

**GETTING SETTLED IN:  
AN OVERVIEW OF THE LIFE/VIATICAL SETTLEMENT LAWS RECENTLY ENACTED IN  
COLORADO, GEORGIA AND NEW JERSEY**

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In 2005, Colorado, Georgia and New Jersey passed legislation regulating both the life and viatical settlement industry in their respective state.<sup>1</sup> Unlike in New Jersey, the life and viatical settlement industry was not regulated in Colorado or Georgia prior to the passage of this legislation. New Jersey's "Viatical Settlements Act" repealed a prior law regulating viatical settlements<sup>2</sup> and replaced it with a broader regulatory scheme that, like the Colorado and Georgia Acts, largely follows the Viatical Settlements Model Act.<sup>3</sup>

A viatical or life settlement is the sale or transfer of an existing life insurance policy to independent third parties (known as life or viatical settlement providers) for less than the expected death benefit under the insurance policy but greater than the cash surrender value or accelerated death benefit available at the time of the life or viatical settlement.<sup>4</sup> Notably, the Colorado, Georgia and New Jersey Acts ("the Acts") include within the definition of viatical/life settlement contract:

- (1) a contract for a loan or other financing transaction with a viator/seller secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the policy, or a loan secured by the cash value of a policy;<sup>5</sup> and
- (2) an agreement with a viator/seller to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator/seller.<sup>6</sup>

The lone difference between a viatical settlement and a life settlement is that viatical settlements deal with insured individuals who have a life expectancy of less than twenty-four months and life settlements deal with individuals who are expected to live more than twenty-four months. Under the Colorado and New Jersey Acts, a viatical settlement includes both a life settlement and a viatical settlement;<sup>7</sup> whereas the Georgia Act refers to both as a life settlement.<sup>8</sup>

***Licensing Requirements***

The Acts require life/viatical settlement providers to be licensed.<sup>9</sup> The Acts also provide that viatical/life settlement providers do not include:

- (1) a bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;<sup>10</sup>
- (2) the issuer of a life insurance policy providing accelerated benefits pursuant to the policy;<sup>11</sup>
- (3) an authorized or eligible insurer that provides stop-loss coverage to a viatical/life settlement provider, financing entity, special purpose entity or related provider trust;<sup>12</sup>
- (4) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of insurance policies for any value less than the expected death benefit;<sup>13</sup>
- (5) a financing entity;<sup>14</sup>
- (6) a special purpose entity;<sup>15</sup>
- (7) a related provider trust;<sup>16</sup> or
- (8) an accredited investor or qualified institutional buyer who purchases a viaticated/purchased policy from a viatical/life settlement provider.<sup>17</sup>

In addition, the Acts provide that only life insurance producers licensed under the laws of the State and who have been licensed as a resident producer with a life line of authority in his or her home state for at least a year may negotiate life/viatical settlement contracts on behalf of owners of life insurance policies.<sup>18</sup> Further, the Acts clarify that the life insurance producer represents only the viator/seller, and not the viatical settlement provider or an insurer.<sup>19</sup> The New Jersey Act goes a bit farther in that it expressly states that "a life insurance producer ... owes a

fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator."<sup>20</sup>

### ***Filing Requirements***

The Acts require that viatical/life settlement providers file their contract forms and disclosure statements with the commissioner for approval.<sup>21</sup> A filed viatical/life settlement contract form or disclosure form is deemed approved if it has not been disapproved within sixty (60) days of the filing.<sup>22</sup>

### ***Disclosure Requirements***

The Acts also require the disclosure of certain information to viators/sellers at the time of application for a viatical/life settlement contract and prior to the execution of a final viatical/life settlement contract . At the time of application, the life insurance producer or settlement provider must disclose, among other things, that:

- (1) there are alternatives to settlements including accelerated death benefits and/or policy loans;<sup>23</sup>
- (2) the proceeds of the settlement may be taxable;<sup>24</sup>
- (3) the proceeds may be subject to the claims of creditors;<sup>25</sup>
- (4) receipt of the proceeds may adversely affect the viator's/seller's eligibility for Medicaid or other governmental benefits or entitlements;<sup>26</sup>
- (5) there is a fifteen day window in which the seller may rescind the settlement contract and if the insured dies within the fifteen days, the contract is automatically rescinded;<sup>27</sup>
- (6) funds will be sent within three business days after the settlement provider has received notice from the insurer that ownership has been transferred;<sup>28</sup>
- (7) entering into viatical/life settlement 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/seller;<sup>29</sup>
- (8) the insured may be contacted by the settlement provider or settlement broker to see if they are alive; however, if their life expectancy is over one year, the contact will be limited to no more than once every three months.<sup>30</sup>

