

**Chapter 48.102 RCW
LIFE SETTLEMENTS ACT**

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RCW 48.102.001 Short title. This chapter may be cited as the "life settlements act." [2009 c 104 s 1.]

RCW 48.102.006 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy or an interest in a policy pursuant to a life settlement contract.

(2) "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. A broker does not mean an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in their professional capacity to represent the

owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

(3) "Business of life settlements" means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking life settlement contracts.

(4) "Chronically ill" means:

(a) Being unable to perform at least two activities of daily living, i.e., eating, toileting, transferring, bathing, dressing, or continence;

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Having a level of disability substantially similar to that described in (a) of this subsection made in a written determination, as existing on July 26, 2009, by the United States secretary of health and human services.

(5) "Commissioner" means the insurance commissioner.

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

(i) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and

(ii) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

(b) "Financing entity" does not mean a nonaccredited investor or purchaser.

(7) "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

(8) "Fraudulent life settlement act" includes:

(a) Acts or omissions committed by any person who, knowingly and 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, but not limited to:

(i) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, 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 life settlement contract or policy;

(B) The underwriting of a life settlement contract or policy;

(C) A claim for payment or benefit pursuant to a life settlement contract or policy;

(D) Premiums paid on a policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;

(F) The reinstatement or conversion of a policy;

(G) In the solicitation, offer to enter into, or effectuation of a life settlement contract, or policy;

(H) The issuance of written evidence of life settlement contracts or insurance; or

(I) Any application for, or the existence of or any payments related to, a loan secured directly or indirectly by any interest in a policy;

(ii) Entering into any act, practice, or arrangement that involves stranger-originated life insurance;

(iii) Failing to disclose to the insurer where the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;

(iv) Employing any device, scheme, or artifice to defraud in the business of life settlements; or

(v) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of state insurable interest laws.

(b) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(i) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of either a broker or provider, or both or other person engaged in the business of life settlements;

(ii) Misrepresent or conceal the financial condition of either a broker or provider, or both, financing entity, insurer, or other person;

(iii) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;

(iv) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;

(v) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insured, owner, or any other person engaged in the business of life settlements;

(vi) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a 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, where the owner or the owner's agent intended to defraud the policy's issuer;

(vii) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subsection; or

(viii) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

(9) "Insured" means the person covered under the policy being considered for sale in a life settlement contract.

(10) "Life expectancy" means the arithmetic mean of the number of months the insured under the policy to be settled can be expected to live considering medical records and appropriate experiential data.

(11) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received

qualification or authority for life insurance coverage or a life line of coverage pursuant to RCW 48.17.170.

(12)(a) "Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the policy, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of a policy for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(b) "Life settlement contract" also means 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.

(c) "Life settlement contract" also means a written agreement for a loan or other lending transaction, secured primarily by a policy or a premium finance loan made for a policy on or before the date of issuance of the policy where:

(i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

(iii) The owner 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.

(d) "Life settlement contract" does not mean:

(i) A policy loan by a life insurance company pursuant to the terms of the policy or accelerated death provisions contained in the policy, whether issued with the original policy or as a rider;

(ii) A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither the default on the loan nor the transfer of the policy in connection with such a default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(iii) A collateral assignment of a policy by an owner;

(iv) A loan made by a lender that does not violate any provision of this title, provided the loan is not described in (a) of this subsection, and is not otherwise within the definition of life settlement contract;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, or (B) 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 those parties;

(vi) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(B) Between one or more 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

(C) Between one or more 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;

(viii) 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

(ix) Any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this chapter.

(13) "Net death benefit" means the amount of the policy to be settled less any outstanding debts or liens.

(14) (a) "Owner" means the owner of a policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For the purposes of this chapter, an owner shall not be limited to an owner of a policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

(b) "Owner" does not mean:

(i) Any provider or other licensee under this chapter;

(ii) A qualified institutional buyer as defined, as of July 26, 2009, in rule 144A of the federal securities act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(15) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

(16) "Person" means any natural person or legal entity, including but not limited to, a partnership, limited liability company, association, trust, or corporation.

