**Section 3701.20 Definitions**

"Act" means the Viatical Settlements Act of 2009 [215 ILCS 159].

"Code means the Illinois Insurance Code [215 ILCS 5].

"Department" means the Illinois Department of Insurance.

"Director" means the Director of the Illinois Department of Insurance.

"Insured" means the person covered under the policy being considered for viatication.

"Life Expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider, considering medical records and appropriate experiential data.

"Net Death Benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

"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.

"SERFF" means the System for Electronic Rate and Form Filing used for electronic filings of participating company policy forms and rating information.

"Viatical settlement broker" means *a licensed insurance producer who has been issued a license pursuant to Section 500-35(a)(1) or 500-35(a)(2) of the Insurance Code, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers, solicits, promotes, or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers.*

*"Viatical settlement broker" does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.* [215 ILCS 159/5]

"Viatical settlement contract" means *any of the following:*

*A written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy.*

*A written agreement for a loan or other lending transaction, secured primarily by an individual life insurance policy or an individual certificate of a group life insurance policy.*

*The transfer for compensation or value of ownership of a 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 and the life insurance contract insures the life of a person residing in this State.*

*A premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy in either of the following situations:*

*The viator or the insured receives a guarantee of the viatical settlement value of the policy.*

*The viator or the insured agrees to sell the policy or any portion of the policy's death benefit on any date before or after issuance of the policy.*

*"Viatical settlement contract" does not include any of the following acts, practices, or arrangements listed in this definition, unless part of a plan, scheme, device, or artifice to avoid application of the Act; provided, however, that the list of excluded items contained in* this definition *is not intended to be an exhaustive list and that an act, practice, or arrangement that is not described in* this definition *does not necessarily constitute a viatical settlement contract:*

*A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;*

*Loan proceeds that are used solely to pay:*

*premiums for the policy; and*

*the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;*

*A loan made by a bank or other financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under* the *Act*;

*A loan made by a lender that does not violate Article XXXIIa of the Illinois Insurance Code, provided that the premium finance loan is not described in* the *Act*;

*An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or trusts established primarily for the benefit of such parties;*

*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;*

*A bona fide business succession planning arrangement:*

*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;*

*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*

*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;*

*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*

*Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the Director based on the Director's determination that the contract, transaction, or arrangement is not of the type intended to be regulated by* the *Act.* [215 ILCS 159/5]

"Viatical settlement provider" means *a person, other than a viator, who enters into or effectuates a viatical settlement contract with a viator. "Viatical settlement provider" does not include:*

*a bank, savings bank, savings and loan association, credit union, or other financial institution that takes an assignment of a policy as collateral for a loan;*

*a financial institution or premium finance company making premium finance loans and exempted by the Director from the licensing requirement under the premium finance laws where the institution or company takes an assignment of a life insurance policy solely as collateral for a premium finance loan;*

*the issuer of the life insurance policy;*

*an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;*

*An individual person who enters into or effectuates no more than one viatical settlement contract in a calendar year for the transfer of policies for any value less than the expected death benefit;*

*a financing entity;*

*a special purpose entity;*

*a related provider trust;*

*a viatical settlement purchaser; or*

*any other person that the Director determines is consistent with the definition of viatical settlement provider.* [215 ILCS 159/5]

*"Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of* the *Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition, except where specifically addressed.*

*"Viator" does not include:*

*a licensee;*

*a qualified institutional buyer;*

*a financing entity;*

*a special purpose entity; or*

*a related provider trust.* [215 ILCS 159/5]

(Source: Amended at 39 Ill. Reg. 4975, effective March 23, 2015)