

Review Requirements Checklist  
VIATICAL SETTLEMENTS

REVIEW REQUIREMENTS	REFERENCES	COMMENTS
<b>General Filing Requirements</b>		
Transmittal Letter	14 VAC 5-100-40	<b>For Paper Filings:</b> Must be submitted in duplicate for each filing, describing each form, its intended use and kind of insurance provided.
	14 VAC 5-100-40 1	Forms submitted and described in transmittal letter must have a number that consists of digits, letters, or a combination of both.
	14 VAC 5-100-40 2	Must clearly indicate if forms are replacements, revisions, or modifications of previously approved forms and describe the exact changes that are intended.
	14 VAC 5-100-40 3	Certification of Compliance signed by General Counsel or officer of company or attorney or actuary representing company is required.
	14 VAC 5-100-40 5	Description of market for which the form is intended.
	14 VAC 5-100-40 6	<b>For Paper Filings:</b> At least one copy of each form must be included in the filing. A duplicate copy of forms must be submitted if the company wants a “stamped” copy of forms for its records. A stamped self-addressed return envelope is required. The letter of transmittal must be addressed to, State Corporation Commission, Bureau of Insurance, P. O. Box 1157, Richmond, VA 23218.
	Administrative Letter 1983-7	Must include the name and Individual NAIC number of the company for which the filing is made.
<b>Additional SERFF Filing Requirements</b>	<b>Administrative Letter 2012-03</b>	<b>Additional SERFF filing requirements must be met as specified below for life and health forms and rate filings. Failure to provide the applicable information will result in a “rejected” filing.</b>
<b>General Information – Filing Description</b>		(i) Description of each form by name, title, edition date, other; and intended use.
		(ii) Identification of changes in benefits and premiums (previously approved or filed forms). [Place changed contract provisions (red-lined or highlighted) in Supporting Documentation].
		(iii) Identification of SERFF or state tracking number for the previously approved or filed form for which the new form revises, replaces, or is intended to be used.
		(iv) A statement as to whether any other regulatory body has withdrawn approval of the form because the form contains one or more provisions that were deemed to be misleading, deceptive or contrary to public policy.
<b>HELP TIP:</b>		If a form or rate filing is submitted as new in Virginia, but was previously disapproved or withdrawn in Virginia, please provide details such as the tracking information, form number, and the date that the form or rate filing was disapproved or withdrawn, if available.

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<b>Rate Changes</b>		(i) Specify the number of affected policyholders.
		(ii) Provide the reason(s) for the proposed change(s).
		(iii) Include a statement regarding an increase, decrease, revision of former rates.
		(iv) Specify the percentage amount(s) of the change(s).
<b>Forms</b>		
Form number	14 VAC 5-100-50 1	Form number must appear in lower left-hand corner of first page of each form.
Company Name & Address	14 VAC 5-100-50 2	Full and proper corporate name (including "Inc.") must prominently appear on cover sheet of all policies and other forms. Home office address of insurer must prominently appear on each policy.
Final form	14 VAC 5-100-50 3	Form must be submitted in the final form in which it will be issued and completed in "John Doe" fashion to indicate its intended use.
Application	14 VAC 5-100-50 4	Any form, which is to be issued with an attached application, must be filed with a copy of the application completed in "John Doe" fashion to indicate its intended use. (If application was previously approved, advise date of approval.)
Type Size	14 VAC 5-100-50 5	Accident and Sickness forms must be printed with type size of at least ten-point type. All other forms must be printed with type size of at least eight-point.
Arbitration	§ 38.2-312	Contract may not deprive courts of Virginia jurisdiction in actions against insurer. Arbitration may not be binding.
Fraud Notice	§ 38.2-316 D 1	Title 38.2 of the Insurance Code does not define "Insurance Fraud." Any notice regarding insurance fraud is in non-compliance with this section of the Code. Variations in a notice warning of consequences of making fraudulent statements are acceptable. The notice may disclose that it does not apply in Virginia or may disclose states where applicable.
Forms Approval	§ 38.2-6003 14 VAC 5-71-35	The viatical settlement contract, including attached riders, amendments or endorsements, any application used in connection with the viatical settlement contract, and any disclosure forms, except forms issued pursuant to 14 VAC 5-71-35 C 2, must be filed with and approved by the Commission before use.
Disclosure	§ 38.2-6007 (Disclosure forms the same as the one found in 14 VAC 5-71-35 C 2 do not have to be filed.)	A viatical settlement provider shall provide the viator with specific disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and provide the information stated in the law and regulation. These disclosures can be combined with the disclosures required by 14 VAC 5-71-35 C.

