

Chapter 36 Life Settlements Act

31A-36-101 Title.

This chapter is known as the "Life Settlements Act."

Amended by Chapter 355, 2009 General Session

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

31A-36-103 Law governing.

- (1) If there is more than one owner on a single policy and the owners are residents of different states, the law of the state in which the owner having the largest percentage ownership resides governs the life settlement. If the owners own equal fractions of a policy, the owners may agree in writing that the law of the state in which one resides governs the life settlement.
- (2) A life settlement that is subject to this chapter may not:
 - (a) require that the life settlement be construed according to the laws of another jurisdiction; or
 - (b) deprive a court of competent jurisdiction in Utah to have jurisdiction over an action.

Amended by Chapter 355, 2009 General Session

31A-36-104 License requirements, revocation, and denial.

- (1)
 - (a) A person may not, without first obtaining a license from the commissioner, operate in or from this state as:
 - (i) a life settlement provider; or
 - (ii) a life settlement producer.
 - (b) A life settlement is included within the scope of the life insurance producer line of authority.
- (2)
 - (a) To obtain a license as a life settlement provider, an applicant shall:
 - (i) comply with Section 31A-23a-117;
 - (ii) file an application;
 - (iii) pay the license fee; and
 - (iv) provide evidence of financial responsibility.
 - (b) If an applicant for a life settlement provider license complies with Subsection (2)(a) and Section 31A-23a-117, the commissioner shall investigate the applicant and issue a life settlement provider license if the commissioner finds that the applicant is competent and trustworthy to engage in the business of providing life settlements by experience, training, or education.
- (3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and 31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a life settlement provider or life settlement producer if the commissioner finds that:
 - (a) a life settlement provider demonstrates a pattern of unreasonable payments to owners;
 - (b) the applicant, the licensee, an officer, partner, or member, or key management personnel:
 - (i) is, whether or not a judgment of conviction is entered by the court, found guilty of, or pleads guilty or nolo contendere to:
 - (A) a felony; or
 - (B) a misdemeanor involving fraud or moral turpitude;
 - (ii) violates this chapter; or
 - (iii) is subject to a final administrative action by another state or federal jurisdiction.
 - (c) a life settlement provider enters into a life settlement not approved under this chapter;
 - (d) a life settlement provider fails to honor obligations of a life settlement;
 - (e) a life settlement provider assigns, transfers, or pledges a settled policy to a person other than:
 - (i) a life settlement provider licensed under this chapter;

- (ii) a life settlement purchaser;
 - (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;
 - (f) a life settlement provider fails to maintain a standard set forth in Subsection (2)(b);
 - (g) an applicant or licensee has a material misrepresentation in an initial or renewal application for a license; or
 - (h) the licensee engages in bad faith conduct with one or more owners.
- (4) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement producer, the commissioner shall conduct an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 355, 2009 General Session

31A-36-105 Filing and use of forms for life settlement and disclosure.

- (1) A person may not use a form unless the form is filed with the commissioner under Subsection 31A-21-201(1).
- (2) The commissioner may prohibit the use of a form submitted under Subsection (1) pursuant to Subsection 31A-21-201(3).
- (3) The commissioner may require the submission of advertising material before its use.

Amended by Chapter 355, 2009 General Session

31A-36-106 Reporting requirements and privacy.

- (1)
 - (a) Subject to Subsection (1)(b), a life settlement provider shall file with the commissioner on or before March 1 of each year an annual report containing the information the commissioner prescribes under Section 31A-36-119.
 - (b) Notwithstanding Subsection (1)(a), the commissioner shall only require the information for those transactions that involve an owner.
- (2) Except as otherwise allowed or required by law, the following may not disclose the identity, financial information, or medical information of an insured to any other person:
 - (a) a life settlement provider;
 - (b) a life settlement producer;
 - (c) a producer of insurance;
 - (d) an information bureau;
 - (e) a rating agency or company; or
 - (f) any other person knowing the identity of an insured.
- (3) Notwithstanding Subsection (2), a person may disclose the identity of an insured if the disclosure is:
 - (a) necessary to effect a life settlement between an owner and a life settlement provider and both the owner and the insured give prior written consent to the disclosure;
 - (b) furnished in response to an investigation or examination by the commissioner or another governmental officer or agency;
 - (c) furnished pursuant to Section 31A-36-114;

- (d) a term of or condition to the transfer of a policy by one life settlement provider to another life settlement provider;
- (e) necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of a policy by a life settlement provider and the insured gives prior written consent to the disclosure;
- (f) necessary to allow the life settlement provider or life settlement producer or the life settlement provider's or life settlement producer's authorized representatives to make a contact to determine the health status of an insured; or
- (g) required to purchase stop-loss coverage.