(17) "Policy" means an individual or group life insurance policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(18) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a policy, which loan is secured by an interest in the policy.

(19) (a) "Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner.

(b) "Provider" does not mean:

(i) Any bank, savings bank, savings and loan association, or credit union;

(ii) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a policy as collateral for a loan;

(iii) The insurer of a policy or rider to the extent of providing accelerated death benefits or riders under an approved policy form or cash surrender value;

(iv) Any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a policy,

for compensation or anything of value less than the expected death benefit payable under the policy;

(v) A purchaser;

(vi) Any authorized or eligible insurer that provides financial guaranty insurance to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(vii) A financing entity;

(viii) A special purpose entity;

(ix) A related provider trust;

(x) A broker; or

(xi) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a policy from a provider.

(20) "Purchased policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(21) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a policy which has been the subject of a life settlement contract.

(22) "Related provider trust" means a titling trust or other trust established by a licensed 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. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed provider.

(23) "Settled policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(24) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider:

(a) In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in rule 144 promulgated under the federal securities act of 1933, as amended; or

(b) When the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(25) "Stranger-originated life insurance" means an act, practice, or arrangement to initiate a policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured under chapter 48.18 RCW. Stranger-originated life insurance practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy and where, at the time of inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits, or both, to a third party. Any trust that is created to give the appearance of insurable interest, and is used to initiate one or more policies for investors, violates chapter 48.18 RCW and the prohibition against

wagering on human life. Stranger-originated life insurance arrangements do not include those practices set forth in subsection (12)(d) of this section.

(26) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less. [2009 c 104 s 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

RCW 48.102.011 Licensing requirements for providers. (1) A person, wherever located, may not act as a provider with an owner who is a resident of this state or if there is more than one owner on a single policy and one of the owners is a resident of this state, without first having obtained a license from the commissioner.

(2) An application for a provider license must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a licensing fee in the amount of two hundred fifty dollars for deposit into the general fund.

(3) All provider licenses continue in force until suspended, revoked, or not renewed. A license is subject to renewal annually on the first day of July upon application of the provider and payment of a renewal fee of two hundred fifty dollars for deposit into the general fund. If not so renewed, the license automatically expires on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the renewal fee is not received by the commissioner after sixty days but prior to twelve months after the expiration date the payment of the renewal fee is for reinstatement of the license and the provider must pay to the commissioner the renewal fee and a surcharge of two hundred percent.

(4) Subsection (3)(a) and (b) of this section does not exempt any person from any penalty provided by law for transacting a life settlement business without a valid and subsisting license.

(5) The applicant must provide information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require an applicant to fully disclose the identity of its stockholders, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(6) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(7) Upon the filing of an application for a provider's license and the payment of the license fee, the commissioner must make an

investigation of each applicant and may issue a license if the commissioner finds that the applicant:

- (a) Has provided a detailed plan of operation;
 - (b) Is competent and trustworthy and intends to transact its business in good faith;
 - (c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;
 - (d) (i) Has demonstrated evidence of financial responsibility in a form and in an amount prescribed by the commissioner by rule.
(ii) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;
 - (e) If the applicant is a legal entity, is formed or organized under the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and
 - (f) Has provided to the commissioner an antifraud plan that meets the requirements of RCW 48.102.140 and includes:
 - (i) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 - (ii) A description of the procedures for reporting fraudulent insurance acts to the commissioner;
 - (iii) A description of the plan for antifraud education and training of its underwriters and other personnel; and
 - (iv) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- (8) (a) A nonresident provider must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the provider. Service of legal process against the provider can be had only by service upon the commissioner.
- (b) With the appointment the provider must designate the person to whom the commissioner must forward legal process so served upon him or her. The provider may change the person by filing a new designation.
- (c) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the provider, and remains in effect as long as there is in this state any contract made by the provider or liabilities or duties arising therefrom.
- (d) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.
- (9) A provider may not use any person to perform the functions of a broker unless the person is authorized to act as a broker under this chapter.
- (10) A provider must provide to the commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees within thirty days of the change.
[2011 c 47 s 14; 2010 c 27 s 5; 2009 c 104 s 3.]