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General Rules	§ 38.2-6008 A 1	A viatical settlement provider entering into a viatical settlement contract shall: a. If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and b. A document in which the insured consents to the release of his medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured. The consent for the release of medical records shall only be obtained for the insurance company if the life insurance policy covering the insured was issued within 48 months of the date of the viator's application for the viatical settlement contract.
	§ 38.2-6008 A 2	Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement to viaticate the policy, the provider must give written notice to the insurer that issued the policy that the policy has or will become a viaticated policy.
	§ 38.2-6008 A 3	The provider must deliver a copy of the medical release, the viator's application for the viatical settlement contract, the notice indicating that the insurance policy has or will be viaticated and a request for verification of coverage to the insurer that issued the life policy that is subject to the viatical transaction. The verification form adopted by the NAIC can be used.
	§ 38.2-6008 A 4	The insurer must respond to a request for verification of coverage no later than 30 calendar days after the date the request is received.
	§ 38.2-6008 A 5	Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he is entering into the viatical settlement contract freely and voluntarily and, or persons who are chronically or terminally ill, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.
	§ 38.2-6008 B	All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to privacy or confidentiality of medical information.
	§ 38.2-6008 C	All viatical settlement contracts shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.

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	§ 38.2-6008 E	Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to subdivision A 6 of § 38.2-6007 renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.
	§ 38.2-6008 F 14 VAC 5-71-90 D	Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this Commonwealth or its authorized representatives and shall be limited to once every three months for insured with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contracts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contracts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.
Contract/Application Disclosures	§ 38.2-6011 B 14 VAC 5-71-35 E	Contracts and applications are required to contain the following language. 1. "Any person who knowingly presents false information in an application for insurance or viatical settlement contract may be guilty of a crime and subject to prosecution." 2. "Viatical settlement transactions between a viatical settlement broker or viatical settlement provider and a resident of this Commonwealth who is a viator or insured are subject to regulation by the State Corporation Commission acting through the Bureau of Insurance pursuant to provisions comprising of Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia. Any person damaged by the acts of a person in violation of this chapter may bring a civil action in a court of competent jurisdiction against the person committing the violation."
Civil Remedies	§ 38.2-6012 A	Any person damaged by the acts of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.
	§ 38.2-6012 B	The Commission shall have no jurisdiction to adjudicate controversies between licenses, or between a licensee under this chapter and a viator or an insured.
	§ 38.2-6012 C	Contractual disputes arising from the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or , if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators, provided that the application of another state's laws shall not impair or limit the ability of the Commission to apply and enforce the provisions of this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title in its regulation of transactions with a resident of this Commonwealth.

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Minimum Face Amount Valuations	14 VAC 5-71-60 A	<p>In order to assure that viators receive a reasonable settlement for viaticating a life insurance policy, the compensation for viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Less than 6 months</td> <td style="text-align: right;">80%</td> </tr> <tr> <td>At least 6 but less than 12 months</td> <td style="text-align: right;">70%</td> </tr> <tr> <td>At least 12 but less than 18 months</td> <td style="text-align: right;">65%</td> </tr> <tr> <td>At least 18 but less than 25 months</td> <td style="text-align: right;">60%</td> </tr> </table>	Less than 6 months	80%	At least 6 but less than 12 months	70%	At least 12 but less than 18 months	65%	At least 18 but less than 25 months	60%
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	14 VAC 5-71-60 B	If the insured's life expectancy is 25 months or more, the minimum payout shall be at least the greater of the cash surrender value at the time of the transaction or the accelerated death benefit in the policy.								
	14 VAC 5-71-60 C	Except where the cash surrender value is paid, the percentage stated above may be reduced by 5.0% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best or other comparable rating agencies.								
Payment of Proceeds	14 VAC 5-71-90 A	For policies containing provisions for double or additional indemnity for accidental death, an additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or, in the absence of a designation, to the estate of the viator.								
	14 VAC 5-71-90 B	Payment of the proceeds of a viatical settlement, pursuant to § 38.2-6008 D of the Code of Virginia, shall be by means of wire transfer to the account of the viator or by certified check or cashier's check made payable to the viator or his designee.								
	14 VAC 5-71-90 C	Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum, except where the provider has purchased an annuity for the purpose of payment of the proceeds and the insurance company agrees to make all payments directly to the viator or the viator's beneficiary.								

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	14 VAC 5-71-90 E	<p>If a provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the contract must contain the following:</p> <ol style="list-style-type: none"> <li data-bbox="884 315 2013 402">(1) A provision that the provider will affect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary.</li> <li data-bbox="884 444 2013 591">(2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy, or send the insured a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and</li> <li data-bbox="884 633 2013 751">(3) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.</li> </ol>

**Access to Administrative Letters, Administrative Orders, Regulations and Laws is available at:**  
<http://www.scc.virginia.gov/boi/laws.aspx>

The Life and Health Division, Forms and Rates Section reviews viatical settlements. Please contact this section at (804) 371-9110 if you have questions or need additional information about this line of insurance.

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I hereby certify that I have reviewed the attached viatical settlement filing and determined that it is in compliance with the viatical settlement checklist.

Signed: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_ Phone No: ( ) \_\_\_\_\_ FAX No: ( ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_