Prior to the date that all parties sign the viatical/life settlement contract, the viatical/life settlement provider must also disclose:

- (1) the affiliation, if any, between the viatical/life settlement provider and the issuer of the insurance policy;<sup>31</sup>
- (2) the name, address and telephone number of the viatical/life settlement provider;<sup>32</sup>
- (3) the dollar amount of the current death benefit payable to viatical/life settlement provider. If known, the viatical/life settlement provider must also disclose the availability of guaranteed insurance benefits, the dollar amount of accidental death and dismemberment benefits under the policy or certificate, and the viatical/life settlement provider's interest in those benefits;<sup>33</sup> and
- (4) the name, business address, and telephone number of the independent third-party escrow agent and the fact that the viator/seller may inspect or receive copies of the relevant escrow or trust agreements or documents.<sup>34</sup>

Further, if the policy to be acquired pursuant to a viatical/life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured, the viator/seller must be informed of the possible loss of coverage on the other lives under the policy and be advised to consult with his or her insurance producer or the insurer issuing the policy.<sup>35</sup>

Although not required by the Colorado, Georgia and New Jersey Acts, other states, including but not limited to Maryland,<sup>36</sup> North Carolina,<sup>37</sup> Ohio<sup>38</sup> and Utah,<sup>39</sup> require that the settlement provider disclose how the life insurance producer's commission is calculated and the amount that he or she will receive in connection with the settlement of the policy.<sup>40</sup>

In the event that the viatical/life settlement provider transfers ownership or changes the beneficiary of the policy, the Acts also compel the settlement provider to notify the insured of the change in ownership or beneficiary within

twenty (20) days after the change.<sup>41</sup>

### ***Privacy Requirements***

Like most states with viatical/life settlement laws, Colorado, Georgia and New Jersey regulate the privacy of the insured's policy, medical information and records. Particularly, the Acts prohibit revealing the identity of the insured or the insured's financial or medical information unless the disclosure:

- (1) is necessary to effect a viatical/life settlement contract between the viator/seller and a viatical/life settlement provider and the viator/seller and the insured have provided prior written consent to the disclosure;<sup>42</sup>
- (2) is provided in response to an investigation or examination by the commissioner or another governmental officer or agency;<sup>43</sup>
- (3) is a term or condition to the transfer of a policy by one viatical/life settlement provider to another viatical/life settlement provider;<sup>44</sup>
- (4) is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and that the viator/seller and insured have provided prior written consent to the disclosure;<sup>45</sup>
- (5) is necessary to allow the viatical/life settlement provider or its authorized representative to make contacts for the purpose of determining health status;<sup>46</sup> or
- (6) is required to purchase stop loss coverage.<sup>47</sup>

### ***Advertising Requirements***

The Acts regulate the advertisement of offers of viatical/life settlement contracts to provide prospective viators/sellers with accurate descriptions of viatical/life settlement contracts and to ensure that product descriptions are not unfair, deceptive or misleading.<sup>48</sup> Fraudulent practices in the offering, application or execution of viatical/life settlement contracts are prohibited and viatical/life settlement providers are required to put into effect antifraud initiatives, which may include fraud investigators and an antifraud plan.<sup>49</sup>

### ***Record and Reporting Requirements***

In addition, the Acts require settlement providers to retain virtually all records pertaining to settlement transactions for at least five years and subject them to the possibility of an inquiry by examiners appointed by the state insurance commissioner.<sup>50</sup> The Acts also require settlement providers to file with the commissioner by March 1 of each year an annual statement containing information prescribed by the commissioner.<sup>51</sup> In New Jersey, such information includes, but is not limited to, the date of the viatical settlement contract, the viator's state of residence at the time of the contract, the mean life expectancy of the insured at the time of the contract, the face amount of the policy viaticated, the net death benefit, and the net amount paid to the viator.<sup>52</sup> Georgia, like New Jersey, also requires settlement providers to report the net death benefit and amount paid to the seller<sup>53</sup> as well as the age of the insured and estimated life expectancy.<sup>54</sup>

While viatical/life settlement laws in Colorado, Georgia and New Jersey are very similar, uniformity among all the states is lacking. Moreover, as the laws/regulations in some states are changing day to day,<sup>55</sup> it is important to review each state's requirements to ensure compliance.

