

BUREAU OF INSURANCE

VIATICAL SETTLEMENT PROVIDERS CHAPTER 60 OF TITLE 38.2 OF THE CODE OF VIRGINIA VIATICAL SETTLEMENTS ACT

REQUIREMENTS FOR OPERATING IN VIRGINIA

(All citations to the insurance statutes of Virginia are in Title 38.2 of the Code of Virginia.)

No person shall act as a viatical settlement provider with a resident of this Commonwealth without first obtaining a license from the Bureau of Insurance (Bureau). To be considered for a license, an applicant must submit a completed *Application for Initial License as a Viatical Settlement Provider* to the Bureau's Financial Regulation Division pursuant to the Viatical Settlements Act, Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia ([Chapter 60](#)).

The following definitions may prove useful to the reader in reviewing the requirements:

Viatical settlement contract means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator 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 life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. "Viatical settlement contracts" do not include accelerated benefits provisions contained in life insurance policies, whether issued with the original policy or as a rider, according to the regulations Rules Governing Accelerated Benefits Provisions ([14 VAC 5-70](#)) promulgated by the Commission.

Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include: (i) 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; (ii) the issuer of a life insurance policy providing accelerated benefits under [§ 38.2-3115.1](#) and pursuant to the contract; (iii) an

authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, viatical settlement purchaser, financing entity, special purpose entity or related provider trust; (iv) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; (v) a financing entity; (vi) a special purpose entity; (vii) a related provider trust; (viii) a viatical settlement purchaser; or (ix) an accredited investor or qualified institutional buyer as described in Securities and Exchange Commission Regulation D (17 CFR 230.501 through 17 CFR 230.508) and defined, respectively, in Rule 501 (17 CFR 230.501) and Rule 144A (17 CFR 230.144A) under the Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider and does not communicate with the viator or insured who is a resident of this Commonwealth except through a person licensed by the Commission as a viatical settlement provider or broker under Chapter 60.

Viator means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. A viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness except where specifically addressed. Viator does not include (i) a person licensed by the Commission as a viatical settlement provider or broker under Chapter 60; (ii) an accredited investor or qualified institutional buyer as described in Regulation D (17 CFR 230.501 through 17 CFR 230.508) and defined, respectively, in Rule 501 (17 CFR 230.501) and Rule 144A (17 CFR 230.144A) under the Securities Act of 1933, as amended; (iii) or a financing entity, special purpose entity, or related provider trust as those terms are defined in Chapter 60.

LICENSE REQUIREMENTS

1. A nonrefundable application fee of \$500 must be paid in order for the application to become eligible for review. Mail a check payable to the *Treasurer of Virginia* along with a cover letter to the Bureau of Insurance, Company Licensing & Regulatory Compliance, P.O. Box 1157, Richmond, VA 23218. The application should be sent electronically to the contact listed below.
2. An applicant for a viatical settlement provider license under the provisions of Chapter 60 must be a legal entity, other than a natural person, that can function legally, sue or be sued, and make decisions through agents. The term "legal entity" includes a corporation, limited liability company, business trust, limited partnership, partnership, or other business entity other than a sole proprietorship. License applicants to be organized under Virginia law must comply with the applicable provisions of [Title 13.1](#) (corporations, limited liability companies and business trusts) or [Title 50](#) (partnerships) of the Code of Virginia or other applicable Virginia law *prior* to filing a license application.
3. The license authorizes the viatical settlement provider's partners, officers, members, and designated employees to act as the viatical settlement provider, provided such individuals are named in the license application.
4. An applicant for a viatical settlement provider license must provide evidence of financial accountability in accordance with the provisions of [14 VAC 5-71-31 J](#). The applicant will be directed to provide this evidence during the tentative approval phase of the

licensing process (see **Section II** of the Application for Initial License as a Viatical Settlement Provider).

5. An applicant for a viatical settlement provider license must provide with its application an anti-fraud plan that meets the requirements of [§ 38.2-6011 E 2](#).

LICENSE RENEWAL REQUIREMENTS

1. A license issued to a viatical settlement provider will, unless otherwise suspended, revoked, or terminated, remain in effect until June 30 following its date of issue, at which date it will expire unless previously renewed in a timely manner.
2. [14 VAC 5-71-31 H](#) requires licensed viatical settlement providers to submit a renewal application form and renewal fee of \$300 payable to the Treasurer of Virginia on or before March 1 of each year. The renewal application form will specify the information that will be required in order for the license renewal to be approved.
3. [14 VAC 5-71-70 B](#) requires licensed viatical settlement providers to submit the anti-fraud certification required by [§ 38.2-6011 E](#) on or before March 1 of each year.

