

SUBCHAPTER R. LIFE SETTLEMENT
DIVISION 1. General Provisions
28 TAC §§3.1701 – 3.1703

DIVISION 2. License Application and Renewal; Course and Training
Requirements; Maintenance of Records
28 TAC §§3.1720 – 3.1730

DIVISION 3. Form Filing and Usage Requirements
28 TAC §§3.1740 – 3.1744

DIVISION 4. Annual Reporting
28 TAC §3.1760

1. INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC Chapter 3, Subchapter R, §§3.1701 – 3.1703, 3.1720 – 3.1730, 3.1740 – 3.1744, and 3.1760, concerning life settlements. The adopted rules include life settlement brokers and providers licensing, life settlement contract regulation, and annual data reporting requirements. Sections 3.1702, 3.1720 - 3.1725, 3.1728, 3.1730, 3.1740 – 3.1744, and 3.1760 are adopted with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10081). Sections 3.1701, 3.1703, 3.1726, 3.1727, and 3.1729 are adopted without changes.

2. REASONED JUSTIFICATION. The new subchapter is necessary to implement HB 2277, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 2277 amended Subtitle A, Title 7, of the Insurance Code, by adding new Chapter 1111A and repealing Insurance Code Chapter 1111, Subchapter A. In conjunction with this adoption TDI is adopting the repeal of existing 28 TAC Chapter 3, Subchapter R,

§§3.1701 – 3.1717, concerning viatical and life settlements, also published in this issue of the *Texas Register*. Section 1111A.015 authorizes the commissioner to adopt rules necessary to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives. These new rules implement the Life Settlements Act. The entire adoption order is part of the reasoned justification for the new sections.

TDI posted on its website an informal concept paper and a draft of the proposed new rules concerning life settlements on April 27, 2012. In the informal posting, TDI requested comments on the substance of the draft rules, the accuracy of TDI's estimates of costs to comply with the draft rules, and what costs certain provisions in the draft would entail. On May 11, 2012, TDI held a public meeting to hear and consider comments from interested parties relating to the informal draft rule text and cost note estimates.

TDI held a public hearing on the rule proposal on January 29, 2013. During the hearing, TDI received both written and oral comments on the published proposal. In response to these comments, TDI has changed some of the proposed language in the text of the rule as adopted. TDI has also made non-substantive editorial changes necessary for clarification and to conform to the TDI style guidelines. None of the changes made to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The structure of the new rule is as follows: Division 1 provides the general provisions of Subchapter R, including purpose and severability, applicability and scope, and definitions. Division 2 provides forms; procedures for life settlement broker and provider license applications, license renewal, fees, and continuing education requirements for brokers; requirements for continuing education providers; life insurance agent notification; life expectancy estimators; guidance on what constitutes unauthorized insurance; fiduciary duty; records maintenance; and health status verifications. Division 3 provides form filing requirements; required life settlement form provisions; the shopper's guide; prohibited life settlements; and requirements regarding advertising, sales, and solicitation materials. Division 4 specifies the requirements for the annual report that life settlement providers must submit to TDI.

The following section-by-section summary provides greater detail.

Section 3.1701 provides the purpose of the subchapter and also includes a severability provision.

Section 3.1702 specifies the applicability and scope of the subchapter. In accord with Insurance Code §1111A.015(c) and §1111A.021(2), the section specifies when the subchapter is not applicable.

Section 3.1703 provides the definitions for the subchapter. The definitions in the adoption are from Insurance Code §1111A.002.

Section 3.1720 specifies the licensing and notification forms adopted by reference. The forms include an Application for a Life Settlement Provider or Broker License form; Application for Renewal, Surrender, or Change of Information for a Life

Settlement Provider or Broker form; Life Agent Notification to TDI to Act as a Life Settlement Broker form; and Biographical Affidavit for Life Settlement Providers or Brokers form. The section also includes information on where to obtain and submit the forms. Insurance Code §1111A.003(b) requires an application for a broker or provider license be made to TDI by the applicant on a form prescribed by the commissioner.

In accord with Insurance Code §1111A.003(h), the Application for a Life Settlement Provider or Broker License form, adopted by reference in §3.1720(a), specifies the information the commissioner requires an applicant to provide. Under §3.1721(c), the form requires the applicant to provide basic contact information. Additionally, the form requires the applicant to certify the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Texas Secretary of State and, if not domiciled in Texas, a consent to jurisdiction. This section also requires filing with the application a list of officers, directors, and shareholders owning 10 percent or more of the entity, and a list of key employees. Officers, directors, shareholders, and key employees must submit fingerprints. The form provides instructions and a checklist to assist in the application. Life settlement providers must also submit a plan of operation in accord with §1111A.003(j)(1). Both life settlement brokers and providers must submit an antifraud plan required by §1111A.003(j)(5) as specified by §1111A.022.

Under §3.1720(b), the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, adopted by reference,

specifies the information the commissioner requires a licensee to provide to renew its license. Licensees must use the form to submit material changes in information.

Additionally, the form requires the certification for the state of domicile, designation of agent for service of process, an acknowledgement and acceptance of appointment as agent for service of process, a certificate of status from the Texas Secretary of State, and, if not domiciled in Texas, a consent to jurisdiction.

Section 3.1720(c) relates to the Life Agent Notification to TDI to Act as a Life Settlement Broker form, adopted by reference, which prescribes the method that a life insurance agent must use to notify the commissioner when the agent is acting as a broker under §1111A.003(d). The notification includes an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Agents must sign and notarize the form, and notification requires an initial fee of \$50. Subsequent biennial renewal is free.

Section 3.1720(d) requires the applicant to complete the Biographical Affidavit for Life Settlement Providers or Brokers form, adopted by reference, as an attachment to the License Application for a Life Settlement Provider or Broker form, and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. Note that the Biographical Affidavit form includes a fingerprint requirement specified in Insurance Code §801.056 and as required by §1111A.025(2), and the applicant is required to sign it and to have the signature notarized.

Section 3.1721 specifies the procedures and requirements for life settlement broker and provider license application and establishes the required fees life settlement brokers and providers must pay to TDI. Insurance Code §1111A.003 states that the licensing fee amounts are established by the commissioner, that the fees for a provider license be reasonable, and that the amount of fees for a broker license is limited to the amount paid for an insurance agent license. Section 3.1721(k) requires life settlement brokers and providers to submit an application for license within 30 days of the adoption of this subchapter, including life settlement brokers or providers operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011. Note that, under §3.1721(k), the submission of the application allows for the applicant's continuity of operations while TDI reviews the application, but the application must be submitted not later than 30 days after the effective date of this subchapter.

Section 3.1722 specifies the procedures and requirements for life settlement broker and provider license renewal application, change of information, and fees. The section also establishes the requirements for providing current information to TDI if there is a material change to any information provided in the license application. Subsection (f) specifies a procedure for surrender or nonrenewal of a life settlement provider license. The effect of surrender of a life settlement broker or provider license is specified in subsection (g). Renewing life settlement brokers and providers do not need to resubmit fingerprints already provided to TDI. The section addresses waiver of requirements under §3.1722(h) due to insolvency. Insurance Code §1111A.025(5) provides that Chapter 404, Subchapter B, applies to a person engaged in the business

of life settlements. Additionally, there are nonrefundable and nontransferable fees of \$50 for renewal of a life settlement broker license and \$100 for renewal of a life settlement provider license.

Section 3.1723 provides the continuing education and training requirements that life settlement brokers must fulfill under Insurance Code §1111A.003(p). The section also requires entities with life settlement broker licenses to ensure proper training for their employees who conduct the business of life settlements. Section 3.1723(c) specifies persons exempt from the training requirements. The section also includes provisions regarding credit toward other licensees or for out-of-state courses, a requirement to maintain proof of continuing education completion, and fines for insufficient continuing education.

Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Continuing education providers must comply with 28 TAC Chapter 19, §§19.1005, 19.1007, 19.1008 – 19.1011, and 19.1014.

Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide notification to TDI when they are providing the services of a life settlement broker. Texas Insurance Code Chapter 4054 specifies the different types of licenses an agent that provides life, accident, and health insurance coverage may have. Insurance Code §1111A.003(d) requires that the notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accord with Chapter 1111A. Finally, the section puts life insurance agents on notice

that a violation of Chapter 1111A or this subchapter may lead to revocation of their license or other sanctions on their life insurance agent license.

Section 3.1726 states the provisions from which a broker who acts solely as a life expectancy estimator are exempt. Insurance Code §1111A.026 allows the commissioner to exempt additional provisions if the commissioner finds that applying those provisions to the broker is unnecessary for ensuring public welfare.

Section 3.1727 clarifies how Insurance Code §101.051 functions in the context of life settlements with respect to statutory unauthorized insurance provisions. Insurance Code Chapter 101 applies to persons engaged in the business of life settlements under §1111A.025 and §1111A.003(q).

Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. The section is consistent with the definitions of “broker” and “life settlement contract” found in Insurance Code §1111A.002. The section clarifies that a life settlement broker must not negotiate a life settlement contract that would result in less money paid to the policy owner than the applicable cash surrender value or accelerated death benefit at the time of application for a life settlement contract. The section also prohibits life settlement brokers from exclusively negotiating with a single life settlement provider.

Section 3.1729 provides a maintenance of records requirement for life settlement brokers and providers. This requirement will assist TDI in its examinations under Insurance Code §1111A.007 and enforcing §1111A.017 and §1111A.025(2). The section provides that a life settlement broker or provider must keep copies of all life

settlement contracts for five years from the execution of the contract. Life settlement brokers and providers may opt to keep such documents longer than five years.

Section 3.1730 specifies who may verify the health status of an insured. The section is consistent with Insurance Code §1111A.006 and §1111A.012(a)(13). The section provides guidance for authorized representatives. The section provides that an authorized representative must have a written delegation from a currently licensed life settlement broker or provider in order to perform health status monitoring.

Section 3.1740 provides the form filing requirements and procedures for the approval, disapproval, and withdrawal of forms. The section specifies the certifications required to be included with the form filing. Section 3.1740 provides for requests for corrections and additional information. The section also provides a method for a life settlement broker or provider to request a hearing on receiving notification of disapproval of a form. The section also provides the fees.

Generally, §3.1740 is based on the form filing requirements for life insurance forms in Chapter 3, Subchapter A, of this title. Under §1111A.005(a), a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Life settlement contracts, disclosures, and verifications of coverage must be filed for review and approval prior to use. Other forms may be submitted as file and use. Subsection 3.1740(o) specifies the filing fees for filing a complete life settlement contract, with forms included; separate individual forms;

resubmission of a previously disapproved form; and filing a previously withdrawn form.

A life settlement contract may contain multiple forms and, if filed together under one filing, requires only a single \$100 filing fee. If the forms are filed separately, each filing will have a filing fee specified in §3.1740(o). This section adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings for the submission of life settlement forms.

Section 3.1741 specifies required provisions that apply to life settlement forms. The section contains requirements for life settlement contracts generally and includes specific content requirements for escrow and trust, medical release, policy release, power of attorney, and verification of coverage forms. Power of attorney forms apply only to medical information. For purposes of the rule, medical information can include copies of the insured's death certificate. The section also provides requirements for disclosures to the policy owner if the contract includes a retained ownership provision, and additional requirements for life settlement contracts involving premium finance loans.

Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Insurance Code §1111A.012(a) requires a buyer's guide or similar consumer advisory package as prescribed by the commissioner. The section adopts by reference the shopper's guide titled "Important Information You Should Know Before Entering Into a Life Settlement," which contains useful consumer information in a question and answer format.

Section 3.1743 specifies that the minimum value of a life settlement offer must be based on the definition of “life settlement contract,” as defined by Insurance Code §1111A.002(11). In accord with §1111A.015(b), this provision does not establish a price or fee for the sale or purchase of a life settlement contract.

Section 3.1744 provides that a life settlement broker or provider must file all advertising and solicitation materials used to market life settlements or the licensee’s services in this state. The rule does not require the approval of the advertising material, only its submission prior to use or dissemination. Note that, under §1111A.002, the term “advertisement” is defined and includes communication transmitted on the Internet.

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year. Insurance Code §1111A.006 specifies the required data for the annual report. Providers must submit the annual report electronically in an Excel spreadsheet via email to lifehealth@tdi.texas.gov.

TDI makes the following changes to the proposed text as a result of comment.

TDI adopts new §3.1702(3) which postpones the effective date of the subchapter until August 1, 2013. Therefore, under §3.1721(k), applications are required not later than 30 days after the effective date of this subchapter, August 1, 2013.

TDI revises §3.1721(b)(3), to state, “A life settlement broker or provider subject to the provisions of this subchapter must apply for issuance of the life settlement broker’s or provider’s license in the life settlement broker’s or provider’s legal name and may

only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.” The change strikes, “engaged in the business of life settlements” from the first sentence in §3.1721(b)(3).

TDI revises §3.1721(c)(2)(B)(ii) to read, “if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship between the parent and all affiliated entities. ‘Affiliate’ and ‘subsidiary’ have the meaning assigned by Insurance Code §823.003.” The language, adapted from the National Association of Insurance Commissioners’ (NAIC) Life Blank Filing Instructions for Schedule Y; Organization Chart, reduces the potential confusion over what constitutes an indirect relationship between parent and holding companies and subsidiaries.

TDI changes §3.1721(c)(5) to state, “the applicant’s legal name, including any assumed name, used by a life settlement broker or provider in the conduct of business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker’s or provider’s application for license.” The change clarifies the scope of the requirement, in that the

assumed names reported are only for those used in the conduct of business related to the license sought.

A revision is made to §3.1728(1) so that the paragraph reads, “receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract.” The language adds clarity to how the accelerated death benefit, if applicable, is determined for purposes of breach of a life settlement broker’s fiduciary duty.

The term “licensed life settlement” before “provider” is added to §3.1730(a) and the word “licensed” is added to §3.1741(a)(5). The changes clarify that only life settlement brokers, providers, and their authorized representatives are contemplated by Insurance Code §1111A.006(d)(5) to verify health status.

TDI revises §3.1741(a)(1) to state that an entire contract provision should apply to the contract, together with the application, including any amendments and attachments. The amended paragraph states, “a provision that the life settlement contract must provide that the contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties.”

TDI moves §3.1741(c)(2) to its own subsection within §3.1741. This change clarifies that accidental death benefits are a separate issue related to, but distinct from,

retained ownership. Additionally, TDI adds to the section language that states, “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.”

TDI makes clarifying changes to 3.1741(j), now redesignated as subsection (k), relating to verification of coverage forms. A list of potential items that may be requested includes the name of the policy owner, the cash surrender value of the policy, the accelerated death benefit at that time, the premium, and mode of premium.

TDI deletes proposed §3.1741(k) related to premium finance loan requirements. The rule text as proposed already addresses premium finance structures that are life settlement contracts at §3.1740.

TDI revises §3.1743 to state, “A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract.” The change adds clarity to how the accelerated death benefit, if applicable, is determined for purposes of breach of a life settlement broker’s fiduciary duty. This change is consistent with the revisions made to §3.1728.

