

SUBCHAPTER R. Life Settlement

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1. INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC, Chapter 3, Subchapter R, §§3.1701 - 3.1703, 3.1720 - 3.1730, 3.1740 - 3.1744, and 3.1760, concerning life settlements. The proposed rules include the licensing of life settlement brokers and providers, regulation of life settlement contracts, and annual data reporting requirements.

The new subchapter is necessary to implement House Bill 2277, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. House Bill 2277 amended Subtitle A, Title 7, Insurance Code by adding new Chapter 1111A and repealing Insurance Code Chapter 1111, Subchapter A. In conjunction with this proposal, TDI is proposing the repeal of existing 28 TAC, Chapter 3, Subchapter R, §§3.1701 - 3.1717, concerning viatical and life settlements, also published in this issue of the *Texas Register*. Section 1111A.015 authorizes the commissioner to adopt rules

necessary to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives. These proposed new rules implement the Life Settlements Act.

TDI posted on its website an informal concept paper and proposed new rules concerning life settlements on April 27, 2012. In the informal posting, TDI requested comments on the substance of the draft rules, the accuracy of TDI's estimates of costs to comply with the draft rules, and what costs certain draft provisions would entail. On May 11, 2012, TDI held a public meeting to receive comments relating to the informal rule text and cost note estimates. TDI appreciates all comments received and discussions held during the drafting process.

The structure of the proposed new rule is as follows: Division 1 provides the general provisions of proposed Subchapter R, including purpose and severability, applicability and scope, and definitions. Division 2 provides forms; procedures for life settlement broker and provider license application, license renewal, and fees; continuing education requirements for brokers; continuing education providers; life agent notification; life expectancy estimators; guidance on what constitutes unauthorized insurance; fiduciary duty; record maintenance; and health status verifications. The division contains requirements for continuing education, life settlement provider maintenance of records, guidance on what constitutes unauthorized insurance relating to life settlements, and who may verify insured health status. Division 3 provides form filing requirements; required life settlement form provisions; the shopper's guide; prohibited life settlements; and requirements regarding advertising, sales, and solicitation materials. Finally, Division 4 specifies the requirements for the annual report

that life settlement providers must submit to TDI.

The following section-by-section summary provides greater detail.

DIVISION 1. General Provisions.

Section 3.1701 provides the purpose of the subchapter, and also includes a severability provision.

Section 3.1702 specifies the applicability and scope of the subchapter. In accord with Insurance Code §1111A.015(c) and §1111A.021(2), the section specifies when the subchapter is not applicable.

Section 3.1703 provides the definitions for the subchapter. The definitions provided are from Insurance Code §1111A.002.

DIVISION 2. License Application and Renewal; Course and Training Requirements; Maintenance of Records.

Section 3.1720 specifies the licensing and notification forms proposed for adoption by reference in this division. The forms include an Application For a Life Settlement Provider or Broker License form; Application For Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; Life Agent Notification to TDI to Act as a Broker form; and Biographical Affidavit for life settlement providers or brokers form. The section includes information on where to obtain and submit the forms. Insurance Code §1111A.003(b) requires an application for a broker or provider license be made to TDI by the applicant on a form prescribed by the commissioner.

In accord with Insurance Code §1111A.003(h), the Application For a Life Settlement Provider or Broker License form adopted by reference by §3.1720(a)

specifies the information the commissioner requires that an applicant provide. Under §3.1721(c) the form requires basic contact information from the applicant. Additionally, the form requires the certification for the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Office of the Texas Secretary of State, and if not domiciled in Texas, a consent to jurisdiction. This section also requires filing of a list of officers, directors, shareholders owning 10 percent or more of the entity, and key employees. Officers, directors, shareholders, and key employees must submit fingerprints. The form provides instructions and a checklist to assist in the application. Life settlement providers must also submit a plan of operations in accord with §1111A.003(j)(1). Both life settlement brokers and providers must submit an anti-fraud plan required by §1111A.003(j)(5) as specified by §1111A.022.

Under §3.1720(b), the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form adopted by reference specifies the information the commissioner requires that a licensee provide to renew its license. Licensees must use the form to submit material changes in information. Additionally, the form requires the certification for the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Office of the Texas Secretary of State, and if not domiciled in Texas, a consent to jurisdiction.

Under §3.1720(c), the Life Agent Notification to TDI to Act as a Life Settlement Broker form adopted by reference prescribes the method that a life insurance agent must use to notify the commissioner when the agent is acting as a broker under

§1111A.003(d). The notification includes an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Agents must sign and notarize the form, and notification requires an initial fee of \$50. Subsequent biennial renewal is free.

Under §3.1720(d), the applicant must complete the Biographical Affidavit for life settlement providers or brokers form adopted by reference as an attachment to the Application For a Life Settlement Provider or Broker License and Application For Renewal, , Surrender, or Change of Information for a Life Settlement Provider or Broker forms. Note that the form includes a fingerprint requirement specified in Insurance Code §801.056 as required by §1111A.025(2). The form requires signing and notarizing.

Section 3.1721 specifies the procedures and requirements for life settlement broker and provider license application and establishes the required fees life settlement brokers and providers must pay to TDI. Insurance Code §1111A.003 states the licensing requirements, requires the fees for a provider license be reasonable, and limits the fees for a broker license to the same as those for an insurance agent. Section 3.1721(k) requires life settlement brokers and providers to submit an application for license within 30 days of the adoption of this subchapter, including life settlement brokers or providers operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011. Note that, under §3.1721(k), the submission of the application allows for continuity of operations while TDI reviews the application, but the application must be submitted not later than 30 days after the effective date of this subchapter.

Section 3.1722 specifies the procedures and requirements for life settlement broker and provider license renewal application, change of information, and fees. The section also establishes the requirements for providing TDI current information if there is a material change to any information provided in the license application. Subsection (f) specifies a procedure for the surrender or of a life settlement provider license. The effect of surrender of a life settlement broker or provider license is specified in subsection (g). Renewing life settlement brokers and providers do not need to resubmit fingerprints already provided to TDI. The section addresses waiver of requirements under §3.1722 due to insolvency. Insurance Code §1111A.025(5) provides that Chapter 404, Subchapter B applies to a person engaged in the business of life settlements. Additionally, there are nonrefundable and nontransferable fees of \$50 for renewal of a life settlement broker license and \$100 for renewal of a life settlement provider license.

Section 3.1723 provides the continuing education and training requirements that life settlement brokers must fulfill under Insurance Code §1111A.003(p). The section also requires entities with life settlement broker licenses to ensure the proper training for their employees conducting the business of life settlements. Subsection §3.1723(c) specifies exempt persons. The section also includes provisions regarding credit toward other licensees or for out of state courses, a requirement to maintain proof of continuing education completion, and fines for insufficient continuing education.

Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Continuing education providers must

comply with §19.1005, 19.1007, 19.1008 – 19.1011, and 19.1014 of Chapter 19 of this title.

Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide give notice to TDI when they are providing the services of a life settlement broker. Insurance Code §1111A.003(d) requires that the notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A . Finally, the section puts life insurance agents on notice that a violation of Chapter 1111A or this subchapter may lead to revocation or other sanctions on their life insurance agent license.

Section 3.1726 provides the provisions from which a broker who acts only as a life expectancy estimator are exempt. Insurance Code §1111A.026 allows the commissioner to exempt additional provisions if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. This section requires periodic renewal of the notification.

Section 3.1727 clarifies how Insurance Code §101.051 functions in the context of life settlements with respect to statutory unauthorized insurance provisions. Insurance Code Chapter 101 applies to persons engaged in the business of life settlements under §1111A.025 and §1111A.003(q).

Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. The section is consistent with the definitions of “broker” and “life settlement contract” found in Insurance Code §1111A.002. The section clarifies that a life settlement broker must not negotiate a life settlement contract that would result in less money paid to the policy owner than the applicable cash

surrender value or accelerated death benefit at the time of application for a life settlement contract. The section also prohibits life settlement brokers from exclusively negotiating with a single life settlement provider.

Section 3.1729 provides a maintenance of records requirement for life settlement brokers and providers. This requirement will assist TDI in its examinations under Insurance Code §1111A.007 and enforcing §1111A.017 and §1111A.025(2). The section provides that a life settlement broker or provider must keep copies of all life settlement contracts for five years from the execution of the contract. Life settlement brokers and providers may opt to keep such documents longer than five years.

Section 3.1730 specifies who may verify the health status of an insured. The section is consistent with Insurance Code §1111A.006 and §1111A.012(a)(13). TDI proposes the section to provide guidance for authorized representatives. The section provides that an authorized representative must have a written delegation from a currently licensed life settlement broker or provider in order to perform health status monitoring.

DIVISION 3. Form Filing and Usage Requirements.

Section 3.1740 provides the form filing requirements and procedures for the approval, disapproval, and withdrawal of forms. The section specifies the certifications required to be included with the form filing. Section 3.1740 provides for requests for corrections and additional information. The section also provides a method for a life settlement broker or provider to request a hearing on receiving notification of disapproval of a form. The section also provides the proposed fees.

