

**State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920**

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 27-72-12, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to adopt Insurance Regulation 115 – Life Settlements.

The purpose of this adoption is to establish standards and procedures for the licensing of life settlement brokers and providers; to govern the conduct of life settlement brokers and providers and to establish standards for contract forms, disclosures and advertising in Rhode Island in accordance with the Life Settlements Statutes R.I. Gen. Laws § 27-72-1 *et seq.*.

The proposed regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by email edwyer@dbr.state.ri.us or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by June 7, 2010 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed adoption shall be held on June 7, 2010 at 10:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.state.ri.us at least three (3) business days prior to the hearing.

A. Michael Marques
Director, Department of Business Regulation

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INSURANCE REGULATION 115

LIFE SETTLEMENTS

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Section 1 *Authority*

This Regulation is promulgated in accordance with R.I. Gen. Laws §§ 27-72-12 and 42-14-17.

Section 2 *Scope*

This regulation applies to the business of life settlements as defined by R.I. Gen. Laws § 27-72-2(3).

Section 3 *Purpose*

The purpose of this regulation is to establish standards and procedures for the licensing of life settlement brokers and providers; to govern the conduct of life settlement brokers and providers and to establish standards for contract forms, disclosures and advertising in Rhode Island.

Section 4 *Definitions*

As used in this Regulation:

- A. "Department " means the Department of Business Regulation, Insurance Division.
- B. "Insurance Commissioner" or "Commissioner" means the Director of the Department of Business Regulation or his or her designee.
- C. "Life Settlements Broker" or "Broker" means a person who, on behalf of an owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and provider.
- D. "Life Settlements Provider" or "Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner.
- E. "NAIC" means the National Association of Insurance Commissioners.

Section 5 *Broker Licensing and Conduct*

- A. No person may engage in or hold himself or herself out to be engaging in life settlement brokering in Rhode Island unless that person:
 - 1. Holds a current valid license as a Rhode Island Life Settlement Broker, or
 - 2. Is licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency and who is retained to represent the owner and whose compensation is not paid directly or indirectly by the provider or any other person except the owner. Such persons may negotiate life settlement contracts on behalf of owners without having to obtain a license as a broker.
- B. Every applicant for a broker license must submit an application to the Department. In order to be licensed, applicants must fulfill the requirements set forth in said application and pay the applicable fee to the Department.
 - 1. Applicants shall submit a complete application providing all information requested by the application and any follow up information requested by the Department. The application is not considered complete until the Department receives all of the information it has requested.
 - 2. Applicants shall pay the biennial license fee paid by insurance producers pursuant to Insurance Regulation 103.
 - 3. An individual who holds a valid Rhode Island resident or nonresident insurance producer license with a life line of authority, may obtain authority to act as a life settlement broker by adding a "life settlement"

line of authority to his or her insurance producer license. The addition of the line of authority shall be made on an application form as designated by the Department. A fee of \$50 per applicant shall be assessed to add the line of authority. Renewal of the insurance producer's license will constitute renewal of the life settlement broker license.

4. Business entities operating as life settlement brokers must obtain a separate business entity license as a life settlement broker whether or not the business entity holds a valid insurance producer license.
 5. Business entities must complete the application provided by the Department and pay the biennial license fee paid by insurance producers pursuant to Insurance Regulation 103.
- C. Every applicant for a renewal license must submit a complete renewal application to the Department. In order to be licensed, applicants must fulfill the requirements set forth in said application and pay the applicable fee to the Department.
1. A broker shall pay the renewal fee paid by insurance producers pursuant to Insurance Regulation 103 biennially for renewal of the license. Failure to renew the license shall result in an automatic revocation of the license.
 2. An individual insurance producer who adds life settlement as a line of authority shall renew his or her producer license as scheduled with no change in renewal due to the addition of the life settlement line of authority.
 3. Individual license renewals shall be made on the birth month of the applicant beginning in the second year of licensure. For the first license renewal the license may be effective for less than a full twenty-four months. The full application and renewal fee must still be paid as Rhode Island does not prorate fees.
 4. Brokers must complete fifteen (15) hours of life settlement training on a biennial basis unless the broker is also licensed as an insurance producer. Life settlement brokers holding an insurance producer license must only complete the continuing education requirements for the producers' license.
- D. A broker that is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The life settlement broker may also request a waiver of any requirement, fine, or other sanction imposed for failure to comply with renewal procedures.
- E. The Department may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any