TDI revises §3.1744(a) to read, “Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker’s or provider’s services to

owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).” The change clarifies that the advertising or other solicitation materials that the provision pertains to is specific to that which is marketed to owners of life policies.

In addition to changes made as a result of comment, TDI makes the following changes to the proposed text.

A change has been made to four of the forms adopted by reference in §3.1720. The License Application for a Life Settlement Provider or Broker form (revised April 2013) is revised to clarify questions and to delete redundant questions. The Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form (revised April 2013) is revised to clarify and to be consistent with the original license application. The Life Agent Notification to TDI to Act as a Life Settlement Broker form (revised March 2013) is revised to delete the checkbox selection for “Renewal Application (no fee). The Life Settlement License will renew concurrently with Life License.” Renewal is automatic for life agents so the checkbox is not necessary. Additionally, the Biographical Affidavit for Life Settlement Providers or Brokers form is revised to make nonsubstantive changes to the forms letterhead.

A change has been made to the proposed text of §3.1722(c)(2) to also require each life settlement broker and provider to keep the department informed of a change in the email address provided, if one was provided. The language in §3.1722 (c)(2) now

reads, “Each life settlement broker and provider must keep the department informed of the licensee’s current mailing, physical addresses, and email address (if any). The department will use the mailing and physical addresses on the most recent application or notification the life settlement broker or provider submitted to the department to communicate with and provide notices to the life settlement broker or provider.”

A change has been made to the proposed text of §3.1723(c)(2). The exemption for brokers who are licensed as a life insurance agent and who operate as a life settlement broker has been changed so that it is consistent with §3.1725 and Insurance Code §1111A.003(p). The language in §3.1723(c)(2) now reads, “the life settlement broker holds a life insurance agent license or acts solely as a life expectancy estimator. A life insurance agent must continue to meet all applicable license and continuing education requirements for the life insurance agent license.”

A change has been made to the proposed text in §3.1725. It is not required that the life agent notify TDI on subsequent renewal of the life insurance agent license. TDI can track the election internally, and eliminating the renewal requirement reduces the administrative burden for both TDI and for life agents acting as life settlement brokers. As a result, proposed §3.1725(b) has been deleted. Accordingly, the remaining subsections in §3.1725 are redesignated.

Changes have been made to the proposed text of §3.1760(d). The requirement for reporting 2011 data is updated to reflect collection of 2012 data. This change is necessary to reflect the effective date of the adopted rule and to collect timely data. TDI acknowledges and appreciates the data that life settlement providers submitted prior to

the adoption of rules on the matter. As a result, an additional change has been made to §3.1760(d) to clarify that life settlement providers that already provided this information to TDI do not need to provide life expectancy estimator information, as specified in §3.1760(b)(3)(E), for 2011 and 2012. The Life Settlement Provider Data Report form (revised March 2013) has also been revised so that it asks for 2011 and 2012 data.

The adopted rules also make numerous nonsubstantive editorial changes to reflect agency style and improve readability throughout, including forms adopted by reference. Email addresses have been changed to reflect the new TDI domain name. The TDI mailing address has been changed to include the abbreviation “St.” in place of “street.” New revision dates are indicated for forms adopted by reference that were changed since they were proposed.

Nonsubstantive changes have been made to §§3.1720(a)–(d), 3.1740(d), 3.1742, and 3.1760(b) to identify when the form was last revised. A change has been made to the Important Information You Should Know Before Entering Into A Life Settlement form adopted by reference in §3.1720 to revise the contact email address.

TDI makes additional changes as a result of comment, as detailed in the Summary of Comments and Agency Response section of this adoption.

3. HOW THE SECTIONS WILL FUNCTION. Section 3.1701 specifies the purpose and severability of the subchapter. Section 3.1702 provides the applicability and scope of the subchapter. Section 3.1703 provides the definitions for the subchapter.

Section 3.1720 specifies the licensing and notification forms adopted by reference in the division. The forms include an Application for a Life Settlement Provider or Broker License form; Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form; Life Agent Notification to TDI to Act as a Life Settlement Broker form; and Biographical Affidavit for Life Settlement Providers or Brokers form.

Section 3.1721 specifies the procedures and requirements for life settlement broker and provider license application and establishes the required fees life settlement brokers and providers must pay to TDI. Section 3.1722 specifies the procedures and requirements for life settlement broker and provider license renewal application, change of information, and fees. Section 3.1723 provides the continuing education and training requirements that life settlement brokers must fulfill. Section 3.1724 sets out provisions for continuing education providers that want to offer life settlement broker continuing education. Section 3.1725 states the procedure and requirements for licensed life insurance agents to provide notice to TDI when they are providing the services of a life settlement broker. Section 3.1726 includes the provisions from which a broker who acts only as a life expectancy estimator is exempt. Section 3.1727 clarifies how Insurance Code §101.051 functions in the context of life settlements with respect to statutory unauthorized insurance provisions. Section 3.1728 provides specificity regarding one portion of the fiduciary duty a life settlement broker owes to an owner. Section 3.1729 provides a maintenance of records requirement for life settlement brokers and providers. Section 3.1730 specifies who may verify the health status of an insured.

Section 3.1740 provides the form filing requirements and procedures for the approval, disapproval, and withdrawal of forms. Section 3.1741 specifies required provisions that apply to life settlement forms. Section 3.1742 requires the delivery of a shopper's guide during the solicitation process. Section 3.1743 specifies the minimum value of a life settlement contract offer. Section 3.1744 provides that a life settlement broker or provider must file all advertising and solicitation materials used to market life settlements or the licensee's services in this state.

Section 3.1760 prescribes the reporting requirements for the annual statement all life settlement providers must provide not later than March 1 of each year.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 3.1721(b)(3)

Comment: One commenter states that TDI should strike "engaged in the business of life settlements" from the first sentence in proposed §3.1721(b)(3). The commenter asserts that the change would clarify that the licensing provisions of the section are related to the defined function of the license, and not the broader activities that may constitute all the business of life settlements.

Agency Response: TDI agrees to make the suggested change for clarity and consistency. TDI revised proposed §3.1721(b)(3), to state, "A life settlement broker or provider subject to the provisions of this subchapter must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person

holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.”

Section 3.1721(c)(2)(A)

Comment: One commenter requests that TDI strike the requirement to provide a list and description of any pending lawsuits or judgments naming the applicant as defendant or co-defendant. The commenter states that they do not object to the information being requested, but question its placement in the plan of operation.

Agency Response: TDI declines to make the change. The required information is one of the elements of the plan of operation. TDI appreciates the willingness of life settlement providers to provide the information. Insurance Code §1111A.003(j) requires the commissioner to investigate each applicant. A listing of pending lawsuits or judgments as part of a detailed plan of operation provides insight into the ongoing operations of the applicant. Additionally, the information helps the commissioner investigate whether the applicant is competent, trustworthy, and has a good business reputation.

Section 3.1721(c)(2)(B)(ii)

Comment: One commenter states that TDI should amend §3.1721(c)(2)(B)(ii) to read, “if the applicant is a subsidiary of a parent or holding company, an organizational

chart showing the relationship of the subsidiary to the parent or holding company and all direct and indirect owners of the subsidiary.” The commenter asserts that the suggested language would better elicit information from the applicant regarding all the relationships between the parent and holding company and subsidiaries. The commenter states that the phrase “all related persons and entities” in the proposed subparagraph lacks clarity and would be too broad.