Generally, §3.1740 is based on the form filing requirements for life insurance forms in Chapter 3, Subchapter A, of this title. Under §1111.005(a), a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Life settlement contracts, disclosures, and verifications of coverage must be filed for review and approval prior to use. Other forms may be submitted as file and use. Subsection 3.1740(o) specifies the filing fees for filing a complete life settlement contract, with forms included; separate individual forms; resubmission of a previously disapproved form; and filing a previously withdrawn form. A life settlement contract may contain multiple forms and if filed together under one filing, requires only a single \$100 filing fee. If the forms are filed separately, each filing will have a filing fee as specified in §3.1740(o). This section proposes to adopt by reference the Transmittal Checklist for Life/Health Rate and Form Filings for the submission of life settlement forms.

Section 3.1741 specifies required provisions that apply to life settlement forms. The section contains requirements for life settlement contracts generally and includes specific content requirements for escrow and trust, medical release, policy release, power of attorney, and verification of coverage forms. Power of attorney forms apply only to medical information. For purposes of the rule, medical information can include copies of the insured's death certificate. The section also provides requirements for disclosures to the policy owner if the contract includes a retained ownership provision,

and additional requirements for life settlement contracts involving premium finance loans.

Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Insurance Code §1111A.012(a) requires a buyer's guide or similar consumer advisory package as prescribed by the commissioner. The section proposes adoption by reference of the shopper's guide titled "Important Information You Should to Know Before Entering Into a Life Settlement", which contains useful consumer information in a question and answer format.

Section 3.1743 specifies that the minimum value of a life settlement offer must be based on the definition of "life settlement contract" as defined by Insurance Code §1111A.002(11). In accord with §1111A.015(b), this provision does not establish a price or fee for the sale or purchase of a life settlement contract.

Section 3.1744 provides that a life settlement broker or provider must file all advertising and solicitation materials used to market life settlements or the licensee's services in this state. The proposed rule does not require the approval of the advertising material, only its submission prior to use or dissemination. Note that, under §1111A.002, the term "advertisement" is defined and includes communication transmitted on the Internet.

DIVISION 4. Annual Reporting.

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year. Insurance Code §1111.006 specifies the required data for the annual report. Providers must submit the annual report electronically in an Excel spreadsheet via email.

2. FISCAL NOTE. Godwin Ohaechesi, director of Company Licensing and Registration, has determined that, for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state government and no impact on local governments because of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy because of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Ohaechesi has also determined that for each year of the first five years the proposal is in effect, there should be public benefits because of the enforcement and administration of the rule. There will also be potential costs for persons required to comply with the proposal. TDI, however, drafted the proposed rules to maximize public benefits, consistent with the intent of Insurance Code Chapter 1111A, while mitigating costs.

The anticipated public benefits will be the efficient administration of Insurance Code Chapter 1111A. Implementing the necessary rules for Chapter 1111A will enable the orderly transaction of life settlements so that policy owners have adequate information when they execute a life settlement contract under the consumer protections of Chapter 1111A. Life settlement brokers and providers will also benefit from the administration of licensing rules.

The cost to persons required to comply with the proposal will vary based on the type and conduct of the person complying. Life settlement brokers and providers will face costs to submit license applications, comply with continuing education

requirements, submit life settlement contract forms for approval, and forego prohibited conduct. Life settlement providers must also submit data to TDI annually. Life insurance agents required by Chapter 1111A to submit notice to TDI when acting as a life settlement broker will face costs to submit that notice. Continuing education providers will face costs related to their registration as course providers.

TDI does not believe that the proposal will have an adverse effect on small and micro businesses. However, TDI has considered the purpose of Chapter 1111A, which is to regulate life settlements, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. TDI solicited cost information in its April 27, 2012, informal rule posting and May 11, 2012, informal stakeholder meeting. TDI prepared and shared estimates as part of the informal posting. TDI did not receive comments on the estimated costs.

TDI has identified four categories of labor reasonably necessary to implement the new subchapter. Life settlement brokers and providers, life insurance agents, and continuing education providers may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The median hourly wage for each category of labor is published online by the Texas Workforce Commission as follows:

(i) a general operations manager or functional director: \$58.64

(www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=11-1021&compare=2);

(ii) a computer programmer: \$38.60

(www.texasindustryprofiles.com/apps/win/eds.php?indcode=5241&indclass=8);

(iii) an administrative assistant: \$21.69

(www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=43-6011&compare=2);

(iv) a staff attorney: \$51.56

(www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=23-1011&compare=2);

TDI estimates that implementation of the new subchapter will likely impact a life settlement broker or provider, continuing education provider, or life insurance agent's overall printing, copying, mailing, and transmitting costs. According to the United States Postal Service business price calculator, available at dbcalc.usps.gov, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 26 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for the 26 cents. This estimate is based on an anticipated use of six pages of standard printing paper, with a total weight of one ounce. TDI has determined that the cost of a standard business envelope is 1.6 cents. TDI further estimates that the cost of printing or copying is between 6 and 8 cents per page.

It is not feasible for TDI to estimate the total amount of increased printing, copying, mailing, and transmitting costs attributable to compliance with the proposed new subchapter. There are numerous factors involved that are not suited to reliable quantification by TDI, including factors like the number of policies settled, the number of employees in an entity licensee, and the number of forms submitted for review. TDI estimates that each affected entity has the information necessary to determine its

individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter, and TDI has identified factors throughout the sections that may contribute to an increased cost for printing, copying, mailing, and transmitting where applicable.

TDI has determined that the actual cost of implementation could be significantly lower than estimated because a life settlement broker or provider, continuing education provider, or life insurance agent may already have significant experience in complying with either the prior rules or statute, or have been working with TDI to be in compliance with Insurance Code Chapter 1111A since its effective date. Many of the requirements of the proposed rule may also be substantially less costly than the estimates set forth in this proposal in the case of a life settlement broker or provider, continuing education provider, or life insurance agent already holding a certificate of registration or temporary license. Many of the proposed requirements for licensees are similar to regulations applicable under the former statute, and TDI estimates that many times cost savings can be had where licensees have already collected the required information for temporary applications or forms already substantially in compliance.

Estimated Costs for Persons Required to Comply with the Proposal.

Costs related to license application. In accord with Insurance Code §1111A.003, persons must hold a license as a life settlement broker or provider unless they meet certain exceptions. Licensure requires the submission of a license application to TDI. TDI bases its estimate of costs for a life settlement broker or provider to comply with §3.1721 on labor costs associated with completing the forms, costs for fingerprinting, the application fee, and costs for the printing and submission of the forms themselves.

TDI estimates that, to submit a license application, a life settlement broker or provider may incur costs related to managerial and support staff necessary to complete the application, including the services of administrative assistants, general operations managers, and attorneys. The number of hours spent completing and submitting the application forms will depend on the size and number of employees of the life settlement broker or provider. TDI anticipates that life settlement broker or provider applicants may require up to 10 hours of time for an administrative assistant, and up to 10 hours of time for general management. TDI estimates a life settlement broker or provider applicant may require an estimated one to two hours for an attorney to review the application form. TDI estimates that the labor cost to an applicant may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, or a combination of both, complete and file the application. The applicant, however, has the information necessary to determine its staffing needs to comply with proposed §3.1721.

Additional costs for proposed §3.1721 also apply. The cost per person to have fingerprints taken is \$34.25 plus a \$9.95 fingerprint collection fee (\$44.20 total) per person. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs to be about 28 cents. The completion of the form also requires the services of a notary public. TDI anticipates that each life settlement broker or provider applicant has the information necessary to determine its individual printing and mailing costs associated with compliance with proposed §3.1721. Finally, each life settlement broker or provider applicant must submit the application fee of \$50 for a life settlement broker or \$100 for a life settlement provider required by proposed §3.1721. The total

cost to comply with §3.1721 could also vary depending on the applicant's administrative processes.

Costs related to license renewal. In accord with Insurance Code §1111A.003, a person may renew a life settlement broker or provider license on the second anniversary of the date of issuance. Proposed §3.1722 requires the submission of a renewal application to TDI. TDI bases its estimate of costs for a life settlement broker or provider to comply with §3.1721 on the labor costs associated with completing the forms, the renewal fee, and the costs for the printing and submission of the forms themselves.

TDI estimates that, to submit a renewal application, a life settlement broker or provider may incur costs related to managerial and support staff necessary to complete the application, including the services of administrative assistants and general operations managers. TDI anticipates that a renewing licensed life settlement broker or provider will require up to five hours of work from an administrative assistant and up to five hours of work from a general operations manager. TDI estimates that the labor cost to a renewing licensee may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, or a combination of both complete and file the application. Each renewing licensee, however, has the information necessary to determine its staff needs to comply with proposed §3.1722.

Additional costs for proposed §3.1722 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs to be about 28 cents. The

forms also require the services of a notary public. The total cost to comply with §3.1722 could also vary depending on a licensee's administrative processes.

Finally, each life settlement broker or provider applicant must submit the renewal application fee of \$50 for a life settlement broker or \$100 for a life settlement provider required by proposed §3.1722. These costs would recur every two years. Additional costs may apply if a licensed life settlement broker or entity must submit a change of information if there is a material change to any information provided in the application for a license. These costs would be similar to the costs for biennial renewal.

Costs related to continuing education. In accord with Insurance Code §1111A.003(p), a life settlement broker must complete 15 hours of training on a biennial basis. Proposed §3.1723 states the individual's and entity's continuing education requirement. TDI estimates that the costs for each person required to complete 15 hours of training under proposed §3.1723 will range up to \$300 per two-year licensing period. TDI bases this estimate on an anticipated range of \$5 to \$20 per credit hour of continuing education. The costs for the continuing education will depend on the market that develops to serve this need for continuing education. The total cost to comply with §3.1723 could also vary depending on the licensee's administrative processes.