RCW 48.102.021 Licensing requirements for brokers. (1) Only a life insurance producer who has been duly licensed as a resident insurance producer with a lifeline of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state is permitted to operate as a broker.

(2) Not later than thirty days from the first day of operating as a broker, the life insurance producer must notify the commissioner that he or she intends acting as a broker on a form prescribed by the commissioner, pay a fee of one hundred dollars, and if a nonresident producer appoint the commissioner as attorney for service of process under RCW 48.02.200. Notification must include an acknowledgment by the life insurance producer that he or she will operate as a broker in accordance with this chapter.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(4) The authority to act as a broker continues in force until suspended, revoked, or not renewed. The authority to act as a broker automatically expires if not timely renewed. The authority to act as a broker is valid for a time period coincident with the expiration date of the broker's insurance producer license. The authority to act as a broker is renewable at that time, upon payment of a renewal fee in the amount of one hundred dollars and if the payment is received by the commissioner prior to the expiration date, the broker's authority to act as a broker continues in effect.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the broker must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof of delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the payment of the renewal fee is not received by the commissioner after sixty days the surcharge is two hundred percent of the renewal fee.

(5) Subsection (4)(a) of this section does not exempt any person from any penalty provided by law for transacting life settlement business without the valid authority to act as a broker.

(6) (a) A nonresident broker must appoint the commissioner as its attorney to receive service of, and upon whom must be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes service upon the broker. Service of legal process against the broker can be had only by service upon the commissioner.

(b) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the broker, and remains in effect as long as there is in this state any contract made by the broker or liabilities or duties arising therefrom.

(c) The service of process must be accomplished and processed in the manner prescribed in RCW 48.02.200.

(7) A broker may not use any person to perform the functions of a provider unless such a person holds a current, valid license as a

provider, and as provided in this chapter. [2011 c 47 s 15; 2009 c 104 s 4.]

RCW 48.102.031 License suspension, revocation, or refusal to renew—Fines. (1) If the commissioner finds that a broker:

- (a) Committed a fraudulent life settlement act;
- (b) Or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
- (c) Or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court; or
- (d) Has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner; then such action shall be an additional cause under RCW 48.17.530 to place on probation, suspend, revoke, or refuse to renew the insurance producer's license of the broker.

The procedure to suspend, revoke, or nonrenew the broker's insurance producer license shall be governed by RCW 48.17.540. The suspension, revocation, or nonrenewal of the broker's insurance producer license shall terminate the insurance producer's authority to act as a broker under this chapter.

(2) The commissioner may refuse, suspend, revoke, or refuse to renew a provider's license if the commissioner finds that:

- (a) The provider committed a fraudulent life settlement act;
- (b) There was any material misrepresentation in the provider's application for its license;
- (c) The provider or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
- (d) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;
- (e) The provider no longer meets the requirements for initial licensure or authority to act as a provider;
- (f) The provider or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the provider has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;
- (g) The provider has entered into any life settlement contract that has not been approved under this chapter;
- (h) The provider has failed to honor contractual obligations set out in a life settlement contract;
- (i) The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(j) The provider or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner.

(3) The commissioner shall give the provider notice of his or her intention to suspend, revoke, or not renew its license not less than ten days before the order of suspension, revocation, or nonrenewal is to become effective. The commissioner shall not suspend a provider's license for a period in excess of one year, and the commissioner shall state in the order of suspension the period during which it shall be effective.