### ***Endnotes***

<sup>1</sup> Colorado's "Viatical Settlements Act" ("Colorado's Act" or "the Colorado Act"), which is codified at Colo. Rev. Stat. Ann. §10-7-601 to 10-7-620, became effective January 1, 2006. Georgia's "Life Settlements Act" ("Georgia's Act" or "the Georgia Act"), Ga. Code Ann. §33-59-1 to §33-59-18, was effective November 5, 2005, and New Jersey's "Viatical Settlements Act", N.J.S.A. 17B:30B-1 to 17B:30B-17, was effective December 21, 2005.]

<sup>2</sup> N.J.S.A. 17B:30A-1 to 17B:30A-10.

<sup>3</sup> The NAIC Model Act was first adopted in 1993 to address the viatical settlement's industry's growth in response to the AIDS epidemic. The original NAIC Model Act did not address life settlements until December 2000, when the NAIC expanded the definition of "viator" to include individuals who are not terminally ill, thereby including life

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settlements within the scope of the Act. In addition, the NAIC also adopted model regulations that govern both viatical and life settlements.

<sup>4</sup> Colo. Rev. Stat. Ann. §10-7-602(13), §10-7-615(1)(a); Ga. Code Ann. §33-59-2(7), §33-59-215(2); N.J.S.A. 17B:30B-2, 17B:30B-9g.

<sup>5</sup> Colo. Rev. Stat. 10-7-602(13); Ga. Code Ann. 33-59-2(7); N.J.S.A. 17B:30B-2.

<sup>6</sup> Colo. Rev. Stat. 10-7-602(13); Ga. Code Ann. 33-59-2(7); N.J.S.A. 17B:30B-2. A written agreement between a viator/seller and a person having an insurable interest in the insured's life is expressly excluded from the definition of a viatical/life settlement contract.

<sup>7</sup> Colo. Rev. Stat. §10-7-602 (13), (16); N.J.S.A. 17B:30B-2.

<sup>8</sup> Ga. Code Ann. §33-59-2 (7), (13).

<sup>9</sup> Colo. Rev. Stat. Ann. §10-7-603(2)(a); Ga. Code Ann. §33-59-3(b)(1); N.J.S.A. 17B:30B-3a.

<sup>10</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(a); Ga. Code Ann. 33-59-2(8)(A); N.J.S.A. 17B:30B-2.

<sup>11</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(b); Ga. Code Ann. 33-59-2(8)(B); N.J.S.A. 17B:30B-2.

<sup>12</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(c); Ga. Code Ann. 33-59-2(8)(C); N.J.S.A. 17B:30B-2.

<sup>13</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(d); Ga. Code Ann. 33-59-2(8)(D); N.J.S.A. 17B:30B-2.

<sup>14</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(e); Ga. Code Ann. 33-59-2(8)(E); N.J.S.A. 17B:30B-2.

<sup>15</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(f); Ga. Code Ann. 33-59-2(8)(F); N.J.S.A. 17B:30B-2.

<sup>16</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(g); Ga. Code Ann. 33-59-2(8)(G); N.J.S.A. 17B:30B-2.

<sup>17</sup> Colo. Rev. Stat. Ann. 10-7-602(14)(h); Ga. Code Ann. 33-59-2(8)(H); N.J.S.A. 17B:30B-2.

<sup>18</sup> Colo. Rev. Stat. Ann. §10-7-603(1)(a); Ga. Code Ann. §33-59-3(a)(1), (2); N.J.S.A. 17B:30B-3(b)(1).

<sup>19</sup> Colo. Rev. Stat. Ann. §10-7-603(1)(c); Ga. Code Ann. §33-59-3(a)(4); N.J.S.A. 17B:30B-3(b)(2).

<sup>20</sup> N.J.S.A. 17B:30B-3(b)(2).

<sup>21</sup> Colo. Rev. Stat. Ann. §10-7-605; Ga. Code Ann. §33-59-5; N.J.S.A. 17B:30B-5.

<sup>22</sup> Colo. Rev. Stat. Ann. §10-7-605; Ga. Code Ann. §33-59-5; N.J. Admin. C. 11:4-35.9(a).

<sup>23</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(a); Ga. Code Ann. §33-59-8(a)(1); N.J.S.A. 17B:30B-8a(1).

<sup>24</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(b); Ga. Code Ann. §33-59-8(a)(2); N.J.S.A. 17B:30B-8a(2).

<sup>25</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(c); Ga. Code Ann. §33-59-8(a)(3); N.J.S.A. 17B:30B-8a(3).

<sup>26</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(d); Ga. Code Ann. §33-59-8(a)(4); N.J.S.A. 17B:30B-8a(4).