Costs related to continuing education providers. The existence of continuing education requirements for life settlement brokers under Insurance Code §1111A.003(p) necessitates continuing education providers to certify courses with TDI. TDI bases its estimate of costs for a continuing education provider to comply with §3.1724 on the labor costs associated with registering a course under the applicable rules, and costs for the printing and submission of the course registration.

Though each continuing education provider has the information needed to estimate its individual costs, TDI estimates that, to register a course, a continuing education provider may incur costs related to managerial and support staff necessary to complete the application including the services of administrative assistants, general operations managers, and attorneys. TDI anticipates that a continuing education provider registering courses with TDI will require up to five hours of work from an administrative assistant, up to five hours of work from a general operations manager, and up to one hour of work from an attorney to review each course. TDI estimates that the labor cost to register a course may vary depending on whether the continuing education provider elects to have an administrative assistant, a general operations manager, attorneys, or a combination of each to complete and file the course registration.

Additional costs for proposed §3.1724 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1724 could also vary depending on the continuing education provider's administrative processes.

Additional costs may apply if a continuing education provider is not yet authorized to provide any continuing education in Texas under Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), of this title. Costs to register as a continuing education provider depend on compliance with those existing rules. Each continuing education provider has the information necessary to determine its staffing needs to comply with proposed §3.1724. Note that continuing education providers are not required to offer life

settlement related continuing education and can otherwise act as continuing education providers without complying with this proposed section.

Costs related to life insurance agent notification. In accord with Insurance Code §1111A.003(c), persons licensed as life insurance agents may operate as life settlement brokers if they notify the commissioner not later than 30 days after the first date of operating as a broker. Proposed §3.1725 requires the submission of a notification to TDI. TDI bases its estimate of costs for a life insurance agent to comply with §3.1725 on the labor costs associated with submission of a notification to TDI registration. There are over 100,000 agents with life, accident, and health licenses in Texas.

TDI anticipates that a life insurance agent providing notification under §3.1725 may require up to two hours of work from an administrative assistant and up to two hours of work from a general operations manager per notification submitted. TDI estimates that the labor cost to provide notification may vary depending on whether the life insurance agent elects to have an administrative assistant, a general operations manager, or a combination of both complete and file the notification. Each life insurance agent, however, has the information necessary to determine its staffing needs to comply with proposed §3.1725.

Additional costs for proposed §3.1725 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The form also requires the services of a notary public. The total cost to comply with §3.1725 could also vary depending on the life insurance agent's administrative processes.

Finally, each life settlement broker or provider must submit the initial notification fee of \$50 required by proposed §3.1725. Subsequent biennial notification sent when the agent's license is renewed has no fee. These labor, printing, and mailing costs also apply for the biennial notification required under proposed §3.1725 when the agent's life insurance agent license is renewed.

Costs related to maintenance of records. Proposed §3.1729 requires life settlement brokers and providers to maintain a copy of the life settlement contract, verification of coverage, and any life expectancy estimate for each settled policy for five years from the date of execution of the contract. TDI bases its estimate of costs for life settlement brokers or provide's to comply with §3.1729 on the labor costs associated with maintaining a complaint records retention schedule.

TDI estimates that a life settlement broker or provider could incur an average annual cost of 10 to 20 hours of administrative time in connection with copying, organizing, and saving the required records. Each life settlement broker or provider has the information necessary to determine its staffing needs to comply with §3.1729.

Costs related to life settlement form submission. In accord with Insurance Code §1111A.005, a life settlement broker or provider must submit any form of life settlement contract in this state in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. TDI bases its estimate of costs for life settlement brokers or providers to comply with §3.1740 on the labor costs associated with submission of forms for approval to TDI and costs for the printing and submission of the forms.

TDI estimates that a life settlement broker or provider could incur an average annual cost of 10 to 20 hours of legal service from a lawyer in connection with drafting, reviewing, and representing the life settlement broker or provider in the form review and approval process. Further administrative work may be required, including up to 10 hours of time from administrative assistants and 10 hours of time from general operations managers. TDI estimates that the labor cost to submit forms may vary depending on whether the life settlement broker or provider elects to have an administrative assistant, a general operations manager, a lawyer, or a combination of each, draft and file the life settlement contract forms. Each life settlement broker or provider, however, has the information necessary to determine its staff needs to comply with proposed §3.1740.

Additional costs for proposed §3.1740 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1740 could also vary depending on the life settlement broker's or provider's administrative processes.

Finally, each life settlement broker or provider must submit the form filing fee of \$100 required by §3.1740.

Costs related to distributing a shopper's guide. In accord with Insurance Code §1111A.012(a)(10), the commissioner may require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process. TDI bases its estimate of costs for life settlement brokers or providers to comply with §3.1742 on the labor costs associated

with supplying the shopper's guide and costs for the printing and submission of the shopper's guide.

TDI estimates that a life settlement broker or provider could require up to two hours of work from an administrative assistant. TDI anticipates that life settlement brokers and providers will be able to include the form in their usual process of delivering informational materials to prospective life settlement contract sellers. The additional labor costs associated with an administrative assistant may be lower if the broker or provider includes the distribution of the shopper's guide with other documents in the solicitation process as an automated or routine process.

Additional costs for §3.1742 also apply. TDI anticipates these printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1742 could also vary depending on the life settlement broker's or provider's administrative processes. TDI anticipates that each life settlement broker or provider submitting life settlement contract forms has the information necessary to determine its individual printing and mailing costs associated with compliance with §3.1742.

Costs related to submitting advertising. In accord with Insurance Code §1111A.005(d), a life settlement broker or provider must submit advertising to TDI. These filings are for informational purposes. TDI's estimate of costs for a life settlement broker or provider to comply with §3.1744 is based on the labor costs associated with the submission of advertising to TDI and costs for the printing and submission of the advertising forms.

TDI estimates that a life settlement broker or provider could incur costs for regular administrative work, including up to five hours of time from administrative assistants per month to submit advertising. TDI estimates that the labor cost to submit advertising may vary depending on the amount of advertising submitted. Each life settlement broker or provider, however, has the information necessary to determine its staffing needs to comply with proposed §3.1744.

Additional costs for §3.1744 also apply. TDI anticipates printing costs to be approximately 6 to 8 cents per page and mailing costs not to exceed 28 cents. The total cost to comply with §3.1744 could also vary depending on the life settlement broker's or provider's administrative processes.

Costs related to annual data reporting. In accord with Insurance Code §1111A.006, a life settlement provider must submit an annual data report to TDI. TDI bases its estimate of costs for life settlement providers to comply with §3.1760 on the labor costs associated with reporting of the data to TDI.

TDI estimates that a life settlement provider could incur costs for up to five hours of time from a computer programmer per year. Further administrative work may be required, including up to two hours of time from administrative assistants and up to two hours of time from general operations managers per month to monitor settlement activity and record the appropriate data. Additionally, the annual report requires use of Microsoft Excel. The industry commonly uses this software and likely will not require additional expenditures by life settlement providers. Should the purchase of the software be necessary, the program may be purchased for approximately \$229.99 retail based on information the department obtained online from various sellers. Each life

settlement provider, however, has the information necessary to determine its staffing needs to comply with §3.1760.

TDI does not anticipate costs for transmission of the annual data reports due to email submission. The total cost to comply with §3.1760 could also vary depending on the life settlement provider's administrative processes.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposed new rules may have an adverse economic effect on 250 to 300 small or micro businesses that must comply with the proposed rules. The cost of compliance with the proposal will not vary between large businesses and small or micro businesses on the basis that a business is a large, small, or micro business, and TDI's cost analysis and resulting estimate is equally applicable to small or micro businesses. The total cost to large businesses and small or micro businesses to comply with the new requirements is not dependent on the size of the affected person. TDI anticipates that most of these small and micro businesses are licensed life insurance agents providing notification that they intend to act as life settlement brokers. TDI estimates that an individual person's particular cost for each component will vary based on multiple factors as described in the Public Benefit/Cost Note portion of this proposal.

The estimate for the number of small or micro businesses comes from TDI's experience in implementing the repealed Chapter 1111, Subchapter A. At the time that statute was repealed, TDI had about 270 life settlement brokers holding certificates of

authority and another 50 life settlement providers holding certificates of authority. TDI estimates that many of those same entities have or will seek licensure under the Chapter 1111A. Many of the brokers are individual agents, and likely to be small or micro businesses. TDI anticipates that many of those life settlement brokers already have a life insurance agent license or will seek one and will do the business of life settlements through the required life agent notification procedure. Additionally, some of the life settlement providers are also small or micro businesses. Continuing education providers may also be small or micro businesses under the definitions in Government Code.

In accord with the Government Code §2006.002(c-1), TDI has considered other regulatory methods to accomplish the objectives of the proposal that minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to implement Insurance Code Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives.

The other regulatory methods considered by TDI to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not proposing the chapter; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the new sections included in this proposal.

