structured, the new owner, or the securities issuer, may take on the responsibility to pay the premiums on the insurance policy.

When the insured dies, the person who has purchased an interest in the insurance policy collects a portion of the death benefits either directly from the insurance company, or from the issuer of the securities. From an investor's perspective, a viatical settlement is an investment in the timely death of the insured person.

The Parties Involved

To better understand how a viatical settlement works, it helps to know who is involved in this type of financial transaction.

Beneficiary – The person(s) designated to receive the death benefit from a life insurance policy upon the death of the insured. In a viatical settlement, one or more investors may receive this designation on an “irrevocable” basis. This means no one can change it without written permission from the beneficiaries.

Dealer – The company offering, buying, selling or otherwise dealing or trading in securities issued by another person. A dealer includes any issuer who, through persons directly compensated or controlled by the issuer, engages in the business of offering or selling securities, which are issued or are proposed to be issued by the issuer.

Insured – The individual whose life is insured by an insurance policy. This individual may or may not be the policyholder.

Issuer – Any person or legal entity who proposes to issue, has issued, or shall issue securities such as interests in a viaticated life insurance policy. Any person who promotes the viatical investment may also be deemed an issuer.

Investor or Purchaser – A person who buys into one or more viatical investments.

Policyholder – The individual who owns the policy and has the legal right to name the beneficiary or sell control and ownership of the policy.

Viatical Settlement – The sale of a life insurance policy to a licensed viatical settlement provider in return for a negotiated payment. This payment is usually represented as a percentage of the policy’s face value.

Viatical Settlement Broker – A person or firm licensed by the Florida Department of Financial Services that offers or attempts to negotiate a viatical settlement between a policyholder residing in Florida and a viatical settlement provider. This person or firm is responsible to, and should only represent the interests of, the policyholder. A licensed life insurance agent may also negotiate such settlements without obtaining a separate viatical settlement broker’s license in Florida. Such an agent must hold a proper appointment from a viatical settlement provider.

Viatical Settlement Contract – A written agreement between a viatical settlement provider and a policyholder that establishes terms under which the provider will pay the policyholder for the policy.

Viatical Settlement Provider – A company or individual licensed by the Florida Department of Financial Services that purchases ownership and beneficiary rights from the policyholder. The provider may assign beneficiary rights to one or more investors. As of the printing date of this publication, only a handful of companies held viatical settlement provider licenses in Florida.

Viaticate – The process by which a person sells a life insurance policy to a third party for less than its face value.

Viator – The owner or policyholder of a life insurance policy, or a certificate holder under a group policy, who has entered into a contract to sell his or her policy.

How the Process Works

Money is raised from investors to purchase interests in life insurance policies. The viatical broker and the policyholder negotiate a price for the life insurance policy with the viatical provider. The negotiated price is usually represented as a percentage of the policy's death benefit.

When the transaction is complete, the policyholder receives the negotiated payment and the investors receive an interest in the policy. At this point, the viator gives up ownership and control of the policy to the securities issuer. Generally, policies written on individuals with serious illnesses and shorter life expectancies will generate a settlement for a higher percentage of the death benefit than those written on healthy individuals or those with a longer life expectancy.

For example, a policyholder may sell a single \$100,000 life insurance policy at 50 percent of the policy's value. The issuer or broker-dealer would take \$50,000 collected from the investor(s), and give it to the policyholder in exchange for the policy, which will pay \$100,000 when the policyholder dies.

The same transaction looks different to the investor. The issuer, typically through a dealer, raises capital to purchase the \$100,000 policy for \$50,000 by selling interests in the policy to investors. If the policy is offered at a 28 percent discount of its face value of \$100,000, the issuer or broker-dealer will collect \$72,000 from investors, and forward \$50,000 of it to the viator to purchase the policy.

When the viator dies, the insurance company pays money to the issuer or broker-dealer, which then distributes the \$100,000 death benefit to the investor(s). If the viator had a 24-month life expectancy and died at the end of that 24 months, the investor would receive his 28 percent total return or roughly a 14 percent annual return. If the viator lives six years beyond his life expectancy, the investor still receives a 28 percent total return on his original investment. His annual return, however, has been reduced to 3.5 percent.

Investors should be aware of this potential variability in annual returns. Selling a policy to an investor is often less financially advantageous for the policyholder than using accelerated benefits or taking out a loan against a policy's value.

