

## CHAPTER 54

## (SB 107)

AN ACT relating to viatical settlement brokers.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a viatical settlement provider without first having obtained a license as a viatical settlement provider from the executive director.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate viatical settlement contracts between a viator and one (1) or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the executive director as follows:
  - (a) All applicants for a viatical settlement broker license shall attend the required viatical broker training and pass a viatical broker examination designated by the executive director through administrative regulation.~~;~~
  - (b) A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), ***shall be deemed to meet the licensing requirements of a viatical settlement broker and shall be permitted to operate as a viatical settlement broker without***~~may act on behalf of a viator or otherwise negotiate, as defined in KRS 304.9-020, viatical settlement contracts between a viator and one or more viatical settlement providers without first~~ obtaining a license as a viatical settlement broker ~~and shall be permitted to operate as a viatical settlement broker~~ as set forth in this subtitle if:
    1. That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;
    2. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the agent notifies the executive director, on a ***notification*** form ~~or in a manner that may be~~ prescribed by the executive director, that he is acting as a viatical settlement broker and pays any applicable fees to be determined by the executive director. The notification shall include an acknowledgment by the agent that he will operate as a viatical settlement broker in accordance with this subtitle; and
    3. Irrespective of the manner in which a viatical settlement broker or life insurance agent is compensated, the viatical settlement broker or life insurance agent 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.
  - (c) Notwithstanding subsection (2) of this section, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts without having to obtain a license as a viatical settlement broker.
  - (d) ***A life insurance agent operating as a viatical settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the viatical settlement contract by all the parties for which such agent is operating as a viatical settlement broker, shall have in force and file with the executive director evidence of financial responsibility as follows:***
    1. ***A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a viatical settlement broker, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or***
    2. ***An agreement with a licensed viatical settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the viatical settlement***

*provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a viatical settlement broker on a viatical settlement contract to which the viatical settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or*

3. *A deposit with the executive director of cash or a cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a viatical settlement broker.*
- (3) Application for a viatical settlement provider license or a viatical settlement broker license shall be made in accordance with KRS 304.9-150.
  - (4) Licenses for viatical settlement providers and viatical settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a viatical settlement broker or viatical settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
  - (5) Prior to issuance of a license as a viatical settlement broker or viatical settlement provider, ***except as provided in subsection (2)(d) of this section***, the applicant shall file with the executive director, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than ~~twenty~~~~five hundred~~ thousand dollars ~~(\$20,000)~~~~(\$500,000)~~ per occurrence, and the sum of one ~~million five~~ hundred thousand dollars ~~(\$100,000)~~~~(\$1,500,000)~~ in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee and the executive director. ***This subsection shall not apply to a life insurance agent operating as a viatical settlement broker in accordance with subsection (2) of this section.***
  - (6) No person shall use a viatical settlement contract form or provide to a viator a disclosure statement form in this Commonwealth unless it has been filed with and approved by the executive director in the following manner:
    - (a) At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the executive director has by order given prior approval or disapproval. Approval of a form by the executive director shall constitute a waiver of any unexpired portion of the waiting period. The executive director may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The executive director shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The executive director may at any time, after notice and for cause shown, withdraw any approval. The executive director shall disapprove a viatical settlement contract form or disclosure statement form if, in the determination of the executive director, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the viator. Upon notice and hearing the executive director shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public; and
    - (b) Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.
  - (7) A licensed viatical settlement provider shall not use any person to perform the functions of a viatical settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license or is a licensed insurance agent authorized pursuant to this subtitle to operate as a viatical settlement broker. A licensed viatical settlement broker shall not use any person to perform the functions of a viatical settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a viatical settlement provider.
  - (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the office may take disciplinary action against the employer licensee.

- (9) When a viatical settlement provider elects to use a related provider trust in accordance with KRS 304.15-716, the viatical settlement provider shall file notice of its intention to use that trust with the office with a copy of the trust agreement. Any change in the trust agreement shall be filed with the executive director prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a viatical settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
  - (a) The beneficiary last named by the policy owner prior to entering into the viatical settlement contract; or
  - (b) To the estate of the viator in the absence of a beneficiary.

**Approved March 28, 2006.**