- ministerial functions, including the collection of fees and data, related to licensing that the Department may deem appropriate.
- F. A broker may not engage in the business of life settlements with any person not licensed as a life settlement broker or provider whose actions would require licensure as a life settlement broker or provider.
 - G. Brokers are considered insurance producers and, therefore, even if they hold only the life settlement line of authority they must comply with all provisions of R.I. Gen. Laws § 27-2.4-1 *et seq.* including the requirement contained in R.I. Gen. Laws § 27-2.4-23 that resident producers maintain errors and omissions insurance.
 - H. Brokers must comply with R.I. Gen. Laws § 27-72-6(c) and Insurance Regulations 99 and 100 concerning non-public personal information.
 - I. Brokers must comply with the requirements of R.I. Gen. Laws § 27-72-9 regarding disclosure to owners. If the broker does not complete the disclosure personally, the broker must assure that the provider provides complete disclosure. The broker will be responsible for lack of compliance if the provider has not satisfied the requirements of disclosure.
 - J. A life settlement broker is required to disclose to the owner the following no later than the date the life settlement contract is signed:
 - a. The name, business address, telephone number and other contact information of the Broker.
 - b. A full complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed life settlement contract.
 - c. A written disclosure of any affiliation or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract.
 - d. The name and amount of compensation received by each broker involved in the transaction.

Section 6 **Provider Licensing**

- A. No person may act as or hold himself or herself out as a life settlement provider without first obtaining a license from the Department.
- B. Every applicant for a provider license must submit an application to the Department. Applicants must fulfill the requirements set forth in the application and pay an annual fee of \$2,500 to the Department. The items to be filed shall include:

1. A copy of the most recent audited financial statement, or if an audited financial statement is not available, the Department may accept a financial statement certified as true and accurate by the chief financial officer of the applicant. The financial statement must demonstrate suitable fiscal soundness and capacity for the life settlement provider to operate and meet its obligations.
 2. A copy of articles of incorporation and by-laws of the applicant.
 3. A listing of officer and directors, NAIC Biographical Affidavits for each officer, director, partner or sole proprietor and a detailed description of ownership of the provider.
 4. A detailed plan of operation that addresses:
 - a. A description of the organizational structure of the applicant and all affiliates.
 - b. A description of the procedures used by the applicant to ensure that life settlement proceeds will be sent to the owner within three business days.
 - c. A description of the procedures used by the applicant to ensure that the insured's identity, identification data, financial and medical information are kept confidential.
 - d. A description of the applicants' anti fraud program.
 - e. Copies of all contracts, applications and disclosure forms intended for use in Rhode Island. These documents must include the consumer disclosure form to be used with regard to every contract entered into in Rhode Island.
- C. The Department may deny, at its sole discretion, a provider application for any of the following reasons:
1. Failure to provide complete or true and accurate information requested on the application.
 2. A determination that the applicant is not competent and trustworthy or does not intend to transact its business in good faith.
 3. A determination that the applicant does not have a good business reputation.

4. A determination that the applicant or any officer, director or employee thereof does not have the experience, training or education to be qualified as a life settlement provider.
- D. Failure to file the annual report or pay the annual fee as set forth in section 10 of this regulation shall result in immediate suspension of the license and shall be a basis to permanently revoke the license or take whatever other action is warranted pursuant to R.I. Gen. Laws §§ 27-72-6 and 42-14-16.
- E. A life settlement provider who obtains a license during a calendar year is required to file an annual report for the partial year of operation and pay the full annual report fee. Application for a partial year of licensing requires a complete application and fee as the Department does not prorate license fees.
- F. The Department may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the Department may deem appropriate.
- G. All providers shall designate an agent for service of process within the state of Rhode Island and shall keep the Department informed of any changes in that designation.
- H. A provider may not engage in the business of life settlements with any person not licensed as a broker whose actions would require licensure as a broker.
- I. Providers must comply with R.I. Gen. Laws § 27-72-6(c) and Insurance Regulations 99 and 100 concerning non-public personal information.

