

**NEW YORK STATE
INSURANCE DEPARTMENT**

**PROPOSED
11 NYCRR XXX
REGULATION NO. XXX**

LIFE SETTLEMENTS

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201 and 301 of the Insurance Law, sections 7806 and 7811 of the Insurance Law, as added by Chapter 499 of the Laws of 2009 and section 21 of Chapter 499 of the Laws of 2009, do hereby promulgate a new Part XXX of Title 11 of the Official Compilation of Codes, Rules and Regulations (Regulation No. XXX), to take effect upon publication in the State Register, and to read as follows:

ALL NEW MATERIAL

Section XXX.1. Life settlement contract forms filing requirements for life settlement providers.

Section XXX.2. Disclosure.

Section XXX.1. Life settlement contract forms filing requirements for life settlement providers.

(a) Life settlement forms filing requirements.

(1) A life settlement provider shall file with and receive approval from the superintendent for every life settlement contract form, application form and the disclosure forms required by section 7811(a) and (b) of the Insurance Law prior to use in this state.

(2) A life settlement provider shall file with and receive approval from the superintendent for the consumer information booklet required under section 7811(a)(10) of the Insurance Law prior to use in this state except that if the model consumer information booklet, as may be promulgated by the superintendent, is used to comply with section 7811(a)(10), then filing with the superintendent is not required.

(b) Every life settlement contract shall include the following provisions:

(1) the provision required by section 7813(g)(1) of the Insurance Law pertaining to the owner's right of rescission;

(2) 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;

(3) a provision that the contract together with the application therefore shall constitute the entire contract between the parties; and

(4) 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.

(c) The application for the life settlement contract shall:

(1) set forth a prominently displayed notice, or similar language, as follows:

"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. Prior to applying for a life settlement contract, a life insurance policy owner should consult with the appropriate social services agency concerning how receipt of life settlement proceeds will affect the eligibility of the recipient and the recipient's spouse or dependents, and with a qualified tax advisor";

(2) provide for an acknowledgement of receipt of the consumer information booklet;

(3) include in any statement to be signed by the applicant as to the truthfulness, correctness and/or completeness of the information in the application, a statement that the truthfulness, correctness and/or completeness is to the best of the applicant's knowledge and belief;

(4) if the application is required to be witnessed, then it shall be witnessed by a person who does not have a financial or beneficial interest, directly or indirectly, in the life settlement transaction; and

(5)(i) contain the following statement:

"Any person who knowingly and with intent to defraud any life settlement provider or other person files an application for a life settlement contract or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent life settlement act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

(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)(5)(i) and (ii) above.

Section XXX.2. Disclosure.

The life settlement provider or life settlement 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 the application form. The consumer information booklet shall, at a minimum, include the following information:

- (a) how life settlements operate;
- (b) that offers should be obtained from several life settlement providers to make sure that the applicant has a competitive offer;
- (c) that if a life settlement broker is used in conjunction with effecting a life settlement contract, the life settlement broker is required to disclose to the owner the amount of compensation to be paid to the life settlement broker by no later than the date the life settlement contract is signed;
- (d) 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 agent or other professional before using the cash value of the policy;
- (e) that tax consequences may result from entering into a life settlement contract and that the applicant should consult with a qualified tax advisor;
- (f) 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;
- (g) that the owner has the right to rescind a life settlement contract from the time of execution of the contract until 15 days after receipt of the proceeds;
- (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) that the insured's medical, financial or other personal information may be disclosed to certain other parties if the insured has provided written consent;

(j) 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;

(k) that, after a life settlement provider buys a life insurance policy, the policy may be resold to other parties;

(l) 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 the New York Insurance Law;

(m) 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; and

(n) that for additional information about life settlements generally or about a life settlement provider, life settlement broker or life settlement intermediary, the owner may contact the New York State Insurance Department.

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