

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO
Guaynabo, Puerto Rico

RULE NO. 85

REGULATORY STANDARDS FOR VIATICAL AGREEMENTS, LIFE AGREEMENTS AND OTHER TRANSACTIONS RELATED TO THE BENEFITS OF LIFE INSURANCE POLICIES

SECTION 1 -LEGAL BASIS

The Office of the Commissioner of Insurance hereby repeals Rule No. 85, Regulation 7480 of the Regulations of the Puerto Rico Insurance Code currently in effect adopts a new Rule No. 85 pursuant to Sections 2.030 and 43.140 of Public Law No. 77, enacted on June 19, 1957, as amended, 26 P.R. LPRC, et seq., commonly known as the Puerto Rico Insurance Code, Public Law No. 170 enacted on August 12, 1988, commonly known as the "Uniform Administrative Procedures Act"; Public Law No. 166, enacted on November 7, 2010; and model regulation #698 titled "Viatical Settlements Model Regulation", as recommended by the National Association of Insurance Commissioners (NAIC).

SECTION 2 - PURPOSE AND SCOPE

This Rule is adopted for the purpose of establishing the standards for implementing the "Act to Regulate Viatical Settlements, Life Settlements and Other Transactions Related to Life Insurance Benefits" incorporated into the Insurance Code of Puerto Rico as Chapter 43. Also, this Rule has the objective of regulating the transactions, relationships, and responsibilities of viatical settlement agreement providers, viatical settlement agreement brokers, viatical settlement agreement investment agents and insurance companies related to the offering, purchasing and selling of a viatical agreement related to a life insurance policy or a certificate of a group policy, or a viatical settlement purchase agreement.

This Rule applies to every natural or legal person that pursuant to Chapter 43 of the Puerto Rico Insurance Code seeks to be engaged in or is engaged in any activity related to offering, soliciting, negotiating, procuring, effectuating, purchasing, financing, monitoring, tracking, underwriting, assigning, pledging, hypothecating or in any other manner transacting a viatical settlement, life settlement or other transactions regarding life insurance benefits, or a viatical settlement purchase agreement.

SECTION 3 - DEFINITIONS

The following terms and phrases shall have the meanings stated below:

- A. "Insured" means the person covered under the policy subject to a viatical settlement agreement or being considered for viatication.
- B. "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens
- C. "Code" means the Puerto Rico Insurance Code.
- D. "Commissioner" means the Insurance Commissioner of Puerto Rico
- E. "Life expectancy" means the average number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and relevant experiential data.
- F. "Patient identifying information" means an insured's address, telephone number, fax number, email address, photograph or likeness, employer, employment status, social security number, account number or any other information that could lead to the identification of the insured.

All the terms defined in Chapter 43 of the Code are incorporated by reference into this Rule.

SECTION 4 - LICENSE REQUIREMENTS

- A. Any natural or legal person or that applies to the Commissioner for a license to be authorized as a viatical settlement broker must comply with the following requirements:
 - 1. Complete and submit to the Commissioner the application form approved for this purpose.
 - 2. Pay the fees indicated in paragraph G of this section.
 - 3. Be trustworthy and competent. This requirement applies to the viatical settlement broker applicant as well as to the stockholders or partners, its officers and employees with authority to make decisions for the entity.
 - 4. If the viatical settlement broker applicant is a legal person, the legal person shall also demonstrate that it is duly registered and authorized to do business in the Commonwealth of Puerto Rico and provide a certificate of good standing issued by the Department of State.