Agency Response: TDI declines to make the suggested change, but does clarify the section. Section 3.1721(c)(2)(B)(ii), as adopted, reads, “if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship between the parent and all affiliated entities. ‘Affiliate’ and ‘subsidiary’ have the meaning assigned by Insurance Code §823.003.” This language mirrors the NAIC Life Blank Filing Instructions for Schedule Y; Organization Chart. The definitions for “affiliate” and “subsidiary” from the Insurance Code are used to clarify the technical meaning of the terms. TDI recognizes that relationships among and between entities can be complex. The use of an organization chart will assist TDI in understanding these relationships. Further, the adopted language eliminates the potential confusion over what constitutes an indirect relationship between parent and holding companies and subsidiaries.

Section 3.1721(c)(5)

Comment: One commenter states that TDI should amend §3.1721(c)(5) by striking “life settlement” from the phrase “the conduct of life settlement business” in the paragraph to clarify that any assumed name used in the conduct of business related to

the license must be included on the applicant's submission to TDI for licensure. The commenter states that if the language were not changed, the required notification of the use of assumed names would apply to a broader context than the scope of the license.

Agency Response: TDI agrees to make the suggested change. TDI revised adopted §3.1721(c)(5), to state, "the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's application for license."

Section 3.1721(k)

Comment: A commenter suggests that section §3.1721(k) be amended to state, "Submission required for existing brokers and providers. A person licensed to act as a viatical or life settlement provider as of the effective date of this subchapter, shall be deemed qualified for licensure as a life settlement provider or broker, and shall be subject to all the provisions of this subchapter as if the person were originally licensed as a life settlement provider or broker." The proposed language required a life settlement broker or provider, including one operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011, to submit an application in accord with this section not later than 30 days after the effective date of this subchapter. The commenter asserts that the suggested language is more appropriate to ensure that existing licensees may continue without interruption of

business. The commenter asserts that the suggested language has been used in other states and it easily understood to allow for continued business operation.

Another commenter states that the decision by the department to require an application to be filed within 30 days after the adoption of the rules is purely arbitrary with no statutory authority. Further, the commenter asserts that since the department has required well over a year to prepare the rules it would not be unreasonable to allow a license renewal applicant at least 60 days to file an application, especially in view of the time required for an applicant to prepare the necessary documents. The commenter also states that many of the forms necessary to complete the application have not been published, to the detriment of early action for compliance.

Agency Response: TDI declines to make the suggested changes, but makes a change to specify the effective date of the adopted subchapter. TDI recognizes that affected persons may require additional time to adequately complete the adoption application form. Therefore, TDI is not making a change to §3.1721(k), but adopts new §3.1702(3) which postpones the effective date of the subchapter until August 1, 2013. TDI also recognizes that there is a need for continued business operation and does not intend to interrupt lawfully conducted commerce. Applicants are required to file their applications not later than 30 days after August 1, 2013, which will be the effective date of this subchapter. Applicants timely filing an application will not be required to cease doing business while the application is reviewed.

Section 3.1722(e)

Comment: One commenter asserts that there is no authorization in Insurance Code Chapter 1111A to allow licensees to renew expired licenses if the renewal application is made within certain time limits. The commenter states that there is no deadline in §3.1722 that provides for when a timely renewal application must be filed.

Agency Response: TDI declines to make the suggested change. A timely renewal application is one that is submitted prior to the expiration of an expired license. However, because it is administratively more efficient, the adopted rule provides that even expired licenses can be renewed so long as the license has not been expired for more than 90 days. Section 3.1722(e) is a more lenient rule than the alternative of not allowing renewal immediately after a license's expiration. The additional renewal grace period saves licensees and TDI from having to submit and review the longer application forms. Further, permitting the late renewal of a license is less costly to licensees than requiring a new application. Renewal of newly expired licenses also maintains licensees under their original license number, limiting the necessity of tracking individuals or entities under multiple license numbers. TDI has the discretion in accord with Insurance Code §§1111A.003 and §1111A.015 to promulgate rules to administer licenses in a reasonable way to implement Insurance Code Chapter 1111A.

Section 3.1726

Comment: One commenter suggests that TDI exempt life expectancy estimators from "related regulations" in addition to §§1111A.003(p), 1111A.012, and 1111A.014(l) and (m).

Another commenter requests new language for §3.1726 that would exempt life expectancy estimators from all of the provisions in Insurance Code Chapter 1111A for any broker who acts solely as a life expectancy estimator and does not otherwise engage in any activities that fall within the definition of “broker” found in §1111A.002(2). The commenter asserts that life expectancy estimation is a highly specialized field and that nationally recognized life expectancy providers do not engage in the business of life settlements. The commenter states that it is far from clear that the intent of the Legislature was to require all life expectancy providers to be licensed as life settlement brokers. The Legislature did not create a comprehensive scheme to regulate life expectancy providers. Further, no other state requires life expectancy estimators to be licensed as brokers. The commenter asserts that it is not evident how such a licensing scheme would enhance protection. The commenter requests that TDI expressly exclude pure life expectancy estimators from licensing and other requirements.

Agency Response: TDI declines to make the suggested change. TDI does observe the nature and content of other states’ regulations, but must look to the requirements and authority specified by the Texas Legislature. Life expectancy estimation is specifically contemplated within the definition of “broker” in Insurance Code §1111A.002(2). In recognition of the highly specialized nature of life expectancy estimation, TDI has exempted persons declaring that they will only perform life expectancy estimates from the continuing education requirements in §3.1723, in addition to other exemptions specified in §3.1726(a). TDI has decided not to exempt life expectancy estimators from providing an antifraud plan under Insurance Code

§1111A.003(j)(5) and §1111A.022 because of recent allegations of life expectancy estimate related misconduct.

Continuing to require an application from persons who are solely life expectancy estimators will enable TDI to track and monitor individuals engaged in the business of life settlements via the creation of life expectancy estimates. A life expectancy estimator may have his or her license suspended or revoked due to fraud or other misconduct. By requiring a license, the statute allows other entities engaged in the business of life settlements to check whether a life expectancy estimator is licensed in Texas. In addition, through licensing life expectancy estimators, TDI will be able to provide more empirical information to inform future, possibly more comprehensive, regulations.

Section 3.1727

Comment: One commenter requests that TDI strike all of §3.1727. The commenter asserts that the section creates a conflict of law. The commenter argues that the Life Settlements Act expressly establishes that a life settlement contract is between an owner and a provider. An owner is defined as a person who owns a life insurance policy. A policy is defined, at §1111A.002, as a policy of life insurance “owned by a resident of this state.” The rule cannot regulate transactions where the insured resides in this state but the owner is in another state.

Agency Response: TDI declines to make the suggested change. TDI denies that application of the unauthorized insurance prohibition creates a conflict of law. Insurance Code §1111A.003(q) states that the business of life settlements constitutes

the business of insurance and §1111A.025 states that Chapter 101 is applicable to a person engaged in the business of life settlements. Section §101.051(b)(9) includes in the business of insurance, “doing or proposing to do any insurance business . . . in a manner designed to evade statutes relating to insurance. . . .” A transaction that is structured in a manner designed to evade the statute is deemed the business of insurance and may subject the actor to the sanctions available under Chapter 101. TDI acknowledges that there are good faith reasons why natural persons in Texas might domicile a trust to own a policy in a state other than Texas. The adopted section applies only to transactions structured with the purpose of evading Texas life settlement statutes, which will generally be shown when there is a pattern and practice by unlicensed individuals or entities of encouraging Texas residents to create out of state trusts without clear benefit.

Section 3.1728

Comment: One commenter requests that TDI include additional language in §3.1728(1) so that the paragraph reads, “receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract.” The commenter asserts that the current life settlement market is not focused on terminally ill insureds, but rather older age insureds, with life expectancies in excess of two years, who no longer need or can no longer afford their insurance policies. These policy

owners are not able to claim an accelerated death benefit. The suggested language would add clarity to how the accelerated death benefit is determined for purposes of determining if a breach of a life settlement broker's fiduciary duty occurred. The commenter also suggests adding "and" between the first and second paragraphs.