Accelerated Death Benefits

An Alternative to Viatical Settlements

Before considering a viatical settlement, a policyholder should check with his or her insurance company or agent to find out if the policy qualifies for an accelerated death benefit. Some life insurance companies offer this benefit, which pays part of a policy's death benefit, minus any outstanding policy loan, before the death of the insured.

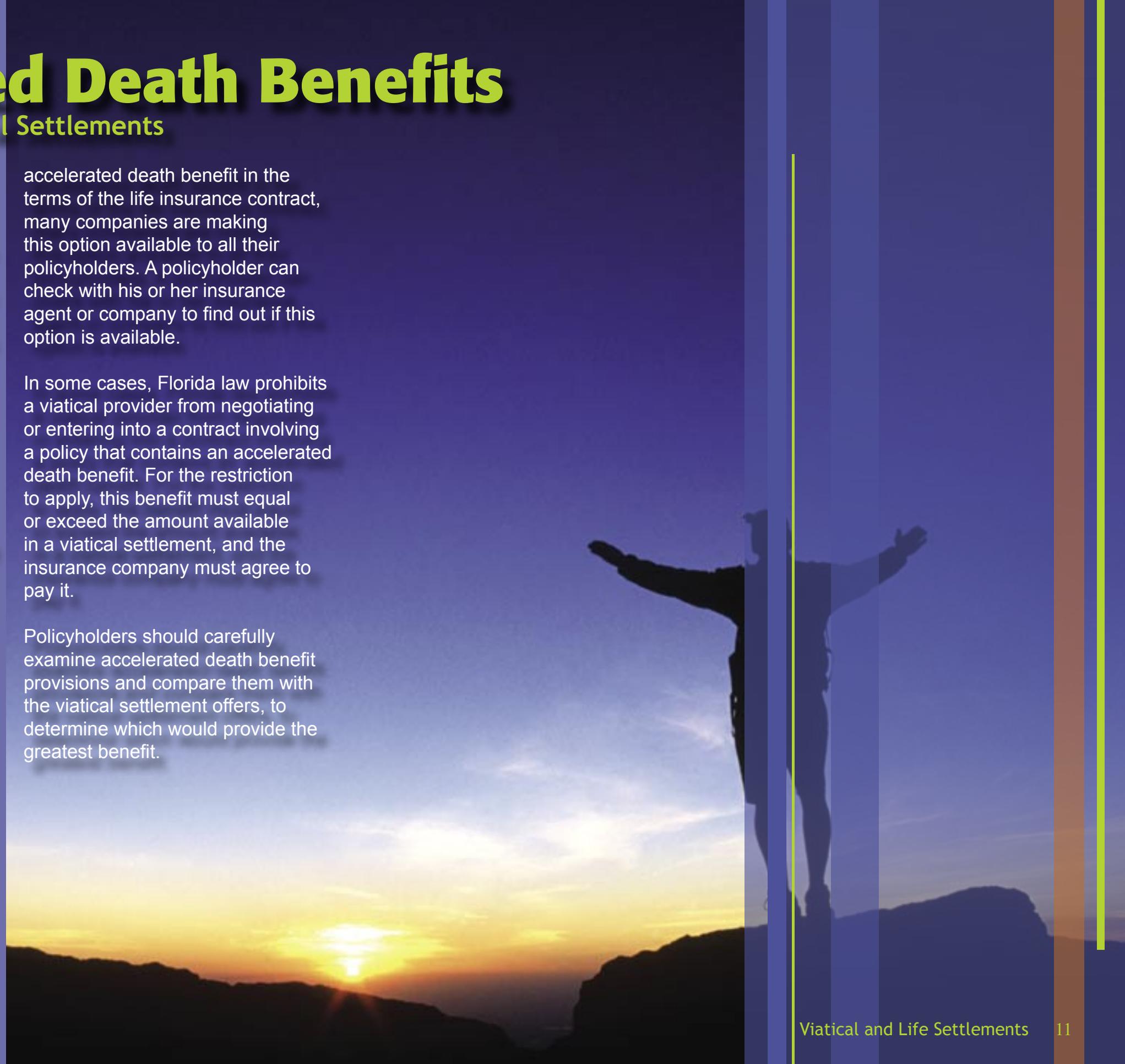
This is useful for policyholders who want to use only a portion of the death benefit, and leave the remainder of the money to their heirs. Therefore, when the insured dies, their designated beneficiary receives the remainder of the death benefit.