- B. Any legal or natural person that applies to the Commissioner for a license to be authorized as a viatical settlement agreement broker must comply with the following requirements:
1. Hold and maintain an authorized life insurance producer license issued by the Commissioner in accordance with Chapter 9 of the Code. In this case, the producer may not hold an appointment as an authorized representative of an insurer.
 2. Submit an Anti-Fraud Action Plan under Section 43.110(G) of the Code.
 3. Submit evidence of financial responsibility as required of insurance providers in Section 9.200 of the Code. The Commissioner may accept as evidence of financial responsibility an errors and omissions policy having limits of \$50,000 per event and \$150,000 in the aggregate, if in the judgment of the Commissioner the policy complies with the purpose of the evidence of financial responsibility.
- C. Any legal or natural person or that applies to the Commissioner for a license to be authorized as a viatical settlement agreement investment agent must comply with the following requirements:
1. Hold and maintain an authorized life insurance representative or life insurance producer license issued by the Commissioner in accordance with Chapter 9 of the Code.
 2. Submit to the Commissioner bona fide evidence that the applicant approved the Series 7 administered by the Financial Industry Regulatory Authority. To this effect, the viatical settlement investment agent applicant shall submit a certification issued by the Financial Institutions Commissioner of Puerto Rico. The Series 7 must also be filed by any natural person authorized in the viatical settlement investment agent's license to act on its behalf.
 3. Submit evidence of financial responsibility as required of insurance producers in Section 9.200 of the Code. The Commissioner may accept as evidence of financial responsibility an errors and omissions policy having limits of \$50,000 per event and \$150,000 in the aggregate, if in the judgment of the Commissioner the policy complies with the purpose of the evidence of financial responsibility.

4. Submit, with the application, the appointment as viatical settlement investment agent of those viatical settlement agreement providers that will be represented in Puerto Rico by the agent.
- D. Any legal or natural person that applies to the Commissioner for a license to be authorized as a viatical settlement agreement provider must comply with the following requirements:
1. Submit a detailed operational plan.
 2. Submit an Anti-Fraud Action Plan under Section 43.110(G) of the Code.
 3. Furnish evidence of professional liability (malpractice) insurance with limits of \$100,000 per event and \$300,000 in the aggregate.
 4. In order to offer, sell or solicit viatical settlement purchase agreements directly with purchasers of viatical settlement agreements, under Section 43.020(c) of the Code, although not with regard to policies which in turn were acquired as viatical settlement agreements, the applicant must submit the following evidence to the Commissioner:
 - a. That the applicant fulfills the requirements for holding a life insurance producer license.
 - b. That the applicant holds a Series 7 administered by the Financial Industry Regulatory Authority.
- E. General Provisions
1. The license issued to a viatical settlement agreement producer, a viatical settlement agreement broker or a viatical settlement agreement investment agent is a limited license that only allows for operation within the scope of the license.
 2. As the licenses are incompatible, the Commissioner will not issue a viatical settlement agreement broker license to an authorized representative, nor will the Commissioner issue a viatical settlement agreement provider license or a viatical settlement agreement investment agent license to a viatical settlement agreement broker.
 3. Any natural person authorized to act on behalf of a legal person holding a viatical settlement agreement broker or investment agent license must fulfill the licensing requirements as though the person were an individual licensee.

4. A viatical settlement agreement provider may not transact business directly with a viator.
5. In addition to the information required in Section 43.020 of the Code and the provisions of this Rule, the Commissioner may request any other information deemed necessary to determine whether the applicant for a viatical settlement agreement provider, broker or investment agent license complies with the requirements set forth in Chapter 43 of the Code and this Rule.

F. Renewal of Licenses

1. Viatical settlement agreement broker licenses shall be renewed every two (2) years along with the renewal of the life insurance producer license. The renewal of both licenses shall be done following the guidelines set forth by the Commissioner for the renewal of the producer license.
2. The license of a viatical settlement agreements investment agent shall be renewed every two (2) years along with the renewal of authorized representative or life insurance producer license, as the case may be. The renewal of both licenses shall be done following the guidelines set forth by the Commissioner for the renewal of the producer and authorized representative licenses.
3. Applicants for viatical settlement agreements broker or investment agent licenses must show they comply with licensing requirements and pay the appropriate annual contribution. Applicants must likewise show evidence of a total of twenty-four (24) hours of contact courses in continuing education,, of which at least seven (7) hours are on subjects related to viatical settlement agreements and three (3) are related to professional ethics.

