

§6802-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 636, §5 (NEW).]

1. Advertising. "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or a similar communications medium, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a settlement contract.

[PL 2003, c. 636, §5 (NEW).]

2. Business of settlements. "Business of settlements" means any activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner engaging in the business of settlement contracts.

[PL 2003, c. 636, §5 (NEW).]

3. Chronically ill. "Chronically ill" means:

A. Being unable to perform at least 2 activities of daily living, including, but not limited to, eating, moving from one place to another, bathing, dressing, voiding the bladder, eliminating the bowel or maintaining continence; [PL 2003, c. 636, §5 (NEW).]

B. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or [PL 2003, c. 636, §5 (NEW).]

C. Having a level of disability similar to that described in paragraph A, as determined by the United States Secretary of Health and Human Services. [PL 2003, c. 636, §5 (NEW).]

[PL 2003, c. 636, §5 (NEW).]

4. Financing entity. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a settlement contract:

A. Whose principal activity related to the transaction is providing funds to effect the settlement or purchase of one or more purchased policies or to provide credit enhancement; and [PL 2003, c. 636, §5 (NEW).]

B. Who has an agreement in writing with one or more licensed settlement providers to finance the acquisition of settlement contracts or to provide stop loss insurance. [PL 2003, c. 636, §5 (NEW).]

"Financing entity" does not include a nonaccredited investor.

[PL 2003, c. 636, §5 (NEW).]

5. Financing transaction. "Financing transaction" means any transaction in which a licensed settlement provider obtains financing for the purchase, acquisition, transfer or other assignment of one or more settlement contracts or policies acquired pursuant to a settlement contract or interests therein, including, without limitation, any secured or unsecured financing, securitization transaction or securities offering, either registered or exempt from registration under federal and state securities law, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of a settlement contract or policy acquired pursuant to a settlement contract or interest therein.

[PL 2003, c. 636, §5 (NEW).]

6. Fraudulent viatical or life settlement act. "Fraudulent viatical or life settlement act" includes:

A. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in, acts including:

- (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a settlement provider, settlement producer, financing entity, insurer, insurance producer or any other person false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:
 - (a) An application for the issuance of a settlement contract or insurance policy;
 - (b) The underwriting of a settlement contract or insurance policy;
 - (c) A claim for payment or benefit pursuant to a settlement contract or insurance policy;
 - (d) Premiums paid on an insurance policy;
 - (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a settlement contract or insurance policy;
 - (f) The reinstatement or conversion of an insurance policy;
 - (g) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;
 - (h) The issuance of written evidence of a settlement contract or insurance policy; or
 - (i) A financing transaction;
 - (2) Employing any device, scheme or artifice to defraud related to policies acquired pursuant to a settlement contract;
 - (3) Entering into stranger-originated life insurance; or
 - (4) Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer or its authorized representatives in connection with the issuance of a policy; [PL 2007, c. 543, §1 (AMD).]
- B. In the furtherance of a fraud or to prevent the detection of a fraud committing or permitting one's employees or agents to:
- (1) Remove, conceal, alter, destroy or sequester from the superintendent the assets or records of a licensee or other person engaged in the business of settlements;
 - (2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
 - (3) Transact the business of settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of settlements; or
 - (4) File with the superintendent or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the superintendent; [PL 2003, c. 636, §5 (NEW).]
- C. Embezzlement, theft, misappropriation or conversion of money, funds, premiums, credits or other property of a settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of settlements or insurance; [PL 2003, c. 636, §5 (NEW).]
- D. Recklessly entering into, brokering or otherwise dealing in a settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, when the viator or the viator's agent intended to defraud

the policy's issuer. For the purposes of this paragraph, "recklessly" means engaging in conduct in consciously and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; [PL 2009, c. 376, §1 (AMD).]

E. Attempting to commit; assisting, aiding or abetting in the commission of; or conspiring to commit the acts or omissions specified in this subsection; [PL 2009, c. 376, §1 (AMD).]

F. Engaging in any transaction, practice or course of business by a person who knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter; [PL 2009, c. 376, §1 (NEW).]

G. With respect to a settlement producer, knowingly soliciting an offer from, effectuating a life settlement contract with or making a sale to any settlement provider, financing entity or related provider trust that is controlling, controlled by or under common control with the producer, unless this relationship is disclosed to the viator; [PL 2009, c. 376, §1 (NEW).]

H. With respect to a settlement provider, knowingly entering into a settlement contract if anything of value will be paid to a settlement producer controlling, controlled by or under common control with the provider or the financing entity or related provider trust that is involved in the settlement contract, unless this relationship is disclosed to the viator; and [PL 2009, c. 376, §1 (NEW).]

I. Any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time, unless free coverage is provided in the policy in the manner described. [PL 2009, c. 376, §1 (NEW).]

[PL 2009, c. 376, §1 (AMD).]

6-A. Life expectancy evaluation. "Life expectancy evaluation" means any evaluation of the number of months the insured under the life insurance policy to be settled can be expected to live, or of the probability that the insured will live beyond a specified date, considering medical records and appropriate experiential data.

[PL 2009, c. 376, §2 (AMD).]

7. Policy. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.

[PL 2003, c. 636, §5 (NEW).]

8. Related provider trust. "Related provider trust" means a titling trust or other trust established by a licensed settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the licensed settlement provider under which the licensed settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to settlement transactions available to the superintendent as if those records and files were maintained directly by the licensed settlement provider.

[PL 2003, c. 636, §5 (NEW).]

9. Settlement contract.

[PL 2007, c. 543, §3 (RP).]

