



A CONSUMER'S GUIDE TO

VIATICAL SETTLEMENTS

GLOSSARY OF INSURANCE TERMS

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 (i.e. no one can change it without written permission from the beneficiary).

VIATICAL SETTLEMENT PURCHASER

A person who invests in one or more viatical contracts.

Policyowner – The person or party who owns an insurance policy. The policyowner is usually the insured and/or the beneficiary, but can be someone else. The policyowner is the only person who can make changes to a policy.

VIATICAL SETTLEMENT CONTRACT

A written agreement establishing the terms under which compensation or anything of value will be paid to the policyowner in exchange for the policyowner’s (viator’s) assignment, transfer, and/or sale of all ownership rights in a life insurance policy.

VIATICATED POLICY

A policy that has been acquired by a viatical settlement provider under a viatical settlement contract.

WHAT IS A VIATICAL SETTLEMENT?



A viatical settlement is a contractual agreement to provide a life insurance policyholder immediate cash in exchange for the sale and transfer of life insurance policy ownership rights. Generally, viatical settlements appeal to insureds that are terminally ill and need the cash settlement to pay for living and medical expenses. However, viatical settlements may also be available to healthy insureds. Once the viatical settlement has been completed, the policyholder relinquishes ownership and control of the policy to the viatical provider, thus terminating the beneficiary's right to collect the death benefit when the insured dies.

From an investment perspective, a viatical settlement is somewhat a speculative transaction involving the anticipated and timely death of the insured person. Viatical settlement investments are considered a type of security. The sale of investments involving viatical transactions are regulated by the North Carolina Secretary of State's Office (Securities Division). If you have questions concerning investments in viatical settlements, that office can be reached at 919-733-3924.

THINGS TO CONSIDER BEFORE SELLING YOUR POLICY



- Your existing life insurance policy may have cash value or other non-forfeiture benefits that might be available to you.
- Selling (viaticating) your policy may create a taxable event resulting in tax consequences for you or your estate.
- Your future situation, circumstances and needs may change.
- You may deny your surviving family members desperately needed life insurance benefits by viaticating your insurance policy.
- Beware of unlicensed, unscrupulous and dishonest viatical settlement providers who might attempt to defraud you.
- If transaction funds and executed agreements are not properly escrowed, you may risk signing over the ownership of your policy without receiving any benefits.
- Life expectancy is an estimate of how long you may live. In actuality, you could live longer or die sooner, regardless of your current state of health. Accordingly, you should consider both scenarios and consider how you and/or your beneficiary might be affected by a viatical settlement.

WHO ARE THE PARTIES INVOLVED?



Knowing the parties involved and understanding industry terminology typically used in this type of financial transaction may provide you with a better understanding of viatical settlements.

- A “viator” is the owner of an individual life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.
- The “insured” is the person on whose life an insurance policy is written. Usually, the insured is also the viator.
- The viatical settlement provider, or “viatical provider,” is a company or individual that purchases the policy from the policyholder. The viatical provider may sell beneficiary and ownership rights to investors.
- The viatical settlement broker, or “viatical broker,” is a person or firm who represents the policyholder and who offers or attempts to negotiate a viatical settlement between a policyholder residing in North Carolina and a viatical settlement provider.
- An “escrow agent” acts as an independent intermediary and is responsible for seeing that both the viatical settlement provider and the policyholder fulfill their obligations under the viatical settlement agreement. Once the escrow agent receives the full amount of payment from the provider and executed documents from the policyholder transferring ownership, the transaction is finalized. The escrow agent cannot have any affiliation with the viatical broker or provider.

Viatical providers and viatical brokers must be licensed to conduct business in North Carolina. To verify if a provider is licensed, contact the North Carolina Department of Insurance (NCDOI) Consumer Services Division toll-free at 1-855-408-1212. To verify if a broker is licensed, contact the NCDOI Agent Services Division at (919) 733-7487.

HOW THE PROCESS WORKS



The process begins when the policyholder (and/or viatical broker) negotiates 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.

The viatical provider then forwards settlement funds to the escrow agent and the policyholder forwards executed documents (transferring ownership of the policy to the viatical provider) to the escrow agent. When both parties have satisfied all their obligations, the transaction is complete (i.e. the policyholder receives settlement funds and the viatical settlement provider receives ownership and control of the policy).

Usually, life insurance policies covering individuals with grave illnesses and shorter life expectancies can be expected to produce much larger viatical settlement offers than similar policies covering healthy individuals.