Not proposing the chapter. As previously noted, the purpose of this proposal is to implement the necessary rules for Chapter 1111A to enable the orderly transaction of life settlements so that policy owners will be well informed and able to execute a life

settlement contract under the consumer protections of Chapter 1111A. Life settlement brokers and providers, life agents, and continuing education providers will also benefit from the administration of licensing rules. If the rules were not proposed, no rules would provide regulatory requirements for the life settlement contracts applicable to Chapter 1111A. Outdated rules that address the former Chapter 1111, Subchapter A, must be repealed. If TDI does not create new rules, the lawful transaction of life settlements would be hindered. This, in turn, would frustrate the intent of HB 2277 to allow life settlement providers to purchase certain life insurance policies. Finally, Chapter 1111A requires rules to establish applications, fees, form review, and annual reporting.

For this reason, TDI has rejected this option.

Proposing different requirements for small and micro businesses. TDI has worked with stakeholders since the passage of HB 2277 to develop the proposed rules applicable to life settlement brokers and providers, life agents, and continuing education providers. TDI made changes to earlier drafts of the proposed subchapter based on input from stakeholders and stakeholder groups, including groups that have among their membership small businesses. TDI believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses. Also, TDI believes that the potential harm of lessened regulatory requirements to consumers and providers would outweigh the potential benefit to small or micro businesses. The proposed requirements include provisions addressing license application contents, continuing education, and life settlement contract review. Since many of the regulatory requirements are not reflected in settlement contracts,

consumers and providers would not know what different regulations a small or micro business insurer would be following.

In addition, exempting small and micro businesses from these requirements or reducing these requirements could result in perceived inadequacy of regulation. Policy owners would be unable to make an adequate comparison between life settlement brokers and providers. Some informed policy owners may recognize that without common rules, small and micro businesses could be subject to different levels of regulatory scrutiny. Other policy owners less informed might not recognize that small and micro businesses were not subject to the same regulatory scrutiny. However, it is likely owners would have difficulty recognizing which entities are large and small or to recognize the differences in the regulatory requirements applicable to the small versus large entities.

For these reasons, TDI has rejected this option.

Excluding small and micro businesses from applicability under the new sections included in this proposal. As addressed in the Public Benefit/Cost Note portion of this proposal, anticipated costs under the proposal are the result of the new requirements applicable to life settlement brokers and providers, life agents, and continuing education providers. If small and micro businesses were excluded from applicability under the sections applicable to these entities, they would not face the economic impacts. However, if small and micro businesses were excluded from applicability under the new sections applicable to these entities, they would not be subject to the licensing, form filing, data collection, or other consumer protections included in the proposed rules. TDI believes that the lack of these consumer protections would create potential harm for

owners and insureds that would outweigh the potential benefit to small or micro businesses.

Additionally, failure to adopt rules applicable to small and micro businesses would be contrary to the Insurance Code. For example, providing disparate life settlement contract form filing fees for small and micro businesses would conflict with Insurance Code §1111A.005, which requires the commissioner to adopt filing rules in a manner that conforms with the filing procedures for life insurance forms. Form filings under Insurance Code Chapter 1701 do not waive fees for small and micro business.

For these reasons, TDI has rejected this option.

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that this proposal does not affect any private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 28, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Godwin Ohaechesi, Director of Company Licensing & Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider proposed new §§3.1701 - 3.1703, 3,1720 - 3.1730, 3.1740 - 3.1744, and 3.1760 and the repeal of §§3.1701 - 3.1717 in a public hearing under Docket No. 2748 scheduled for January 29, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. TDI will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The new sections are proposed pursuant to Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a

licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§3.1701	Insurance Code Chapter 1111A
§3.1702	Insurance Code Chapter 1111A
§3.1703	Insurance Code §1111A.002 and §1111A.015
§3.1720	Insurance Code §§801.056, 1111A.002, 1111A.003, 1111A.015, 1111A.022, and 1111A.025
§3.1721	Insurance Code §§1111A.002, 1111A.003, and 1111A.015

- §3.1722 Insurance Code §§1111A.003,
1111A.004, and 1111A.015
- §3.1723 Insurance Code §§1111A.003,
1111A.015, and 1111A.026
- §3.1724 Insurance Code §1111A.003 and
§1111A.015
- §3.1725 Insurance Code §1111A.003 and
§1111A.015
- §3.1726 Insurance Code §1111A.015 and
§1111A.026
- §3.1727 Insurance Code §§101.151, 1111A.003,
and 1111A.015
- §3.1728 Insurance Code §1111A.002 and
§1111A.015
- §3.1729 Insurance Code §1111A.007 and
§1111A.015
- §3.1730 Insurance Code §1111A.006 and
§1111A.015
- §3.1740 Insurance Code §§1111A.002,
1111A.005, 1111A.011, 1111A.012,
1111A.014, and 1111A.015
- §3.1741 Insurance Code §§1111A.002,
1111A.005, 1111A.012, 1111A.014,

	and 1111A.015
§3.1742	Insurance Code §§1111A.012 and §1111A.015
§3.1743	Insurance Code §§1111A.002, 1111A.015, and 1111A.017
§3.1744	Insurance Code §§1111A.005, 1111A.011, and 1111A.015
§3.1760	Insurance Code §§1111A.006 and §1111A.015

9. TEXT.

DIVISION 1. General Provisions

§3.1701. Purpose and Severability.

(a) Purpose. Under Insurance Code Chapter 1111A, the Life Settlements Act, the commissioner implements this subchapter to:

(1) establish life settlement requirements concerning license applications, renewal, continuing education, and disclosures;

(2) establish form filing requirements for life settlement contracts;

(3) prohibit or require certain contractual provisions in life settlement contracts; and

(4) establish annual reporting requirements for life settlement providers.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application. To this end, the provisions of this subchapter are severable.

§3.1702. Applicability and Scope. This subchapter:

(1) applies to all persons involved in the business of life settlements in this state as specified in Insurance Code Chapter 1111A; and

(2) does not regulate the actions of an investor providing money to a life settlement provider, and does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law.

§3.1703. Definitions. In this subchapter, the following terms have the meanings assigned by Insurance Code §1111A.002, unless the context clearly indicates otherwise:

- (1) advertisement;
- (2) broker;
- (3) business of life settlements;
- (4) insured;
- (5) life expectancy;
- (6) life insurance agent;
- (7) life settlement contract;

(8) net death benefit;

(9) owner;

(10) person;

(11) policy;

(12) premium finance loan;

(13) provider;

(14) purchaser; and

(15) settled policy.

DIVISION 2. License Application and Renewal; Course and Training

Requirements; Maintenance of Records

§3.1720. Forms.

(a) Application form. The commissioner adopts by reference the License Application for a Life Settlement Provider or Broker form as the application for license for each person engaging in, or desiring to engage in, business as a life settlement broker or life settlement provider in this state.

(b) Renewal, Surrender, or Change of Information form. The commissioner adopts by reference the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form for the renewal, , or surrender of life settlement broker or provider licenses and for use in providing notice to the department of a change to any license holder information or information in an application previously submitted to the department.

(c) Life Agent Notification form. The commissioner adopts by reference the Life Agent Notification to TDI to Act as a Life Settlement Broker form for use by a life insurance agent operating as a life settlement broker.

(d) Biographical Affidavit form. The commissioner adopts by reference the Biographical Affidavit for life settlement providers or brokers form for use as an attachment to the License Application for a Life Settlement Provider or Broker form and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, as applicable, for each owner, partner, director, officer, key management personnel, employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock.

(e) Where to find and send forms. The forms adopted in this section may be obtained from and submitted to Company Licensing and Registration, MC 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or obtained at the department's website at www.tdi.texas.gov/forms.

§3.1721. License Application; Fees.

(a) Applicant. In this section, "applicant" means a person applying for a life settlement broker or provider license.

(b) License requirements.

(1) A person engaging in business as a life settlement broker or life settlement provider in this state must apply for and obtain a license issued by the department as required by this subchapter, except that:

(A) a person may operate as a life settlement broker without a life settlement broker license if that person has held a life insurance agent license in this state for at least one year and holds an active license, or has held a life insurance agent license in that person's home state for at least one year and is licensed as a nonresident agent in this state. The life insurance agent must notify the department in accord with §3.1725 of this title (relating to Life Insurance Agent Notification) and Insurance Code Chapter 1111A; and

(B) a person may operate as a life settlement broker without a life settlement broker license if that person is a licensed attorney, certified public accountant, or financial planner who is retained in the type of practice customarily performed in a professional capacity to represent the owner and whose compensation for the life settlement transaction is not paid directly or indirectly by the provider or any other person, except the owner.

(2) A life settlement broker or provider is prohibited from concurrently holding more than one license of the same type and in the same legal name.

(3) A life settlement broker or provider engaged in the business of life settlements, subject to the provisions of this subchapter, must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or

provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.

(4) A licensed life settlement broker or provider may have additional offices or do business under assumed names, as that term is defined in §19.901 of this title (relating to Definitions Concerning Conduct of Licensed Agents), without obtaining an additional license. However, the life settlement broker or provider must furnish the department with a list identifying any and all offices from which the life settlement broker or provider will conduct life settlement business and showing any and all assumed names that the life settlement broker or provider will utilize in conducting life settlement business at any of those offices.

(A) Where such a filing is required under the Assumed Business or Professional Name Act, Business and Commerce Code Chapter 71, or any similar statute, the life settlement broker or provider must provide the department with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the life settlement broker or provider.

(B) A life settlement broker or provider doing business under an assumed name must comply with subsection (c)(5) of this section.