<sup>27</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(e); Ga. Code Ann. §33-59-8(a)(5); N.J.S.A. 17B:30B-8a(5).

<sup>28</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(f); Ga. Code Ann. §33-59-8(a)(6); N.J.S.A. 17B:30B-8a(6).

<sup>29</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(g); Ga. Code Ann. §33-59-8(a)(7); N.J.S.A. 17B:30B-8a(7).

<sup>30</sup> Colo. Rev. Stat. Ann. §10-7-608(1)(i); Ga. Code Ann. §33-59-8(a)(10); N.J.S.A. 17B:30B-8a(10).

<sup>31</sup> Colo. Rev. Stat. Ann. §10-7-608(3)(a); Ga. Code Ann. §33-59-8(b)(1); N.J.S.A. 17B:30B-8b(1).

<sup>32</sup> Colo. Rev. Stat. Ann. §10-7-608(3)(a); Ga. Code Ann. §33-59-8(b)(2); N.J.S.A. 17B:30B-8b(2).

<sup>33</sup> Colo. Rev. Stat. Ann. §10-7-608(3)(d); Ga. Code Ann. §33-59-8(b)(4); N.J.S.A. 17B:30B-8b(4).

<sup>34</sup> Colo. Rev. Stat. Ann. §10-7-608(3)(e); Ga. Code Ann. §33-59-8(b)(5); N.J.S.A. 17B:30B-8b(5).

<sup>35</sup> Colo. Rev. Stat. Ann. §10-7-608(3)(c); Ga. Code Ann. §33-59-3(b)(3); N.J.S.A. 17B:30B-8b(3).

<sup>36</sup> MD Code Ann. §8-606(f)(3)(iii).

<sup>37</sup> N.C. Gen. Stat. Ann. §58-58-245(b)(3).

<sup>38</sup> R.C. §3916.06(B)(1)(c)

<sup>39</sup> Utah Admin. C. R590-222-8(2)(c).

<sup>40</sup> The New Jersey Act does provide that “the commissioner *may* require that either or both viatical settlement provider and life insurance producers provide to the commissioner that information the commissioner determines by regulation, regarding the amount and method of compensation paid to life insurance producers for negotiating a viatical settlement contract”. N.J.S.A. 17B:30B-6c.

<sup>41</sup> Colo. Rev. Stat. Ann. §10-7-608(4); Ga. Code Ann. §33-59-8(c); N.J.S.A. 17B:30B-8c.

<sup>42</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(a)(I)(II); Ga. Code Ann. §33-59-6(b)(1); N.J.S.A. 17B:30B-6b(1).

<sup>43</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(b); Ga. Code Ann. §33-59-6(b)(2); N.J.S.A. 17B:30B-6b(2).

<sup>44</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(c); Ga. Code Ann. §33-59-6(b)(3); N.J.S.A. 17B:30B-6b(3).

<sup>45</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(d); Ga. Code Ann. §33-59-6(b)(4); N.J.S.A. 17B:30B-6b(4).

<sup>46</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(e); Ga. Code Ann. §33-59-6(b)(5); N.J.S.A. 17B:30B-6b(5).

<sup>47</sup> Colo. Rev. Stat. Ann. §10-7-606(2)(f); Ga. Code Ann. §33-59-6(b)(6); N.J.S.A. 17B:30B-6b(6).

<sup>48</sup> Colo. Rev. Stat. Ann. §10-7-611; Ga. Code Ann. §33-59-11; N.J.S.A. 17B:30B-11.

<sup>49</sup> Colo. Rev. Stat. Ann. §10-7-612; Ga. Code Ann. §33-59-12; N.J.S.A. 17B:30B-12.

<sup>50</sup> Colo. Rev. Stat. Ann. 10-7-607(1), (2); Ga. Code Ann. 33-59-7(a), (b); N.J.S.A. 17B:30B-7a, b.

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<sup>51</sup> Colo. Rev. Stat. Ann. 10-7-606(1); Ga. Code Ann. 33-59-6(a); N.J.S.A. 17B:30B-6a.

<sup>52</sup> N.J. Admin. C. 11:4-35.11(a).

<sup>53</sup> Ga. Admin. C. 120-2-93-.05(2).

<sup>54</sup> Ga. Admin. C. 120-2-93-.05(1).

<sup>55</sup> Allison Bell, Life Settlement Firms Face Jumbled Regulatory Picture, Nat'l Underwriter Life & Health, Sept. 20, 2004, note 71, at 40 (quoting Douglas Head, Executive Director of the Viatical and Life Settlement Association of America).