Agency Response: TDI agrees to make the suggested change relating to the timing of the calculation of accelerated death benefit. TDI declines to add the word "and" because it is not necessary.

Section 3.1730(a) and Section 3.1741(a)(5)

Comment: One commenter suggests inserting "licensed life settlement" before "provider" in §3.1730(a). The commenter asserts that the addition will remove ambiguity and clarify that the life settlement provider must be licensed by the state of Texas. Additionally, the commenter requests TDI amend the section so that an authorized representative of the policy owner who registers with the commissioner may contact an insured to determine the insured's health status or to verify the insured's address. The commenter asserts that in the tertiary settlement market the original life settlement broker or provider may no longer have a relationship with the new policy owner. In the tertiary market, many policies are serviced by professional servicing companies selected and authorized by the policy owners. The commenter asserts that requiring these entities to have formal written authorizations from each provider may be problematic and will increase costs. The regulatory scheme suggested would be subject to the supervision and control of the department, but would not otherwise need formal authorization from the providers.

Agency Response: TDI agrees to insert “licensed life settlement,” but declines to make the other suggested changes. Only life settlement brokers, providers, and their authorized representatives are contemplated by Insurance Code §1111A.006(d)(5). In §1111A.012(13), the Legislature required notice be given to owners that, “the insured may be contacted by either the provider or broker or an authorized representative of the provider or broker. . . .” This disclosure would be meaningless if additional third parties in the tertiary market who are not licensed providers, brokers, or their representatives, could contact the insured. TDI does not have the statutory authority to require the registration of any other entity. Insurance Code §1111A.015 provides only for regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives. The statute indicates a concern over the privacy of the insured, and it is not clear that a tertiary policy owner would share these privacy concerns. In order to effectively regulate the involved entities and to provide for consumer protection, TDI must have jurisdiction over entities tracking health status and making contact with insureds. However, the rule as adopted provides that any Texas licensed life settlement broker, provider, or their authorized representatives may verify health status. A subsequent policy owner is not required to utilize the services of the original parties to the life settlement contract. A tertiary policy owner may contract with any life settlement broker or provider.

Section 3.1740(b)

Comment: One commenter requests that TDI eliminate the types of forms listed in §3.1740(b)(4) – (10). The commenter asserts that Insurance Code §1111A.005

authorizes that only the life settlement contract and disclosure forms be filed and approved by the department. Authority to require verification of coverage comes from Insurance Code §1111A.014. The commenter asserts that no other forms may be required to be filed. Additionally, the commenter asserts that there is no justification for including premium finance loan documents in the rule.

Agency Response: TDI declines to make the suggested change. Insurance Code §1111A.005(a) states that, “a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts.” The forms required to be filed under the adopted rule effectuate the settlement of the policy. TDI has an interest in protecting consumers from inappropriate forms utilized in the purchase of life policies. Disclosures, escrow and trust agreements, documents used to obtain confidential information, consent forms, powers of attorney, premium finance, and other forms used to effectuate a life settlement are within the meaning of “any form of life settlement contract.” These forms often assign rights or grant legal permission that can affect a policy owner or insured’s privacy and legal rights. Review of such forms is not unique to life settlement forms. Life insurance companies submit forms to TDI that are similarly used to effectuate a contract. Insurance Code §1111A.005 expressly requires that the review and submission requirements of life settlement forms mirror that of life policies. Further, the definition of “life settlement contract” in §1111A.002(11) appears to contemplate the possibility of multiple documents making

up the complete contract, and it explicitly includes premium finance loans entered into prior to the date of the issuance of the original policy under the definition of a life settlement contract.

Sections 3.1740(f)(3) and 3.1740(h)

Comment: One commenter requests that companies that have already filed their forms and have had them approved under the statute should not be required to resubmit forms.

Agency Response: TDI agrees, but declines to make any changes. The adopted rule requires forms to be filed with TDI only if they are not otherwise already compliant with these adopted rules. TDI anticipates that some forms that have already been reviewed will not require refiling. However, where provisions of this subchapter make a previous form noncompliant, refiling will be necessary. The department believes that it would be unfair and confusing to the market to have two different sets of form filing requirements resulting in differing standards in the life settlement contracts being issued to public with different provisions based on the filing date of the forms.

Section 3.1740(o)

Comment: One commenter states that the commissioner has no statutory authority to charge filing fees for form filings. The commenter asserts that neither Insurance Code §1111A.003 nor §1111A.015 authorizes the commissioner to charge fees for the filing of forms. The commenter reasons that there are no additional fees for life insurance agents to file additional forms required by the agent to obtain a license.

Agency Response: TDI agrees that additional fees should not be required to obtain a life settlement broker or provider license beyond what is specifically allowed by Insurance Code §1111A.003(b). However, a person can obtain a license without having to file a life settlement contract form or other forms necessary to settle a life policy. The authority to require filing fees on forms is in Insurance Code §1111A.005. The filing procedures for life settlement forms must conform with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. The form filing rules in this adoption are adapted from those in 28 TAC Chapter 3, Subchapter A, relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings. Further, it is possible for life settlement brokers to use and rely on forms already filed with and approved by TDI that were submitted by the life settlement provider the life settlement broker is negotiating the life settlement contract with. Additionally, Insurance Code §1111A presumes that some individuals may wish to become licensed as a life settlement broker to engage in some form of business, such as life expectancy estimating or health status verification, that do not require using approved forms. TDI declines to make the suggested change.

Section 3.1741(a)(1)

Comment: One commenter states that the entire contract provision in §3.1741(a)(1) should only include the life settlement contract and the application (including any amendments and attachments). The commenter asserts that the life insurance policy should not be part of what the provision requires. Another commenter suggests similar language that would strike the word “policy” and instead require a

provision that the life settlement contract, or the life settlement contract and application and any documents, instruments, and agreements delivered pursuant to or in connection with the life settlement contract for the life settlement constitutes the entire contract between the parties. The entire contract provision should refer to the life settlement contract and not the policy.

Agency Response: TDI agrees that the term “policy” does not provide the most clarity with respect to the entire contract provision and has modified the rule text. The intent of the provision is to mirror similar entire contract provisions in life policies. TDI agrees that the entire contract provision should apply to the life settlement contract, or the life settlement contract and the application, so long as the meaning is specified in the life settlement contract. A change has been made to the paragraph so that it states, “a provision that the life settlement contract must provide that the contract or the contract together with the application, including any amendments and attachments, constitute the entire contract between the parties.”

Section 3.1741(b)(1)

Comment: One commenter states that §3.1741(b)(1) should be struck entirely. The commenter asserts that indemnification should be encouraged, not discouraged. Indemnification can provide an antifraud measure in the contract which serves to put owners on notice that they need to make accurate representations regarding the policy. It would be unreasonable for the regulation to have an express provision that owners should not be held accountable for fraud or material misrepresentations. The commenter asserts that an indemnification provision would allow for protection in the

marketplace against owners trying to deceive life settlement companies and investors in the transactions.

Agency Response: TDI declines to make the suggested change. TDI notes that the rule does not prohibit indemnification. The provision states that an indemnification clause cannot result in indemnification that exceeds the proceeds of the life settlement contract received by the owner. TDI agrees that fraud is detrimental to the market, and the TDI fraud unit assists in the investigation of suspected criminal activity involving life settlement contracts.