Section 7 **Conduct of All Licensees**

- A. A broker or provider doing business under any name other than the broker or providers' legal name is required to notify and obtain the consent of the Department prior to using the assumed name.
- B. A broker or provider shall inform the Department in writing of any change of address or name within thirty (30) days of the change.
- C. If a broker or provider holds a professional license, including but not limited to an insurance or life settlement license, in any other state, he or she shall immediately notify the Department if his or her license is suspended or revoked or not renewed for any reason.
 1. Within thirty (30) days of the initial pretrial hearing date, the broker or provider shall report to the Department any criminal prosecution of the broker or provider taken in any jurisdiction. The report shall include a

copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

2. Within thirty (30) days of the initiation of the matter the broker or provider shall report to the Department any administrative action taken against the broker or provider in another jurisdiction or by another governmental agency in this state. This report shall include all relevant legal documents.
- E. Licensees shall comport themselves in accordance with all Rhode Island laws and regulations issued thereunder.
- F. Records shall be maintained for at least 3 years after the date of death of the insured and shall be open to examination by the Department at all times.
- G. Providers and brokers each have a separate duty to assure that a disclosure form, in compliance with R.I. Gen. Laws § 27-72-9, is delivered to and signed by the owner no later than the date of the application for the life settlement contract.

Section 8 **Life Settlement Contract Forms, Disclosures and Advertisements Filing Requirements**

- A. Providers shall file with and receive approved for every life settlement contract form, application form and disclosure form to be used with regard to life settlements contracts in Rhode Island. The forms shall contain the following minimum provisions.
 1. Contract Forms. Life Settlement contracts shall contain all of the following:
 - a. The name, addresses and contact information of each person or entity involved in the transaction including a description of the person or entities involvement (i.e. provider, broker) and a detailing of any compensation received by said person in the transaction.
 - b. A provision setting forth the requirements of R.I. Gen. Laws § 27-72-9(a)(5) describing the owner's right of rescission and the actions which the owner must take to exercise that right;
 - c. A provision stating that failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner shall render the life settlement contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner;
 - d. A provision that the contract together with the application shall

constitute the entire contract between the parties.

- e. If the life settlement provider has agreed to continue any supplemental benefits under the life insurance policy, a provision setting forth the terms upon which such benefits will be continued.

2. Application Forms. Applications shall contain all of the following:

- a. A prominently displayed notice informing the owner of the following:

- Receipt of payment pursuant to a life settlement contract may affect eligibility for public assistance programs such as Medicaid, supplementary social security income, food stamps or other governmental benefits or entitlements.
- Receipt of payment pursuant to a life settlement contract may be taxable.
- Entering into a life settlement contract could limit a persons ability to purchase future insurance.
- If the owner is asked by another person to buy a life insurance policy or if the owner plans to but the life insurance policy with a primary purpose of selling it to another person, then this transaction may be a stranger-oriented life insurance (STOLI) transaction that is prohibited by Rhode Island law.

- b. An acknowledgement of receipt of the consumer information booklet.

- c. i. The application must contain the following statement:

“Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison”

- ii. The warning statement shall be placed immediately above the space provided for the signature of the person executing the application and shall be printed in type which will produce a warning statement of conspicuous size.

- d. All claim forms for life settlements provided to any person in connection with a life settlement transaction shall contain the statement and shall be in the format as set forth in subdivision

(c)(i) and (ii) above.