(4) After hearing or with the consent of the provider or broker and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, the commissioner may levy a fine upon the provider or broker or its employees in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying the fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due the commissioner shall revoke the license of the provider or the insurance producer license of the broker if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [2009 c 104 s 5.]

RCW 48.102.041 Contract requirements. (1) A person may not use any form of life settlement contract in this state unless it 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, if any, for life insurance forms, policies, and contracts.

(2) An insurer may not, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(3) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of RCW 48.102.070, 48.102.080, 48.102.110, and 48.102.150 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material. [2009 c 104 s 6.]

RCW 48.102.046 Reporting requirements and record retention. (1) Each provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. In addition to any other

requirements, for any policy settled within five years of policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(2) Every provider that fails to file an annual statement as required in this section, or fails to reply within thirty calendar days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.

(3) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours. [2009 c 104 s 7.]

RCW 48.102.051 Privacy. (1) Except as otherwise allowed or required by law, a provider, broker, purchaser, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;

(b) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided (i) the sale is conducted in accordance with applicable state and federal securities law, and (ii) the owner and the insured have both provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of RCW 48.102.061, 48.102.140, and 48.102.150;

(d) Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this subsection;

(e) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status.

(i) For the purposes of this section, the "authorized representative" does not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity.

(ii) A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(f) Is required to purchase stop loss coverage.

(2) Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be

subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley act, P.L. 106-102 (1999).

(3) Names and individual identification data for all owners and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law. [2009 c 104 s 8.]

RCW 48.102.061 Examination. (1) Any life settlement provider, broker, or person licensed or regulated by this chapter shall be subject to the provisions of chapters 48.03 and 48.37 RCW, except as otherwise explicitly exempted or modified in this chapter.

(2) For the purpose of ascertaining its condition, or compliance with this title, the commissioner may as often as the commissioner finds advisable examine the accounts, records, documents, and transactions of:

(a) Any life settlement provider, broker, or person licensed or regulated under this chapter;

(b) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a provider or broker; and

(c) Any person holding the shares of capital stock of a provider or broker for the purpose of control of its management either as voting trustee or otherwise.

(3) In lieu of an examination or market conduct oversight activity under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report or market conduct oversight action on the provider or broker as prepared by the commissioner for the provider's or broker's state of domicile or port-of-entry state.

(4) (a) Every examination, whatsoever, or any part of the examination of any person licensed or regulated under this chapter shall be at the expense of the person examined. RCW 48.03.060 (1) and (2) are not applicable to persons licensed or regulated under this chapter.

(b) When making an examination under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination.

(c) The person examined and liable therefore shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees shall be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher.

(d) The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this section limits the commissioner's authority to terminate or suspend any examination or market conduct oversight activities in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any order adopting an examination report are prima facie evidence in any legal or regulatory action. [2009 c 104 s 9.]

RCW 48.102.070 Advertising. (1) A broker, or provider licensed pursuant to this chapter, may conduct or participate in advertisements within this state. These advertisements shall comply with all advertising and marketing laws or rules adopted by the commissioner that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.

(2) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(3) A person or trust shall not:

(a) Directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy; or

(b) Use the words "free," "no cost," or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy. [2009 c 104 s 10.]

RCW 48.102.080 Disclosures to owners. (1) The provider or broker shall provide in writing, or require the broker to provide, in a separate document that is signed by the owner and provider or broker, the following information to the owner no later than the date of application for a life settlement contract:

(a) The fact that possible alternatives to life settlement contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(b) The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(c) The fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(d) The fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(e) The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures required by this section. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(f) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group

administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

(g) The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy to be forfeited by the owner and that assistance should be sought from a professional financial advisor;

(h) The date by which the funds will be available to the owner and the transmitter of the funds;

(i) The fact that 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;

(j) The disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

(k) A separate signed fraud warning as follows:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

(l) The fact that the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less;

(m) The affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(n) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(o) The document shall include the name, address, and telephone number of the provider;

(p) The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(q) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(2) The written disclosures shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker.