The applicant may distribute the remaining of the contact hours, according to his or her best judgment, in order to complete the total of twenty-four (24) hours required under Rule 52. If the producer must submit evidence of continuing education as part of the renewal of an insurance producer license within one year of having obtained the viatical settlement agreements broker or viatical settlement agreements investment agent license, the producer will not be obligated to comply with the seven (7) hour requirement.

4. The Commissioner will not renew the license of any applicant for a viatical settlement agreements broker or investment agent license who does not comply with this continuing education requirement.

5. The viatical settlement agreement provider license will expire on the 30th day of June and shall be renewed on an annual basis. To renew this license, the applicant shall demonstrate that they comply with the requirements to hold such license and pay the corresponding annual fee.
6. If at the time of the renewal of the viatical settlement agreements provider license, there are viatical settlement agreements in which the insured has not died, the Commissioner will decide among the following options:
 - a. Renew or maintain the license until the first of these events occurs:
 - i. The viatical settlement agreements provider has assigned, sold or transferred appropriately the viatical settlement agreements for which the insurer has not died; or
 - ii. The last insured covered by a viatical settlement transaction has died.
 - b. Request that a court of competent jurisdiction appoint the Commissioner as a receiver-trustee. In this case, the Court shall order the Commissioner to take immediate possession and custody of all the assets of the viatical settlement provider and to administer such assets under the exclusive supervision of the Court. The Court order, and any powers and duties of the Commissioner in such cases will have the same authority conferred by Chapter 40 of the Code in liquidation and rehabilitation orders.

G. Annual Contribution

The annual contribution for authorization or renewal of a viatical settlement agreements broker, viatical settlement agreements investment agent and viatical settlement agreements provider licenses shall be as set forth below:

Type of License	Annual Contribution
Viatical Settlement Agreements Broker	\$1,051.00
Viatical Settlement Agreements Provider	\$2,103.00
Viatical Settlement Agreements Investment Agent	\$1,051.00

These contributions will remain in effect until another amount is set forth in Section 7.010(1) of the Code.

H. Non-Resident Viatical Settlement Agreements Brokers, Viatical Settlement Agreements Investment Agents, and Viatical Settlement Agreements Providers

1. Applicants for a viatical settlement broker, viatical settlement provider or viatical settlement investment agent non resident license shall comply with the same requirements established in Chapter 43 and this Rule for resident applicants for such licenses. They also must comply with the following requirements:
 - a. Complete and submit to the Commissioner the corresponding application for a non resident license.
 - b. Pay the corresponding fee in accordance to paragraph G of this Section.
 - c. Irrevocably appoint the Commissioner as an agent for service of process on behalf of the licensee, for any cause of action arising from transactions performed in Puerto Rico under the holder's license. The service of process shall be performed in accordance with the rules established in Section 9.280 of the Code.
 - d. Demonstrate that the applicant is duly organized under the laws of the state of domicile.
 - e. Demonstrate that the applicant is duly registered and authorized to do business in the Commonwealth of Puerto Rico and provide a certificate of good standing from the Department of State of Puerto Rico.
 - f. The applicant for a non resident viatical settlement broker or a non resident viatical settlement investment agent license must also hold a non resident producer license issued by the Commissioner.
2. The holder of a non resident license shall be subject to the same obligations and limitations, and to examination by the Commissioner, as if the holder were a resident or domiciled in Puerto Rico. The holder of the license must also maintain current and customary books corresponding to the transactions performed in Puerto Rico.
3. Viatical settlements and viatical settlement purchase agreements executed by a non resident viatical settlement agreement broker, viatical settlement agreement provider or viatical settlement agreement investment agent will be considered for all purposes as executed in Puerto Rico, subject to the standard established in Section 43.020(A), (B) and (C) of the Code.

