TEXAS DEPARTMENT OF INSURANCE
Regulatory Policy Division - Life, Annuity, and Credit Program (106-1D)
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LIFE SETTLEMENT FORMS CHECKLIST

Every effort has been made to ensure the accuracy of the information in this document. All parties should consult the Texas Insurance Code, the Texas Administrative Code, and other applicable laws.

Important Note

Terms No Longer Recognized Under TIC §1111A.002

Provider representative - no longer referenced or licensed (registered)
Seller or Viator - now known or referenced as the Owner
Purchaser, Investor or Buyer - may not be used in place of the term Provider
Life Expectancy Provider - now known or referenced as the Life Expectancy Estimator or Broker
Viatical Settlement - now known or referenced as Life Settlement

Form Use - *For each listed item, complete the following:*

Page No. field *- enter a form page number reference, or N/A if not applicable.*

First comment box *- enter general comments or form objections. In the drop down box select: No Comments, Comments, or Objection.*
Text size: 1200 characters. When you print the form, only the visible text (first three lines) will print.
To view the full text in a comment box, click on the + icon in the lower right corner of the box and then use the up or down scroll buttons.

Second comment box labeled Company Response *- enter a response if the first box is marked Objection (optional)*

Use the last two pages of this form for additional comments, objections and responses (text size: 4000 characters).

Settlement Contracts Required Provisions - 28 TAC §3.1741(a)(1) - (8)

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(1) a provision that the life settlement contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties;

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(2) a provision that any change to the life settlement contract is valid only on written approval by an executive officer of the life settlement provider designated in the contract with authority to bind the provider and that such approval must be endorsed in or attached to the life settlement contract. The provision must also state that no person, other than an executive officer of the provider, has the authority to change the life settlement contract or to waive any of its provisions;

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(3) a provision that, in the absence of fraud, all statements made by the owner and insured are representations and not warranties;

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(4) a provision that the owner may designate any individual of legal age, in regular contact with the insured, as a contact for inquiries about the insured's health status on written notice providing the name, address, and telephone number of such individual. The provision must include a statement that the owner may change a designation at any time on written notice to the life settlement provider;

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(5) a provision that the licensed life settlement provider must provide to the insured the name, address, and telephone number of the life settlement broker, provider, or authorized representative of the provider or broker that will contact the insured or the insured's designee for tracking purposes and must notify the insured of any change in such information;

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(6) a provision defining how any notice required or permitted under the contract must be given and delivered;

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(7) a provision disclosing what effect the life settlement contract will have on payment of premiums and disposition of proceeds, cash values, and dividends; and

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(8) a provision disclosing that, if the policy that is the subject of the life settlement contract is a joint policy, or contains riders or other provisions insuring the lives of a spouse, dependents, or anyone else other than the owner, there may be a possible loss of coverage, and that the owner should contact the owner's insurance company or agent to determine if the coverage may be converted to avoid losing the coverage.

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Prohibited Provisions - 28 TAC §3.1741(b)

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A contract used to effect life settlement must not:

(1) contain an indemnification or a hold harmless provision that requires the owner or insured to protect another person against liability, loss, or damages that exceed the proceeds of the life settlement contract received by the owner; or

(2) require any owner to condition a life settlement contract on the exclusive dealing between the owner and the life settlement broker or provider.

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Accidental Death Benefits - 28 TAC §3.1741(c)

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The death benefit provision for accidental death contained within the policy must remain payable to the beneficiary last named by the owner or to the owner's estate. Nothing contained here requires the life settlement provider or any subsequent owner of the policy to continue any accidental death benefits attached to the policy by rider or endorsement.

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Retained Ownership - 28 TAC §3.1741(d)(1) - (3)

If a life settlement provider enters into a life settlement contract that allows the owner to retain an interest in the policy, or if the policy contains a clause in the policy or attached to the policy by rider, that provides a death benefit for accidental death, the life settlement contract or amendment must contain a provision that:

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(1) the life settlement provider will transfer the amount of the net death benefit only to the extent or portion of the amount sold. The provision must also state that benefits in excess of the amount sold will be paid by the insurance company directly to the beneficiaries in accord with the terms of the policy;

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(2) the life settlement provider will, on acknowledgment of the perfection of the transfer, either:

advise the owner in writing that the insurance company has confirmed the owner's remaining interest in the policy; or

provide the owner with a copy of the document prepared by the insurance company that acknowledges the owner's remaining interest in the policy; and

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(3) defines the apportionment of premiums the life settlement provider and the owner will pay. The life settlement contract or amendment may specify that the life settlement provider will pay all premiums. The contract or amendment may also require the owner to reimburse the life settlement provider for the premiums attributable to the remaining interest, including any premiums for the accidental death benefit, subsequent to the life settlement contract.

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General Contract Requirements - 28 TAC §3.1741(e)

All life settlement contracts, in addition to meeting the other requirements of this section, must contain:

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consistent terminology;

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a section defining key terms used in the life settlement contract;

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the name of the owner and insured;

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the number of the policy that serves as the basis for the life settlement contract;

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Page No. the name of the insurance company underwriting the policy at the time of contract;

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Page No. the amount of the net death benefit of the policy; and

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Page No. signature lines for the life settlement provider and the owner.