9-A. Settlement contract. "Settlement contract" means an agreement between a viator and a settlement provider establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. "Settlement contract"

includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State. "Settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on or before the date of issuance of the policy when the viator or the insured receives on the date of the premium finance loan a guarantee of a future settlement value of the policy or when the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. "Settlement contract" does not include:

- A. A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms; [PL 2007, c. 543, §4 (NEW).]
- B. A collateral assignment of a policy by the owner of the policy, unless the assignee knows or reasonably expects that the owner does not intend to repay the loan; [PL 2009, c. 376, §3 (AMD).]
- C. Loan proceeds that are used solely to pay:
 - (1) Premiums for the policy; and
 - (2) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and 3rd-party collateral provider fees and expenses, including fees payable to letter of credit issuers; [PL 2007, c. 543, §4 (NEW).]
- D. A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, as long as neither the default itself nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter; [PL 2007, c. 543, §4 (NEW).]
- E. Unless the premium finance loan otherwise constitutes a settlement contract under this subsection, a loan made by a lender that does not violate Title 9-A, Article 2; [PL 2007, c. 543, §4 (NEW).]
- F. An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured or are trusts established primarily for the benefit of such parties; [PL 2007, c. 543, §4 (NEW).]
- G. Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer, of life insurance on the life of the employee; [PL 2007, c. 543, §4 (NEW).]
- H. A bona fide business succession planning arrangement:
 - (1) Between shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;
 - (2) Between partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or
 - (3) Between members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members; [PL 2007, c. 543, §4 (NEW).]

I. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or [PL 2007, c. 543, §4 (NEW).]

J. Any contract, transaction or arrangement other than those set forth in paragraphs A to I exempted from the definition of "settlement contract" by the superintendent by rule based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 543, §4 (NEW).]

[PL 2009, c. 376, §3 (AMD).]

10. Settlement producer. "Settlement producer" means any person who has life insurance producer authority, who acts or aids in any manner in the soliciting of a settlement on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate settlement contracts between a viator and one or more settlement providers. "Settlement producer" does not include an attorney, accountant, financing entity or person exercising a power of attorney granted by the viator retained to represent the viator and whose compensation is paid solely by the viator without regard to whether the settlement is effected. "Settlement producer" does not include a credit union or an employer or association that makes its employees or members aware of settlement contracts.

[PL 2009, c. 376, §4 (AMD).]

11. Settlement provider. "Settlement provider" means a person other than the viator that enters into or effectuates a settlement contract. "Settlement provider" does not include:

A. A supervised lender, as defined in Title 9-A, section 1-301, subsection 39, that takes an assignment of a life insurance policy as collateral for a loan; [PL 2003, c. 636, §5 (NEW).]

B. The issuer of a life insurance policy providing accelerated benefits under section 2555 and pursuant to the contract; [PL 2003, c. 636, §5 (NEW).]

C. An authorized or eligible insurer that provides stop-loss coverage to a settlement provider, purchaser, financing entity, special purpose entity or related provider trust; [PL 2003, c. 636, §5 (NEW).]

D. A viator's friend or family member or other natural person who enters into no more than one agreement in a calendar year for the assignment, transfer, sale, devise or bequest of a life insurance policy for any value less than the expected death benefit; [PL 2003, c. 636, §5 (NEW).]

E. A financing entity; [PL 2003, c. 636, §5 (NEW).]

F. A special purpose entity; [PL 2003, c. 636, §5 (NEW).]

G. A related provider trust; or [PL 2003, c. 636, §5 (NEW).]

H. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 and Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a policy from a settlement provider. [PL 2003, c. 636, §5 (NEW).]

[PL 2003, c. 636, §5 (NEW).]

12. Special purpose entity. "Special purpose entity" means a corporation, partnership, trust, limited liability company or similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed settlement provider.

[PL 2003, c. 636, §5 (NEW).]

12-A. Stranger-originated life insurance. "Stranger-originated life insurance" means an act or practice to initiate a life insurance policy for the benefit of a person who, at the time of the origination of the policy, has no insurable interest in the insured. "Stranger-originated life insurance" includes, but is not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person who, at the time of the inception of the policy, could not lawfully initiate the policy and when,

at the time of policy inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits to another person. "Stranger-originated life insurance" also includes the creation of a trust to give the appearance of insurable interest and the use of such a trust in order to initiate policies for investors in circumvention or violation of insurable interest laws and the prohibition against wagering on life.

[PL 2009, c. 597, §1 (AMD).]

13. Terminally ill. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death within 24 months or less.

[PL 2003, c. 636, §5 (NEW).]

14. Viator. "Viator" means a person who assigns, transfers, sells, devises or bequeaths or seeks to assign, transfer, sell, devise or bequeath a death benefit or ownership of a life insurance policy or certificate under a settlement contract. "Viator" does not include:

A. A settlement provider licensed under this chapter; [PL 2003, c. 636, §5 (NEW).]

B. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 and Rule 144A of the Federal Securities Act of 1933, as amended; [PL 2003, c. 636, §5 (NEW).]

C. A financing entity; [PL 2003, c. 636, §5 (NEW).]

D. A special purpose entity; or [PL 2003, c. 636, §5 (NEW).]

E. A related provider trust. [PL 2003, c. 636, §5 (NEW).]

[PL 2003, c. 636, §5 (NEW).]

SECTION HISTORY

PL 2003, c. 636, §5 (NEW). PL 2007, c. 543, §§1-5 (AMD). PL 2009, c. 376, §§1-5 (AMD). PL 2009, c. 597, §1 (AMD).

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