Amended by Chapter 355, 2009 General Session

31A-36-107 Examinations and retention of records.

- (1) The commissioner may conduct an examination of a life settlement provider or life settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and 31A-2-205.
- (2) A life settlement provider or life settlement producer shall retain for five years copies of:
 - (a) the following records, whether proposed, offered, or executed, from the later of the date of the proposal, offer, or execution:
 - (i) contracts;
 - (ii) purchase agreements;
 - (iii) underwriting documents;
 - (iv) policy forms; and
 - (v) applications;
 - (b) checks, drafts, and other evidence or documentation relating to the payment, transfer, or release of money, from the date of the transaction; and
 - (c) records and documents related to the requirements of this chapter.
- (3) This section does not relieve a person of the obligation to produce a document described in Subsection (2) to the commissioner after the expiration of the relevant period if the person has retained the document.
- (4) A record required by this section to be retained:
 - (a) shall be legible and complete; and
 - (b) may be retained in any form or by any process that accurately reproduces or is a durable medium for the reproduction of the record.
- (5) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This Subsection (5) does not automatically preclude an examiner from being:
 - (a) an owner;
 - (b) an insured in a settled policy; or
 - (c) a beneficiary in a policy that is proposed to be settled.
- (6)
 - (a) An examinee under this section shall reimburse the cost of an examination to the department consistent with Section 31A-2-205.
 - (b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not subject to Section 31A-2-205.

Amended by Chapter 297, 2011 General Session

31A-36-108 Required disclosures.

- (1) With an application for a life settlement, a life settlement provider or life settlement producer shall furnish to the owner the disclosures the commissioner may require under Section 31A-36-119, in a separate document signed by the owner and the life settlement provider or life settlement producer, no later than the time the application for the life settlement is signed by all the participants in the life settlement.
- (2) A life settlement provider shall furnish to the owner the disclosures the commissioner may require under Section 31A-36-119, conspicuously displayed in the life settlement or in a separate document signed by the owner and the life settlement provider, no later than the time the life settlement is signed by all participants in the life settlement.

Amended by Chapter 355, 2009 General Session

31A-36-109 General requirements.

- (1) If a life settlement provider transfers ownership or changes the beneficiary of a settled policy, the life settlement provider shall inform the insured of the transfer or change within 20 calendar days.
- (2) A life settlement provider that enters a life settlement shall first obtain:
 - (a) if the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter a life settlement;
 - (b) a witnessed document in which the owner represents that:
 - (i) the owner has a full and complete understanding of the life settlement and the benefits of the policy;
 - (ii) the owner has entered the life settlement freely and voluntarily; and
 - (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was diagnosed after the policy was issued; and
 - (c) a document in which the insured consents to the release of the insured's medical records to:
 - (i) a life settlement provider;
 - (ii) a life settlement producer; and
 - (iii) the insurer that issued the policy covering the insured.
- (3) Within 20 calendar days after an owner executes documents necessary to transfer rights under a policy, or enters into an agreement in any form, express or implied, to settle the policy, the life settlement provider shall give written notice to the issuer of the policy that the policy has or will become settled. The notice shall be accompanied by a copy of the documents required by Subsection (4).
- (4) The life settlement provider shall deliver a copy of the following to the insurer that issued the policy that is the subject of the life settlement:
 - (a) the medical release required under Subsection (2)(c);
 - (b) a copy of the owner's application for the life settlement; and
 - (c) the notice required under Subsection (3).
- (5)
 - (a) An insurer shall complete and return a request for verification of coverage not later than 30 calendar days after the day on which the request is received. In its response, the insurer shall indicate whether the insurer intends to pursue an investigation regarding the validity of the insurance contract.
 - (b) An insurer may not require that a person making a request under Subsection (5)(a) provide the insurer additional information in order for the insurer to comply with Subsection (5)(a), if the person provides the insurer:

- (i) a request for verification of coverage made on an original, facsimile, or electronic copy of a verification of coverage for a policy document adopted by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) an authorization that accompanies the verification described in Subsection (5)(b)(i) signed by the owner.
- (6) Medical information solicited or obtained by a life settlement provider or life settlement producer is subject to:
 - (a) other laws of this state relating to the confidentiality of the information; and
 - (b) a rule relating to privacy of medical or personal information promulgated by the commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. Sec. 6805.
- (7)
 - (a)
 - (i) A life settlement entered into in this state shall reserve to the owner an unconditional right to rescind the life settlement within the rescission period provided for in this Subsection (7).
 - (ii) The rescission period ends 15 calendar days after the day on which the owner receives the proceeds of the life settlement.
 - (iii) Rescission by an owner may be conditioned on the owner giving notice and repaying to the life settlement provider within the rescission period all proceeds of the life settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.
 - (b) If the insured dies during the rescission period, the life settlement is considered to be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement provider or life settlement purchaser are repaid within 60 calendar days of the day on which the insured dies.
- (8)
 - (a) Contact with an insured to determine the health status of the insured after a life settlement may be made only by a life settlement provider or life settlement producer that is licensed in this state, or its authorized representative, and no more than:
 - (i) once every three months if the insured has a life expectancy of one year or more; or
 - (ii) once every month if the insured has a life expectancy of less than one year.
 - (b) A life settlement provider or life settlement producer shall explain the procedure for the contacts allowed under this Subsection (8) to the owner when the application for the life settlement is signed by all participants in the life settlement.
 - (c) The limitations of this Subsection (8) do not apply to contacts for purposes other than determining health status.
 - (d) A life settlement provider or life settlement producer is responsible for the acts of its authorized representative in violation of this Subsection (8).
- (9) The trustee of a related provider trust shall agree in writing with the life settlement provider that:
 - (a) the life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and
 - (b) the trustee will make all records and files related to life settlements available to the commissioner as if those records and files were maintained directly by the life settlement provider.
- (10) Regardless of the method of compensation, a life settlement producer:
 - (a) represents only the owner; and
 - (b) owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

Amended by Chapter 297, 2011 General Session

31A-36-110 Payment and document requirements.

- (1)
 - (a) A life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership or assignment or change of beneficiary of the affected policy to a designated independent escrow agent.
 - (b) Within three business days after the day on which the escrow agent receives the documents, or within three business days after the day on which the life settlement provider receives the documents if by mistake they are sent directly to the life settlement provider, the life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust account of the escrow agent in a federally insured depository institution.
- (2)
 - (a) Upon completion of the requirements of Subsection (1), the escrow agent shall deliver the original documents executed by the owner to:
 - (i) the life settlement provider; or
 - (ii) a related provider trust or other designated representative of the life settlement provider.
 - (b) Upon the life settlement provider's receipt from the insurer of an acknowledgment of the change in ownership or assignment or change of beneficiary of the affected policy, the life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement to the owner.
- (3) Payment to the owner shall be made within three business days after the day on which the life settlement provider receives the acknowledgment from the insurer. Failure to make the payment within that time makes the life settlement voidable by the owner for lack of consideration until payment is tendered to and accepted by the owner.

Amended by Chapter 297, 2011 General Session

31A-36-111 Prohibited acts.

- (1) An owner may not enter into a life settlement at any time before the application or issuance of a policy.
- (2) An owner may not enter into a life settlement within two years after the date of issuance of the policy to which the life settlement relates unless the owner certifies to the life settlement provider that one of the following is satisfied:
 - (a) the policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy if:
 - (i) the total time covered under the conversion policy plus the time covered under the prior policy is at least 24 months; and
 - (ii) the time covered under a group policy, calculated without regard to any change in insurance carriers, is continuous and under the same group sponsorship; or
 - (b) the owner submits to the life settlement provider independent evidence that within the two-year period:
 - (i) the owner or insured is terminally ill;
 - (ii) the owner or insured is chronically ill;
 - (iii) the spouse of the owner dies;
 - (iv) the owner divorces the owner's spouse;
 - (v) the owner retires from full-time employment;