(c) Information required with application. In addition to a complete License Application for a Life Settlement Provider or Broker form, an applicant for a license to

engage in business as a life settlement broker or provider must submit the items set forth in paragraphs (1) – (7) of this subsection, as follows:

(1) either:

(A) a certificate of account status issued by the Comptroller of Public Accounts reflecting that the applicant is in good standing or temporary good standing; or

(B) a certification signed by an officer or partner of the applicant attesting that the applicant is not subject to Tax Code Chapter 171;

(2) if a provider, a detailed plan of operation, including, but not limited to the following, where applicable:

(A) history:

(i) a brief history of the applicant since its formation, if an entity;

(ii) a list of all states in which the applicant holds a license or registration as a life settlement provider or viatical settlement provider and the date(s) that the applicant obtained such licensure or registration;

(iii) a list of all states in which the applicant is currently doing business, but in which a license or registration is not required; and

(iv) a list and description of any pending lawsuits or judgments naming the applicant as defendant or co-defendant;

(B) management:

(i) evidence that the applicant has a good business reputation, and a detailed description of the experience, training, or education that

qualifies the applicant to conduct the business of life settlements as a life settlement provider; and

(ii) if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship of all related persons and entities; and

(C) marketing plan:

(i) a detailed description of the applicant's marketing plan; and

(ii) the applicant's projected volume of business in Texas and nationwide for the first three years after licensure;

(3) an antifraud plan that meets the requirements of Insurance Code §1111A.022;

(4) a completed Biographical Affidavit form to be used as an attachment to the License Application for a Life Settlement Provider or Broker form for each owner, partner, director, officer, key management personnel, or employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock;

(5) the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of life settlement business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's application for license;

(6) if a business entity, a current copy of its certificate of status from the Office of the Texas Secretary of State; and

(7) if a business entity not domiciled in Texas:

(A) a current copy of its certificate of good standing from the state of its domicile; and

(B) with the license application, a completed appointment of an agent for service of process, unless the applicant has filed with the department the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the commissioner. The applicant must attach the completed form to the application for license. The applicant must appoint as the agent for service of process a person with a Texas address who has an established place of business and who can be easily located and served with notices, legal process, and papers.

(d) Application process.

(1) If an applicant for a license to operate as a life settlement broker or provider has complied with all application procedures in this section, the commissioner will issue the applicant a license to engage in business as a life settlement broker or provider unless the commissioner determines that the application should be denied based on any one or more of the factors set forth in Insurance Code Chapter 1111A.

(2) If the commissioner denies the application and the applicant requests a hearing, or if, at any time, the applicant no longer meets the requirements for licensure, the procedure for the denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by §1.32 of this title (relating to Licenses).

(3) The department will not accept applications that do not contain all required information or certifications.

(e) License fee. An applicant must submit with each completed application for license at the time of filing a two-year license fee in the amount of \$50 for a life settlement broker, or \$100 for a life settlement provider. All license fees are nonrefundable and nontransferable, including fees for applications that are denied or incomplete.

(f) Partnership, corporation, or other business entity license. A partnership, corporation, or other business entity may file an application for a license to engage in business as a life settlement broker or provider only if each owner, partner, director, member, officer, and designated employee is named in the application.

(g) Notice of suspension or revocation. A life settlement broker or provider must notify the department of, and must deliver to the department a copy of, any applicable order or judgment not later than the 30th day after the date of the:

(1) suspension or revocation of the life settlement broker's or provider's right to transact business in another state;

(2) receipt of an order or notice of hearing to show cause why the life settlement broker's or provider's license or license in another state should not be suspended or revoked; or

(3) imposition of an administrative or criminal penalty, forfeiture, or sanction on the life settlement broker or provider for the violation of the laws of this state, any other state, or the federal government.

(h) Effect of criminal conduct. An applicant for or holder of a life settlement broker's or provider's license, including each owner, partner, director, member, officer, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock, is subject to the requirements of Insurance Code §1111A.004 and Chapter 1, Subchapter D, of this title (relating to Effect of Criminal Conduct).

(i) Requirement of additional information. In addition to the information required in this section, the department may ask for other information necessary to determine whether the applicant complies with the requirements of Insurance Code §1111A.003 and this subchapter for purposes of issuing or renewing a life settlement broker's or provider's license. If an applicant does not respond to a request for additional information within 10 days following the date the applicant receives the request, the department will consider the application withdrawn. The applicant can request an extension, but must provide a reasonable basis for the need for additional time.

(j) Material change. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date the change occurs, using the Application for Renewal, , Surrender, or Change of Information for a Life Settlement Provider or Broker form.

(k) Submission required for existing brokers and providers. A life settlement broker or provider, including one operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011, must submit an application in accord with this section not later than 30 days after the effective date of this subchapter.

§3.1722. Renewal; Surrender; Change of Information; and Fees.

(a) Renewal form. To renew an unexpired life settlement provider's or broker's license, a license holder must submit to the department a completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. The license holder must submit with the renewal application a two-year renewal fee of \$50 for a life settlement broker license or \$100 for a life settlement provider license. All renewal fees are nonrefundable and nontransferable.

(b) Renewal application requirements. In addition to the completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, a license holder applying for renewal of a life settlement broker's license or provider's license must submit:

(1) if a business entity:

(A) a certificate of account status issued by the Comptroller of Public Accounts reflecting that the licensee is in good standing or temporary standing;
or

(B) a certification signed by an officer or partner of the licensee attesting that the licensee is not subject to the Tax Code Chapter 171; and

(2) if a life settlement broker, a certification that the life settlement broker and each owner, partner, director, member, officer, and designated employee named in the application or in any supplement to the application, who perform acts of a life settlement broker under Insurance Code §1111A.002(2), has completed training equivalent to that required of individual brokers under §3.1723 of this title (relating to

Course and Training Requirements for Brokers), unless the individual is exempted under §3.1723(c) of this title or has been associated with the license holder for less than two years.

(c) Change in license information. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date such change occurs, using the Application for Renewal, , Surrender, or Change of Information for a Life Settlement Provider or Broker form. This requirement applies to material changes in information that occur after the license has been issued and during which time the license remains valid and unexpired.

(1) A life settlement broker or provider notifying the department of a change in information must provide the notice separately from any other submission of information to the department.

(2) Each life settlement broker and provider must keep the department informed of both the licensee's current mailing and physical addresses. The department will use the mailing and physical addresses on the most recent application or notification the life settlement broker or provider submitted to the department to communicate with and provide notices to the life settlement broker or provider.

(d) Additional licenses. If the department grants a licensee an additional life settlement broker or provider license, the expiration date of the license initially granted applies to all life settlement broker or provider licenses that the license holder subsequently obtains from the department.

(e) Effect of renewal application.

(1) Continuance of license until approved or refused. On filing the completed renewal application and payment of the proper fee, the life settlement broker's or provider's current unexpired license will continue in force until the department renews the license or makes a final determination to refuse to renew the license, as provided in Insurance Code §1111A.004 and Government Code §2001.054, and provides notice of such refusal in writing to the license holder.

(2) Expiration for not more than 90 calendar days. If the life settlement broker's or provider's license has been expired for not more than 90 calendar days, the life settlement broker or provider may apply to renew the license by sending a completed renewal application and fee, as applicable, and an additional fee equal to one-half of the required renewal fee.

(3) Expiration for more than 90 calendar days. If a life settlement broker or provider license has been expired for more than 90 calendar days, the life settlement broker or provider may not apply to renew the license. The life settlement broker or provider must obtain a new license by submitting a new application for a license and fee under §3.1721 of this title (relating to License Application; Fees).

(f) Surrender or of a provider's license. If a life settlement provider does not intend to renew or elects to surrender its license, the life settlement provider must request approval from the department by submitting the Application for Renewal, , Surrender, or Change of Information for a Life Settlement Provider or Broker form. The department must receive the provider's written request for or surrender at least 30 days before the date the provider's current license expires or planned surrender date. A life settlement provider must apply for license renewal and cannot surrender or nonrenew

an expiring license if a life settlement contract is executed in the 15 days prior to the or surrender of the license. Prior to expiration or surrender, the life settlement provider must submit a report containing all the information required by §3.1760 of this title (relating to Reporting Requirements) for all life settlement contracts executed in Texas for which the insured is a resident of Texas.

(g) Effect of license surrender. The surrender of a life settlement broker's or provider's license to the department is not a defense to a violation of the Insurance Code or this title committed by the life settlement broker or provider prior to the effective date of the surrender. In addition, surrendering to the department any or all life settlement licenses in no way affects the authority of the department or the commissioner to initiate or continue any investigation or disciplinary proceedings concerning the life settlement broker or provider.

(h) Insolvency. If a court of competent jurisdiction assumes control of or appoints a receiver to control and wind down the business operations of a life settlement broker or provider, and the commissioner determines that such waiver is in the public interest and is consistent with the requirements of the Insurance Code, the department may waive requirements specified in this section.

§3.1723. Course and Training Requirements for Brokers.

(a) Individual continuing education requirement. A life settlement broker must complete at least 15 hours of department-certified life settlement continuing education during each two-year license period.

(b) Entity continuing education requirement. A partnership, corporation, or other entity must have each owner, partner, director, member, officer, and designated employee named in the license application or in any supplement to the application that perform the acts of a life settlement broker under Insurance Code §1111A.002(2), and is not exempt under subsection (c) of this section, complete at least 15 hours of department-certified life settlement continuing education during the two-year license period.

