

304.15-717 Circumstances under which life settlement transactions are unlawful -- Required statement regarding false information -- Furnishing information regarding fraudulent life settlement acts.

- (1) It is unlawful for any person:
 - (a) To knowingly or intentionally enter into a life settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;
 - (b) To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;
 - (c) To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements as defined in KRS 304.15-020(5);
 - (d) To commit a fraudulent life settlement act;
 - (e) To misrepresent that the life settlement provider, life settlement broker, other licensee, or any other person has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof;
 - (f) To act as a life settlement broker if the person is acting as a life settlement provider in the same life settlement contract;
 - (g) For any person to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee;
 - (h) To 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 KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (i) To 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;
 - (j) To issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the sole purpose of or with a primary emphasis on settling the policy;
 - (k) To enter into a life settlement contact on a policy that was the subject of a premium finance agreement as described in KRS 304.15-020(17)(b)2.;
 - (l) With respect to any life settlement contract or life insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust, or any insurer that is controlling, controlled by, or under common control with such broker unless disclosed to the owner;
 - (m) With respect to any life settlement contract or life insurance policy and a provider, to 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 or provider that is controlling, controlled by, or under common

control with such provider, the financing entity, or related provider trust that is involved in such life settlement, or any insurer unless disclosed to the owner;

- (n) With respect to a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by administrative regulation, have been filed with the commissioner. Marketing materials shall not 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 shall be considered a violation of KRS 304.15-700 to 304.15-720;
- (o) With respect to any insurance company, insurance producer, broker, or provider, or any other person, to 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
- (p) If an insurer, to:
 - 1. Engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled policy;
 - 2. Make any false or misleading statement as to the business of life settlements or financing premiums due for a policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a life settlement contract; or
 - 3. 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.

This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented.

- (2) A life settlement contract and an application for a life settlement contract, 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 upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent life settlement act.

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

- (b) Any person who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide the information required to the commissioner, in a manner prescribed by the commissioner in administrative regulations.
 - (4) (a) Civil liability may not be imposed on and a cause of action may not 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:
 - 1. The commissioner or the commissioner's employees, agents, or representatives;
 - 2. Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;
 - 3. A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
 - 4. The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or life settlement contracts;
 - 5. The insurer that issued the policy covering the life of the insured; or
 - 6. The licensee and any agents, employees, or representatives.
 - (b) This subsection shall not apply to a statement 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 this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.
 - (c) A person who furnishes information concerning fraudulent life settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.
 - (d) This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.
 - (e) This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent life settlement acts or suspected, anticipated, or completed fraudulent insurance acts.
- (5) 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, except that:

- (a) This subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:
 - 1. In administrative or judicial proceedings to enforce laws administered by the commissioner;
 - 2. 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 (NAIC); or
 - 3. At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act; and
 - (b) The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.
- (6) This section shall 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) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent life settlement acts to a law enforcement or regulatory agency other than the Department of Insurance;
 - (c) 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; or
 - (d) Preempt, supersede, or limit any provision of any state securities law or any rule, order, administrative regulation, or notice issued thereunder.
- (7) A life settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The commissioner may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection 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 reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:
- (a) Fraud investigators, who may be life settlement providers or employees or independent contractors of those life settlement providers; and
 - (b) An antifraud plan that shall be filed with the commissioner and that shall include but is not limited to the following:

1. The procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
2. The procedures for reporting possible fraudulent life settlement acts to the commissioner;
3. The plan for antifraud education and training of underwriters and other personnel; and
4. A 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.

Antifraud plans filed with 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.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1197, effective July 15, 2010; and ch. 166, sec. 8, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 32, sec. 8, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 58, sec. 12, effective June 20, 2005. -- Created 2000 Ky. Acts ch. 472, sec. 6, effective July 14, 2000.

Legislative Research Commission Note (7/15/2010). During codification of 2008 Ky. Acts ch. 32, the Reviser of Statutes renumbered the subdivisions of KRS 304.15-020(17), which was Section 1 of that Act, but neglected to make a conforming change to a citation to that statute in subsection (1)(k) of this section, which was Section 8 of that Act. The conforming change to "KRS 304.15-020(17)(b)2." has now been made under the authority of KRS 7.136(1)(e).

Legislative Research Commission Note (7/15/2008). 2008 Ky. Acts ch. 32 intended to change all existing references in the KRS from "viatical settlements" to "life settlements." One reference to "viatical settlement" in this section was overlooked during the bill drafting process. The Reviser of Statutes has made this change upon the authority of KRS 7.136(1)(h).