



Ohio Revised Code

Section 3916.16 Conditions permitting entering into viatical settlement contract within two-year period commencing with date of issuance of insurance policy or certificate.

Effective: September 11, 2008

Legislation: House Bill 404 - 127th General Assembly

(A)(1) It is a violation of this chapter for any person to enter into a viatical settlement contract prior to the application for or issuance of a policy that is the subject of the viatical settlement contract.

(2) It is a violation of this chapter for any person to issue, solicit, market, or otherwise promote the purchase of a policy for the purpose of or with an emphasis on selling the policy.

(B) It is a violation of this chapter for any person to enter into a viatical settlement contract within a five-year period commencing with the date of issuance of the policy unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within five years after the issuance of the policy:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

(2) The viator is a charitable organization with an insurable interest pursuant to division (B) of section 3911.09 the Revised Code that has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the charitable organization is exempt from federal income taxation under subsection 501(a) and described in section 501(c)(3) of the "Internal Revenue Code."

(3) The viator certifies and submits independent evidence to the viatical settlement provider that one or more of the following conditions have arisen after the issuance of the policy:



- (a) The viator or insured is terminally or chronically ill.
 - (b) The viator's spouse dies.
 - (c) The viator divorces the viator's spouse.
 - (d) The viator retires from full-time employment.
 - (e) The viator becomes physically or mentally disabled, and a physician determines that the disability prevents the viator from maintaining full-time employment.
 - (f) A court of competent jurisdiction enters a final order, judgment, or decree on the application of a creditor of the viator and adjudicates the viator bankrupt or insolvent or approves a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.
 - (g) The sole beneficiary of the policy is a family member of the viator and the beneficiary dies.
- (4) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and certifies that all of the following are true:
- (a) The viator has funded the policy using personal assets, which may include an interest in the life insurance policy being viaticated up to the cash surrender value of the policy or any financing agreement to fund the policy premiums entered into prior to policy issuance or within two years of policy issuance was provided to the insurer within thirty days of the date the agreement was executed and the financing agreement was secured with personal assets.
 - (b) The viator had no agreement or understanding with any other person to viaticate the policy or transfer the benefits of the policy, including through an assumption or forgiveness of a premium finance loan at any time prior to issuance of the policy or during the two years after the date of issuance of the policy.
 - (c) If requested by the insurer, the viator both disclosed to the insurer whether a person other than



the insurer obtained a life expectancy evaluation for settlement purposes in connection with the application, underwriting, and issuance of the policy and provided a copy of any such life expectancy evaluation to the insurer at the time of application.

(d) The viator disclosed any financial arrangement, trust, or other arrangement, transaction, or device that conceals the ownership or beneficial interest of the policy to the insurer prior to the issuance of the policy.

(C) Copies of the independent evidence described in division (B)(3) of this section and documents required by section 3916.07 of the Revised Code shall be submitted to the insurer when the viatical settlement provider or any other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(D) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification and independent evidence described in division (B)(3) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy conclusively establishes that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.

(E) No insurer, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, may require the viator, insured, viatical settlement provider, or viatical settlement broker to sign any form, disclosure, consent, or waiver form that has not been approved by the superintendent of insurance for use in connection with viatical settlement contracts.

(F) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days to confirm that the insurer has made the change or specify reasons that the change cannot be processed. No insurer shall unreasonably delay effecting change in ownership or beneficiary or seek to interfere with any viatical settlement contract lawfully entered into in this state.



(G) A viatical settlement provider or viatical settlement broker that is party to a plan, transaction, or series of transactions to originate, renew, continue, or finance a policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to or during the first five years after the insurer issues the policy shall fully disclose the plan, transaction, or series of transactions to the superintendent of insurance.