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LEGISLATIVE RESEARCH

~~Rule and Regulation 69 — Agency # 054.00~~

~~VIATICAL SETTLEMENTS REGULATION~~

~~Section~~

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~~§ 1. Purpose~~

~~The purpose of this rule is to implement Ark. Code Ann. § 23-81-501, et seq, known as "The Viatical Settlements Act," as enacted by Act 490 of 1997. This rule sets forth requirements pertaining to the licensing of viatical settlement providers, viatical settlement agents, and viatical settlement brokers, as well as promulgates standards for minimum payments, reporting, advertising and disclosure applicable to those persons and organizations selling or facilitating viatical settlement transactions in this state.~~

~~§ 2. Authority~~

~~This rule is issued pursuant to the authority vested in the Commissioner by Ark. Code Ann. § 23-81-510 and Ark. Code Ann. § 23-61-108, and any other applicable provisions of Arkansas law.~~

~~§ 3. Applicability and scope~~

~~This rule shall apply to all new viatical settlement contracts solicited, sold, issued, issued for delivery, or to be performed in this state on and after March 1, 1998.~~

~~§ 4. Effective date~~

~~The effective date of this Rule is March 1, 1998.~~

~~§ 5. Definitions~~

~~(A) A "viatical settlement provider" means that person or organization defined in Ark. Code Ann. § 23-81-5020;~~

~~(B) A "viatical settlement broker" means that person or organization defined in Ark. Code Ann. § 23-81-502(h);~~

~~(C) A "viatical settlement agent" means that person who is an authorized agent of a licensed viatical settlement provider or viatical settlement broker who acts or aids in any manner in the solicitation of a viatical settlement. A viatical settlement agent shall not include:~~

~~(1) An attorney, an accountant, a financial planner or any person exercising a power of attorney granted by a viator or;~~

~~_____ (2) Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator regardless of whether the viatical settlement is consummated.~~

~~§ 6. License requirements for viatical settlement providers~~

~~_____ A viatical settlement provider, as defined in Ark. Code Ann. § 23-81-5020, shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Commissioner.~~

~~_____ (A) The application shall be on a form required by the Commissioner.~~

~~_____ (B) Only those individuals named in the application may act as viatical settlement providers.~~

~~_____ (C) The Commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of Ark. Code Ann. § 23-81-5020 and Ark. Code Ann. § 23-81-503.~~

~~_____ (D) A viatical settlement provider shall have ninety (90) days from the date of this regulation or sixty (60) days from the time the insurance department prepares an application form, whichever is later, to file for a license and still be considered in compliance with this regulation.~~

~~§ 7. License requirements for viatical settlement brokers and agents~~

~~_____ A viatical settlement broker or agent, who is not already licensed by the Department to sell life or disability policies in this state, shall not solicit a viatical settlement contract without first obtaining a license from the Commissioner.~~

~~_____ (A) A viatical settlement broker or agent shall make application on a form required by the Commissioner.~~

~~_____ (B) The application shall be accompanied by a fee of \$100.00. The license may be renewed yearly by payment of a fee of \$100.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.~~

~~_____ (C) The license shall be a limited license which allows solicitation only of viatical settlements.~~

~~_____ (D) A viatical settlement broker or agent shall have ninety (90) days from the date of this regulation or sixty (60) days from the time the insurance department prepares an application form, whichever is later, to file for a license and still be considered in compliance with this regulation.~~

~~_____ (E) Prelicensing education and continuing education required of other agents and brokers shall not apply to viatical settlement brokers or agents.~~

~~_____ (F) The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker or agent if the Commissioner finds that:~~

~~_____ (1) There was any misrepresentation in the application for a license;~~

~~_____ (2) The broker or agent has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;~~

~~_____ (3) the licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or~~

~~_____ (4) The viatical settlement agent or broker has violated any of the provisions of Ark. Code Ann. § 23-81-501, the Viatical Settlements Act, or this Rule.~~