(c) Exempt persons. A life settlement broker is not subject to the requirements of this section if:

(1) the life settlement broker or the owner, partner, director, member, officer, or designated employee of the life settlement broker has been associated with the licensed entity for less than two years; or

(2) the life settlement broker holds a general life, accident, and health insurance agent license or acts solely as a life expectancy estimator. A general life, accident, and health insurance agent must continue to meet all applicable license and continuing education requirements for the general life, accident, and health insurance agent license.

(d) Continuing education subject requirements. The 15 hours of continuing education that a broker must complete during each two-year license period must include:

(1) at least six hours on the duties of life settlement brokers under Insurance Code Chapter 1111A, the requirements of this subchapter, and additional topics addressing statutes enacted and rules adopted subsequent to the effective date

of this section, provided that the statutes or rules relate specifically to life settlement contracts;

(2) at least three hours on ethics and consumer protection; and

(3) at least six hours on life insurance.

(e) Credit for other licenses. Licensees may count a life settlement course toward completion of the non-ethics or consumer protection-related continuing education requirements prescribed in Insurance Code Chapter 4004, and §19.1003 of this title (relating to Licensee Requirements). If a licensee uses a life settlement course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this title, the licensee must comply with §19.1013 of this title (relating to Licensee Record Maintenance).

(f) Out-of-state continuing education. For license holders determining equivalent course hours, the licensee must maintain a list of all course approved times and states in which the course is approved and provide the list to the department on request. The equivalent hours are determined by using the average of approved times in other states.

(g) Proof of course completion. A licensee must maintain proof of completion of a life settlement continuing education course for a period of four years from the date of completion of the course. On request, the licensee must provide proof of completion of the life settlement continuing education course to the department. A licensee must immediately report to the department any discrepancy the licensee discovers between a course taken by the licensee and the credit hours certified to the licensee by the continuing education provider.

(h) Automatic fine. A broker's failure to comply with the provisions of this section is subject to automatic penalties of \$50 per credit hour. Paying the automatic fine does not preclude other administrative action.

(i) Administrative action. The filing of a properly completed renewal application constitutes a licensee's certification that all required continuing education hours for the reporting period have been completed. The department's renewal of a license does not relieve a licensee or any individual from compliance with the continuing education requirements for any reporting period, and the failure to obtain required continuing education hours subjects the licensee to administrative action.

§3.1724. Continuing Education Providers.

(a) A continuing education provider for life settlement broker continuing education must comply with:

(1) §§19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) §19.1009 of this title (relating to Types of Courses);

(3) §19.1010 of this title (relating to Hours of Credit);

(4) §19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses); and

(5) §19.1014 of this title (relating to Provider Compliance Records).

(b) A life settlement broker continuing education provider that fails to comply with the requirements of this section is subject to:

(1) §19.1015 of this title (relating to Failure to Comply); and

(2) §19.1016 of this title (relating to Automatic Fines).

§3.1725. Life Insurance Agent Notification.

(a) Operating as a life settlement broker. A licensed life insurance agent may operate as a life settlement broker, provided that:

(1) the life insurance agent has held a license as a life insurance agent:

(A) in this state for at least one year; or

(B) in the person's home state for at least one year and is licensed

as a nonresident agent in this state;

(2) notifies the commissioner, within 30 days after the first date of operating as a life settlement broker, by filing a completed Life Agent Notification to TDI to Act as a Broker form accompanied by the \$50 fee; and

(3) has an active life insurance agent's license.

(b) Notice of renewal required. A life insurance agent that continues to operate as a life settlement broker must also submit a Life Agent Notification to TDI to Act as a Broker form on each subsequent renewal of the agent's life insurance agent license. No fee is required for subsequent renewal of life agent notifications.

(c) Temporary notification. A life insurance agent that has been operating under a temporary notification must submit a notification in accord with this section no later than 30 days after the effective date of this subchapter.

(d) Compliance required. A life insurance agent acting as a life settlement broker under Insurance Code Chapter 1111A must comply with all statutes and rules applicable to the business of life settlements.

(e) Sanctions. The commissioner may revoke the license of a life insurance agent or impose other sanctions in accord with Insurance Code Chapters 82, 83, and 84 for a violation of Chapter 1111A or this subchapter.

§3.1726. Life Expectancy Estimators.

(a) Insurance Code §§1111A.003(p), 1111A.012, and 1111A.014(l) and (m) do not apply to a life settlement broker who acts solely as a life expectancy estimator.

(b) A life settlement broker or life insurance agent who solely performs estimates of life expectancy must indicate on the License Application for a Life Settlement Provider or Broker form; the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; or the Life Agent Notification to TDI to Act as a Broker form, as applicable, that the broker or life insurance agent will act solely as a life expectancy estimator.

§3.1727. Unauthorized Insurance. For purposes of Insurance Code §101.051(b)(8) and (9), unauthorized insurance includes participation of a life settlement broker or provider in connection with a life settlement contract for which the insured resides in this state but for which the owner is a trust or similar entity domiciled in another state and created primarily to avoid the requirements of Insurance Code Chapter 1111A.

§3.1728. Life Settlement Broker Fiduciary Duty. Breach of a life settlement broker's

fiduciary duty includes, but is not limited to:

(1) receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit of the life insurance policy payable at the time of application for a life settlement contract.

(2) a contractual agreement or arrangement to directly or indirectly exclusively negotiate life settlement contracts with a single life settlement provider.

§3.1729. Maintenance of Records. A life settlement broker or provider must maintain a copy of the life settlement contract, verification of coverage, and any life expectancy estimate for each settled policy for five years from the date of execution of the contract.

§3.1730. Health Status Verification.

(a) Who can verify health status. Only a licensed life settlement broker, provider, or authorized representative of a licensed life settlement broker or provider may contact an insured to determine the insured's health status or to verify the insured's address.

(b) Written delegation. An authorized representative must have a written authorization from a licensed life settlement broker or provider to be an authorized representative. An authorized representative must agree in writing to adhere to the privacy provisions in Insurance Code Chapter 1111A.

DIVISION 3. Form Filing and Usage Requirements

§3.1740. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms; Fees.

(a) General form filing requirement. A person must not use a form used to effect a life settlement in this state unless the form has been filed with and approved by the commissioner pursuant to this section, if prior approval is required by subsection (f) of this section.

(b) Required life settlement contract form filings. Forms that must be filed include the following:

(1) settlement contracts, including any amendments;

(2) disclosures;

(3) verification of coverage forms;

(4) escrow or trust agreements;

(5) documents used to obtain or release confidential information,

including documents used by the life settlement broker or provider that in any way refer to, affect, request, or relate to a life settlement broker or provider obtaining or releasing confidential information;

(6) owner consent forms;

(7) power of attorney forms;

(8) settlement applications;

(9) premium finance loan documents as specified in Insurance Code

§1111A.002(11)(B), unless exempted by §1111A.002(11-A); and

(10) any other form used by a life settlement broker or provider to effect a life settlement contract in this state.

(c) Submission. Licensees must submit one copy of forms pursuant to this section. Non-electronic filings must be submitted to the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701. A filing submitted electronically must be submitted through the System for Electronic Rate and Form Filing. A person must hold a life settlement broker's or provider's license issued by the department have authority to operate as a life settlement broker, or be authorized under subsection (d)(2) of this section to submit forms.

(d) Transmittal checklist requirement. The commissioner adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings to be filed with and attached to forms filed pursuant to subsection (c) of this section. The form may be obtained from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The transmittal checklist must provide complete and accurate information about the filing, be signed by a duly authorized representative or attorney of the life settlement broker or provider, and include the following information:

(1) the name and license number of the submitting life settlement broker or provider;

(2) a designated contact person for the filing, including the individual's name, address, phone number, and, if available, fax number and email address. If the

form filing is submitted by anyone other than the life settlement broker or provider, the filing must include an attachment executed by the life settlement broker or provider, or by an officer if an entity, that designates the person submitting the filing as the contact for that filing;

(3) a list of all submitted forms and an explanation of the purpose and use of each form;

(4) if applicable, a list of the form numbers and approval dates of all previously reviewed forms with which the submitted form will be used and a statement explaining when the submitted form will be used;

(5) a designation indicating the type of filing, as those types are described in subsection (h) of this section; and

(6) any applicable information, attachments, and certifications specified in this section.

(e) Specific form filing requirements. Forms filed pursuant to this section are subject to the requirements set forth in paragraphs (1) – (3) of this subsection.

(1) Any form filed pursuant to this section must:

(A) prominently display the full name, home office mailing address, and telephone number of the life settlement broker or provider;

(B) include specimen language and specimen fill-in material. A broker or provider is prohibited from including the confidential information of any policy owner in the filed form. Fill-in lines, blanks, and text boxes that are clearly titled with the information to be filled in do not require specimen language;

(C) be submitted on 8 1/2 by 11-inch paper or formatted for that size if submitted electronically. The department will not accept bound forms;

(D) be submitted in typewritten, computer-generated, or printer's proof format and be clearly legible;

(E) include a unique form number designation sufficient to distinguish it from all other forms used by the life settlement broker or provider. The form number must be located in the lower left-hand corner of the cover page or on the first page of the form, if visible with the cover closed; and

(F) a designation indicating whether the form is filed as file and use or review and approval prior to use as those categories are described in subsection (f) of this section.

