

31A-36-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Advertising" means a communication placed before the public to:
 - (i) create an interest in a life settlement; or
 - (ii) induce a person pursuant to a life settlement to sell, assign, devise, bequest, or transfer the death benefit or ownership of:
 - (A) a policy; or
 - (B) an interest in a policy.
 - (b) "Advertising" includes the following, if the requirements of Subsection (1)(a) are met:
 - (i) a written, electronic, or printed communication;
 - (ii) a communication by means of a recorded telephone message;
 - (iii) a communication transmitted on radio, television, the Internet, or similar communications media; and
 - (iv) a film strip, motion picture, or video.
- (2) "Business of life settlements" includes the following:
 - (a) offering a life settlement;
 - (b) soliciting a life settlement;
 - (c) negotiating a life settlement;
 - (d) procuring a life settlement;
 - (e) effectuating a life settlement;
 - (f) purchasing a life settlement;
 - (g) investing in a life settlement;
 - (h) financing a life settlement;
 - (i) monitoring a life settlement;
 - (j) tracking a life settlement;
 - (k) underwriting a life settlement;
 - (l) selling a life settlement;
 - (m) transferring a life settlement;
 - (n) assigning a life settlement;
 - (o) pledging a life settlement;
 - (p) hypothecating a life settlement; or
 - (q) in any other manner acquiring an interest in an insurance policy by means of a life settlement.
- (3) "Chronically ill" means:
 - (a) being unable to perform at least two activities of daily living, such as eating, toileting, moving from one place to another, bathing, dressing, or continence;
 - (b) requiring substantial supervision for protection from threats to health and safety because of severe cognitive impairment; or
 - (c) having a level of disability similar to that described in Subsection (3)(a).
- (4) "Depository institution" is as defined in Section 7-1-103.
- (5)
 - (a) "Financing entity" means a person:
 - (i) who has direct ownership in a policy that is the subject of a life settlement;
 - (ii) whose principal activity related to a life settlement is providing money to effect the life settlement or the purchase of one or more settled policies; and
 - (iii) who has an agreement in writing with one or more licensed life settlement providers to finance the acquisition of one or more life settlements.
 - (b) "Financing entity" includes, if the requirements of Subsection (5)(a) are met, the following:

- (i) an underwriter;
 - (ii) a placement agent;
 - (iii) an enhancer of credit;
 - (iv) a lender;
 - (v) a purchaser of securities; and
 - (vi) a purchaser of a policy from a life settlement provider.
- (c) "Financing entity" does not include:
- (i) a nonaccredited investor; or
 - (ii) a life settlement purchaser.
- (6) "Form" means, in addition to a form as defined in Section 31A-1-301:
- (a) a life settlement;
 - (b) a disclosure to an owner;
 - (c) a notice of intent to settle; or
 - (d) a verification of coverage.
- (7) "Life expectancy" means the mean number of months an individual insured under a policy to be settled can be expected to live considering medical records and appropriate experiential data.
- (8)
- (a) "Life settlement" means a written agreement:
- (i) between an owner and a life settlement provider; and
 - (ii) that establishes the terms for the payment of anything of value in exchange for the owner assigning, selling, transferring, devising, releasing, or bequeathing, at the time of or after the exchange, the death benefit or ownership of:
 - (A) any portion of a policy; or
 - (B) a beneficial interest in the policy.
- (b) "Life settlement" includes:
- (i) the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns a policy if the trust or other entity is formed or operated for the principal purpose of acquiring one or more policies; or
 - (ii) a premium finance loan made for a policy by a lender to an owner on, before, or after the date of issuance of the policy if the owner:
 - (A) receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or
 - (B) agrees on the date of the premium finance loan to sell the policy or any portion of the policy's death benefit on a date following the issuance of the policy.
- (c) An agreement described in Subsection (8)(a) is a "life settlement" even if it is referred to by a different name, including:
- (i) a "viatical settlement"; or
 - (ii) a "senior settlement."
- (d) "Life settlement" does not include:
- (i) a loan or accelerated death benefit by an insurer pursuant to the terms of a policy;
 - (ii) loan proceeds that are used solely to pay:
 - (A) premiums for a policy; and
 - (B) the loan costs or other expenses incurred by the lender, including:
 - (I) interest;
 - (II) an arrangement fee;
 - (III) a use fee;
 - (IV) closing costs;
 - (V) attorney fees and expenses;

- (VI) trustee fees and expenses; and
- (VII) third party collateral provider fees and expenses, including fees payable to a letter of credit issuer;

(iii)

- (A) a loan made by a licensed lender in which the licensed lender takes an interest in a policy solely to secure repayment of a loan; or
- (B) the transfer of a policy by a lender, if:
 - (I) the loan is:
 - (Aa) a loan described in Subsection (8)(d)(iii)(A); or
 - (Bb) a premium finance loan that is not a life settlement;
 - (II) the loan is defaulted on;
 - (III) the policy is transferred; and
 - (IV) neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement with any other person for the purpose of evading regulation under this chapter;

(iv) an agreement where all the participants in the agreement:

(A)

- (I) are closely related to the insured by blood or law; or
- (II) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured; and

(B) are trusts established primarily for the benefit of the participants in the agreement;

(v) a 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; or

(vi) a business succession planning arrangement not made for the purpose of evading regulation under this chapter:

(A)

- (I) between one or more shareholders in a corporation; or
- (II) between a corporation and:
 - (Aa) one or more of its shareholders; or
 - (Bb) one or more trusts established by its shareholders;

(B)

- (I) between one or more partners in a partnership; or
- (II) between a partnership and:
 - (Aa) one or more of its partners; or
 - (Bb) one or more trusts established by its partners; or

(C)

- (I) between one or more members in a limited liability company; or
- (II) between a limited liability company and:
 - (Aa) one or more of its members; or
 - (Bb) one or more trusts established by its members.

