

VIATICAL SETTLEMENTS

([33-20-1302](#) – [1317](#)
[33-15-325](#), [33-15-403](#))

This list is not a complete list of all statutes and regulations required to be addressed in form filings. It is intended solely to give companies guidance on common areas that are deficient. It is the company's responsibility to keep abreast of all changes to the Montana Insurance Code. Pursuant to § 33-1-501(4), CSI approval of any form may be withdrawn at any point for any reason enumerated in the statute.

The below checklists include hyperlinks to the electronic version of the Montana Code Annotated. MCA [33-1-501](#) and MCA [33-1-502](#) is our authority for forms approval

Policy Content	33-15-303
Flesch score (exceptions 33-15-324)	33-15-325
Insurable interest	33-15-201
Representations	33-15-403
Validity of arbitration agreement -- exceptions	27-5-114
Terms of contract	33-20-1308
Payment to escrow or trust(immediately upon receipt)	33-20-1314
Disclosure to Policyholder	33-20-1311
	<ol style="list-style-type: none">1. possible alternatives i.e.; accelerated benefits offered by insurer2. some or all of proceeds may be taxable & assistance from personal tax adviser should be sought.3. settlement could be subject to claims of creditors4. settlement may adversely affect eligibility for Medicaid or other government benefits & advice should be obtained from appropriate agencies.5. right as described in 33-20-13086. date the funds will be available to policyholder and the source of the funds7. settlement contract void if settlement provider or broker fails to tender payment of proceeds as provided in the settlement contract.
Disclosure to Viatical settlement purchasers	33-20-1317
	<ol style="list-style-type: none">1. purchaser will not receive payment until insured dies2. actual annual rate of return is dependent upon accurate projection of insured's life expectancy and actual date of insured's death and that annual guaranteed rate of return is not determinable.3. contract is not a liquid purchase since it is impossible to predict the exact timing of maturity, that the funds are probably not available until the death of the insured, and there is not an established secondary market for resale of viatical settlement products by purchaser4. purchaser may lose all benefits or may receive substantially reduced benefits if insurer goes out of business during term of settlement investment5. purchaser is responsible for payment of premiums or other costs related to the policy, if required by the terms of the agreement and these payments may reduce purchaser's return and may continue beyond the projected life expectancy6. if a party other than purchaser is responsible for payment that name of the party must be disclosed, the amount of the premium purchaser is required to pay, purchaser may be responsible for payment of premiums or other costs if insured returns to health7. amount of fees or other expenses charged to purchaser

8. whether or not the purchaser is entitled to a refund of all or part of investment if policy is later determined to be void
9. GROUP policies may contain limitations on conversion rights, may require additional premiums if the group policy is converted, may be terminated and replaced by another group policy, with benefits under the new policy that may be less than those in original coverage.
10. that there are risks associated with policy contestability, including the risk that purchaser may not have a claim or may have only a partial claim to benefits if insurer rescinds policy within contestability period
11. whether or not the purchaser will be the beneficiary or owner of policy and the risks that go with being the beneficiary (change of bene)
12. a description of the experience & qualifications of the person who determined the life expectancy of the insured, information on which the projection of life expectancy is based and relationship of the person who has made the determination of life expectancy.
13. description & amount of any loan or other encumbrance against or in connection with the policy
14. purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the settlement broker or provider prior to purchase.

Standards for Evaluation of Reasonable payments [ARM 6.6.8507](#)

when the insured is terminally ill the following shall be minimum discounts:

Life expectancy	Minimum % of Net Death Benefit
Less than 6 months	80%
At least 6 but < 12	70%
At least 12 but < 18	65%
At least 18 but < 24	60%
24 months or more	50%

If the insured is chronically ill but not terminally ill, they must receive at least 30% of the net death benefit. If the insured is not terminally ill or chronically ill, they must receive at least the greater of the cash surrender value or accelerated death benefit of the policy.

Except where the cash surrender value or accelerated death benefit is paid, the % may be reduced by 5% for viaticating a policy where the insurer has an A.M. Best rating at or below a marginal rating.

General Rules [ARM 6.6.8508](#)

(1) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment must remain payable to the beneficiary last named by a viator prior to entering into a viatical settlement contract, or to such other beneficiary, other than a viatical settlement provider, as a viator may thereafter designate, or in the absence of a beneficiary, to the estate of a viator.

(10) ADVERTISING

(11) IF VIATOR RETAINS AN INTEREST IN THE POLICY

Montana Constitution Art. II Sec 26 -Waiver of Jury Trial ~ May NOT WAIVE RIGHT TO A JURY TRIAL Art. II Sec 26 of the Montana Constitution reads in part; the right of trial by jury is secured to all and shall remain inviolate.