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Disclosures to Owners - TIC §1111A.012(a)(1) - (18) and 28 TAC §3.1741(f)

The broker, or the provider if no broker is involved in the application, shall provide in writing, in a separate document that is signed by the owner, the following information to the owner not later than the date of application for a life settlement contract:

Page No. (1) the fact that possible alternatives to life settlement contracts exist, including accelerated benefits offered by the issuer of the life insurance policy;

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Page No. (2) the fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

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(3) the fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

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(4) the fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agency;

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(5) the fact that the owner has a right to terminate a life settlement contract within 15 days of the date the contract is executed by all parties and the owner has received the disclosures described in this section, that rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider during the rescission period, and that if the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

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(6) the fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

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(7) the fact that entering into a life settlement contract may cause the owner to forfeit other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy, and that assistance should be sought from a professional financial advisor;

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(8) the amount and method of calculating the compensation, including anything of value, paid or given, or to be paid or given, to the broker, or any other person acting for the owner in connection with the transaction;

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(9) the date by which the funds will be available to the owner and the identity of the transmitter of the funds;

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(10) the fact that the commissioner requires delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

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(11) the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members or a spouse or a significant other, may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

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(12) the fact that the commissioner requires providers and brokers to print separate signed fraud warnings on the applications and on the life settlement contracts as follows: "Any person who knowingly presents false information in an application for insurance or a life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

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(13) the fact that the insured may be contacted by either the provider or broker or an authorized representative of the provider or broker for the purpose of determining the insured's health status or to verify the insured's address and that this contact is limited to once every three months if the insured has a life expectancy of more than one year, and not more than once per month if the insured has a life expectancy of one year or less;

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(14) the affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

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(15) that a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

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(16) the name, address, and telephone number of the provider;

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(17) the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

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(18) the fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

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Disclosures to Owners - TIC §1111A.012(c)(1) - (5) and 28 TAC §3.1741(f)

A broker shall provide the owner and the provider with at least the following disclosures not later than the date on which the life settlement contract is signed by all parties and which must be conspicuously displayed in the life settlement contract or in a separate document signed by the owner:

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(1) the name, business address, and telephone number of the broker;

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(2) a full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

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(3) a written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract;

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(4) the name of each broker who receives compensation and the amount of compensation, including anything of value, paid or given to the broker in connection with the life settlement contract; and

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(5) a complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner.

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Escrow or Trust Agreements - 28 TAC §3.1741(g)(2)

The escrow or trust agreement must contain:

Page No. the name of the owner;

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Page No. the number of the policy that serves as the basis for the life settlement contract;

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Page No. the name of the insurance company underwriting the policy at the time of contract execution;

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Page No. the name of the life settlement provider purchasing the policy;

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Page No. the name, address, and telephone number of the escrow agent or trustee;

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the amount of the owner's proceeds placed into the escrow or trust account;

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all terms and conditions of the escrow or trust agreement;

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the name and address of the financial institution holding the escrow funds into which the provider will pay the funds to the owner;

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a description of the purpose of the escrow or trust account;

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the circumstances that will trigger disbursement of the funds from the escrow or trust account;

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the limitations concerning, or time restrictions for, the insurance company's affirmative acceptance and acknowledgement of the assignment of the policy;

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if applicable, the process for required notices for communication if the owner rescinds the life settlement contract pursuant to TIC §1111A.012(a)(5) or if the insurance company does not accept the policy assignment or transfer of ownership;

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the duties of the escrow agent or trustee;

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the designation of the escrow agent or trustee;

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the limits of liability for the escrow agent or trustee;

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the process for resolving any dispute arising between the owner and the life settlement provider, the escrow agent, or the trustee concerning the interpretation of the escrow or trust agreement; and

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a signature line for the life settlement provider, the owner, and the escrow agent or trustee.

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Medical Release - 28 TAC §3.1741(h)

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A medical release form must:

be in writing and signed by the insured; and

disclose the medical records covered by the release, the purposes for the release, the identity of the person to whom the information is to be released, any limitations on the right to withdraw consent, and that the release form may be used to determine and track the insured's ongoing health status.

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Policy Release - 28 TAC §3.1741(i)

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A policy release form must:

be in writing and signed by the owner; and

disclose the information covered by the release, the purposes of the release, the identity of the person to whom the information is to be released, and the owner's right to withdraw consent.

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Power of Attorney - 28 TAC §3.1741(j)

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A power of attorney form must be limited to the purpose of releasing medical information in connection with the settlement transaction, including tracking the ongoing health status of the insured.

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Verification of Coverage - 28 TAC §3.1741(k)(1) - (4)

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A verification request form must be limited to information relevant to the life settlement contract, including, if requested:

(1) the policy owner;

(2) the cash surrender value;

(3) the accelerated death benefit at that time; and

(4) the premium and mode of premium payment.

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Binding Arbitration and Waiver of Jury Trial - TIC §1111A.005(c)

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Note: The Texas Department of Insurance is required to verify that approved forms allow consumers all statutory protections granted by the legislature, including rights, benefits, and remedies relating to court access in insurance actions. Mandatory binding arbitration and waiver of jury trial clauses are prohibited because they deny consumers statutorily guaranteed access to courts. Statutory consumer protections include: Texas Insurance Code **Chapters 541**, **542**, and **544**.

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Life Insurance Assets; Life Insurance Policy Conversion - Texas Human Resources Code §32.02613(d)

Providers may submit an endorsement or optional contract language to comply with Texas Human Resources Code Chapter 32.

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A life settlement contract entered into under this section must:

(1) provide that the lesser of five percent of the face amount of the life insurance policy or $5,000 is reserved and is payable to the owner's estate or a named beneficiary for funeral expenses;

(2) provide that the balance of proceeds under the life settlement contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary; and

(3) specify the total amount payable for the benefit of the recipient of long-term care services and support under the life settlement contract.

Company Response

See next pages for additional comments or objections and space for additional responses, if any.

Additional Comments or Objections:

Additional Company Responses:

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