~~_____ (G) Before the Commissioner shall deny a license application or suspend, revoke or fail to renew the license of a viatical settlement broker or agent, the Commissioner shall conduct a hearing in accordance with the Arkansas Administrative Procedure Act, in Ark. Code Ann. § 25-15-201 et seq.~~

§ 8. Other requirements for brokers and agents

Viatical settlement brokers or agents shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

§ 9. Standards for evaluation of reasonable payments

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts:

_____	Minimum Percentage
_____	Of Face Value Less
_____	Outstanding Loan
<u>Insured's Life Expectancy</u>	<u>Received by Viator</u>
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%
At least 24 but less than 30 months	50%
Thirty months or more	No minimum

This percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest 4 categories by A.M. Best or comparable rating by another rating agency.

§ 10. Reporting requirements

Beginning on March 1, 1999, for the calendar year of 1998, each viatical settlement provider licensed in this state shall make a report containing the following information for the previous calendar year:

- _____ (A) For each policy viaticated:
 - _____ (1) Date viatical settlement entered into;
 - _____ (2) Life expectancy of viator at time of contract;
 - _____ (3) Face amount of policy;
 - _____ (4) Amount paid by the viatical settlement provider to viaticate the policy; and
 - _____ (5) If the viator has died:
 - _____ (a) Date of death; and
 - _____ (b) Total insurance premiums paid by the viatical settlement provider to maintain the policy in force;
- _____ (B) Breakdown of applications received, accepted and rejected, by disease category;
- _____ (C) Breakdown of policies viaticated by issuer and policy type;
- _____ (D) Number of secondary market vs. primary market transactions;
- _____ (E) Portfolio size; and
- _____ (F) Amount of outside borrowings.

§ 11. Disclosure

The following items supplement the disclosures required by Ark. Code Ann. § 23-81-508:

- _____ (A) A viatical settlement provider, viatical settlement agent or viatical settlement broker shall disclose the following information to the viator no later than the time of the application:
 - _____ (1) Funds will be sent to the viator within two (2) business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that

~~ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract; and~~

~~(2) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and assistance should be sought from a financial adviser.~~

~~(B) A viatical settlement provider shall disclose the following information to the viator prior to the date the viatical settlement contract is signed by all parties:~~

~~(1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated;~~

~~(2) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator must be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication; and~~

~~(3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. The viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.~~

§ 12. General Rules

~~(A) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement agreement, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator.~~

~~(B) Payment of the proceeds of a viatical settlement pursuant to Ark. Code Ann. § 23-81-501, et seq, the Viatical Settlements Act, shall be by means of wire transfer to the account of the viator or by certified check.~~

~~(C) Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Installment payments shall not be made unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.~~

~~(D) A viatical settlement provider, broker, and agent shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators; with dependents and without.~~

~~(E) A viatical settlement provider, broker, and agent shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.~~

~~(F) Contacts for the purpose of determining the health status of the viator by the viatical settlement provider, broker, or agent after the viatical settlement has occurred should be limited to once every three (3) months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.~~

~~(G) Viatical settlement providers, brokers and agents shall not solicit investors who could influence the treatment of the illness of the insureds whose coverage would be the subject of the investment.~~

~~(H) Advertising standards:~~

~~(1) Advertising should be truthful and not misleading by fact or implication.~~

~~_____ (2) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.~~

~~_____ (3) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six (6) months.~~

~~_____ (l) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.~~

§ 13. Severability

If any provision of this Rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Rule and the application of such provision to other persons or circumstances shall not be affected thereby.