(3) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

(a) The name, business address, and telephone number of the broker;

(b) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts;

(d) The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;

(e) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

(f) The failure to provide the disclosures or rights described in this section is an unfair trade practice pursuant to RCW 48.102.180. [2009 c 104 s 11.]

RCW 48.102.090 Disclosure by insurer. In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If, as described in RCW 48.102.006, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the prohibited practices in RCW 48.102.130.

(2) If the financing does not violate RCW 48.102.130 in this manner, the insurance carrier:

(a) May make disclosures, including but not limited to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy:

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(i) A change of ownership could lead to a stranger owning an interest in the insured's life;

(ii) A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(iii) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or

other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

(iv) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan"; and

(b) May require certifications, such as the following, from the applicant and/or the insured:

"(i) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;

(ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and

(iii) The borrower has an insurable interest in the insured."
[2009 c 104 s 12.]

RCW 48.102.100 Notice to insured of alternative transactions— Document approved by commissioner. (1) With respect to each policy issued by an insurance company, the insurance company shall notify the owner of an individual life insurance policy when the insured person under such a policy is age sixty or older, or is known to be terminally ill or chronically ill, that there may be alternative transactions available to that owner at the time of each of the following:

(a) When a life insurance company receives from such an owner a request to surrender, in whole or in part, an individual policy;

(b) When a life insurance company receives from such an owner a request to receive an accelerated death benefit under an individual policy;

(c) When a life insurance company sends to such an owner all notices of lapse of an individual policy; or

(d) At any other time that the commissioner may require by rule.

(2) (a) The commissioner shall approve a document calculated to appraise the consumer of his or her rights as an owner of a life insurance policy. The document shall be made available at no cost to all insurance companies and life insurance producers and written in lay terms.

(b) The document shall advise the consumer:

(i) That life insurance is a critical part of a broader financial plan, and that the consumer is encouraged, and has a right, to seek additional financial advice and opinions;

(ii) That possible alternatives to lapse exist; and

(iii) Of the definitions of common industry terms.

(c) In addition to the information described in (a) and (b) of this subsection, the document must contain the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the option best suited to your needs."

(d) The document may include brief descriptions of common products available from providers. These products must be discussed in general terms for informative purposes only, and not identifiable to any specific provider.

(e) The document will be considered part of the notice required in subsection (1) of this section. [2009 c 104 s 13.]

RCW 48.102.110 General rules. (1) A provider entering into a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:

(a) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and

(b) A document in which the insured consents to the release of his or her medical records to a provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.

(2) The insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance producer not later than thirty calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(3) Before or at the time of execution of the settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract, that the owner has a full and complete understanding of the benefits of the policy and acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(4) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this state or with a resident of this state.

(5) If a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(6) If a broker performs the verification of coverage activities required of the provider, the provider has fulfilled the requirements of RCW 48.102.080(1).

(7) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by RCW 48.102.090(2).

(8) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(9) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto.

Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(10) Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgment of the transfer from the insurer.

(11) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission under this section tolls the right of rescission until thirty days after the written notice of the right of rescission has been given.

(12) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing the broker's fee below this percentage if the broker so chooses.

(13) The broker shall disclose to the owner anything of value paid or given to a broker, which relate to a life settlement contract.

(14) A person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall not enter into a life settlement regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

(b) The owner submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:

(i) The owner or insured is terminally or chronically ill;
(ii) The owner or insured disposes of his or her ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;

(iii) The owner's spouse dies;

(iv) The owner divorces his or her spouse;

(v) The owner retires from full-time employment;

(vi) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(vii) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets;

(c) Copies of the independent evidence required by (b) of this subsection shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. This section does not prohibit an insurer from exercising its right to contest the validity of any policy;

(d) If the provider submits to the insurer a copy of independent evidence provided for in (b)(i) of this subsection when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section. [2009 c 104 s 14.]

