

*Note: Sections to be deleted from the California Code of the Regulations (Title 10, California Code of Regulations, sections 2548.1 through 2548.8) are indicated in ~~strikeout~~; new sections (Title 10, California Code of Regulations sections 2548.1 through 2548.32) are indicated in underlined text. This version of the regulations was noticed to interested parties on June 11, 2010.*

**CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 5,  
SUBCHAPTER 3:**

**REPEAL ARTICLE 12.9: Sections 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7 and 2548.8.**

**ADOPT ARTICLE 12.9 TO READ:  
LIFE SETTLEMENTS**

**Repeal:  
~~Section 2548.1 Authority and Purpose~~**

~~These regulations are promulgated pursuant to the authority granted to the Insurance Commissioner by Sections 10113.1 and 10113.2 of the Insurance Code. The purpose of these regulations is to implement Sections 10113.1 and 10113.2.~~

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~

**Adopt:  
Section 2548.1. AUTHORITY AND PURPOSE.**

These regulations are promulgated pursuant to the authority granted to the Insurance Commissioner by Insurance Code sections 10113.2(k) and 10113.35(a). The purpose of these regulations is to implement and clarify Insurance Code sections 10113.1, 10113.2 and 10113.3.

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.35(a), 10113.35(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994).

**Repeal:  
~~Section 2548.2 Definitions~~**

~~As used in these regulations:~~

~~(a) "Catastrophic or life-threatening illness or condition" is:~~

- ~~i. An illness or condition that will result in a drastically limited life span not exceeding 24 months;~~

broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator. A viatical settlement broker must obtain a viatical settlement license from the Commissioner. Viatical settlement broker does not include:

(1) an attorney, an accountant, or financial planner, retained to represent the viator whose compensation is paid solely by the viator and without regard to whether a viatical settlement is effected; or

(2) an employee of a licensed viatical settlement broker, so long as they are considered an employee for federal and state tax purposes.

(g) "Viatical settlement investment broker" means any person domiciled, residing or conducting business in California, who for a fee, commission, or other valuable consideration, solicits or offers the availability of one or more viatical settlement investments to any person, introduces any person to a viatical settlement provider for the purposes of purchasing one or more viatical settlement investments, or offers to negotiate one or more viatical settlement investments between any person and a viatical settlement provider. A viatical settlement investment broker must be licensed by the Commissioner. A viatical settlement investment broker does not include an attorney, an accountant, or financial planner, retained to represent the investor, whose compensation is paid solely by the investor and without regard to whether a viatical settlement is effected.

(h) "Viatical settlement provider" means any person domiciled, residing or conducting business in California who enters into a viatical settlement agreement. Viatical settlement provider includes any person who has an ownership interest in the insurance policy which has been viaticated, including but not limited to a collateral ownership interest, and including subsequent owners of the life insurance policy to be viaticated. A viatical settlement provider must obtain a viatical settlement license from the Commissioner. Viatical settlement provider does not include:

(1) a 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;

(2) the issuer of a life insurance policy providing accelerated benefits under California law and pursuant to the insurance policy; or

(3) an employee of a licensed viatical settlement provider, so long as they are considered an employee for federal and state tax purposes.

(i) "Viator" means the original owner of a life insurance policy, or the original certificate holder under a group policy, insuring the life of a person with a catastrophic or life threatening illness or condition who enters into, or is considering entering into an agreement under which the viatical settlement provider will pay compensation or

anything of value, 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 the insurance policy or certificate to the viatical settlement provider.

NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.

**Adopt:**

**Section 2548.2. DEFINITIONS.**

(a) As used in this article:

- (1) **Broker.** A life settlement broker as defined at Insurance Code section 10113.1(b).
- (2) **Insured.** The person covered under the policy to be settled as defined at Insurance Code section 10113.1(h).
- (3) **Life Insurance Producer.** A life insurance producer as defined at Insurance Code section 10113.1(j).
- (4) **Owner.** A life insurance owner as defined at Insurance Code section 10113.1(m).
- (5) **Provider.** A life settlement provider as defined at Insurance Code section 10113.1(r).

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.35(a), 10113.35(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994). Reference: Insurance Code sections: 10113.1(b), 10113.1(h), 10113.1(j), 10113.1(m), 10113.1(r).

**Repeal:**

**Section 2548.3 Transfers to Unlicensed Persons**

A licensee or applicant shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any life insurance policy that is or has been the subject of a viatical settlement agreement, to any person that does not hold a California license as a viatical settlement provider issued by the Commissioner and without obtaining the written consent of the viator.

NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.

**Adopt:**

**Section 2548.3. LICENSING OF PROVIDER.**

- (a) Any person acting as a provider in California pursuant to Insurance Code section 10113.2(b)(1) shall submit to the California Insurance Commissioner an application for a license on the application form referenced at Section 2548.17, along with the application fee of \$3,180. The Commissioner shall have the authority to require Applicant to fully disclose the identification of all stockholders who hold more than 10 percent of the shares of the company, as well as all partners, directors, members and key management personnel. The Commissioner may refuse to issue a license to the entity if the Commissioner believes that any stockholder, partner, director, member or person in a key management position fails to meet the standards of Insurance Code sections 10113.2(b)(1) and 10113.2(b)(2).
- (b) The Commissioner's issuance of a provider's license to a legal entity authorizes all officers, partners, and key management personnel act as a provider.
- (c) On each year following the issuance of the original license, a provider shall pay the renewal fee of \$199 and shall renew its license.

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.3(a), 10113.3(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994). Reference: Insurance Code sections: 10113.2(b)(1), 10113.2(b)(2), 10113.2(b)(3), 10113.2(b)(4).

**Repeal:**

**~~Section 2548.4 Viator Designation of Third Party Contact; Contacts with the Insured~~**

~~The viator may designate a third party to receive and respond to all inquiries by the viatical settlement provider regarding the viator's health after the viatical settlement agreement is executed. Contacts with the viator for the purpose of determining the health status of the viator by the viatical settlement licensee shall be limited to once every three (3) months for viators with life expectancy of more than (1) one year, and to no more than (1) one month for viators with a life expectancy of (1) one year or less. The viatical settlement provider and broker shall explain the procedure for these contacts to the viator at the time the viatical settlement contract is entered into. The limitations set forth in this section shall not apply to any contacts with a viator under a viaticated policy for reasons other than determining the viator's health status.~~

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~

**Adopt:**

**Section 2548.4. GRANDFATHERING OF VIATICAL SETTLEMENT PROVIDERS.**

Any natural person or business entity licensed to act as a viatical settlement provider as of December 31, 2009, shall be issued by the Commissioner a provider's license effective July 1, 2010, and shall thereafter be subject to the renewal requirements for such license as if the person or entity were originally licensed as a life settlement provider.

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.3(a), 10113.3(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994). Reference: Insurance Code section 10113.2(b)(1)(C).

**Repeal:**

**Section 2548.5 Disclosures**

~~At the time an offer is made to the viator, the viatical settlement provider shall disclose in writing to the viator:~~

~~(1) the affiliation, if any, between the viatical settlement provider and broker and the issuer of an insurance policy to be viaticated;~~

~~(2) the affiliation, if any, between the viatical settlement provider and the viatical settlement broker;~~

~~(3) the amount of commission or other consideration to be paid by the viatical settlement provider to the viatical settlement broker;~~

~~(4) the viator's right to designate a third party to receive and respond to all inquiries by the viatical settlement provider regarding the viator's health after the viatical settlement agreement is executed;~~

~~(5) the method of contacting the viator or designee and the number of times per month the viator or designee will be contacted regarding the viator's health, after the viatical settlement agreement is executed;~~

~~(6) all estimates of the viator's life expectancy, as provided by the physician(s) retained by any viatical settlement provider offering to purchase a policy;~~

~~—(7) the following notice, in 12-point bold print: NOTICE: YOU MAY HAVE ALTERNATIVES TO SELLING YOUR LIFE INSURANCE POLICY SUCH AS ACCELERATED BENEFITS, CASHING OUT YOUR POLICY, OR USING YOUR POLICY AS COLLATERAL FOR A LOAN. CONTACT YOUR INSURANCE COMPANY FOR FURTHER INFORMATION AND CAREFULLY REVIEW ALL OF YOUR OPTIONS; and~~

~~— (8) notice that a policy may be resold only to an entity or person who holds a viatical settlement license from the Commissioner, and only with the written permission of the insured.~~

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~

**Adopt:**

**Section 2548.5. SALE OF SHARES OR CHANGE IN CONTROL OF PROVIDER.**

The provider shall provide to the Commissioner new or revised information about officers, stockholders who hold more than 10 percent of the shares of the company, partners, directors, or key management personnel within 30 days of change. Furthermore, those providers that are either incorporated in California or otherwise conducting a substantial portion of their life settlement business within this state shall submit a new life settlement application to the Commissioner if such provider sells or transfers 10 percent or more of its stock to another entity that is not, at the time of the transfer, licensed as a California life settlement provider. The provider cannot transact new business within the state until the Commissioner approves the new provider application. For purposes of this section, "substantial portion" is defined as life settlement business transacted in California constituting more than 50 percent of the provider's total business as reported in Section 5.d. of the licensee's most recent annual statement.

