

How the New Viatical Model Act May Impact Your Business

BY LARRY SIMON

The National Association of Insurance Commissioners' introduction of new amendments to the Viatical Settlements Model Act establishes pivotal changes for those financial professionals working with life settlements. Industry players who work with senior clients who are eligible for life settlements should be informed about these proposed Model Act amendments. If adopted, the amendments would establish new guidelines for settlement providers and brokers and their practices while setting out to further regulate the life settlement industry.

The amendments

This act began in 1993, when the original model was adopted. This model was previously amended in 1998 and 2000 before the June 4 amendments were proposed by the NAIC Life Insurance and Annuities Committee at a December 2006 meeting. Currently, 39 states regulate viaticals or life settlements in one way or another, and the majority of these states base their laws, at least in part, on the old Model Act and its amendments.

The main focus of the latest set of amendments is restricting insurance practices known as stranger-initiated life insurance (SILI). SILI transactions occur when life insurance policies are enacted and designed to primarily benefit parties who are unrelated to the insured. These

transactions are typically viewed as unethical and conflict with insurable interest laws.

The most recently revised model sets out to curb SILI transactions by imposing a five-year ban on the sale of certain newly issued life insurance policies in the secondary market. Previous guidelines imposed only a two-year waiting period after the policy was issued. Although the Model Act is only an advisory resource for industry regulators, if state legislatures adopt the latest Model Act amendments, they would immediately impact those involved in the life settlement business, including agents, brokers, providers, and consumers.

The Model Act changes do not completely eliminate the prior two-year moratorium, which restricted clients from selling their life insurance policies until two years after they purchased them. Clients would still be able to sell their life policies prior to the expiration of the new five-year period as long as certain conditions were met, such as:

1. The viator (client) is terminally or chronically ill
2. The policy owner's spouse dies
3. The policy owner divorces their spouse
4. The policy owner retires from full-time employment

5. The policy owner becomes physically or mentally disabled, such that they cannot maintain full-time employment
6. The policy owner is bankrupt or insolvent

Furthermore, the amendments would permit the sale of the policy after two years from issuance if at all times prior to that date:

1. No agreement has been made guaranteeing the future purchase of the policy
2. The policy's premiums were funded exclusively by unencumbered assets or by a full recourse loan
3. Neither the policy nor the insured have been evaluated for future settlements

In addition to establishing new guidelines for policy sales in the secondary market, the amendments create a new definition for premium finance loans disguised as life settlement contracts. The revisions define a life settlement contract to include any premium finance loan made before or after issuance of a policy where the following provisions exist:

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1. The policy owner or insured has received a guarantee of the future life settlement value of a policy
2. The policy owner or insured has agreed to sell the policy or a portion of its death benefit after issuance

One thing that's excluded from the definition of settlements are the loans made by the carrier (pursuant to policy terms) and loans where the proceeds are used solely to pay for policy premiums and the cost of the loan.

Other major changes that may occur for settlement providers and brokers under the new Model Act amendments include:

- \$250,000 bonding requirement
- Additional disclosure requirements, including the disclosure to insurers of plans

to originate, renew, continue, or finance a life insurance policy for the purpose of engaging in settlements prior to or during the first five years after the issuance of a policy

- Rescission periods as long as 60 days
- Elimination of accredited investor exceptions

Agents should also be aware of the opposition directed at the Model Act. While the NAIC focused its recent Model Act on regulating SILI practices, some industry associations, such as the Life Insurance Finance Association (LIFA) and Life Insurance Settlement Association (LISA), opposed the adopted amendments. Such industry groups believe that the amendments are poorly drafted and largely ineffective against the SILI activities they are aiming

to curb, while the five-year ban on selling in the secondary market could negatively affect senior clients who need to sell their policies immediately.

For settlement brokers, the amendments mean that more attention must be placed on the individual circumstances of each client and the status of their life insurance policies. Increased awareness should also be practiced in following up with legislative activities resulting from these new amendments. Industry professionals can look to resources such as the NAIC, LISA, and the National Conference of Insurance Legislators' (NCOIL) Web sites for more information on regulatory updates.

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