RCW 48.102.120 Conflict of laws. (1) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the commissioner.

(3) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws. [2009 c 104 s 15.]

RCW 48.102.130 Prohibited practices. (1) It is unlawful for any person to:

(a) Enter into a life settlement contract if such person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive or misleading application for such policy;

(b) Engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;

(c) Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;

(d) Issue, solicit, market, or otherwise promote the purchase of an insurance policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy;

(e) If providing premium financing, receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such a loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment;

(f) With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker unless this relationship is disclosed to the owner;

(g) With respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract, unless this relationship is disclosed to the owner;

(h) With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time is a violation of this chapter;

(i) With respect to any life insurance producer, insurance company, broker, or provider make 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 provided in the policy; or

(j) With respect to an insurer, engage in any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

(2) A violation of this section constitutes a fraudulent life settlement act. [2009 c 104 s 16.]

RCW 48.102.140 Fraud prevention and control. (1) (a) A person shall not commit a fraudulent life settlement act.

(b) A person shall not knowingly and intentionally interfere with the enforcement of this chapter or investigations of suspected or actual violations of this chapter.

(c) A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(2) (a) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in (a) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(3) (a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(4) (a) Civil liability shall not be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(i) The commissioner or the commissioner's employees, agents, or representatives;

(ii) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(iii) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;

(iv) Any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

(v) The life insurer that issued the life insurance policy covering the life of the insured; or

(vi) Either a broker or provider, or both and any agents, employees, or representatives.

(b) Subsection (4) (a) of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that (a) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in (a) of this subsection shall be entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the

provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in (a) of this subsection.

(5) (a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (5) (a) of this section does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the national association of insurance commissioners; or

(iii) At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under (b) of this subsection does not abrogate or modify the privilege granted in (a) of this subsection.

(6) This chapter does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Preempt, supersede, or limit any provision of chapter 21.20 RCW or any rule, order, or notice issued thereunder;

(c) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

(d) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7) (a) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or either a broker or provider, or both may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(i) Fraud investigators, who may be provider or broker employees or independent contractors; and

(ii) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures

for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action. [2009 c 104 s 17.]

RCW 48.102.150 Enforcement. (1) The commissioner may conduct investigations to determine whether any person has violated any provision of this chapter.

(2) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this title or any regulation or order of the commissioner, the commissioner may:

(a) Issue a cease and desist order; and/or

(b) Bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof. [2009 c 104 s 18.]

RCW 48.102.160 Penalties. (1) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within this state and relates to or involves a life settlement contract.

(2) It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to commit a fraudulent life settlement act.

(3) For criminal liability purposes, a person that knowingly commits a fraudulent life settlement act is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly acts as a life settlement provider without being licensed by the commissioner is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any person who knowingly acts as a life settlement broker without the proper authorization under this chapter is guilty of a class B felony punishable under chapter 9A.20 RCW.

(6) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(7) If the commissioner has cause to believe that any person has:

(a) Knowingly acted as a life settlement provider without being licensed by the commissioner; or

(b) Knowingly acted as a life settlement broker without the proper authorization under RCW 48.102.021; the commissioner may assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and

an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(8) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2009 c 104 s 19.]

RCW 48.102.170 Authority to adopt rules. The commissioner may adopt rules implementing and administering this chapter including, but not limited to:

(1) Establishing standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally ill or chronically ill including, but not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;

(2) Requiring a bond or other mechanism for financial accountability for life settlement providers; and

(3) Governing the activities, relationships, and responsibilities of providers, brokers, insurers, and their agents. [2009 c 104 s 20.]

RCW 48.102.180 Unfair trade practices. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 104 s 21.]

RCW 48.102.193 Existing rights or liabilities—July 26, 2009. Chapter 104, Laws of 2009 does not affect any existing right acquired or liability or obligation incurred under the sections repealed in chapter 104, Laws of 2009 or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections. [2009 c 104 s 26.]