COMMISSIONER OF SECURITIES & INSURANCE

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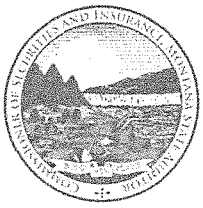

OFFICE OF THE MONTANA
STATE AUDITOR

WHAT TO CONSIDER BEFORE SELLING YOUR LIFE INSURANCE POLICY

VIATICAL SETTLEMENTS

Selling a life insurance policy may not always be in your best interest. There are many things to consider before doing so. The following will give you the basic information you need to make an informed decision. Even with this information, it is important for you to consult with your legal and financial advisors before making the decision to sell your policy.

WHAT IS A VIATICAL SETTLEMENT?

A viatical settlement is the sale of a life insurance policy to a third party. The owner (**viator**) of the life insurance policy sells the policy for an immediate cash benefit. The **viator** will enter into a contract with the viatical settlement provider (**provider**) to accept a cash payment in exchange for the life insurance policy. The cash payment will be less than the face amount of the policy which would be paid upon the death of the insured.

As a result of the transaction, the **provider** will:

- become the new owner of the insurance policy
- pay any future premiums
- name the beneficiary
- collect the benefits upon the death of the insured
- and may sell your policy again

QUESTIONS TO ASK

- **Do I still need life insurance protection?** Have your needs for life insurance changed since you bought the life insurance policy? If not, selling your policy may not be the right choice. If you sell your life insurance policy now, your beneficiaries will not receive a benefit at the time of your death. Life insurance premiums increase as you grow older. You may not want to pay the higher cost for coverage in the future. If your health changes, you may no longer qualify to purchase life insurance.

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- **What other options may be available to me?** Check with your insurance producer or company to determine if any of the following options are available to you.
    - **Surrendering the policy for the current cash value**
    - **Borrowing against the cash value.** This will allow the policyholder to keep the policy in force. The benefits of the policy will be reduced by the amount of the loan outstanding and any accumulation of interest due to the insurance company.
    - **Using the cash value as collateral to obtain a loan from a financial institution.**
    - **Accelerated death benefit provisions.** Many life insurance policies have an accelerated death benefit provision. This provision may allow an insured who is terminally ill or permanently confined in a nursing home to receive a portion of the face value of the policy while the insured is still living. The policy remains in force which means that when the insured dies, the balance of the benefits will be paid to the beneficiaries.

- **If the policy is through an employer or another group, do I need permission to sell it?**
- **If I sell the policy, who will become the owner and collect the death benefits?**
- **Will the sale of the life insurance policy affect my income taxes, estate planning or my eligibility for public assistance benefits such as Medicaid or other government benefits?**
- **If I sell the policy, can my creditors claim the money?**
- **Who will have access to information about my health and financial records?**
- **After the sale of the life insurance is complete, can it be resold by the buyer?**
- **If I decide to sell the policy, how is the purchase price determined?**
- **If I wait a year or two before selling the policy, will the purchase price increase?**

HOW DOES THE SETTLEMENT TRANSACTION WORK?

The sale is usually arranged through a viatical settlement broker (**broker**). Regardless of how the **broker** is compensated, the **broker** is required by law to represent only the **viator** and owes a fiduciary duty to the **viator** to act according to the **viator's** instructions and in the best interests of the **viator**. The **viator** should ask the **broker** about the business relationship between the **broker** and the **provider** before the transaction is finalized. In many cases, the **broker** is paid a commission from the **viator's** proceeds of the sale of the policy.

The **provider** will need information about the insured before they will be able to make an offer to purchase the policy. The **provider** will request a medical release form so they can receive and review the insured's medical records. They will also require an authorization form to contact the insurance company to confirm the ownership of the policy, the benefits and premiums.

The **provider** will use the information collected to make an offer. There are many factors that the **provider** will take into account in order to determine the offer. Some of those may include:

- Amount of life insurance coverage
- Medical condition and estimated life expectancy of the insured.
- Any loans outstanding against the policy
- The premiums required to keep the policy in force

If you accept the offer, there will be additional forms sent to you by the **provider**. These forms will be necessary to complete the change of ownership of the policy and will stipulate the conditions of the sale of the policy. Once these forms are completed and returned to the **provider**, the **provider** will forward the necessary paperwork to the insurance company to record the changes. At this time, the **provider** will also place the proceeds owed to you (**the viator**) in an independent escrow account to protect your funds during the completion of the transfer of the policy.

Once the insurance company notifies the **provider** that the requested changes to the policy have been recorded, the proceeds will be released to the **viator**.

Montana code requires viatical settlement contracts contain a provision enabling the **viator** to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the **viator** receives the viatical settlement proceeds, whichever is the longer period.

PERSONAL INFORMATION

The **provider** will periodically inquire about the health status of the insured. The **provider** is permitted to share the insured's non-public health information with persons or entities that are involved in the viatical settlement transaction. The **provider** may resell the policy as an investment to third parties. Those third parties will also have access to the health records of the insured.

CONSUMER TIPS

- Compare the services provided and fees charged by several **brokers** before entering into an agreement.
- Get quotes from several **providers** to determine if the offers to purchase the policy are competitive.
- Find out if you will lose any public assistance benefits such as food stamps or Medicaid if you get a cash settlement.
- Consult a tax professional to determine if the proceeds from the sale of the policy are taxable under federal and state income tax.
- Consult legal and financial professionals to determine if the proceeds from the sale of the policy are subject to the claims of creditors, personal representative, trustees in bankruptcy, and receivers in state and federal courts.
- Consult with your insurance company because the change of ownership could limit your ability to purchase life insurance in the future because there is a limit to how much coverage insurers will issue on one life.
- Under normal circumstances, a **broker** or **provider** will not be able to provide any guidance on tax implications, financial implications, or federal and state

governmental benefits.

- Check all contract and application forms for accuracy, especially your medical history. All questions must be answered truthfully and completely.
- Be sure to read all portions of the contract and application. Consult with a legal professional to be sure the provisions are in your best interest.
- Call the Montana Insurance Commissioner's Office to verify the **broker** and **provider** are licensed to do business in the State of Montana.

REMEMBER, SELLING A LIFE INSURANCE POLICY MAY NOT ALWAYS BE IN YOUR BEST INTEREST. PLEASE CONSIDER ALL OF YOUR OPTIONS PRIOR TO ENTERING INTO A VIATICAL SETTLEMENT CONTRACT.