- (vi) the owner acquires a physical or mental disability and a physician determines that the disability precludes the owner from maintaining full-time employment;
 - (vii) a final judgment or order is entered or issued by a court of competent jurisdiction, on the application of a creditor of the owner:
 - (A) adjudging the owner bankrupt or insolvent;
 - (B) approving a petition for reorganization of the owner; or
 - (C) appointing a receiver, trustee, or liquidator for all or a substantial part of the owner's assets;
 - (viii) the owner experiences a significant decrease in income that is unexpected and impairs the owner's reasonable ability to pay the policy premium; or
 - (ix) the owner or insured disposes of ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the policy is initially issued.
- (3) An insurer may not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement, require any of the following to sign a form, disclosure, consent, or waiver that is not filed with the commissioner for use in connection with a life settlement in this state:
- (a) an owner;
 - (b) an insured;
 - (c) a life settlement provider; or
 - (d) a life settlement producer.
- (4)
- (a) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, an insurer shall respond in writing within 30 calendar days of the day of receipt with written acknowledgment:
 - (i) confirming that the change is effective; or
 - (ii) specifying the reasons why the requested change cannot be processed.
 - (b) An insurer may not:
 - (i) unreasonably delay effecting a change of ownership or beneficiary; and
 - (ii) otherwise seek to interfere with a life settlement lawfully entered into in this state.
- (5) A person may not issue, solicit, or market the purchase of a policy for the primary purpose of or with a primary emphasis on settling the policy.
- (6)
- (a) Unless disclosed to an owner before the execution of a life settlement by the owner, a life settlement producer may not knowingly with respect to the life settlement solicit an offer from, effectuate the life settlement with, or make a sale to any of the following that is controlling, controlled by, or under common control with the life settlement producer:
 - (i) a life settlement provider;
 - (ii) a life settlement purchaser;
 - (iii) a financing entity; or
 - (iv) a related provider trust.
 - (b) Unless disclosed to an owner before the execution of a life settlement by the owner, with respect to the life settlement, a life settlement provider may not knowingly enter into the life settlement with the owner, if, in connection with the life settlement, anything of value will be paid to a life settlement producer that is controlling, controlled by, or under common control with:
 - (i) the life settlement provider;
 - (ii) the life settlement purchaser;

- (iii) a financing entity; or
- (iv) a related provider trust.

Amended by Chapter 366, 2011 General Session

31A-36-112 Advertising regulations.

- (1)
 - (a) A life settlement provider or life settlement producer shall establish and continuously maintain a system of control over the content, form, and method of dissemination of advertisements of the life settlement provider's or life settlement producer's contracts and services.
 - (b) An advertisement is the responsibility of the life settlement provider or life settlement producer as well as the person that creates or presents the advertisement.
 - (c) A system of control shall include at least annual notification to persons authorized by the life settlement provider or life settlement producer that disseminate advertisements of the requirements and procedures for approval before use of any advertisements not furnished by the life settlement provider or life settlement producer.
- (2) An advertisement shall be truthful and not misleading in fact or by implication, as determined by the commissioner from the overall impression it may reasonably be expected to create upon a person of average education or intelligence in the segment of the public to which it is directed.
- (3) A false or misleading statement is not remedied by:
 - (a) making a life settlement available for inspection before it is consummated; or
 - (b) offering to refund payment if the owner is not satisfied within the period prescribed in Subsection 31A-36-109(7).

Amended by Chapter 297, 2011 General Session

31A-36-113 Fraud.

- (1) As used in this section, "recklessly" means engaging in conduct:
 - (a) when a person knows or should have known of a substantial likelihood of the existence of the relevant facts or risks; and
 - (b) involving a significant deviation from acceptable standards of conduct.
- (2) A person may not, knowingly or with intent to defraud, to deprive another of property or for pecuniary gain, do or permit its employees or agents to engage in any of the following acts:
 - (a)
 - (i) present, cause to be presented or prepare with knowledge or belief that it will be presented, false information to or by a life settlement provider or life settlement producer, a financing entity, an insurer, a provider of insurance or any other person, or to conceal information, as part of, in support of or concerning a fact material to:
 - (A) an application for the issuance of a policy or life settlement;
 - (B) the underwriting of a policy or life settlement;
 - (C) a claim for payment or other benefit under a policy or life settlement;
 - (D) a premium paid on a policy;
 - (E) a payment or change of beneficiary or ownership pursuant to a policy or life settlement;
 - (F) the reinstatement or conversion of a policy;
 - (G) the solicitation, offer, effectuation, or sale of a policy or life settlement;
 - (H) the issuance of written evidence of a policy or life settlement; or
 - (I) a financing transaction;
 - (ii) employ a device, scheme, or artifice to defraud in the business of life settlements;