When accelerated death benefits are paid, the insurance company may charge a service fee. But this fee is much smaller than the amount of benefits lost in a typical viatical contract. This usually makes accelerated death benefits a much better deal for policyholders. While some older policies may not grant an

accelerated death benefit in the terms of the life insurance contract, many companies are making this option available to all their policyholders. A policyholder can check with his or her insurance agent or company to find out if this option is available.

In some cases, Florida law prohibits a viatical provider from negotiating or entering into a contract involving a policy that contains an accelerated death benefit. For the restriction to apply, this benefit must equal or exceed the amount available in a viatical settlement, and the insurance company must agree to pay it.

Policyholders should carefully examine accelerated death benefit provisions and compare them with the viatical settlement offers, to determine which would provide the greatest benefit.



Information for Potential Investors in Viatical Securities

Persons selling viatical investments that are considered securities are required to provide each investor with full and fair disclosure of all information relevant to an investment decision. Many times these disclosures are made in a prospectus or offering memorandum. Be sure you are provided with this risk disclosure document and be sure to read the document carefully.

Verify that the person offering or selling securities consisting of viaticated policies is properly licensed in Florida. To verify licensure of all parties involved, whether you are buying or selling, visit www.fldfs.com, or call our toll-free Consumer Helpline at 1-800-342-2762. To find out if the person selling you a viatical settlement investment is registered to sell securities, please call the Office of Financial Regulation at (850) 410-9893.

Unlike some other investment options, a viatical investment usually is not readily convertible into cash. This means you may not be able to get any portion of your investment back, even for an emergency, until the viator dies and a death claim payment is paid. Remember that the insured may live much longer than the estimated years, or live longer than you. Therefore, you will not have access to your investment dollars. Consider whether you can afford to keep the money tied up until the insured dies.

Remember, the life expectancy of the insured person is just an estimate and many viators have lived significantly longer than estimated. There is no guarantee the insured person will die when the estimated time runs out. Given the potential uncertainty surrounding life expectancy estimates, investing in viaticals may be considered a speculative investment. Be cautious of any person that represents these investments as guaranteed or low risk.

If the policy matures within the estimated life expectancy of the insured, your annual rate of return will be high; if the insured lives for a long time, your annual rate of return will be low. Make sure you understand the difference before you invest.

Consider diversifying your portfolio by investing in a pool that contains many different viaticated policies. Spreading your investment dollars over many insurance policies should reduce your overall risk and may increase the liquidity of your investment. You should also consider diversifying your investments into other products such as stocks, bonds or mutual funds, to further reduce your risk.

Ownership of viatical investments can bring significant ongoing expenses. These costs include those associated with paying the ongoing life insurance premiums, tracking the viator, monitoring the health of the viator, filing a claim for payment with the insurance company and distributing the

proceeds to investors. Who is responsible for paying these costs and who will pay these costs if the issuer or dealer selling the securities goes out of business or is otherwise unable to pay these expenses?

The viator's surviving family members or heirs may challenge the changes made to the life insurance policy contract, delaying your payment even further. If this happens, determine who is responsible for paying for any legal fees incurred defending the rights to the policy.

The life expectancy estimate is crucial to the success of the investment. Know how the life expectancy estimate is formulated. Determine the background, credentials and experience of the person or company that will issue the life expectancy estimate.