REPORTING REQUIREMENTS

1. [14 VAC 5-71-70 A](#) requires viatical settlement providers licensed in Virginia to file on or before March 1 of each year an annual report of all viatical settlement transactions where the viator is a resident of this Commonwealth on a form containing the following information, for the previous calendar year, for each of the viatical settlements contracted during the reporting period:
 - a. Date of the viatical settlement contract;
 - b. Life expectancy of the insured at the time of the contract, in months;
 - c. Face amount of the policy at the time of the contract;
 - d. Net death benefit viaticated;
 - e. Cash surrender value of the policy at time of the contract;
 - f. Accelerated death benefit available from the policy; and
 - g. Net amount paid by the viatical settlement provider to the viator to viaticate the policy.
2. [14 VAC 5-71-70 B](#) requires viatical settlement providers licensed in Virginia to certify to the Bureau the *implementation* of anti-fraud initiatives calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. The initial certification shall be within 60 days following licensure, and then annually on or before March 1 as a condition of license renewal.

3. [14 VAC 5-71-70 C](#) requires viatical settlement providers licensed in Virginia to report to the Commission, in writing, any material change in information filed with the Bureau concerning the provider's identity. A provider must report any such change within 30 calendar days of the change.
4. [14 VAC 5-71-70 D](#) requires viatical settlement providers licensed in Virginia that have been convicted of a felony to report to the Commission, in writing, within 30 calendar days of the conviction the facts and circumstances regarding the criminal conviction.

The annual report required by subsection A of 14 VAC 5-71-70 shall be filed with the Bureau of Insurance, marked to the attention of the Life and Health Market Regulation Division. The reports required by subsections B, C and D of 14 VAC 5-71-70 shall be filed with the Bureau of Insurance, marked to the attention of the Financial Regulation Division.

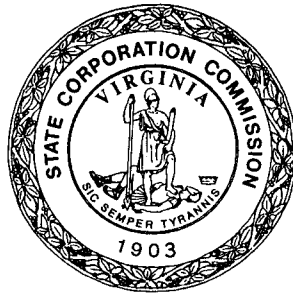
BUREAU CONTACTS

1. *License applicants* should direct all questions to:

Kevin McClain
Insurance Financial Analyst
Company Licensing and Regulatory Compliance
Telephone: (804) 371-9432
Kevin.Mcclain@scc.virginia.gov

2. [Section 38.2-6003 A](#) requires viatical settlement contract and disclosure statement forms to be filed with and approved by the Bureau in accordance with the procedures set forth in § 38.2-316. Upon receiving a license, a viatical settlement provider should request filing instructions from and submit its contracts and forms for approval to:

Mrs. Amanda McCauley
Principal Insurance Market Examiner
Forms and Rates Section
Life and Health Division
Telephone: (804) 371-0034
Amanda.McCauley@scc.virginia.gov



STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

APPLICATION FOR INITIAL LICENSE AS A VIATICAL SETTLEMENT PROVIDER
CHAPTER 60 OF TITLE 38.2 OF THE CODE OF VIRGINIA
VIATICAL SETTLEMENTS ACT

(Please read these instructions completely before filing an application.)
(All citations to the insurance statutes of Virginia are in Title 38.2 of the Code of Virginia.)

Section I. Initial Review Documents and Disclosure

In its initial application, an applicant for a license as a viatical settlement provider must submit or disclose the following:

1. Non-refundable Application Fee of \$500.00
2. Name of Applicant _____
3. DBA/Trade, Assumed or Fictitious Name (if applicable) _____
4. Street Address of Applicant _____

5. Mailing Address _____

6. Internet Website Address _____
7. Organizational Structure (Date of Incorporation/Formation _____)
____ Corporation ____ Limited Liability Company ____ Partnership
____ Other: Identify/Explain _____

- 8. State of Domicile _____
- 9. Federal Employer Identification Number _____
- 10. Contact Person _____
 Title _____
 Telephone _____
 Fax Number _____
 Email _____

11. Name and Address of Designated Agent for Service of Process

12. A copy of the applicant’s organizational documents (e.g., articles of incorporation).

13. A plan of operation for Virginia. Include a description of how the applicant advertises and markets its viatical settlement business in general. Detail how the applicant contacts and communicates with individual viators. Submit a copy of all advertising or solicitation materials that the applicant uses or plans to use to attract potential viators or to otherwise market, promote or publicize its business or services. Explain how persons who have direct contact with viators are recruited, trained, and compensated.

14. An anti-fraud plan in accordance with the provisions of [§ 38.2-6011 E 2](#).

15. The name and address of the qualified financial institution(s) where the applicant has established an escrow account pursuant to [§ 38.2-6008 D](#).

Name	Address	Account #
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

16. A list of all states in which an application for a viatical settlement provider license is currently pending.

17. A list of all states in which the applicant is currently licensed or registered as a viatical settlement provider.

18. A list of all the states for which a viatical settlement provider application has been refused or denied.

19. Provide the information below for each individual authorized to act as the viatical settlement provider under this license.