MIKE PICKENS
INSURANCE COMMISSIONER
STATE OF ARKANSAS

April 13, 1998
DATE

Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201-1904
Licensing Division
1-501-371-2750

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For-Department-Entries-Only	
Date-filed	
Date-approved	

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**ARKANSAS
VIATICAL PROVIDER LICENSE APPLICATION**

SECTION I:

General Information

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Applicant — Name	
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Federal Social Security Number	
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Date Commenced Business	
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State of Domicile	
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Home Office	
------------------------	--

Address _____

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Contact Name _____

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Contact Title: _____

Phone: _____

Contact Address _____

Ark Ins. Dept. Viatical Pro. Reg. Form 1-A

April 1998

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Fees

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Application Fee \$100.00

Renewal Fee \$100.00

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All Checks Must be Made Payable to the State Insurance Department Trust Fund

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Type of Entity Applying

Individual

Corporation

Limited Liability Corporation

Partnership

Sole Proprietorship

Other _____

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SECTION II.

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Background Information

Except as otherwise indicated below, all of the following questions must be answered for every applicant. ATTACH A FULL EXPLANATION AND/OR THE REQUESTED INFORMATION FOR ANY YES ANSWERS.

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1. Has the applicant ever had an application denied by any insurance regulatory authority?

~~Yes~~ ~~No~~

~~2. Has the applicant ever been placed under any type of regulatory supervision?~~

~~Yes~~ ~~No~~

~~3. Has the applicant every had a Certificate of Authority or license revoked or suspended by any regulatory authority?~~

~~Yes~~ ~~No~~

~~4. Has the applicant ever been subject to any regulatory action including cease and desist orders or similar actions?~~

~~Yes~~ ~~No~~

~~5. Has the applicant ever changed its name?~~

~~Yes~~ ~~No~~

~~6. Has the applicant ever redomesticated?~~

~~Yes~~ ~~No~~

Ark. Ins. Dept. Viatcal Pro. Reg. Form 1-B

April, 1998

~~7. Within the last five years, has the applicant merged or consolidated with any other entity?~~

~~Yes~~ ~~No~~

~~8. Within the last five years, has the applicant undergone a change of ownership of 10% or more?~~

~~Yes~~ ~~No~~

~~9. Is the applicant presently negotiating or inviting negotiations or party to a counter-letter which would result in transfer or encumbrance of a substantial portion (more than 20%) of its assets or business?~~

~~Yes~~ ~~No~~

~~10. Is the applicant presently negotiating or inviting negotiations or party to a counter-letter which would result in a change of ownership of 10% or more?~~

~~Yes~~ ~~No~~

~~11. Does the applicant contemplate a change in management or any transaction which would normally result in a change of management within the reasonably foreseeable future?~~

~~Yes~~ ~~No~~

~~12. Is the applicant owned, operated or controlled, directly or indirectly, by any other state or province, district, territory, or nation or any governmental subdivision or agency?~~

Official List of Management and Owners

Below give the name, social security number, resident address, position and percent of ownership of all persons responsible for the conduct of affairs of the applicant. This list should include all officers, directors, partners (in the case of a partnership), trustees, executive committee members and/or any person(s) owning, directly or indirectly, five percent or more of the applicant and any other person who exercises control or influence over the affairs of the applicant. THIS LIST MUST INCLUDE THE NAMES OF ALL PERSONS ACTING AS VIATICAL SETTLEMENT PROVIDERS. You may reproduce this form as needed.

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Name:	SSN#
Address:	Position:
	Ownership %:

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Name:	SSN#
Address:	Position:
	Ownership %:

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Ark.-Ins.-Dept.-viatical-Pro-Reg-Form-1-D

April, 1998

Name:	SSN#
Address:	Position:
	Ownership %:

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Name:	SSN#
Address:	Position:

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	Ownership %:
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Name:	SSN#
Address:	Position:
	Ownership %:

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Name:	SSN#
Address:	Position:
	Ownership %:

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Address:	Position:
	Ownership %:

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Name:	SSN#
Address:	Position:
	Ownership %:

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Required Exhibits

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1. A copy of the most recent audited financial statement (if available) or, if an audited financial statement is not available, a financial statement confirmed as true and correct by the treasurer or chief financial officer of the applicant.
2. A copy of the plan of operation which addresses the following items:
 - What markets does the applicant intend to target? What geographical areas?
 - Who will produce business for the applicant and how will these persons be trained?
 - What is the anticipated number of persons the applicant plans to have marketing its products or services?
 - What is the total projected Arkansas business over the next five years?
 - Give a detailed description of the corporate organizational structure of the applicant, its parent company and all affiliates.
 - Give a detailed description of the steps taken by the applicant to ensure immediate access to viator funds.
 - Give a detailed description of the procedures used by the applicant for keeping all medical information confidential?
3. A copy of the articles of incorporation, partnership agreement, trust agreement or other such organizational document of the applicant certified by the proper domiciliary official.
4. A copy of the by-laws of the applicant certified as true and correct by the secretary of the company if a corporation, a partner, if a partnership, or other appropriate person.
5. A copy of the domiciliary certificate of authority or license certified by the proper domiciliary official. (To be supplied only if viatical settlement providers are required to be licensed in the state of domicile of the applicant).
6. Duplicate copies of all contract and application forms intended for use in Arkansas.
7. Copies of all advertising or solicitation materials that the applicant uses or plans to use to attract potential viators or to otherwise market, promote or publicize its business or services.
8. Copy of appointment of agent for service of process form fully completed. The proper form is attached. (Non-resident applicants only)

SECTION VI.

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Service of Process Information
Service of Regulatory Complaint Information

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1. Give the name and address of the Agent for Service of Process appointed by the applicant.

2. Give the name and address and phone number of the person, on behalf of the applicant, who shall be responsible for handling or responding to regulatory complaints, application forms, or questions regarding its activities in this State.

3. Give the name and address and telephone number of applicant's US legal counsel, if applicant is an alien company.

Notarization*

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State of _____

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County of _____

~~Before me, the undersigned authority, personally appeared _____ who after being duly sworn, did depose and say that all information contained in this application and all attachments thereto is, to the best of his/her knowledge, true, complete and correct.~~

Signature of Applicant or Authorized Representative

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Printed Name and Title of Authorized Representative

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SWORN to and subscribed before me this _____ **day of**
_____ **(year)** _____

Notary Public's Signature _____ **My Commission expires:**

Ark-Ins-Dept.-viatical-Pro-Reg-Form-1-G

April, 1998

Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201-1904
Licensing Division
1-501-371-2750

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For Department Entries Only	
Date filed	
Date approved	

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ARKANSAS VIATICAL BROKER LICENSE APPLICATION

1. Name (ALL) _____

2. Residential Address (FOR INDIVIDUAL LICENSE ONLY) _____

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3. Business Address And Phone Number (ALL)

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4. Social Security # (Or FEIN # if agency, Firm or business organization)

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5. Date of Birth (FOR INDIVIDUAL LICENSE ONLY)

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6. Type of Licensing Applied For as Broker

Individual

Agency, firm, corporation

Or other _____

(ALL)

Ark Ins. Dept. v. iatical Brok. Reg. Form 2-A

April, 1998

7. Employment History (the last five years) With Name of Employer, Address, Date(s), and Occupation (FOR INDIVIDUAL LICENSE ONLY)

Multiple horizontal lines for entering employment history.

8. (A) Have you been discharged from employment for failing to account, embezzlement or other irregularities in money transactions? (FOR INDIVIDUAL LICENSE ONLY)

Yes No

If yes, please fully explain the circumstances on a separate sheet of paper and attach it to this application.

(B) Have you ever been convicted of a felony, or pled guilty or pled nolo contendere to a felony?

Yes No

If yes, please describe the date and nature of the felony, plea, and date of conviction on a separate sheet of paper and attach it to this application.

(C) Have you ever been convicted of or pled guilty to any misdemeanor, within the last five (5) years, involving theft, fraud, embezzlement or mishandling of funds?
 Yes **No**

If yes, please describe the date and exact nature of the misdemeanor on a separate sheet of paper and attach it to this application.