(2) A form filed under this section may contain variable language, provided the variable language is both bracketed and accompanied by a clear explanation of how the material will vary and how it will be used.

(3) The department will not accept handwritten forms or handwritten corrections.

(f) Categories for form filings.

(1) Review and approval prior to use; deemer. A life settlement broker or provider must file life settlement contract forms, disclosures, and verification of coverage forms under this paragraph with the department not less than 60 days prior to the life settlement broker's or provider's use or delivery of such form. After the submission of a filing under this subsection, the life settlement broker or provider may not use or deliver the form on or before 60 days from the date the department receives

the form unless the department approves the form during the 60-day period. If the department has not approved the form by the 60th day after the date the department receives the form, the life settlement broker or provider may deem the form approved only if:

(A) the life settlement broker or provider has not requested an extension or waiver of the review period, and;

(B) the department has not disapproved the form.

(2) File and use. A life settlement broker or provider may immediately use and deliver a form filed under this category in this state until the department makes a request for corrections, or disapproves the form. A life settlement broker or provider may file any other form identified in subsection (b)(4) – (10) of this section under this paragraph. A filing under this category shall include the information and certifications specified in subsection (i)(1) and (2) of this section. Any form that the department has previously disapproved pursuant to subsection (k) of this section is not eligible for filing under this category.

(3) Forms approved prior to the effective date of this section. Forms approved prior to the effective date of this section must comply with this subchapter six months from the effective date of this section.

(g) Extension or waiver of review period. A request for extension of time for the approval of a form must comply with paragraphs (1) – (5) of this subsection.

(1) A life settlement broker or provider may request in writing an extension to the approval period for a form for an additional period not to exceed 45 days.

(2) The department automatically grants a timely request for extension under this section on the date it receives the request.

(3) The department will only grant one extension under this section.

(4) If the department grants an extension under this section and does not affirmatively approve or disapprove the form before the extended period expires, the form is considered approved on the first day after the date the extended period expires.

(5) A life settlement broker or provider may waive the deeming of the form filings.

(h) Types of form filings. The types of life settlement contract form filings available for designation on the transmittal checklist are as follows:

(1) New form. A form that the department has not previously reviewed or approved under Insurance Code §1111A.005 and this subchapter, except for a form withdrawn by a life settlement broker or provider pursuant to paragraph (6) of this subsection.

(2) Informational form. A form submitted for informational purposes only.

(3) Substantially similar to a previously approved form. A form that is substantially similar to a form that the department reviewed or approved on or after the effective date of this subchapter. This type of form filing requires the information and certification specified in subsection (i)(1), (2), and (4) of this section.

(4) Exact copy. A form that, except for the life settlement broker's or provider's name, address, phone number, or other similar life settlement broker's or provider's identification information, is an exact copy of a form the department reviewed or approved on or after the effective date of this subchapter. This type of form filing

requires the information and certifications specified in subsection (i)(1) and (4) of this section and is approved as of the date the department receives it.

(5) Substitution for a previously approved form. A form that is a substitute for a form the department previously reviewed or approved on or after the effective date of this subchapter for the same life settlement broker or provider, provided that the broker or provider has not issued or otherwise used the previously reviewed or approved form in Texas and will not use it in Texas at any time. This type of form filing requires the information and certifications specified in subsection (i)(1) and (4) of this section.

(6) Correction to a pending form. A form containing corrections to a pending form submitted subsequent to the life settlement broker or provider receiving notification of the pending form's deficiencies from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (5) of this section. The department must receive the filing no later than 30 days following the date the life settlement broker or provider receives written notification from the department of the form's deficiencies. The department will consider the originally submitted form withdrawn if it does not receive a corrected form within 30 days following the date the notification of the form's deficiencies is sent. The department will not approve or review a withdrawn form until the broker or provider refiles it as a new form filing.

(7) Resubmission of a previously disapproved form. A form containing corrections to a form subsequent to the life settlement broker or provider receiving a

disapproval letter from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (7) of this section.

(i) Certifications, Attachments, and Other Information. A life settlement broker or provider must include in a filing the certifications, attachments, and other information referred to in this section as follows:

(1) A life settlement broker or provider, or the broker's or provider's duly authorized representative or attorney, filing any form with the department must certify on the transmittal checklist that:

(A) the filer has reviewed and is familiar with all applicable statutes and regulations of this state;

(B) the filer has reviewed the form filing, and

(C) to the best of his or her knowledge and belief, the filed form complies in all respects with the applicable statutes and regulations of this state.

(2) A life settlement broker or provider filing a form as file and use under subsection (f)(2) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that:

(A) no corrections to the form have been requested by the department; and

(B) the form has not been previously disapproved by the department.

(3) A life settlement broker or provider filing a form as review and approval prior to use under subsection (f)(1) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that it will not use

the form until the department approves it. If, following the 60th day from the date the department receives the form, the life settlement broker or provider elects to use, issue, or deliver such form prior to receiving approval from the department, the life settlement broker or provider must have provided the certifications specified in paragraphs (1) and (2) of this subsection.

(4) A life settlement broker or provider submitting a form under subsection (h)(3), (4), or (5) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number and approval date of the previously approved form, including the broker's or provider's name if different from the submitting broker or provider;

(B) a summary of the differences between the previously approved form and the submitted form, including a description of any deleted text. The submitted form must clearly identify all changes, with new or modified text underlined; and

(C) a certification that the form contains no changes other than those identified.

(5) A life settlement broker or provider submitting a form pursuant to subsection (h)(6) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number of the pending form;

(B) the name of the department's form review specialist who reviewed the form;

(C) the date of notification of any form deficiencies;

(D) the tracking number of the pending form assigned by the department;

(E) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text. The corrected form must clearly identify all changes, with new or modified text underlined; and

(F) a certification that the form contains no changes other than those identified.

(6) A life settlement broker or provider submitting a form pursuant to subsection (h)(5) of this section must provide the certification specified in paragraph (1) of this subsection and a certification that the broker or provider has not issued or used the original version of the form in Texas and will not use it in Texas at any time.

(7) A life settlement broker or provider submitting a form pursuant to subsection (h)(7) of this section must provide:

(A) a certification specified in paragraph (1) of this subsection, as well as the information and certifications specified in paragraph (5)(B), (D), (E), and (F) of this subsection;

(B) the form number of the disapproved form; and

(C) the date of disapproval by the department.

(j) Forms not qualified for review. The department will not accept for review and will return to the life settlement broker or provider form filings that are not accompanied by a completed transmittal checklist or that do not contain all required information or certifications. No filing fees will be refunded.

(k) Disapproval or withdrawal of previous approval; request for corrections.

Form disapprovals, withdrawals of previous approvals, and requests for corrections to filed forms subject to paragraphs (1) and (2) of this subsection.

(1) The department may disapprove, withdraw previous approval, or request that a life settlement broker or provider make corrections of any form filed pursuant to this section if the form:

(A) fails to comply with any applicable statutes or regulations of this state;

(B) fails to meet any requirements of the Insurance Code, including §§1111A.011, 1111A.012, 1111A.014, and 1111A.023(b);

(C) is unreasonable or contrary to the interests of the public; or

(D) is otherwise misleading or unfair to the owner.

(2) When the department makes a request for corrections, disapproves a form, or withdraws approval of a form pursuant to this section, the department may require that the life settlement broker or provider discontinue using the form, replace the form, or any other appropriate remedy available by law.

(l) Notification of approval or disapproval. The department will provide written notification of any approval or disapproval of any form filed under this section.

(m) Additional requested information. The department may request any additional information necessary for a comprehensive review of any form in accord with the requirements in Insurance Code Chapter 1111A.

(n) Request for hearing. The life settlement broker or provider may make a written request for a hearing to the Chief Clerk, Mail Code 113-2A, Texas Department of

Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701, on receiving notification under subsection (l) of this section of any withdrawal of approval or disapproval of a form by the department.

(o) Filing fees. Applicable fees for filings made pursuant to this division are set forth in paragraphs (1) – (4) of this subsection.

(1) For filing a complete life settlement contract, including forms related to the life settlement contract, a fee of \$100.

(2) For filing life settlement contract forms individually, a fee of \$100 for each filing.

(3) For filing a resubmission of a previously disapproved life settlement contract form, a fee of \$50.

(4) For each refiling of a previously withdrawn life settlement contact form, a fee of \$50.

§3.1741. Required Form Provisions

(a) Life settlement contracts. All contracts used to effect life settlements must contain the provisions set forth in paragraphs (1) – (8) of this subsection, as follows:

(1) a provision that the life settlement contract must provide that the policy or the policy and application for the life settlement constitute the entire contract between the parties;

(2) a provision that any change to the life settlement contract is valid only on written execution of approval by an executive officer of the life settlement provider designated in the contract with authority to bind the provider and that such approval

must be endorsed in or attached to the life settlement contract. The provision must also state that no person, other than an executive officer of the provider, has the authority to change the life settlement contract or to waive any of its provisions;

(3) a provision that, in the absence of fraud, all statements made by the owner and insured are representations and not warranties;

(4) a provision that the owner may designate any individual of legal age, in regular contact with the insured, as a contact for inquiries about the insured's health status on written notice providing the name, address, and telephone number of such individual. The provision must include a statement that the owner may change a designation at any time on written notice to the life settlement provider;

(5) a provision that the life settlement provider must provide to the insured the name, address, and telephone number of the life settlement broker, provider, or authorized representative of the provider or broker that will contact the insured or the insured's designee for tracking purposes and must notify the insured of any change in such information;

(6) a provision defining how any notice required or permitted under the contract must be given and delivered;

(7) a provision disclosing what effect the life settlement contract will have on payment of premiums and disposition of proceeds, cash values, and dividends; and

(8) a provision disclosing that, if the policy that is the subject of the life settlement contract is a joint policy, or contains riders or other provisions insuring the lives of a spouse, dependents, or anyone else other than the owner, there may be a possible loss of coverage, and that the owner should contact the owner's insurance

company or agent to determine if the coverage may be converted to avoid losing the coverage.