3. Disclosure Booklet. The provider or broker shall deliver a consumer information booklet to every applicant before the application for the life settlement contract is completed, and receipt of the consumer information booklet must be acknowledged by the applicant in writing. The consumer information booklet shall, at a minimum, include the following information.
 - a. A description of how life settlements operate.
 - b. A statement that offers should be obtained from several life settlement providers to make sure that the applicant has a competitive offer.
 - c. The name, business address, telephone number and other contact information of each person or entity involved in the transaction including the broker, producer and independent third-party escrow agent, if any, and insurer along with a description of any affiliation between any of these parties.
 - d. If a broker is used in conjunction with effecting a life settlement contract, the life settlement broker is required to disclose to the owner the following no later than the date the life settlement contract is signed:
 - i. The name, business address, telephone number and other contact information of the broker.
 - ii. A full complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed life settlement contract.
 - iii. A written disclosure of any affiliation or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract.
 - iv. The name and amount of compensation received by each broker involved in the transaction.
 - e. A description of possible alternatives to life settlements, including loans secured by the cash value of the life insurance policy, withdrawing some of the cash value and reducing the death benefit of the policy to lower future premiums. If the insured under the policy is terminally or chronically ill, the owner of the policy may be able to accelerate some or all of the death benefit during the

lifetime of the insured if the policy provides an accelerated death benefit, together with a statement that the owner should seek advice from an insurance producer or other professional before using the cash value of the policy.

- f. That tax consequences may result from entering into a life settlement contract and that the applicant should consult with a qualified tax advisor.
- g. That the receipt of life settlement proceeds may affect eligibility for public assistance programs such as Medicaid, supplementary social security income, food stamps or other governmental benefits or entitlements and that the owner should consult the appropriate agency for more information.
- h. That the proceeds payable to the owner may not be exempt from the owner's creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts.
- i. The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits to be forfeited and the owners should seek assistance from a profession financial advisor.
- j. The following language:

“all medical, financial or personal information solicited or obtained by a provider or broker about an insured, including the insured’s identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years”
- k. That the owner has the right to rescind a life settlement contract from the time of execution of the contract until 15 days after its execution or receipt of the disclosure document whichever is later and a description of what steps the owner must take to exercise this option.
- l. That the proceeds will be sent to the owner within three (3) business days after the provider has received the insurers acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated.

- m. That the insured's medical, financial or other personal information may be disclosed to certain other parties if the insured has provided written consent that the life settlement provider or its authorized representative may contact the insured within a certain specified frequency for the purpose of determining the insured's health status.
- n. That, after a life settlement provider buys a life insurance policy, the policy may be resold to other parties.
- o. That if the owner is asked by another person to buy a life insurance policy or if the owner plans to buy a life insurance policy with a primary purpose of selling it to another person, then this transaction may be a stranger-originated life insurance (STOLI) transaction that is prohibited by Rhode Island Law.
- p. That the owner should consult a professional financial advisor, attorney or accountant to help the owner decide if a life settlement is the most suitable arrangement for the owner.
- q. That this disclosure is being delivered as a requirement of the Rhode Island Insurance Department.

B. The Department will reject any form filed if the Department, in its sole discretion, finds any of the following:

- 1. Fails to meet the requirements of R.I. Gen. Laws § 27-72-1 *et seq.*
- 4. Is unreasonable.
- 5. Is contrary to the interests of the public.
- 4. Is otherwise misleading or unfair to the owner.

C. Advertising materials must be filed with the Department and may not be utilized until approved by the Department.

- 1. All advertisements must:
 - a. Be accurate, truthful and not misleading;
 - b. Not solicit or otherwise promote, directly or indirectly, the purchase of a policy for the sole purpose of or with an emphasis on settling the policy.

- c. Not use the words “free”, “no cost” or words of similar meaning soliciting or otherwise promoting the purchase of an insurance policy.
 2. All advertisements shall be maintained by the broker and provider for a period of five years after the settlement of the insurance contract and produced to the Department upon request or during examination.
- D. All forms, disclosures and advertisements shall be submitted to the Department via SERFF and the applicant shall pay a filing fee of \$25 per form or piece of advertising. The filing fee shall be paid by Electronic Funds Transfer (EFT) via SERFF.

