

3901-9-01

Viatical settlement providers.**(A) Purpose**

The purpose of this rule is to provide standards for applicants applying for initial licensure as a viatical settlement provider in this state or renewal of a previously-issued license. This rule also provides form filing requirements and fees for licenses, renewals, and form approvals.

(B) Authority

This rule is promulgated under the authority granted the superintendent of insurance pursuant to sections 3901.011, 3901.041, 3901.19 to 3901.26, 3916.05, and 3916.20 of the Revised Code.

(C) Applicability and scope

This rule applies to all persons applying for or renewing a license or who are currently licensed as a viatical settlement provider in this state.

(D) Definitions

The definitions set forth in Chapter 3916. of the Revised Code are incorporated by reference herein. The following are terms used in this rule:

- (1) "Applicant" means a person who is applying to be licensed or applying to renew a license as a viatical settlement provider.
- (2) "Person" means an individual or a business entity.

(E) Applying for an initial viatical settlement provider license

- (1) To apply for a license to operate as a viatical settlement provider in this state, the applicant shall submit a completed application on a form prescribed by the superintendent.
- (2) An application shall not be considered complete until the superintendent receives the application completed in its entirety, required attachments, and the applicable fee.
- (3) The applicant shall be notified if the superintendent considers an application to be incomplete and the application shall not be considered for licensure.
- (4) All fees paid, as set forth in this rule, including the initial application filing fee, are non-refundable and non-transferable.

(5) A viatical settlement provider shall use only the name that appears on the provider's license, except:

(a) A viatical settlement provider that intends to do business in this state under any name other than the name that appears on the provider's license shall notify the superintendent in writing prior to using the assumed name in this state.

(b) Viatical settlement providers shall include the name appearing on the provider's license in all advertisements, correspondence, and other documents used by the provider in this state.

(F) Applying for renewal of a viatical settlement provider license

(1) A license as a viatical settlement provider expires on March thirty-first of the year following the initial issuance or the continuance of a previously issued or renewed license.

(2) To renew a viatical settlement provider license to operate in this state, the applicant shall submit a renewal application on a form prescribed by the superintendent and the applicable fee. All information requested in the renewal application must be provided.

(a) The applicant shall be notified if the superintendent considers an application to be incomplete and the application shall not be considered for renewal.

(b) All fees are non-refundable and non-transferable.

(G) Request to surrender a viatical settlement provider license

(1) A viatical settlement provider may submit a request to voluntarily surrender its license at any time using a form approved for that purpose by the superintendent. No request for license surrender shall be effective until approved by the superintendent.

(2) A request for voluntary surrender of a viatical settlement provider license shall not be accepted under either of the following circumstances:

(a) The superintendent has, prior to the time of the request, already commenced a formal investigation of any allegation of a violation of Chapter 3916. of the Revised Code or any rule promulgated thereunder that, if proven, would result in administrative action on the viatical settlement provider's license; or,

- (b) The superintendent has issued a notice of opportunity for hearing to the provider.

(H) Form filings for licensed viatical settlement providers

- (1) No viatical settlement provider forms shall be used in this state or accepted for filing and approval for use in this state until after a license has been issued.
- (2) After a license is issued, but before the viatical settlement provider may conduct business in this state, the viatical settlement provider shall submit the forms required to be filed pursuant to division (A) of section 3916.05 of the Revised Code and obtain approval from the superintendent for use in this state.
- (3) In addition to all other requirements for approval, all forms filed with the superintendent for approval that require the signature of an Ohio resident viator shall include provisions whereby all parties to the viatical settlement transaction consent to the jurisdiction of the laws of the state of Ohio, except as provided in division (B)(1) of section 3916.02 of the Revised Code or federal law, as applicable.

(I) Form filing fees

The fee for a new form filing is fifty dollars per filing.

(J) Application and license renewal fees for viatical settlement providers

- (1) The application fee for initial licensure is one thousand dollars.
- (2) The application fee for license renewal is five hundred dollars.

(K) Requirements for surety bonds submitted as proof of financial responsibility

- (1) All applicants for a viatical settlement provider license and all licensed viatical settlement providers must provide proof of financial responsibility as defined in division (D) of section 3916.03 of the Revised Code.
 - (a) All surety bonds, unconditional and irrevocable letters of credit, and deposits of cash and securities ("surety instruments") posted with this state, or drawn in favor of this state, to meet financial responsibility requirements shall be kept current and fully paid for by the applicant, and if a license is issued, the surety instruments shall be kept current and fully paid by the licensee at all times until released by the department in a writing signed by the superintendent.

(b) Release of surety instruments.

- (i) Surety instruments in place or on deposit for a currently licensed viatical settlement provider may be released by the department upon receipt of audited financial statements indicating positive equity of two hundred fifty thousand dollars and, in the department's sole discretion, acceptable pro-forma quarterly financial statements for the following four quarters indicating equity at or above the two hundred fifty thousand dollar level at all times.
- (ii) In the event of the denial of a viatical settlement provider license application by the superintendent or a withdrawal of a pending viatical settlement provider license application by the applicant, surety instruments in place or on deposit may be released by the department upon receipt of a formal withdrawal letter from the applicant.
- (iii) In the event of acceptance by the superintendent of surrender of a viatical settlement provider license, or in the case of the revocation or non-renewal of a viatical settlement provider license by the superintendent, surety instruments in place or on deposit may be released by the department upon receipt of a formal withdrawal letter from the licensee or after the revocation order has been signed by the superintendent, and upon submission by the licensee of written documentation satisfactory to the superintendent confirming that all contracts for purchase of policies by the licensee from Ohio viators have been fully executed, and the viators have received all funds owed to them by the licensee.
- (iv) No surety instrument in place or on deposit by a viatical settlement provider as proof of compliance with division (D) of section 3916.03 of the Revised Code shall be terminated for any reason without prior approval of the superintendent.

(L) Standards for evaluation of reasonable payments

- (1) In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be the minimum payouts.

"Viator's or Insured Person's Remaining Life Expectancy at Time of Viatication"	"Minimum Percentage of Expected Death Benefit (Net of Loans and Any Cash Surrender Value to be Received by Viator)"
Less than 6 months	80%
At least 6, but less than 12 months	75%
At least 12, but less than 18 months	70%
At least 18, but less than 24 months	65%

- (2) For viatical settlement transactions involving terminally or chronically ill viators, the payout shall be increased by one hundred per cent of any net cash surrender value of the insurance policy at the time the viatical contract is issued.
- (3) For viatical settlement transactions involving terminally or chronically ill viators, payouts may be reduced by the minimum premium (including premiums payable for additional benefits retained at the option of the viator), if any, required in order to keep the contract in force for the duration of the viator's remaining life expectancy. Other than this allowable reduction in payout, there shall be no other retention of funds for expenses or broker's fees.

(M) Penalties

A violation of this rule is an unfair and deceptive trade practice under sections 3901.19 to 3901.26 of the Revised Code and a violation of Chapter 3916. of the Revised Code.

(N) Severability

If any paragraph, subparagraph, term, or provision of this rule be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other paragraph, subparagraph, term, or provision of this rule, but the remaining paragraphs, subparagraphs, terms, or provisions shall be and continue in full force and effect.

Five Year Review (FYR) Dates: 2/3/2021 and 08/30/2025

CERTIFIED ELECTRONICALLY

Certification

02/03/2021

Date

Promulgated Under:	119.03
Statutory Authority:	3916.05, 3916.20
Rule Amplifies:	3916.01, 3916.02, 3916.03, 3916.05, 3916.16, 3916.20
Prior Effective Dates:	11/05/2010