(b) Prohibited provisions. A contract used to effect life settlement must not:

(1) contain an indemnification or a hold harmless provision that requires the owner or insured to protect another person against liability, loss, or damages that exceed the proceeds of the life settlement contract received by the owner; or

(2) require any owner to condition a life settlement contract on the exclusive dealing between the owner and the life settlement broker or provider.

(c) Retained ownership. If a life settlement provider enters into a life settlement contract that allows the owner to retain an interest in the policy, or if the policy contains a clause in the policy or attached to the policy by rider that provides an additional death benefit for accidental death, the life settlement contract or amendment must contain a provision that:

(1) the life settlement provider will transfer the amount of the net death benefit only to the extent or portion of the amount sold. The provision must also state that benefits in excess of the amount sold will be paid by the insurance company directly to the beneficiaries in accord with the terms of the policy;

(2) the additional death benefit for accidental death must remain payable to the beneficiary last named by the owner, not including the life settlement provider, or, in the absence of a beneficiary, to the estate of the owner;

(3) the life settlement provider will, on acknowledgment of the perfection of the transfer, either:

(A) advise the owner in writing that the insurance company has confirmed the owner's remaining interest in the policy; or

(B) provide the owner with a copy of the document prepared by the insurance company that acknowledges the owner's remaining interest in the policy; and

(4) defines the apportionment of premiums the life settlement provider and the owner will pay. The life settlement contract or amendment may specify that the life settlement provider will pay all premiums. The contract or amendment may also require the owner to reimburse the life settlement provider for the premiums attributable to the remaining interest, including any premiums for the accidental death benefit, subsequent to the life settlement contract.

(d) General contract requirements. All life settlement contracts, in addition to meeting the other requirements of this section, must contain:

(1) consistent terminology;

(2) a section defining key terms used in the life settlement contract;

(3) the name of the owner and insured;

(4) the number of the policy that serves as the basis for the life settlement contract;

(5) the name of the insurance company underwriting the policy at the time of contract;

(6) the amount of the net death benefit of the policy; and

(7) signature lines for the life settlement provider and the owner.

(e) Required disclosures. All life settlement contracts, in addition to meeting the other requirements of this section, must contain the written disclosures required by

Insurance Code §1111A.012 and §1111A.014 for delivery to the owner by the life settlement broker, or provider if there is no broker involved in the transaction, with each application for a life settlement contract. For purposes of Insurance Code §1111A.012(a)(8), if the amount of compensation is not known at the time of application, the method of calculation must be provided at the time of application, and the amount of compensation must be provided at the date the life settlement contract is signed by the owner.

(f) Escrow and trust. A life settlement provider that places the proceeds of the life settlement contract into an escrow or trust account must comply with the following:

(1) the escrow agent may not be any person under common control with a life settlement broker or provider;

(2) the escrow or trust agreement must contain:

(A) the name of the owner;

(B) the number of the policy that serves as the basis for the life settlement contract;

(C) the name of the insurance company underwriting the policy at the time of contract execution;

(D) the name of the life settlement provider purchasing the policy;

(E) the name, address, and telephone number of the escrow agent or trustee;

(F) the amount of the owner's proceeds placed into the escrow or trust account;

(G) all terms and conditions of the escrow or trust agreement;

(H) the name and address of the financial institution holding the escrow funds into which the provider will pay the funds to the owner;

(I) a description of the purpose of the escrow or trust account;

(J) the circumstances that will trigger disbursement of the funds from the escrow or trust account;

(K) the limitations concerning, or time restrictions for, the insurance company's affirmative acceptance and acknowledgement of the assignment of the policy;

(L) if applicable, the process for required notices for communication if the owner rescinds the life settlement contract pursuant to Insurance Code §1111A.012(a)(5) or if the insurance company does not accept the policy assignment or transfer of ownership;

(M) the duties of the escrow agent or trustee;

(N) the designation of the escrow agent or trustee;

(O) the limits of liability for the escrow agent or trustee;

(P) the process for resolving any dispute arising between the owner and the life settlement provider, the escrow agent, or the trustee concerning the interpretation of the escrow or trust agreement; and

(Q) a signature line for the life settlement provider, the owner, and the escrow agent or trustee.

(g) Medical release. A medical release form must:

(1) be in writing and signed by the insured; and

(2) disclose the medical records covered by the release; the purposes for the release; the identity of the person to whom the information is to be released; any limitations on the right to withdraw consent; and that the release form may be used to determine and track the insured's ongoing health status.

(h) Policy release. A policy release form must:

(1) be in writing and signed by the owner; and

(2) disclose the information covered by the release, the purposes of the release, the identity of the person to whom the information is to be released, and the owner's right to withdraw consent.

(i) Power of attorney. A power of attorney form must be limited to the purpose of releasing medical information in connection with the settlement transaction, including tracking the ongoing health status of the insured.

(j) Verification of coverage. A verification request form must be limited to information relevant to the life settlement contract.

(k) Premium finance loan. A life settlement broker or provider may not use a premium finance loan that is not already filed with and approved by the department under Insurance Code Chapter 651. The department may disapprove a premium finance loan form approved under Insurance Code Chapter 651 for use with or as a life settlement contract if it violates Insurance Code Chapter 1111A.

(l) Owner's copies. The life settlement broker or provider must provide the owner with a copy of the life settlement contract and all materials used to effect the life settlement contract, including the application, a copy of the escrow or trust agreement, and any consent forms or any other document that the life settlement broker or provider

required the owner or the owner's representative to sign to effect the life settlement contract. The life settlement contract and all other materials used to effect the life settlement contract must be provided at no charge to the owner.

§3.1742. Shopper's Guide. The commissioner adopts by reference the form Important Information You Should Know Before Entering Into A Life Settlement, as a shopper's guide for delivery to owners during the solicitation process. The life settlement broker, or the provider if the transaction does not have a broker, must deliver the guide to the owner prior to the execution of the life settlement contract. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The delivery of the shopper's guide satisfies only the requirements of Insurance Code §1111A.012(10), and this section.

§3.1743. Prohibited Life Settlements. A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit of the life insurance policy payable at the time of application for a life settlement contract.

§3.1744. Advertising, Sales, and Solicitation Materials; Filing Prior to Use.

(a) Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life

settlement contracts or broker's or provider's services in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).

(b) Information filing. The filings required by this section are for informational purposes only. Life settlement brokers or providers may use or disseminate the materials referenced in this section without prior review by the department.

DIVISION 4. Annual Reporting

§3.1760. Reporting Requirements.

(a) General reporting requirements applicable to all life settlement providers. All life settlement providers must comply with the general reporting requirements set forth in paragraphs (1) and (2) of this subsection.

(1) On or after January 1 and before March 1 of each year, each life settlement provider must submit electronically via email in Excel format to lifehealth@tdi.state.tx.us, for the previous calendar year, the life settlement provider data report form that is adopted by reference in this section, whether or not the provider conducted any transactions during the reporting period.

(2) In complying with the requirements of this section, a life settlement provider may not include any confidential information in the report or in any other way compromise the anonymity of any owner, owner's family members, or owner's spouse.

(b) Report requirements. The commissioner adopts by reference the Life Settlement Provider Data Report form, to be filed pursuant to subsection (a) of this section. The form is available from the Rate and Form Review Office, Mail Code 106-

1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov. The report must include the following:

(1) the name and license number of the submitting life settlement provider;

(2) a designated contact person for the report, including the individual's name, address, phone number, and if available, fax number and email address; and

(3) with respect to life settlement contracts executed in Texas for which the insured is a resident of Texas during the reporting period for a policy settled not later than the fifth anniversary of the issue date of policy, as follows:

(A) the total number of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year;

(B) the aggregate face amount of the policies settled during the immediately preceding calendar year, with the information categorized by policy issue year;

(C) the proceeds of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year for policies issued in each of the last five years;

(D) the full name of each insurance company whose policies have been settled and the brokers that have settled the policies; and

(E) the name and life settlement broker license number of any persons who estimated life expectancies for a life settlement contract.

(c) Disciplinary action. A life settlement provider that fails or refuses to submit any information required by this section is subject to disciplinary action under Insurance Code §1111A.006 in addition to any other applicable penalty.

(d) 2011 data. Notwithstanding the requirements of subsection (a) of this section, each life settlement provider must submit a report with the information required in this section within 60 days from the effective date of this rule for data regarding life settlement contracts entered during the period of January 1, 2011, to December 31, 2011, in Texas for which the insured is a resident of Texas. A life settlement provider that has already provided complete information required in subsection (b)(3)(A) – (E) of this section by the effective date of this section meets the requirements of this subsection.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued at Austin, Texas, on December 11, 2012.



Sara Waitt
General Counsel
Texas Department of Insurance