Section 9 **Denial, Nonrenewal, Suspension or Revocation of Licenses**

- A. The Department may deny an application for a broker or provider or revoke or suspend a license, or deny renewal of a license for the following:
1. Failing to respond to any written inquiry (including electronic communications) from the Department within 15 days of receipt of such inquiry.
 2. Providing incorrect, misleading, incomplete or materially untrue information in the license application.
 3. Violating any Rhode Island law or regulation, subpoena or order of the Department or of another state’s insurance commissioner.
 4. Obtaining or attempting to obtain a license through misrepresentation or fraud.
 5. Being convicted of a felony.
 6. Having admitted or been found to have committed any unfair insurance trade practice, fraud or fraudulent life settlement act.
 7. Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place.
 8. Having a life settlement license or insurance producer license or its equivalent, denied, suspended or revoked in any other state, province, district or territory.
 9. Forging another’s name to any document.

10. Failing to comply with an administrative or court order imposing a child support obligation.
 11. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.
 12. Failure to pay an assessment made by the Department.
- B. In addition to any of the above basis, the Department may deny or revoke a provider license if the department finds any of the following:
1. The provider is not fiscally sound to meet its obligations.
 2. The provider demonstrates a pattern of unreasonably withholding payments of owners.
 3. The provider does not have the capacity to operate as a life settlement provider and meet its obligations.
 4. The provider has failed to file the annual report or pay the annual fee as required in section 10 of this regulation.
 5. The provider entered into a life settlement contract on an unapproved form.
- C. In the event that the action by the Department is to deny an application for or not renew a license, the Department shall notify the applicant or licensee, in writing, the reason for the denial or non-renewal of the license. The applicant or licensee may make written demand upon the Department within ten days for a hearing before the Department to determine the reasonableness of the Department's action.
- D. The license of a business entity may be suspended or revoked if the Department finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the Department nor corrective action taken.
- E. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a fine and/or any other appropriate remedies according to R.I. Gen. Laws § 42-14-16.
- F. The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by R.I. Gen. Laws §§ 27-72-1 *et seq.*, 42-14-16 and/or this Regulation against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 10 **Provider Reporting Requirements**

- A. Each provider must file a report on an annual basis reporting information for the previous calendar year no later than March 1 of the succeeding year.
 - 1. The first report is due on March 1, 2011 and will reflect the information for each provider from the effective date of R.I. Gen. Laws § 27-72-1 *et seq.* to December 31, 2010.

- B. The annual report shall be on a form designated by the Department and shall require disclosure of the following information regarding settlement of life insurance contracts issued to Rhode Island residents in the preceding year and settled within five years of policy issuance.
 - 1. Total number of policies settled.
 - 2. Aggregate face amount of those policies.
 - 3. Life settlement proceeds of those policies.
 - 4. A breakdown by policy issue year.
 - 5. The insurance companies whose policies were settled.
 - 6. The identity of the brokers who participated in the settlement transactions.

- C. With each annual filing a life settlement provider must pay an annual fee of \$2,500.

Section 11 **Assessments**

- A. The Department may assess brokers and providers for the following:
 - 1. To review contract forms and disclosures filed with the Department.
 - 2. To review advertisements filed with the Department.
 - 3. To review the annual report filed with the Department by providers pursuant to section 10 of this regulation.

- B. The Department shall make such assessments as it, in its sole discretion, deems necessary. For a particular activity the Department may choose to assess by any one or combination of the following methods:

1. Assess all participants in the life settlement market by market share determined by the number of or value of life settlement contracts in a given calendar year.
 2. Assess all participants in the market equally.
 3. Assess all providers and/or all brokers by either method.
 4. Assess an individual licensee or a designated group of licensees.
- C. The Department shall, in arriving at a determination of a method to be used, consider the purpose of the assessment and the licensees effected.
- D. The Department has the discretion not to make an assessment; to assess less than all of the subjects it is authorized to assess and/or to assess on some occasions and not on others and no such action shall be a basis for objection to any future assessment.
- E. The Department will bill the licensee thirty (30) days prior to the due date of an assessment by whatever means the department determines to be expedient.
- F. Failure to pay an assessment within thirty (30) days or failure to pay examination fees assessed per R.I. Gen. Laws § 27-72-7(a), (e) and (k) shall be grounds for suspension or revocation of the license or for whatever additional and further administrative penalties are warranted pursuant to R.I. Gen. Laws § 42-14-16.

Section 12 *Severability*

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 13 *Effective Date*

This regulation is effective as indicated below.

EFFECTIVE DATE: July 1, 2010