- (iii) enter into any plan or practice that involves stranger-originated life insurance; or
- (iv) employ a device, scheme, or artifice resulting in a violation of Section 31A-21-104 in the solicitation, application, or issuance of a policy that is the subject of a life settlement;
- (b) in furtherance of a fraud or to prevent detection of a fraud:
 - (i) remove, conceal, alter, destroy, or sequester from the commissioner assets or records of a person engaged in the business of life settlements;
 - (ii) misrepresent or conceal the financial condition of a licensee, a financing entity, an insurer, or other person;
 - (iii) transact the business of life settlements in violation of this chapter; or
 - (iv) file with the commissioner or analogous officer of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner or analogous officer;
- (c) embezzle, steal, misappropriate, or convert money, premiums, credits, or other property of a life settlement provider, an owner, an insurer, an insured, an owner of a policy, or other person engaged in the business of life settlements or insurance;
- (d) recklessly enter into, negotiate, or otherwise deal in a life settlement, the subject of which is a policy obtained when one or more persons intend to defraud the policy's issuer, the life settlement provider, or the owner by:
 - (i) presenting false information concerning a fact material to the policy; or
 - (ii) concealing, to mislead another, information concerning a fact material to the policy;
- (e) facilitate a change of the state or jurisdiction of ownership of a policy or the state of residency of an owner to a state or jurisdiction that does not have a law similar to this chapter for the express purpose of evading or avoiding this chapter; or
- (f) attempt to commit, assist, aid, abet, or conspire to commit an act or omission described in this Subsection (2).
- (3) A person may not knowingly or intentionally interfere with the enforcement of this chapter or an investigation of a possible violation of this chapter.
- (4) A person engaged in the business of life settlements may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.
- (5)
 - (a) An application or contract for a life settlement, however transmitted, shall contain the following or a substantially similar statement: "A person that knowingly presents false information in an application for insurance or a life settlement is guilty of a crime and may be subject to fines and confinement in prison."
 - (b) The lack of the statement described in Subsection (5)(a) is not a defense in a prosecution for violation of this section.

Amended by Chapter 355, 2009 General Session

31A-36-114 Reporting of fraud and immunity.

- (1) A person engaged in the business of life settlements that knows or reasonably suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
- (2) A person not engaged in the business of life settlements that knows or reasonably believes that a violation of Section 31A-36-113 is being, has been, or will be committed may furnish to the commissioner the information required by, and in a manner prescribed by, the commissioner.

- (3) Except as provided in Subsection (4), a person furnishing information of the kind described in this section is immune from liability and civil action if the information is furnished to or received from:
 - (a) the commissioner or the commissioner's employees, agents, or representatives;
 - (b) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
 - (c) another person involved in the prevention or detection of violations of Section 31A-36-113 or that person's employees, agents, or representatives;
 - (d) the following organizations or their employees, agents, or representatives:
 - (i) the National Association of Insurance Commissioners;
 - (ii) the Financial Industry Regulatory Authority;
 - (iii) the North American Securities Administrators Association; or
 - (iv) another regulatory body overseeing life insurance, life settlements, securities, or investment fraud; or
 - (e) the insurer that issued the policy concerned in the information.
- (4) The immunity provided in Subsection (3) does not extend to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a violation of this section, the plaintiff shall plead specifically that the defendant acted with actual malice.
- (5) A person furnishing information as identified in Subsection (3) is entitled to an award of attorney fees and costs if:
 - (a) the person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter; and
 - (b) the action did not have a reasonable basis in law or fact at the time it was initiated.
- (6) This section does not supplant or modify any other privilege or immunity at common law or under another statute.

Amended by Chapter 297, 2011 General Session

31A-36-115 Confidentiality.