NOTE: Once a policyholder receives settlement funds, he or she has a “10-day free-look period” in which to change his or her mind and cancel the settlement. The settlement funds must be returned to the viatical provider in order to cancel the viatical settlement under the free look provision.

ACCELERATED DEATH BENEFITS



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. Sometimes referred to as “living benefits,” this policy provision provides life insurance benefits to insureds diagnosed with a terminal illness.

Depending on the contract, other qualifying events may also trigger benefits, such as being permanently confined to a nursing home or requiring an organ transplant. Qualifying events can differ from contract to contract. The policy may limit the amount that can be paid and any amounts paid will generally reduce the death benefit payable to the beneficiary.

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 their policyholders. A policyholder can check with his or her insurance agent or company to find out if this option is available.

If you accept an accelerated benefit payment, you may become ineligible for Medicaid or other governmental benefits. Also, the benefits may be taxable. We suggest that you consult with your tax and/or legal advisors to determine whether or not this may be the case in your individual situation prior to entering into any financial agreement.

REQUIRED DISCLOSURES



With each viatical settlement application, the provider or broker must provide the viator with the following disclosures no later than the time the viatical settlement application is signed by all parties. These disclosures must be provided in a separate document that is signed by the viator and the provider or broker.

- 1) There are possible alternatives to contracts including any accelerated death benefits or policy loans offered under the viator’s policy.
- 2) Some or all of the proceeds of the viatical settlement may be taxable under federal and state tax code. Assistance should be sought from a professional tax advisor.
- 3) Proceeds of the viatical settlement could be subject to the claims of creditors.
- 4) Receipt of the proceeds of a viatical settlement may adversely affect the viator’s eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- 5) The viator has the right to rescind a contract within 10 business days of receiving the viatical settlement proceeds. If the insured dies during the rescission period, the settlement contract is rescinded subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the provider or purchaser.
- 6) Funds will be sent to the viator within three business days after the provider has received the insurer or group administrator’s acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- 7) Entering into a contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- 8) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements.
- 9) The disclosure document must include the following language: “All medical, financial or personal information solicited or obtained by a provider or broker about an insured, including the insured’s identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.” 1

10) The insured may be contacted only by the provider, broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year and no more than once per month if the insured has a life expectancy of one year or less.

A provider must provide the viator with the following disclosures no later than the date the contract is signed by all parties. These disclosures must be conspicuously displayed in the contract or in a separate document signed by the viator and the provider or broker:

- 1) The affiliation, if any, between the provider and the issuer of the insurance policy to be viaticated including the name, address and telephone number of the provider.
- 2) A broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a broker for the placement of a policy.
- 3) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.
- 4) The dollar amount of the current death benefit payable to the provider under the policy. If known, the provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy and the provider's interest in those benefits.
- 5) The name, business address and telephone number of the independent third-party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

CONSUMER TIPS

- Shop around. Don't be pressured into selling your policy for a lower value than you feel is appropriate.
- A viatical transaction may require you to disclose confidential personal information including medical records to various individuals involved in the transaction.
- Know who is involved in the transaction, and check them out thoroughly.
- Find out the name of the escrow agent used in the transaction and be sure you are confident that he/she will act as an impartial party in the transaction.
- Find out the name of the licensed viatical provider involved in the transaction if you negotiate through a viatical settlement broker.
- If there is an existing loan against your policy, you may have to pay it back before initiating a viatical settlement.
- Remember, 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 "10-day free look" period.
- If the policy is a whole life policy, make sure you consider all policy values including dividends, additional policy face value increases and accidental death, or other benefits, before signing and executing a viatical settlement agreement.
- Any funds received as part of a viatical settlement may be taxable and could change your current tax rate.
- Contact governmental agencies or charitable organizations that may provide benefits to you. Income from a viatical settlement may disqualify you from receiving Medicaid and/or other benefits.
- Obtaining a life insurance policy under false pretense, for any purpose, is illegal. Anyone engaged in such activities can face civil and criminal charges.

IF YOU HAVE QUESTIONS, THE CONSUMER SERVICES DIVISION OF THE DEPARTMENT OF INSURANCE IS HERE TO HELP.

Toll free: 855-408-1212

Outside of NC: 919-807-6750

Fax: 919-733-0085

North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

You can find additional information as well as a downloadable copy of our [Request for Assistance](#) form on the NCDI Web site.

NC Department of Insurance | Mike Causey, Commissioner | www.ncdoi.com