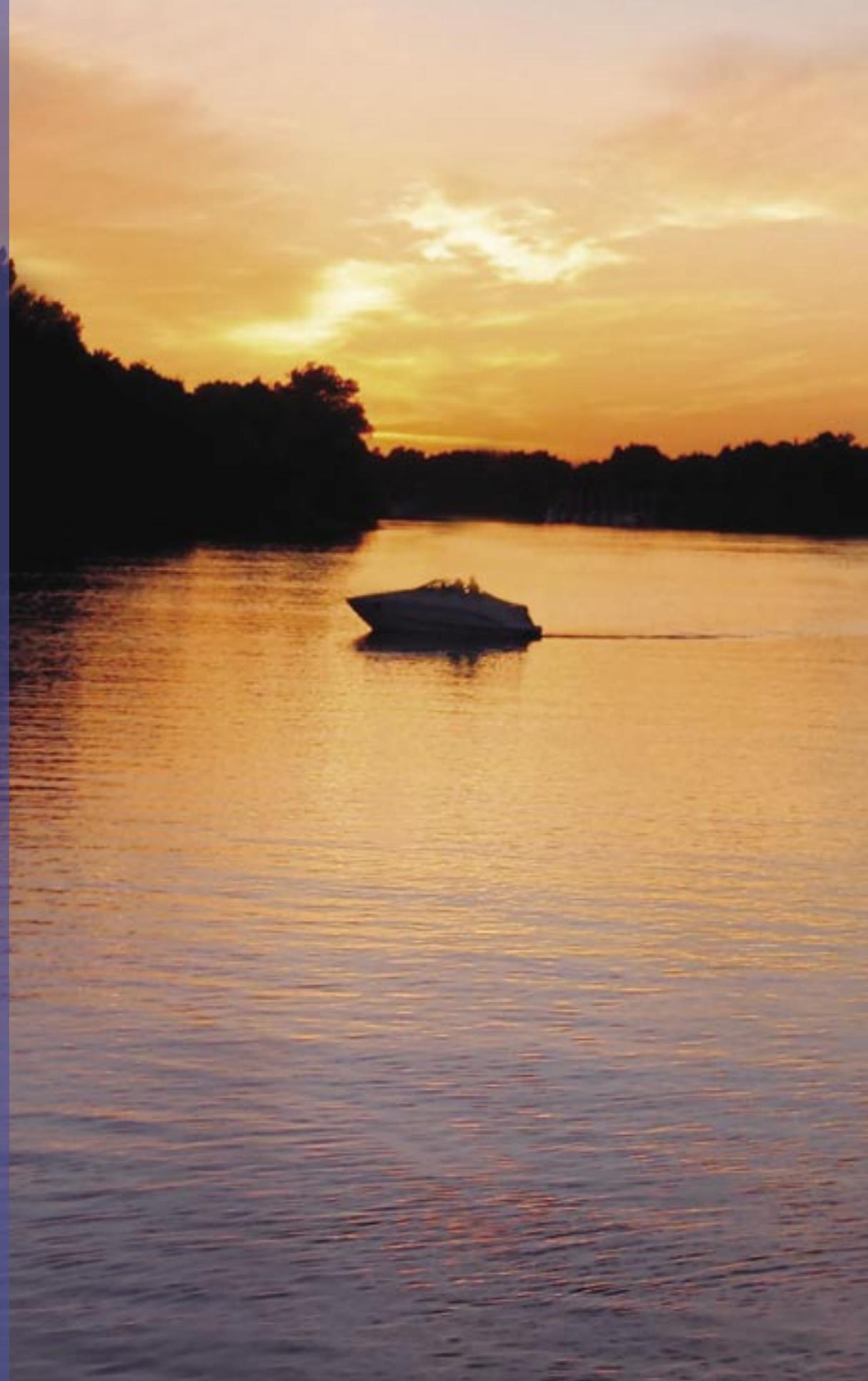
Know whether the person or company establishing the life expectancy examined the viator or just reviewed medical records.

Determine how accurate this individual or company's life expectancy estimates have been in the past. Find out if there was a second opinion. Consider asking for a written report of the accuracy of the life expectancies issued by the company that will be issuing yours.

Viatical settlement investments used to fund an IRA or 401(k) can create financial hardships if the insured does not die before you need to start collecting your retirement benefits, or before federal law requires you to begin to make withdrawals.

Beware the Dangers of Fraud

- You may lose your investment if the viatical provider, issuer, dealer or others involved have financial trouble or are involved in fraudulent practices.
- Life insurance companies require a two-year "contestability clause" to investigate and rescind policies obtained using fraudulent information. If you invest in a policy less than two years old, you take on a greater risk, since the insurance company can cancel the policy if it was obtained fraudulently.



- Serious problems may also arise if the original application submitted by the insured was intentionally inaccurate or "cleansheeted." Cleansheeting is when an agent or policyholder deliberately omits or misrepresents a medical history, or other information on an application, to obtain an insurance policy.

- Be cautious of fraudulent schemes in which the policyholder obtains life insurance policies, then immediately sells the policies, and collects the cash settlement. These are called "wet ink" policies and may involve fraud.

- The insurance company may not pay death benefits on a policy obtained using fraudulent information, and may sue for damages if the fraud is discovered later.

Tips for Persons Thinking of Selling Their Life Insurance Policy

- Check with your insurance company or agent to find out if the policy qualifies for an accelerated death benefit. An accelerated death benefit pays part of a policy's death benefit, minus any outstanding policy loan, before the death of the insured. This is useful for policyholders who want to use only a portion of the death benefit and leave the balance to their heirs.
- Shop around and contact several licensed viatical settlement providers or licensed viatical settlement brokers. One provider might pay 35 percent of the face value of a policy, while another might pay 45 percent for the same policy. A viatical settlement broker has fiduciary responsibilities to you, the viator.
- Find out the name of the escrow agent involved in the transaction and check with the department to see whether any complaints have been lodged against this individual.