SECTION 5 - APPOINTMENTS

- A. A viatical investment agreement agent or other viatical settlement agreement provider shall not act as an agent of a viatical settlement agreement provider unless the investment agent becomes an appointed agent of that provider.
- B. As part of the process of appointing an investment agent as its agent, the provider shall file a notice of appointment with the Commissioner, within fifteen (15) days from the date the agency contract is executed or from the first contact with an investor on behalf of the provider.
- C. On receipt of the notice of appointment, the Commissioner will verify, no later than within a period of thirty (30) days, if the investment agent is eligible for the appointment. If the Commissioner determines that the investment agent is not eligible, the Commissioner will notify the provider within five (5) days of such determination.

SECTION 6 - STANDARDS FOR EVALUATION OF REASONABLENESS OF PAYMENTS TO INSUREDS

To insure that viators receive a reasonable amount as a liquidation payment, the proceeds of the liquidation of the viatical agreement shall not be less than the following amounts for an insured who has a terminal or chronic illness:

Life expectancy insured	Minimum percentage of the face value less outstanding loans received by the viator.
Less than 6 months	[80%]
6 months, but less than 12 months	[70%]
12 months, but less than 18 months	[65%]
18 months, but less than 25 months	[60%]
25 months or more	Viator must receive at least the larger amount between the cash surrender value or the death benefit which under the policy may be accelerated or advanced.

For the purposes of this Section the cash surrender value and the accelerated or advanced death benefit is the minimum amount that in effect would be available to the viator through the transaction.

SECTION 7. REPORTING REQUIREMENTS

- A. On or before March 1 of each calendar year, the licensed viatical settlement agreement provider shall submit to the Commissioner the following reports related to the licensee's activities for the previous calendar year:
1. A report of the viatical settlement transactions performed by the viatical settlement provider in all states of the United States using Form VSP 001;
 2. A report of the viatical settlement transactions related to Puerto Rico viators using Form VSP 002;
 3. A report of the individual mortality of Puerto Rico insureds on policies that were part of a viatical settlement Form VSP 003; and
 4. A certification of the information in the reports described in paragraphs (1) through (3), to be submitted on Form VSPB 001 along with the reports.
- B. On or before March 1 of each calendar year, the licensed viatical settlement broker shall submit to the Commissioner the following reports related to the licensee's activities for the previous calendar year:
1. A report of the total viatical settlement transactions performed by the viatical settlement broker using Form VSB 001;
 2. A report of the viatical settlement transactions performed by the viatical settlement broker related to viators that are residents of Puerto Rico using Form VSB 002;
 3. A certification of the information in the reports described in paragraphs (1) and (2), to be submitted on Form VSPB 001 along with the reports.
- C. The following material is incorporated into this Rule:
1. Form VSP 0001, "Viatical Settlement Provider Report-All States and Territories";
 2. Form VSP 002, "Viatical Settlement Provider Report-Puerto Rico Insureds Only";
 3. Form VSP 003, "Individual Mortality Report-Puerto Rico Insureds Only";
 4. Form VSB 001, "Viatical Settlement Broker Report-All States and Territories";

5. Form VSB 002, "Viatical Settlement Broker Report-Puerto Rico Insureds Only";
and
6. Form VSPB 001, "Viatical Settlement Provider/Broker Certification Form

