

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 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) 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 2 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 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. 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 minimum deposit of \$100,000 in eligible securities, as outlined in O.C.G.A. §33-12-3, with the Commissioner to ensure the faithful performance of its obligations to Georgia policy owners in the event of insolvency or the loss of its license; provided the Commissioner may, in his or her discretion require an additional deposit as he or she deems appropriate;

(g) If a non-resident provider applying for a license under this chapter, an agreement, in a form acceptable to the Commissioner, consenting to the jurisdiction of the Georgia Commissioner of Insurance and courts of this state on any matter related to their insurance activities in Georgia, on the basis of service of process under Title 33 or other service of process authorized under Georgia law;

(h) 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;

(i) 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

(j) 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 shall 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) A provider lawfully transacting business in this state may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the Commissioner not later than 30 days after publication by the Commissioner of an application form for licensure of these life settlements providers.

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 and statement by May 1st of every year. The renewal application and statement shall include all of the following information and documents and any other materials the Commissioner deems necessary to adequately assess the renewal application:

(a) 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 for Georgia resident owners;

(b) The names of the insurance companies whose policies have been settled and the life settlement brokers that have settled policies for Georgia resident owners;

(c) An audited financial statement as of the current year proving that the provider possesses a minimum net worth of \$300,000; unless the Commissioner has required a higher net worth. Letters of credit, backstop guarantees and special corporate structures will not be taken into consideration by the Commissioner in determining the net worth requirement;

(d) Verification of the security deposit with the required specifications noted in 120-2-93.04(f); and

(e) 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 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 provider or applicant.

(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 not use 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) A life settlement broker shall not use 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) Neither a provider nor a life settlement broker shall enter into a life settlement contract with an owner 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) Neither a provider nor a life settlement broker shall enter into a life settlement contract or facilitate a life settlement contract where it can be determined by the Commissioner of Insurance or any other party that insurable interest laws were violated or that a policy was obtained by any fraudulent life settlement act.

(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 insurance 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.

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 application violates any of the prohibited practices under O.C.G.A. §33-59-13.

(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 provider or life settlement broker failing to comply with the requirements of this Chapter shall be subject to such penalties as may be appropriate under the laws of this State. A violation of this Chapter shall be deemed 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. Furthermore, a violation shall be considered an unfair trade practice pursuant to state law and subject to 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.