

### **304.15-020 Definitions.**

- (1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communication media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
- (2) "Business of life settlements" means an activity involved in but not limited to the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of life settlement contracts.
- (3) "Chronically ill" means:
  - (a) Being unable to perform at least two (2) activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence;
  - (b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
  - (c) Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Secretary of Health and Human Services.
- (4) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (5) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a life settlement contract but:
  - (a) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one (1) or more policies or to provide credit enhancement; and
  - (b) Who has an agreement in writing with one (1) or more licensed life settlement providers to finance the acquisition of life settlement contracts or to provide stop loss insurance."Financing entity" does not include a nonaccredited investor or purchaser.
- (6) "Financing transaction" means a transaction in which a life settlement provider obtains financing from a financing entity, including without limitation any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.
- (7) "Fraudulent life settlement act" includes:
  - (a) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary

gain, commits or permits his employees or its agents to engage in acts including:

1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, life insurance producer, financing entity, insurer, premium finance lender, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:
    - a. An application for the issuance of a life settlement contract or policy;
    - b. The underwriting of a life settlement contract or policy;
    - c. A claim for payment or benefit pursuant to a life settlement contract or policy;
    - d. Premiums paid on a policy;
    - e. Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;
    - f. The reinstatement or conversion of a policy;
    - g. In the solicitation, offer, effectuation, or sale of a life settlement contract or policy;
    - h. The issuance of written evidence of a life settlement contract or policy;
    - i. A financing transaction;
    - j. Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or
    - k. Stranger-originated life insurance;
  2. Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a life settlement contract;
  3. In the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws;
- (b) Any of the following acts committed by any person or permitted by a person to be committed by the person's employees or agents in the furtherance of a fraud or to prevent detection of a fraud to:
1. Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;
  2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
  3. Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the

transaction of the business of life settlements;

4. File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or which otherwise conceals information about a material fact from the commissioner; or
  5. Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this section and KRS 304.15-700 to 304.15-720;
- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, life settlement broker, insurer, insured, owner, insurance policyowner, or any other person engaged in the business of life settlements or insurance;
  - (d) Recklessly entering into, brokering, or otherwise dealing in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
  - (e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- (8) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
  - (9) "Life expectancy" means the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.
  - (10) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
  - (11) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.
  - (12) "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in policies. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related

to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.

- (13) "Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.
- (14) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed life settlement provider.
- (15) "Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls, or has an arrangement or agreement to own or control, the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in paragraph (b) of subsection (17) of this section.
- (16) "Life settlement broker" or "broker" means an individual, partnership, corporation, or other person who is working exclusively on behalf of an owner and for a fee, commission, or other valuable consideration, offers or advertises the availability of life settlements, introduces an owner to life settlement providers, or offers or attempts to negotiate life settlements between an owner and one (1) or more life settlement providers. "Life settlement broker" does not include an attorney, certified public accountant, or financial planner who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or any other person except the owner.
- (17) (a) "Life settlement contract" means a written agreement entered into between a life settlement provider and an owner owning a policy or who owns or is covered under a group policy insuring the life of a person and the agreement establishes the terms under which the life 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 owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate. A life settlement contract also includes a contract for a loan or other financing transaction with an owner 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 life settlement contract includes an agreement with an owner to transfer ownership or change the beneficiary designation of a policy at a later date regardless of the date that compensation is paid to the owner. "Life settlement contract" does not mean a written agreement entered into between an owner and a person having an insurable interest in the insured's life.

- (b) "Life settlement contract" also includes a premium finance loan made for a policy on or before the date of issuance of the policy where:
1. The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
  2. The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
  3. The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (c) "Life settlement contract" does not include:
1. A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;
  2. A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under KRS 304.15-700 to 304.15-720;
  3. A collateral assignment of a life insurance policy by an owner;
  4. A loan made by a lender that does not violate Subtitle 30 of this chapter, if the loan is not described in paragraph (b) of this subsection and is not otherwise within the definition of life settlement contract;
  5. An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
  6. Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
  7. A bona fide business succession planning arrangement:
    - a. Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trust established by its shareholders;
    - b. Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trust established by its partners; or
    - c. Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trust established by its members;
  8. An agreement entered into by a service recipient, or a trust established

by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

9. Any other contract, transaction, or arrangement not included in the definition of life settlement contract as determined by the commissioner by administrative regulation.
- (18) "Life settlement provider" or "provider" means an individual, partnership, corporation, or other person who or that enters into an agreement with a person owning a policy under the terms of which the life settlement provider pays 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 policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the life settlement provider. Life settlement provider does not include:
- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution or creditor or secured party that takes an assignment of a policy as collateral for a loan;
  - (b) The issuer of a policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;
  - (c) Any natural person who is not licensed in accordance with KRS 304.15-700 and who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
  - (d) A related provider trust;
  - (e) An authorized or eligible insurer that provides stop-loss coverage to a life settlement provider, financing entity, special purpose entity, or related provider trust;
  - (f) A special purpose entity;
  - (g) A related provider trust;
  - (h) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a policy from a life settlement provider;
  - (i) A purchaser;
  - (j) A financing entity; or
  - (k) Broker.
- (19) "Owner" means a resident of this Commonwealth who is the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a life settlement contract. An owner 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 or condition except where specifically addressed. If there is more than one (1) owner on a single policy and the owners are residents

of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage of ownership resides or, if the owners hold equal ownership, the state of residence of one (1) owner agreed upon in writing by all owners. "Owner" does not include:

- (a) A life settlement provider licensed pursuant to KRS 304.9-440;
  - (b) A qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended;
  - (c) A financing entity;
  - (d) A special purpose entity; or
  - (e) A related provider trust.
- (20) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- (21) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for the policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from the funds and partly from funds contributed by the insured employees.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1175, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 32, sec. 1, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 58, sec. 6, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 472, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 403, sec. 1, effective July 15, 1998. -- Amended 1976 Ky. Acts ch. 233, sec. 1, effective June 19, 1976. -- Created 1970 Ky. Acts ch. 301, subtit. 15, sec. 2, effective June 18, 1970.

**Legislative Research Commission Note (7/15/2008).** The numbering of paragraphs in subsection (17) of this statute has been altered by the Reviser of Statutes from that in 2008 Ky. Acts ch. 32, sec. 1, under the authority of KRS 7.136(1)(a).