SECTION 8. GENERAL STANDARDS

- A. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement, or to such other beneficiary, (other than the viatical settlement provider), as the viator may thereafter designate. In the absence of a beneficiary, to payment shall be for the estate of the viator.
- B. Payment of the proceeds of the liquidation of a viatical settlement pursuant to Section 43.080(D) of the Code shall be made by means of wire transfer to an account designated by the viator or by certified check or cashier's check.
- C. Payment of the proceeds to the viator pursuant to a liquidation of a viatical settlement shall be made in a lump sum except where the viatical settlement agreement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company, a bank or an affiliate thereof. Retention of a portion of the proceeds not disclosed or described in the viatical settlement agreement by the viatical settlement agreement provider or escrow agent is not permissible without written consent of the viator.
- D. No viatical settlement agreement producer, broker or investment agent may establish any unfair difference among persons of the same class and the same life expectancy, nor discriminate in any other manner in soliciting viatical settlement agreements.
- E. No viatical settlement agreement producer, broker or investment agent may pay or offer to pay any commission for generating business, or fee or any other compensation to any insured's physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent or producer of the viator, other than a viatical settlement agreement broker, with respect to the viatical settlement.
- F. No viatical settlement agreement provider or viatical settlement agreement investment agent shall knowingly solicit purchasers or investors among persons who have treated or have been asked to treat the condition or illness of the insured whose coverage would be the subject of a viatical settlement.

- G. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement agreement shall contain the following provisions:
1. A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;
 2. A provision that the viatical settlement provider will, upon acknowledgment of the execution of the title of the policy that is the subject of the viatical settlement agreement will do one of the following:
 - a. Advise the insured and the viator, in writing, that the insurance company has confirmed the viator's interest in the policy; or
 - b. Deliver a copy to the insured and the viator of the instrument sent from the insurance company to the viatical settlement agreement provider acknowledging the viator's interest in the policy.
 3. A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options are no less favorable, on a proportional basis, than those included originally in the policy to be viaticated
- G. In all cases where the insured is a minor child involved, the viatical settlement agreement provider and the viatical settlement agreement broker shall inform the child's parents of this fact and of all the details of the procedure for executing a viatical settlement agreement and shall obtain permission from the parents and their consent in every instance where the consent of the insured is required in order to comply with the requirements of Chapter 43 of the Puerto Rico Insurance Code and this Rule.

SECTION 9 PROHIBITED PRACTICES

- A. A viatical settlement agreement provider, broker or investment agent shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement agreement provider, broker or investment agent is served with a subpoena and, therefore, compelled by a court or administrative order to produce records containing patient identifying

information, said provider, broker or investment agent shall notify the viator and insured in writing at their last known addresses within five (5) business days of the receipt of the subpoena.

- B. A viatical settlement agreement provider will not also act as a broker of the viatical settlement agreement in the same agreement, if the producer has a right to receive direct or indirect compensation.
- C. No viatical settlement agreement broker may seek or obtain any compensation from the viator, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement agreement.

SECTION 10 -PRACTICES OF INSURERS

- A. Life insurance companies authorized to do business in Puerto Rico shall respond to a request for verification of coverage from a viatical settlement agreement provider or broker within thirty (30) calendar days to be counted from the date a request is received, subject to the following condition:
 - 1. The request must be joined by a current authorization signed before a notary public by the policy owner or certificate holder;
 - 2. In the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form title "Verification of Coverage for Life Insurance Policies," attached to this Rule, completed by the viatical settlement agreement provider or broker in accordance with the instructions on the form.
- B. No provision of this Section shall prevent a life insurer, a provider of viatical settlement agreements or a broker of viatical settlement agreements from using any other verification of coverage form as agreed in writing prior to filing the application.
- C. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement agreement provider or broker in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.
- D. Life insurance companies may send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and the insured whenever the policyholder or certificate owner is other than the insured. The

acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the policy.

- E. Life insurance companies may not require the viator or insured to sign any request for change in a policy or a group certificate from a viatical settlement agreement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such event, the viatical settlement agreement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate."

SECTION 11 - EFFECTIVE DATE

The provisions of this Rule shall enter into effect thirty (30) days after filing with the Department of State, under the provisions of Public Law No. 170, supra.

SIGNED

RAMÓN L. CRUZ COLÓN
COMMISSIONER OF INSURANCE

Date of approval:

Date of Filing
at the Department of State:

Date of Filing
at the Legislative Library: