

Chapter 120-2-93

Life Settlements Regulation

120-2-93-.01 Authority

This regulation is promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. §§33-59-1 et seq.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.02 Scope and Purpose

(1) This regulation applies to any Provider of a Life Settlement Contract and any Life Settlement Broker as those terms are defined in O.C.G.A. § 33-59-2 as well as any person who enters into a life settlement contract with an owner of a policy or who facilitates any life settlement contract unless that person is defined as being specifically excluded from registration or licensure by O.C.G.A. §33-59-2(10) or O.C.G.A. §33-59-2(18). The purposes of this regulation include:

- (a) Providing for required disclosures by the provider or life settlement broker to the owner of the life insurance policy in accordance with O.C.G.A. §33-59-9;
- (b) Providing for the licensure of life settlements providers and registration of a life settlement broker as defined in O.C.G.A. § 33-59-2;
- (c) Regulating life settlements providers' and life settlement brokers' practices in conformity with the general purposes of the Georgia Insurance Code;
- (d) Regulating the use of forms approved by the Commissioner of Insurance;
- (e) Regulating the relationship between all persons involved in the business of life settlements including but not limited to life settlement brokers, providers of life settlement contracts and domestic stock life insurance companies; and
- (f) Making it unlawful for a person to engage in the business of life settlements, act as a provider of life settlement contracts or a life settlement broker with an owner or multiple owners who are residents of this state without first having obtained a provider license or acknowledgment of broker registration from the Commissioner or to otherwise commit a fraudulent life settlement act.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.03 Definitions

(1) All terms defined in O.C.G.A. §33-59-1 et seq., hereinafter referred to as the “Life Settlements Act” or “Act” which are used in this Regulation shall have the same meaning as in the Act.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.04 License; Application and Issuance

(1) Except as provided for in O.C.G.A. §33-59-2(18), it is unlawful for any person to enter into a life settlement contract with an owner of a policy or to hold oneself out as a provider in this state without a valid provider license issued by the Commissioner of Insurance. To qualify for and hold a license as a provider in this state, a provider must otherwise be in compliance with Article 3 of Chapter 59 of Title 33 of the Official Code of Georgia Annotated and this Regulation.

(2) The provider shall file with the Commissioner of Insurance an application for a license upon a form to be furnished by the Commissioner of Insurance, which application should include or have attached the following information and documents and any other materials the Commissioner of Insurance deems necessary to adequately assess the merits of the application:

(a) All basic organizational documents of the provider, the articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents, and all amendments to those documents;

(b) The bylaws, rules and regulations or similar documents regulating the conduct or the internal affairs of the provider and a detailed plan of operation;

(c) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of the affairs of the provider, including all stockholders, partners, officers, members, and employees, with exception to those owning fewer than ten percent (10%) of the provider;

(d) Financial statements certified by the President, Chief Financial Officer or Treasurer or audited reports for the two most recent years, or such other information as the Commissioner may require in order, to review the current financial condition of the provider. The provider must prove that it possesses and maintains a minimum net worth of \$300,000; however, the Commissioner may, in his or her discretion, require a higher net worth if he or she deems such higher net worth necessary for the protection of the public. If the Provider is an entity, the minimum net worth must be on the balance sheet of the entity holding the license; letters of credit, backstop guarantees and special corporate structures will not be taken into consideration by the Commissioner in determining the net worth requirement;

(e) Fees as provided in O.C.G.A. §§ 33-59-3(b) and 33-8-1;

(f) A copy of its antifraud plan which shall include but not be limited to the information required under O.C.G.A. §33-59-14;

(g) A copy of its life settlements contract and disclosure statement, containing the provisions stipulated at O.C.G.A. §33-59-9, for the Commissioner's review and approval in accordance with O.C.G.A. §33-59-5; and

(h) A statement that stipulates that its advertisements shall not be misleading, in fact or by implication, shall not suggest that the purchase of a policy is for the sole purpose of life settling the policy, and shall not use the words "free," "no cost," or words of similar meaning in order to entice an individual to purchase a policy for subsequent life settlement.

(3) The Commissioner may not issue a license if he or she determines that the provider or any principal thereof is not competent, trustworthy, financially responsible; has had an insurance license refused, revoked or suspended by any state, or otherwise fails to satisfy

the requirements of O.C.G.A. § 33-59-3 and the Commissioner may suspend, revoke, or refuse to renew a provider's license pursuant to O.C.G.A. §33-59-4(a).

(4) Before becoming registered as a life settlement broker in this state, the person or entity seeking registration must have a current and valid life license in this state or his or her home state for at least one year. Additionally, non-resident producers shall have a valid non-resident producer license in this state.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.05 Annual Statement and Renewal

(1) Each provider shall file with the Commissioner an annual renewal application by May 1st of every year. The renewal application shall include information and documents and other materials the Commissioner deems necessary to adequately assess the renewal application.

(2) Each provider shall file with the Commissioner an annual statement by May 1 of every year. The statement shall include all of the following information and documents and any other materials the Commissioner deems necessary.

(a) For policies settled during the immediately preceding calendar year, where the insured was a Georgia resident:

- i. The total number, aggregate face amount, and life settlement proceeds of those policies, together with a breakdown of the information by policy year;
- ii. The names of the insurance companies whose policies have been settled;
- iii. The life settlement brokers receiving compensation related to those policies;

(b) An audited financial statement as of the current year proving that the provider possesses and maintains a minimum net worth of \$300,000; unless the Commissioner has required a higher net worth. If the Provider is an entity, the minimum net worth must be on the balance sheet of the entity holding the license. Letters of credit, backstop guarantees and special corporate structures will not be taken into consideration by the Commissioner in determining the net worth requirement; and

(c) A statement that any advertisement by or on behalf of the provider shall comply with O.C.G.A. §33-59-8.

(2) Any provider that willfully fails to file an annual renewal application and statement shall be subject to fines and other penalties as set forth at O.C.G.A. §33-59-6(a)(3).

(3) The term of a provider license shall be equal to that of a domestic stock life insurance company and the term of a life settlement broker registration shall be equal to that of an insurance producer license. Licenses or registrations requiring periodic renewal may be renewed on their anniversary date upon payment of the periodic renewal fee as specified in this Chapter. Failure to pay the fees on or before the renewal date shall result in expiration of the license or registration.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.06 Examination

(1) The Commissioner may conduct an examination of the business affairs of any licensee, registrant or applicant under this chapter as often as the Commissioner in his or her sole discretion deems appropriate with all expenses incurred to be paid by the

licensee, registrant or applicant. All such examinations shall comply with the requirements of O.C.G.A. §33-59-7 and all other applicable laws and regulations.

(2) Nothing in this rule shall limit or abridge any other investigatory powers of the Commissioner vested in him or her by Title 33 of the Georgia Insurance Code.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.07 General Rules

(1) A provider shall comply with the requirements of this Chapter and O.C.G.A. §§ 33-59-1 et seq. and shall not engage and or deal with any person to perform the functions of a life settlement broker as defined at O.C.G.A. §33-59-2(10) unless such person holds a current, valid registration as a life settlement broker.

(2) Any person or life settlement broker shall comply with the requirements of this Chapter and O.C.G.A. §§ 33-59-1 et seq. and shall not present a policy to, solicit bids or offers from, engage and or deal with any person or entity to perform the functions of a provider as defined at O.C.G.A. §33-59-2(18) unless such person or entity holds a current, valid license as a provider.

(3) Any fee paid by a provider, party, individual, or an owner to a life settlement 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.

(4) No person shall enter into a life settlement contract during a two-year period commencing with the date of issuance of the policy unless the owner provides the provider with the certification required under O.C.G.A. §33-59-11(n)(1) or the owner submits to the provider the independent evidence required pursuant to O.C.G.A. §33-59-11(n)(2).

(a) If the owner submits to the provider the independent evidence required pursuant to O.C.G.A. §33-59-11(n)(2) then the provider shall submit copies of such evidence, accompanied by the provider's letter of attestation that the copies are true and correct copies of the documents received by the provider, to the insurer when the provider submits the request for verification of coverage to the insurer.

(5) It is a violation of this chapter for any person, provider, life settlement broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act, including but not limited to, stranger originated life insurance.

(6) 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 acknowledgement of the transfer by 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 acknowledgement of the transfer from the insurer.

(7) All life settlement contracts shall provide that the owner may rescind the contract on or before 15 days after the date it is executed by all parties thereto. If rescission is exercised by the owner, all proceeds, premiums, loans, etc. must be repaid and notice given within the rescission period. If the owner dies during the rescission period subject to all repayments having been made, the contract is deemed to have been rescinded.

(8) Pursuant to O.C.G.A. §33-59-14(c)(1), any person engaged in the business of life settlements shall notify the Enforcement Division of the Commissioner's office if he or she has knowledge or a reasonable belief that a fraudulent life settlement act is being, has

been or will be committed. Notification can be made by telephone, electronic or written communication.

(9) No person shall engage in the business of life settlements unless they have obtained the appropriate license; applied for, or received the appropriate registration; or have been designated as an authorized representative by a properly licensed or registered entity on a form prescribed by the Commissioner. A violation of this section shall be considered an unfair trade practice and a felony.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.08 Insurance Company Practices

(1) Life insurance companies are permitted to ask questions of any life insurance applicant as to whether the proposed owner is intending to finance the premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing. The life insurance company may reject the application if it can be shown that the premium financing 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 as described in O.C.G.A. §33-59-10(b). If the financing does not violate O.C.G.A. §33-59-13, life insurance companies may issue the disclosures and affirmations set forth in O.C.G.A. §33-59-10(c).

(2) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a provider within 30 days of the date a request is received. The verification of coverage must be on a form prescribed by the Commissioner's office.

(3) A life insurance company shall not unreasonably delay effecting either a change of policy ownership or of a beneficiary under a policy that is subject to a life settlement contract lawfully entered into in this state or with a resident of this state.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.09 Penalties

(1) Any person failing to comply with the requirements of this Chapter and O.C.G.A. §§ 33-59-1 et seq. shall be subject to all such penalties and relief as may be appropriate under the laws of this State. Furthermore, a violation of this Chapter shall be considered an unfair trade practice pursuant to state law and subject to such penalties provided by state law.

(2) It is unlawful for any person, other than a licensed provider or a registered life settlement broker, to enter into any life settlement contract with an owner of a policy or facilitate any life settlement contract unless that party is defined as being specifically excluded from registration or licensure by O.C.G.A. § 33-59-2(10) or O.C.G.A. §33-59-2(18). A violation of this section shall be considered a fraudulent life settlement act and the violator(s) subject to fines and penalties as stipulated at O.C.G.A. §33-59-15 and O.C.G.A. §33-59-16.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.

120-2-93-.10 Severability

If any provision of this Chapter or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the Chapter or the applicability of such provision to other person or circumstances shall not be affected.

Authority – O.C.G.A. §§33-2-9, 33-59-1 et seq.