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.3(a), 10113.3(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994). Reference: Insurance Code sections: 10113.2(b)(1), 10113.2(p).

**Repeal:**

**~~Section 2548.6 Escrow Account~~**

~~Within 15 calendar days of the viatical settlement provider's receipt of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the viatical settlement contract. The attorney for a viatical settlement provider shall not be the escrow agent for the viatical settlement provider. The trustee or escrow agent shall transfer the proceeds to the viator within 15 calendar days of the viatical settlement provider's receipt of acknowledgment of the transfer of the insurance policy.~~

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~

**Adopt:**

**Section 2548.6. PROVIDER ESCROW REQUIREMENTS.**

- (a) Within three (3) business days of a provider's receipt of documents to effect the transfer of a legal or beneficial interest in the life insurance policy which is the subject of the life settlement agreement, the provider shall deposit the proceeds payable to the owner under the life settlement into an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).
- (b) The escrow or trust account shall be managed by a trustee or escrow agent independent of the parties to the life settlement contract and shall be pursuant to a written agreement signed by the provider and the owner. An attorney or law firm representing the provider shall not be the escrow agent for the provider.
- (c) All persons receiving any form of compensation under the escrow or trust agreement must be clearly identified, including the name, business address, telephone number, tax identification number and compensation amount.
- (d) The trustee or escrow agent shall transfer the proceeds to the owner within three (3) business days following provider's receipt of acknowledgement of the transfer of ownership or beneficial rights to the insurance policy.

NOTE: Authority cited: Insurance Code sections 10113.2(k), 10113.35(a), 10113.35(b); *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20<sup>th</sup> Century Ins. Co. v. Garamendi*, 8 Cal.4<sup>th</sup> 216 (1994). Reference: Insurance Code sections: 10113.3(j) and 10113.3(k).

**Repeal:**

**Section 2548.7 General Rules**

~~Viatical settlement licensees shall not:~~

- ~~(a) pay or offer to pay any finder's fee, commission, or other compensation to any person unlicensed under Section 10113.2 of the Insurance Code;~~
- ~~(b) enter into any viatical settlement in which payments are to be made in installments;~~
- ~~(c) engage in any acts determined by the commissioner to be unfair, deceptive or harassing;~~
- ~~(d) deduct the viatical settlement broker's fee or other valuable consideration~~

from the amount paid or quoted to the viator on a policy;

~~(e) act in the capacity of both a viatical settlement broker and a viatical settlement provider unless authorized by the Commissioner;~~

~~—(f) act as a viatical settlement broker after having acted as an insurance agent or broker with respect to the same individual policy;~~

~~(g) destroy any material records such as purchase agreements, assignments, powers of attorney, escrow agreements, changes of beneficiary, medical records releases, other releases, disclosures, and other material documents, pertaining to a viatical settlement for (5) five years after the date of execution of the viatical settlement;~~

~~—(h) act as a provider, broker or sales agent in a viatical settlement involving a life insurance policy within its contestable or suicide period;~~

~~(i) act in ways contrary to the best interests of the viator, or fail to act according to the viator's instructions, while acting as a viatical settlement broker;~~

~~—(j) offer to buy a policy for an amount less than the policy's cash surrender value or accelerated benefits value;~~

~~(k) use forms that have not been approved by the Commissioner; and~~

~~(l) sell any ownership interest in a viatical settlement business that holds a California viatical settlement license to any entity or person who does not hold a California viatical settlement license, and without authorization from the Commissioner.~~

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~

**Adopt:**

**Section 2548.7. LICENSING OF BROKER; LIFE INSURANCE PRODUCER NOTIFICATION OF BROKERING LIFE SETTLEMENTS.**

Any person acting as a broker in California pursuant to Insurance Code sections 10113.2(b)(1) or 10113.2(b)(1)(D)(ii) shall submit to the Commissioner an application for a one-year life settlement broker's license as referenced at Section 2548.18 or a two-year life settlement broker notification as referenced at Section 2548.20 herein. Persons who have not been licensed as either a resident or non-resident California life agent for at least one year shall submit the life settlement broker application referenced at Section 2548.18 herein. Life agents who have been licensed in California for at least one year may submit the life agent notification referenced at Section 2848.20 herein.