(9)

(a) "Life settlement producer" means a person licensed in the state as a life insurance producer that on behalf of an owner and for consideration offers or attempts to negotiate a life settlement between the owner and one or more life settlement providers.

(b) "Life settlement producer" does not include an attorney licensed to practice law in any state, a certified public accountant, or a financial planner accredited by a nationally recognized accrediting agency:

- (i) that is retained to represent an owner; and
- (ii) whose compensation is not paid directly or indirectly by:
 - (A) a life settlement provider; or
 - (B) a life settlement purchaser.

(10)

- (a) "Life settlement provider" means a person other than an owner that enters into or effectuates a life settlement.
- (b) "Life settlement provider" does not include:
 - (i) a licensed lender that takes an assignment of a policy as security for a loan, including a:
 - (A) depository institution; or
 - (B) lender that makes a premium finance loan that is not described in Subsection (8)(b)(ii);
 - (ii) the issuer of a policy;
 - (iii) an authorized or eligible insurer that provides stop-loss coverage to:
 - (A) a life settlement provider;
 - (B) a life settlement purchaser;
 - (C) a financing entity;
 - (D) a special purpose entity; or
 - (E) a related provider trust;
 - (iv) a financing entity;
 - (v) a special purpose entity;
 - (vi) a related provider trust;
 - (vii) a life settlement purchaser; or
 - (viii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A that purchases a settled policy from a life settlement provider.

(11)

- (a) "Life settlement purchaser" means a person that, to derive an economic benefit:
 - (i) provides a sum of money as consideration for a policy or an interest in the death benefits of a policy; or
 - (ii) owns, acquires, or is entitled to a beneficial interest in a trust that:
 - (A) owns a life settlement; or
 - (B) is the beneficiary of a policy that has been or will be the subject of a life settlement.
- (b) "Life settlement purchaser" does not include:
 - (i) a life settlement provider;
 - (ii) a life settlement producer;
 - (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec. 230.501;
 - (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
 - (v) a financing entity;
 - (vi) a special purpose entity; or
 - (vii) a related provider trust.

(12)

- (a) "Owner" means any of the following who resides in this state and seeks to enter into a life settlement:
 - (i) the owner of a policy; or
 - (ii) the holder of a certificate of a group policy.
- (b) "Owner" is not limited to an individual who is terminally ill or chronically ill except when the limitation is expressly provided in this chapter.
- (c) "Owner" does not include:
 - (i) a life settlement provider;

- (ii) a life settlement producer;
 - (iii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
 - (iv) a financing entity;
 - (v) a special purpose entity; or
 - (vi) a related provider trust.
- (13) "Policy" means:
- (a) an individual or group life insurance policy;
 - (b) an individual or group annuity policy;
 - (c) a group life insurance certificate;
 - (d) a group annuity certificate; or
 - (e) a life insurance policy or an annuity policy, whether or not delivered or issued for delivery in Utah:
 - (i) affecting the rights of a resident of Utah; or
 - (ii) bearing a reasonable relation to Utah.
- (14) "Premium finance loan" is a loan made primarily for the purpose of making premium payments on a policy if the loan is secured by an interest in the policy.
- (15) "Related provider trust" means a trust established by a licensed life settlement provider or a financing entity solely to hold the ownership of or beneficial interests in purchased policies in connection with financing.
- (16) "Settled policy" means a policy that is acquired by a life settlement provider pursuant to a life settlement.
- (17) "Special purpose entity" means an entity formed by a licensed life settlement provider solely to enable the life settlement provider to gain access to institutional markets for capital.
- (18)
- (a) "Stranger-originated life insurance" means an act, practice, or arrangement to initiate a policy for the benefit of a third party investor or other person who has no insurable interest in the insured resulting in the requirements of Section 31A-21-104 not being met.
 - (b) "Stranger-originated life insurance" includes when:
 - (i) a policy is purchased with resources or guarantees from or through a person who, at the time of policy origination, could not lawfully initiate the policy itself; and
 - (ii) at the time of policy origination, there is an agreement, whether oral or written, to directly or indirectly transfer to a third party the ownership of a policy, policy benefits, or both.
 - (c) "Stranger-originated life insurance" does not include:
 - (i) a life settlement that complies with:
 - (A) this chapter; and
 - (B) Section 31A-21-104; or
 - (ii) an act, practice, or arrangement described in Subsection (8)(d).
- (19) "Terminally ill" means having a condition that reasonably may be expected to result in death within 24 months.

Amended by Chapter 10, 2010 General Session
Amended by Chapter 218, 2010 General Session