9. Name and address of each individual viatical settlement broker representing the firm/Corporation in this state? (FOR FIRM, BUSINESS ORGANIZATION, CORPORATION LICENSE ONLY)

Ark. Ins. Dept. Viatical Brok. Reg. Form 2-B

April, 1998

10. Has each person above applied for and been approved for an individual viatical settlement broker's license with the Arkansas Insurance Department? (FOR FIRM BUSINESS ORGANIZATION, CORPORATE LICENSE ONLY)
 Yes **No**

11. Has your firm, agency, corporation, or organization registered with the Arkansas Secretary of State's Office, either as a domestic corporation or organization or foreign organization registered to conduct business in this state? (FOR FIRM BUSINESS ORGANIZATION, CORPORATE LICENSE ONLY)
 Yes **No**

If yes, please attach copies of your articles of incorporation or organization, or if a foreign corporation or organization a certificate of compliance or evidence registration from the Secretary of State's office showing that you are currently registered or authorized foreign corporation or organization authorized to conduct business in this state.

12. Are you conducting business in this state under an assumed business name (DBA)? (ALL)
 Yes **No**

If yes, please list each and every assumed business name, with the location and phone number of such business.

13. Has the applicant ever been subject to any regulatory action or investigation including cease and desist orders? (ALL)

Yes No

If yes, please describe in detail the regulatory action or investigation you are or were subject to giving the dates, subject matter, regulatory agency, and location of such action.

14. Has the applicant ever had an application denied by any insurance or regulatory authority? (ALL)

Yes No

If yes, please describe the circumstances of such denial, providing the subject matter, time, location and identity of the insurance or regulatory authority denying the application.

15. Has the applicant every had a Certificate of Authority or license revoked or suspended by any regulatory authority? (ALL)

Yes No

If yes, please provide a full explanation of such actions, describing the subject matter of the revocation or suspension, the date and identity of the regulatory authority taking such action.

16. Please list the Viatical Settlement Providers with whom you may have an appointment or affiliation with, or intend to have an appointment or affiliation with:

NAME OF VIATICAL PROVIDER	ADDRESS	DATE OF AFFILIATION

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17. Name, address, and phone number of the contact person the Department will contact to respond to complaints or inquiries about your activities in this state as a viatical broker? (ALL)

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Any person or organization misrepresenting facts on this application is subject to refusal to issue or revocation of license, and in addition is subject to any other regulatory or criminal penalties for providing false or misleading information to a state agency, provided under Arkansas law.

I DO HEREBY CERTIFY THAT ALL INFORMATION GIVEN ON THIS APPLICATION IS TRUE AND COMPLETE.

Signature _____ Date _____

Typed Name _____

Ark. Ins. Dept. Viatical Brok. Reg. Form 2-D _____ April, 1998

FOR NON-RESIDENT APPLICANTS ONLY

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Appointment of the Insurance Commissioner As Attorney To Receive Legal Process

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The Arkansas Insurance Commissioner is hereby appointed as attorney to receive service of legal process, upon causes of action arising within Arkansas, issued against:

 Insert Name of the Viatical Settlement Broker

A licensed viatical settlement broker in the State of _____.

It is agreed that service upon the Commissioner as attorney shall constitute effective legal service upon the non-resident licensee, and this appointment shall be irrevocable for as long as there could be any cause of action against the company/provider arising out of the viatical settlement transactions in the state of Arkansas.

The licensee has executed this document as required to obtain or retain a non-resident license from the Insurance Commissioner of the State of Arkansas.

Signed: _____
 _____ For Viatical Broker

Title: _____

Date: _____

Notarization*

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State of _____

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County of _____

Before me, the undersigned authority, personally appeared _____ who after being duly sworn, did depose and say that all information contained in this application and all attachments thereto is, to the best of his/her knowledge, true, complete and correct.

Signature of Applicant or Authorized Representative

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Printed Name and Title of Authorized Representative

SWORN to and subscribed before me this _____ day of _____ (year)

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Notary Public's Signature _____ My Commission expires: _____