Section 3.1741(c)

Comment: One commenter states that §3.1741 should be amended and restated to expressly provide that the life settlement providers are not acquiring any interest in additional death benefits for accidental death. The commenter also requests language stating that nothing in a life settlement contract shall require the life settlement provider or any subsequent owner to maintain accidental death benefits. The commenter states that many states prohibit the assignment of double indemnity provisions.

Agency Response: TDI agrees with the commenter that the assignment of accidental death benefits should be included in the life settlement contract. The proposed rule stated in §3.1741(c) that the additional death benefit for accidental death must remain payable to the beneficiary last named by the owner, not including the life settlement provider, or, in the absence of a beneficiary, to the estate of the owner. TDI declines to adopt the specific language the commenter suggests, but does amend

§3.1741 so that proposed §3.1741(c)(2) is moved into its own subsection to clarify that accidental death benefits are a separate issue related to, but distinct from, retained ownership. Additionally, TDI adopts the clarifying language similar to that suggested by the commenter, to read, “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.”

Comment: One commenter suggests that TDI amend and restate the retained ownership provision to state that no life settlement provider may enter into a life settlement contract that provides that the policy owner will retain an interest in the death benefit payable under the policy unless the life settlement contract form has been approved by the commissioner. The commenter asserts that life settlement transactions with retained benefits can be structured in a number of different ways, some of which are not contemplated or addressed by the proposed rule. By requiring the commissioner to approve any agreements, the department can ensure it will protect consumers’ interests and effectively regulate the market.

Agency Response: TDI declines to make the suggested change. Retained ownership provisions do necessitate protracted review. TDI anticipates that it can provide this oversight during the review that forms are subject to, as required by §3.1740. Proposed §3.1741(c), redesignated as §3.1741(d), provides additional requirements to protect consumer interests and effectively regulate the market. It is impracticable for TDI to timely review each and every life settlement transaction that may feature a retained ownership provision. The commenter asserts that the potential

exists for certain methods of structuring a retained ownership which may not be regulated by TDI. Without specific example, TDI is not able to assess this claim. If required, future rulemaking can address problems related to retained ownership provisions.

Section 3.1741(d)

Comment: One commenter requests that TDI strike §3.1741(d)(2) and not require a single section for defined terms in life settlement contracts. The commenter asserts that the provision is not necessary and that common practice is to define terms throughout the contract. The commenter suggests that this requirement would necessitate an entire rewrite of many contracts in use in the life settlement market.

Agency Response: TDI declines to make the suggested change. The requirement to have a definition section does not preclude also providing the definitions in the body of the contract. TDI encourages such language where it enhances mutual understanding. However, providing a single source of definitions is a useful tool for consumers as technical terms might be used throughout a document, and defining them only the first time they are used may limit understanding of the document. Life settlement brokers and providers may include an attached listing of all defined terms without necessitating redrafting contracts anew.

Section 3.1741(j)

Comment: One commenter asserts that proposed §3.1741(j) introduces uncertainty into the market, because life settlement providers, investors, and insurance companies will have different views as to what questions in a verification request are

relevant to a contract. Generally, verification of coverage forms already used are limited in practice and the information that an insurance company typically provides to policy owners.

Agency Response: TDI agrees with the commenter and has made clarifying changes to proposed §3.1741(j), now redesignated as subsection (k), to add a list of potential items that may be requested, including the policy owner, the cash surrender value, the availability of an accelerated death benefit provision, the premium, and mode of premium payment.

Section 3.1741(k)

Comment: Commenters assert that proposed §3.1741(k) should be struck from the rule. One commenter states that premium finance loans are irrelevant to life settlements and the provision does not fit into Insurance Code Chapter 1111A. The commenter asserts that life settlement brokers and providers cannot issue premium finance loans. One commenter states that premium finance is a business separate from life settlements and the purpose and intent of the section is not clear. The commenter notes that under §1111A.002(11), the act provides that certain premium finance loans are life settlement contracts. The rule text as proposed already addresses premium finance structures that are life settlement contracts at §3.1740.

Agency Response: TDI agrees to make the change. TDI expects that a premium finance loan that meets the definition of a life settlement contract to be filed with TDI as a life settlement contract. Further, meeting the requirements of this

subchapter is not sufficient to offer a premium finance loan. Additional requirements for premium finance loans are found in Insurance Code Chapter 651.

Section 3.1743

Comment: One commenter requests that TDI revise §3.1743 to clarify that the accelerated death benefit is calculated based on the time the owner enters into the life settlement contract. This revision provides clarification as to the prohibition on settling a policy for less than the cash surrender value or the accelerated death benefit. The commenter asserts that the current life settlement market is not focused on terminally ill insureds, but rather older insureds, with life expectancies in excess of two years, who no longer need or can no longer afford their insurance policies. These policy owners are not able to claim an accelerated death benefit. The suggested language would add clarity to how the accelerated death benefit, if applicable, is determined for purposes of determining whether breach of a life settlement broker's fiduciary duty occurred.

Agency Response: TDI agrees to make the suggested change. The section is revised to state, "A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract." This change is consistent with the revisions made to §3.1728.

Section 3.1744

Comment: One commenter requests that the advertising file and use requirement be eliminated from the adopted rule. The commenter asserts that it is a cumbersome requirement which is difficult for compliance. Further, the rule lacks specifics as to how it is to be done. The commenter compares the rule to the National Conference of Insurance Legislators' Life Settlement Model Act, under which providers and brokers could conduct advertising and would comply with rules promulgated by the commissioner, but would not be required to file advertising material with the commissioner. The commenter also compares the rule to the NAIC Viatical Settlement Act, which requires that a provider file advertising materials, as may be prescribed by regulation, with the commissioner, but does not require a broker to file promotional, advertising, and marketing materials.

Agency Response: TDI declines to make the suggested change. The statutory authority for requiring advertising to be filed with the commissioner is in Insurance Code §1111A. Section 1111A.005(d) grants the commissioner the authority to require the submission of advertisements to the department. Section 1111A.011 states that a broker's or provider's advertisement in this state must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under Chapter 1111A. Both life settlement brokers and providers are license holders under Chapter 1111A. The former 28 TAC Chapter 3, Subchapter R, Viatical and Life Settlements rules, repealed with the adoption of this rule, also required the filing of advertising by both life settlement brokers and providers. Many life settlement brokers and providers are familiar with the

advertising submission requirements of the repealed rules. In substance, the two rules do not differ. The section requires submission of advertisements in a file and use manner. The filing procedures are expressly the same as other advertising filing requirements adopted by TDI.

Comment: One commenter suggests that TDI change §3.1744(a) so the advertising or other solicitation materials the provision pertains to are limited to those marketed to owners of life policies. The commenter asserts that the limitation would make the section consistent with the scope of the statute, which is to regulate transactions in this state.

Agency Response: TDI agrees to make the suggested change. Section 3.1744(a) now reads, “Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker’s or provider’s services to owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).”

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: One individual, the Institutional Life Markets Association, and the Life Insurance Settlement Association.

6. STATUTORY AUTHORITY. The new sections are adopted as authorized by Insurance Code Chapter 1111A and §36.001. Section 1111A.015 provides that the commissioner may adopt rules implementing Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives. Section 1111A.003 states that an application for a life settlement broker or provider license must be in a form prescribed by the commissioner and accompanied by a fee in an amount established by the commissioner by rule. Section 1111A.003(d) requires that a life insurance agent notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and pay any applicable fee to be determined by the commissioner by rule. Section 1111A.005(a) states that a person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts. Section 1111A.025(b) states that the commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare. Section 1111A.011(a) states that a licensed life settlement broker or provider must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter. Section 1111A.003(l) provides that life settlement providers file with TDI not later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule.