- Protect your privacy. A large number of people may be involved in a viatical transaction requiring access to personal information. Know who is involved, and check them out thoroughly.
- To verify licensure of all parties involved, whether you are buying or selling, visit www.fldfs.com, or call our toll-free Consumer Helpline at 1-800-342-2762. To find out if the person selling you a viatical settlement investment is registered to sell securities, please call the Office of Financial Regulation at (850) 410-9893.
- Your decision may have a negative financial impact on you and others as you may be denying your surviving family members a much needed benefit from the life insurance policy.
- You may have to pay taxes on the sale that could adversely affect your financial condition.
- If there is an existing loan against your policy, you may have to pay it back before initiating a viatical settlement.

- As the policyholder, you may change your mind and rescind a viatical settlement contract within 15 days from the date the settlement funds are received.
- If the viatical provider pays off a policy loan out of the settlement proceeds, you will have to pay the viatical provider that amount, plus the actual cash received, if you cancel the viatical contract during the 15-day "free look" period.
- If the policy is a whole life policy, make sure the contract specifies what will happen to any dividends, additional policy face value increases, and accidental death or other benefits, before the viatical settlement is signed and executed.
- Contact any governmental agencies and charitable organizations that provide you entitlements or benefits. The income from a viatical settlement may disqualify you from receiving certain Medicaid, Medicare, Social Security or other benefits.

Beware the Dangers of Fraud

- It is illegal for anyone to purchase your life insurance policy under false pretenses, for any purpose. Any person who engages in such activity can be sued, and may face criminal charges under Florida's insurance fraud laws.
- Be wary of an agent who says he can sell your existing policy and get you a replacement policy.
- Don't omit, or allow to be omitted, any factual information that should be included on an application for life insurance. These actions may be fraudulent and you could face criminal charges, and be uninsured.
- Florida law requires viatical brokers and providers to supply certain written disclosures to prospective viators. The name, business address and telephone number of the escrow agent involved in the settlement process must be disclosed.

Additional Help

Those who have questions or problems regarding viatical settlements, accelerated death benefits or life insurance may call the Consumer Helpline toll-free at 1-800-342-2762. The hearing impaired may order such publications by using a TDD to call 1-800-640-0886.

You may also call the DFS service office closest to you. The service offices are on the next page. Consumers may also obtain information and assistance from the Department of Financial Services Web site at www.fldfs.com.

To determine whether the person selling you the viatical or life settlement investment is registered to sell securities or has a disciplinary history, call the Office of Financial Regulation at (850) 410-9893

Other Numbers and Web sites:
Better Business Bureau (Check local directory)
www.bbb.org

Florida Attorney General: (850) 414-3300
myfloridalegal.com

National Association of Insurance Commissioners: (816) 842-3600
www.naic.org

Office of the U.S. Attorney Victim/Witness Line: 1-800-379-4643
www.usdoj.gov/usao/fls

DFS Service Offices

Daytona Beach

135 Executive Circle, Suite 103
Daytona Beach, FL 32114-1180
(386) 323-0900

Fort Lauderdale

499 N.W. 70th Ave., Suite 301-B
Plantation, FL 33317-7574
(954) 321-2900

Fort Myers

2295 Victoria Ave., Suite 163
Ft. Myers, FL 33901-3867
(239) 461-4000

Jacksonville

921 N. Davis
Building B, Suite 260
Jacksonville, FL 32209
(904) 798-5800

Miami

401 N.W. Second Ave., Suite N-307
Miami, FL 33128-1700
(305) 536-0300

Orlando

400 W. Robinson St., Suite N-401
Orlando, FL 32801-1751
(407) 835-4400

Pensacola

610 E. Burgess Road
Pensacola, FL 32504-6320
(850) 453-7800

St. Petersburg/Largo

11351 Ulmerton Road, Suite 240
Largo, FL 33778-1636
(727) 587-7260

Tallahassee

Larson Building
200 E. Gaines St.
Tallahassee, FL 32399-0323
(850) 413-3132

Tampa

5309 E. Fowler Ave.
Tampa, FL 33617-2221
(813) 899-6160

West Palm Beach

400 N. Congress Ave., Suite 210
West Palm Beach, FL 33401-2933
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