- (1) The following shall be classified as protected records under Title 63G, Chapter 2, Government Records Access and Management Act:
 - (a) a document or information furnished pursuant to Section 31A-36-114; and
 - (b) a document or information obtained by the commissioner in an investigation of a violation of Section 31A-36-113.
- (2) Subsection (1) does not prohibit the commissioner from disclosing documents or evidence so furnished or obtained:
 - (a) in an administrative or judicial proceeding to enforce laws administered by the commissioner;
 - (b) to federal, state, or local law enforcement or regulatory agencies;
 - (c) to an organization established to detect and prevent fraudulent life settlement acts;
 - (d) to the National Association of Insurance Commissioners; or
 - (e) to a person engaged in the business of life settlements that is aggrieved by the violation.
- (3) Disclosure of a document or evidence under Subsection (2) does not abrogate or modify the privilege granted in Subsection (1).

Amended by Chapter 355, 2009 General Session

31A-36-116 Other law enforcement or regulatory authority.

This chapter does not:

- (1) preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
- (2) prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or
- (3) limit the powers granted elsewhere by law to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action.

Amended by Chapter 355, 2009 General Session

31A-36-117 Antifraud initiatives.

- (1) The following shall establish and maintain antifraud initiatives which are reasonably calculated to prevent, detect, and assist in the prosecution of violations of Section 31A-36-113:
 - (a) a life settlement provider; and
 - (b) an agency that is a life settlement producer.
- (2) The commissioner may order, or a licensee may request and the commissioner may approve, modifications of the measures otherwise required under this section, more or less restrictive than those measures, as necessary to protect against fraud.
- (3) Antifraud initiatives shall include:
 - (a) fraud investigators, that may be either:
 - (i) employees of a life settlement provider or life settlement producer; or
 - (ii) independent contractors;
 - (b) an antifraud plan submitted to the commissioner, which shall include:
 - (i) a description of the procedures for:
 - (A) detecting and investigating possible violations of Section 31A-36-113; and
 - (B) resolving material inconsistencies between medical records and applications for insurance;
 - (ii) a description of the procedures for reporting possible violations to the commissioner;
 - (iii) a description of the plan for educating and training underwriters and other personnel against fraud; and
 - (iv) a description or chart of the organizational arrangement of the personnel responsible for detecting and investigating possible violations of Section 31A-36-113 and for resolving material inconsistencies between medical records and applications for insurance.
- (4) A plan submitted to the commissioner shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 355, 2009 General Session

31A-36-118 Criminal penalties and restitution.

- (1) A person subject to this chapter is subject to:
 - (a) Section 31A-2-308 for an administrative violation of this title;
 - (b) prosecution under Section 76-6-412 for a criminal activity involving a life settlement; or
 - (c) prosecution under Section 31A-31-103 for insurance fraud involving a life settlement.
- (2) A person found to be in violation of this chapter may:
 - (a) be ordered to pay restitution to persons aggrieved by the violation;
 - (b) be ordered to pay a forfeiture;
 - (c) be imprisoned if found guilty of a criminal law by a court of competent jurisdiction; and
 - (d) be subject to a combination of the penalties described in this Subsection (2).

(3) Except for a fraudulent act committed by an owner, this section does not apply to the owner.

Amended by Chapter 355, 2009 General Session

31A-36-119 Authority to make rules.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

- (1) establish the requirements for the annual report required under Section 31A-36-106;
- (2) establish standards for evaluating the reasonableness of payments under life settlements;
- (3) establish appropriate licensing requirements, fees, and standards for continued licensure for:
 - (a) a life settlement provider; and
 - (b) a life settlement producer;
- (4)
 - (a) determine the amount and conditions of a bond or other assurance of financial responsibility required under Section 31A-23a-117 for a life settlement provider; and
 - (b) require, determine the amount, or determine the conditions of an assurance of financial responsibility for a life settlement producer, including a bond or an errors and omissions insurance policy;
- (5) govern the relationship of insurers with a life settlement provider or life settlement producer during the settlement of a policy;
- (6) determine the specific disclosures required under Section 31A-36-108;
- (7) determine whether advertising for life settlements violates Section 31A-36-112;
- (8) determine the information to be provided to the commissioner under Section 31A-36-114 and the manner of providing the information;
- (9) determine additional acts or practices that are prohibited under Section 31A-36-111;
- (10) establish payment requirements for the payments in Section 31A-36-110; and
- (11) establish the filing procedure for the forms listed in Subsection 31A-36-105(1).

Amended by Chapter 355, 2009 General Session