Similarly, §1111A.006(a) states that each provider shall file with the commissioner no later than March 1 of each year an annual statement containing the information the commissioner prescribes by rule. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

7. TEXT.

DIVISION 1. General Provisions

§3.1701. Purpose and Severability.

(a) Purpose. Under Insurance Code Chapter 1111A, the Life Settlements Act, the commissioner implements this subchapter to:

- (1) establish life settlement requirements concerning license applications, renewal, continuing education, and disclosures;
- (2) establish form filing requirements for life settlement contracts;
- (3) prohibit or require certain contractual provisions in life settlement contracts; and
- (4) establish annual reporting requirements for life settlement providers.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application. To this end, the provisions of this subchapter are severable.

§3.1702. Applicability and Scope. This subchapter:

(1) applies to all persons involved in the business of life settlements in this state as specified in Insurance Code Chapter 1111A;

(2) does not regulate the actions of an investor providing money to a life settlement provider, and does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law; and

(3) becomes effective August 1, 2013.

§3.1703. Definitions. In this subchapter, the following terms have the meanings assigned by Insurance Code §1111A.002, unless the context clearly indicates otherwise:

- (1) advertisement;
- (2) broker;
- (3) business of life settlements;
- (4) insured;
- (5) life expectancy;
- (6) life insurance agent;
- (7) life settlement contract;
- (8) net death benefit;
- (9) owner;
- (10) person;

- (11) policy;
- (12) premium finance loan;
- (13) provider;
- (14) purchaser; and
- (15) settled policy.

DIVISION 2. License Application and Renewal; Course and Training Requirements; Maintenance of Records

§3.1720. Forms.

(a) Application form. The commissioner adopts by reference the License Application for a Life Settlement Provider or Broker form (revised April 2013) as the application for license for each person engaging in, or desiring to engage in, business as a life settlement broker or life settlement provider in this state.

(b) Renewal, Surrender, or Change of Information form. The commissioner adopts by reference the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form (revised April 2013) for the renewal, nonrenewal, or surrender of life settlement broker or provider licenses and for use in providing notice to the department of a change to any license holder information or information in an application previously submitted to the department.

(c) Life Agent Notification form. The commissioner adopts by reference the Life Agent Notification to TDI to Act as a Life Settlement Broker form (revised March 2013) for use by a life insurance agent operating as a life settlement broker.

(d) Biographical Affidavit form. The commissioner adopts by reference the Biographical Affidavit for Life Settlement Providers or Brokers form (revised April 2013) for use as an attachment to the License Application for a Life Settlement Provider or Broker form and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, as applicable, for each owner, partner, director, officer, key management personnel, employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock.

(e) Where to find and send forms. The forms adopted in this section may be obtained from and submitted to Company Licensing and Registration, MC 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or obtained at the department's website at www.tdi.texas.gov/forms.

§3.1721. License Application; Fees.

(a) Applicant. In this section, "applicant" means a person applying for a life settlement broker or provider license.

(b) License requirements.

(1) A person engaging in business as a life settlement broker or life settlement provider in this state must apply for and obtain a license issued by the department as required by this subchapter, except that:

(A) a person may operate as a life settlement broker without a life settlement broker license if that person has held a life insurance agent license in this state for at least one year and holds an active license, or has held a life insurance agent license in that person's home state for at least one year and is licensed as a nonresident agent in this state. The life insurance agent must notify the department in accord with §3.1725 of this title (relating to Life Insurance Agent Notification) and Insurance Code Chapter 1111A; and

(B) a person may operate as a life settlement broker without a life settlement broker license if that person is a licensed attorney, certified public accountant, or financial planner who is retained in the type of practice customarily performed in a professional capacity to represent the owner and whose compensation for the life settlement transaction is not paid directly or indirectly by the provider or any other person, except the owner.

(2) A life settlement broker or provider is prohibited from concurrently holding more than one license of the same type and in the same legal name.

(3) A life settlement broker or provider subject to the provisions of this subchapter must apply for issuance of the life settlement broker's or provider's license in the life settlement broker's or provider's legal name and may only act within the scope of authority granted by the license. If a person holds a license authorizing the person to act as a life settlement broker or provider, that person need not obtain an additional license to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must

apply for and hold, in its own legal name, a separate license to conduct business as a life settlement broker or provider in this state.

(4) A licensed life settlement broker or provider may have additional offices or do business under assumed names, as that term is defined in §19.901 of this title (relating to Definitions Concerning Conduct of Licensed Agents), without obtaining an additional license. However, the life settlement broker or provider must furnish the department with a list identifying any and all offices from which the life settlement broker or provider will conduct life settlement business and showing any and all assumed names that the life settlement broker or provider will utilize in conducting life settlement business at any of those offices.

(A) Where such a filing is required under the Assumed Business or Professional Name Act, Business and Commerce Code Chapter 71, or any similar statute, the life settlement broker or provider must provide the department with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the life settlement broker or provider.

(B) A life settlement broker or provider doing business under an assumed name must comply with subsection (c)(5) of this section.

(c) Information required with application. In addition to a complete License Application for a Life Settlement Provider or Broker form, an applicant for a license to engage in business as a life settlement broker or provider must submit the items set forth in paragraphs (1)–(7) of this subsection, as follows:

(1) either:

(A) a certificate of account status issued by the Texas Comptroller of Public Accounts reflecting that the applicant is in good standing or temporary good standing; or

(B) a certification signed by an officer or partner of the applicant attesting that the applicant is not subject to Texas Tax Code Chapter 171;

(2) if a provider, a detailed plan of operation, including, but not limited to the following, where applicable:

(A) history:

(i) a brief history of the applicant since its formation, if an entity;

(ii) a list of all states in which the applicant holds a license or registration as a life settlement provider or viatical settlement provider and the date(s) that the applicant obtained such licensure or registration;

(iii) a list of all states in which the applicant is currently doing business, but in which a license or registration is not required; and

(iv) a list and description of any pending lawsuits or judgments naming the applicant as defendant or co-defendant;

(B) management:

(i) evidence that the applicant has a good business reputation, and a detailed description of the experience, training, or education that qualifies the applicant to conduct the business of life settlements as a life settlement provider; and

(ii) if the applicant is a subsidiary of a parent or holding company, an organizational chart showing the relationship between the parent and all affiliated entities. "Affiliate" and "subsidiary" have the meaning assigned by Insurance Code §823.003; and

(C) marketing plan:

(i) a detailed description of the applicant's marketing plan;
and

(ii) the applicant's projected volume of business in Texas and nationwide for the first three years after licensure in Texas;

(3) an antifraud plan that meets the requirements of Insurance Code §1111A.022;

(4) a completed Biographical Affidavit form to be used as an attachment to the License Application for a Life Settlement Provider or Broker form for each owner, partner, director, officer, key management personnel, or employee having authority to direct the management of the organization, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock;

(5) the applicant's legal name, including any assumed name, used by a life settlement broker or provider in the conduct of business under a license is subject to the requirements of §19.902 of this title (relating to One Agent, One License), except that a separate application is not required for a life settlement broker or provider who conducts business under a single assumed name and registers that name with the department on the life settlement broker's or provider's application for license;

(6) if a business entity domiciled in Texas, a current copy of its certificate of status from the Office of the Texas Secretary of State; and

(7) if a business entity not domiciled in Texas:

(A) a current copy of its certificate of good standing from the state of its domicile; and

(B) with the license application, a completed appointment of an agent for service of process, unless the applicant has filed with the department the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the commissioner. The applicant must attach the completed form to the application for license. The applicant must appoint as the agent for service of process a person with a Texas address who has an established place of business and who can be easily located and served with notices, legal process, and papers.

(d) Application process.