Name	Job Title	Address	SSN#
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

For each individual, provide a properly executed biographical affidavit for each officer and director using the standard NAIC form. Affidavits must be current and shall not be signed by the affiant more than one year prior to the date the application is filed. In addition, each affidavit must be certified by an independent third party that has conducted a comprehensive review of the affiant’s background and has certified that the biographical affidavit has no inaccurate or conflicting information and no material omissions. An independent third party is one that has no affiliation with the license applicant and is in the business of providing background checks or investigations, such as DAC, Equifax, Owens Online or Proudfoot. The form can be accessed through the NAIC’s website at www.naic.org/industry_ucaa.htm.

20. Provide the information below on any of the applicant's members, partners, directors, officers, stockholders, and designated employees having, owning or holding a 10% or greater interest in the applicant or an affiliate of the applicant. For each *individual*, an NAIC biographical affidavit must also be submitted, along with the independent third party certification.

Name	Job Title	% Interest	Address	SSN/FEIN#
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

21. If the applicant is a member of a holding company system, submit an organizational chart which depicts the affiliate relationships among the members. As used herein, “affiliate” means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the member specified. “Control” shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively 10% or more of the voting securities of any other person.

22. With regard to the applicant, and all members, partners, directors, officers, affiliates, stockholders, and designated employees who are conducting the business of the applicant:

a. Have any been found guilty of fraudulent or dishonest practices? Yes No

- b. Have any been subject to a final administrative action or otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider? Yes No
- c. Have any demonstrated a pattern of unreasonable payments to viators? Yes No
- d. Have any been convicted of a felony or any misdemeanor involving moral turpitude? Yes No
- e. Have any unlawfully engaged in the business of viatical settlements in other states? Yes No
- f. Have any violated any provisions of Chapter 60 or other applicable provisions of Title 38.2? Yes No
- g. Have any failed to honor contractual obligations set out in a viatical settlement contract? Yes No

If the response to any of these questions is **yes**, please provide details including dates, locations, disposition, etc. (attaching supporting documentation as appropriate). If an NAIC Biographical Affidavit provided with the application already addresses such a response, please identify the individual.

NOTARIAL ACKNOWLEDGMENT REQUIRED OF ALL APPLICANTS

Dated and signed this _____ day of _____, 20____ at _____
 _____ being duly sworn according to law, deposes and says that the answers to the questions and the declarations contained in this application are true and correct.

 Signature of the President/CEO of the Provider

 Full Legal Name of the Provider
 (Type or Print)

State of _____

City/County of _____

Personally appeared before me the above named _____
 personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers contained therein are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL)

 Notary Public

My Commission Expires: _____

It is the intent of the Bureau to process all applications in a timely manner. When necessary, the Bureau will contact the applicant regarding the need for any additional information in order to continue and complete the review process. Failure by the applicant to respond adequately to requests for such additional information within a reasonable timeframe, or failure to demonstrate compliance with the licensing standards prescribed by law, will be grounds for denial of the application, subject to the applicant's right to demand a hearing before the Commission.

If the Bureau concludes that the applicant is a qualified candidate for licensure pursuant to Chapter 60, it will issue a letter of **tentative approval** directing the applicant to complete the remaining requirements for licensure in Section II below.

Section II. Tentative Approval

1. *All applicants* must provide evidence of financial accountability under the provisions of [14 VAC 5-71-31 J](#) through **one** of the following:
 - a. a surety bond in the amount of \$100,000. The bond shall be for the use and benefit of the Commonwealth of Virginia and for any person having a cause of action against the principal arising out of breaches of laws set forth in Chapter 60. The surety must be either licensed in this Commonwealth to transact the business of suretyship or approved by the Commission to issue surplus lines coverage, and shall not be directly or indirectly under the same ownership or management as the principal on the bond. The bond must contain termination provisions acceptable to the Commission, and provide that the bond and the coverage thereunder shall not be terminated without 30 days' written notice to the Commission.
 - b. an errors and omissions insurance policy in an amount not less than \$100,000 per occurrence and \$1 million for all occurrences within one year, issued by an insurer licensed in this Commonwealth or approved by the Commission to issue surplus lines coverage.
 - c. a deposit of not less than \$100,000 with the Treasurer of Virginia that complies in form and amount with the requirements of [§ 38.2-1045 A](#).
2. *For a non-Virginia domiciled applicant that is organized as a corporation, limited liability company, business trust, limited partnership, or partnership, or is a registered limited liability partnership*, the applicant must make appropriate filings with the Office of the Clerk of the Commission to obtain authority to transact business in Virginia. For filing instructions and forms, the applicant may contact the Office of the Clerk at www.scc.virginia.gov or at (804) 371-9733.
3. *For a non-Virginia domiciled applicant that is not organized as a corporation, limited liability company, business trust, limited partnership, or partnership*, the applicant must record its existence to the extent required by the appropriate governing statutes of Virginia and designate a resident of Virginia as agent for service of process. The applicant must provide evidence to the Bureau that such existence has been properly registered.

The Bureau will issue a license to an applicant once it determines that the applicant has complied with the requirements of Section II and all other licensing standards provided by [§ 38.2-6002 D](#).