(1) If an applicant for a license to operate as a life settlement broker or provider has complied with all application procedures in this section, the commissioner will issue the applicant a license to engage in business as a life settlement broker or provider unless the commissioner determines that the application should be denied based on any one or more of the factors set forth in Insurance Code Chapter 1111A.

(2) If the commissioner denies the application and the applicant requests a hearing, or if at any time the applicant no longer meets the requirements for licensure,

the procedure for the denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by §1.32 of this title (relating to Licenses).

(3) The department will not accept applications that do not contain all required information or certifications.

(e) License fee. An applicant must submit with each completed application for license at the time of filing, a two-year license fee in the amount of \$50 for a life settlement broker, or \$100 for a life settlement provider. All license fees are nonrefundable and nontransferable, including fees for applications that are denied or incomplete.

(f) Partnership, corporation, or other business entity license. A partnership, corporation, or other business entity may file an application for a license to engage in business as a life settlement broker or provider only if each owner, partner, director, member, officer, and designated employee is named in the application.

(g) Notice of suspension or revocation. A life settlement broker or provider must notify the department of, and must deliver to the department a copy of, any applicable order or judgment not later than the 30th day after the date of the:

(1) suspension or revocation of the life settlement broker's or provider's right to transact business in another state;

(2) receipt of an order or notice of hearing to show cause why the life settlement broker's or provider's license or license in another state should not be suspended or revoked; or

(3) imposition of an administrative or criminal penalty, forfeiture, or sanction on the life settlement broker or provider for the violation of the laws of this state, any other state, or the federal government.

(h) Effect of criminal conduct. An applicant for or holder of a life settlement broker's or provider's license, including each owner, partner, director, member, officer, and any person who has ownership of 10 percent or greater of the applicant or the applicant's stock, is subject to the requirements of Insurance Code §1111A.004 and Chapter 1, Subchapter D, of this title (relating to Effect of Criminal Conduct).

(i) Requirement of additional information. In addition to the information required in this section, the department may ask for other information necessary to determine whether the applicant complies with the requirements of Insurance Code §1111A.003 and this subchapter for purposes of issuing or renewing a life settlement broker's or provider's license. If an applicant does not respond to a request for additional information within 10 days following the date the applicant receives the request, the department will consider the application withdrawn. The applicant can request an extension, but must provide a reasonable basis for the need for additional time.

(j) Material change. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date the change occurs, using the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form.

(k) Submission required for existing brokers and providers. A life settlement broker or provider, including one operating under a temporary license or operating under a certificate of authority issued prior to September 1, 2011, must submit an application in accord with this section not later than 30 days after the effective date of this subchapter.

§3.1722. Renewal; Nonrenewal; Surrender; Change of Information; and Fees.

(a) Renewal form. To renew an unexpired life settlement provider's or broker's license, a license holder must submit to the department a completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. The license holder must submit with the renewal application a two-year renewal fee of \$50 for a life settlement broker license or \$100 for a life settlement provider license. All renewal fees are nonrefundable and nontransferable.

(b) Renewal application requirements. In addition to the completed Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, a license holder applying for renewal of a life settlement broker's license or provider's license must submit:

(1) if a business entity:

(A) a certificate of account status issued by the Texas Comptroller of Public Accounts reflecting that the licensee is in good standing or temporary good standing; or

(B) a certification signed by an officer or partner of the licensee attesting that the licensee is not subject to the Texas Tax Code Chapter 171; and

(2) if a life settlement broker, a certification that the life settlement broker and each owner, partner, director, member, officer, and designated employee named in the application or in any supplement to the application, who perform acts of a life settlement broker under Insurance Code §1111A.002(2), has completed training equivalent to that required of individual brokers under §3.1723 of this title (relating to Course and Training Requirements for Brokers), unless the individual is exempted under §3.1723(c) of this title or has been associated with the license holder for less than two years.

(c) Change in license information. If there is a material change to any information provided in the application for license, the life settlement broker or provider must submit written notification of the change to the department not later than 30 days after the date such change occurs, using the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. This requirement applies to material changes in information that occur after the license has been issued and during which time the license remains valid and unexpired.

(1) A life settlement broker or provider notifying the department of a change in information must provide the notice separately from any other submission of information to the department.

(2) Each life settlement broker and provider must keep the department informed of the licensee's current mailing, physical addresses, and email address (if

any). The department will use the mailing and physical addresses on the most recent application or notification the life settlement broker or provider submitted to the department to communicate with and provide notices to the life settlement broker or provider.

(d) Additional licenses. If the department grants a licensee an additional life settlement broker or provider license, the expiration date of the license initially granted applies to all life settlement broker or provider licenses that the license holder subsequently obtains from the department.

(e) Effect of renewal application.

(1) Continuance of license until approved or refused. On filing the completed renewal application and payment of the proper fee, the life settlement broker's or provider's current unexpired license will continue in force until the department renews the license or makes a final determination to refuse to renew the license, as provided in Insurance Code §1111A.004 and Government Code §2001.054, and provides notice of such refusal in writing to the license holder.

(2) Expiration for not more than 90 calendar days. If the life settlement broker's or provider's license has been expired for not more than 90 calendar days, the life settlement broker or provider may apply to renew the license by sending a completed renewal application and fee, as applicable, and an additional fee equal to one-half of the required renewal fee.

(3) Expiration for more than 90 calendar days. If a life settlement broker or provider license has been expired for more than 90 calendar days, the life settlement

broker or provider may not apply to renew the license. The life settlement broker or provider must obtain a new license by submitting a new application for a license and fee under §3.1721 of this title (relating to License Application; Fees).

(f) Surrender or nonrenewal of a provider's license. If a life settlement provider does not intend to renew or elects to surrender its license, the life settlement provider must request approval from the department by submitting the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form. The department must receive the provider's written request for nonrenewal or surrender at least 30 days before the date the provider's current license expires or planned surrender date. A life settlement provider must apply for license renewal and cannot surrender or nonrenew an expiring license if a life settlement contract is executed in the 15 days prior to the nonrenewal or surrender of the license. Prior to expiration or surrender, the life settlement provider must submit a report containing all the information required by §3.1760 of this title (relating to Reporting Requirements) for all life settlement contracts executed in Texas for which the insured is a resident of Texas.

(g) Effect of license surrender. The surrender of a life settlement broker's or provider's license to the department is not a defense to a violation of the Insurance Code or this title committed by the life settlement broker or provider prior to the effective date of the surrender. In addition, surrendering to the department any or all life settlement licenses in no way affects the authority of the department or the commissioner to initiate or continue any investigation or disciplinary proceedings concerning the life settlement broker or provider.

(h) Insolvency. If a court of competent jurisdiction assumes control of or appoints a receiver to control and wind down the business operations of a life settlement broker or provider, and the commissioner determines that such waiver is in the public interest and is consistent with the requirements of the Insurance Code, the department may waive requirements specified in this section.

§3.1723. Course and Training Requirements for Brokers.

(a) Individual continuing education requirement. A life settlement broker must complete at least 15 hours of department-certified life settlement continuing education during each two-year license period.

(b) Entity continuing education requirement. A partnership, corporation, or other entity must have each owner, partner, director, member, officer, and designated employee named in the license application or in any supplement to the application that performs the acts of a life settlement broker under Insurance Code §1111A.002(2), and is not exempt under subsection (c) of this section, complete at least 15 hours of department-certified life settlement continuing education during the two-year license period.

(c) Exempt persons. A life settlement broker is not subject to the requirements of this section if:

(1) the life settlement broker or the owner, partner, director, member, officer, or designated employee of the life settlement broker has been associated with the licensed entity for less than two years; or

(2) the life settlement broker holds a life insurance agent license or acts solely as a life expectancy estimator. A life insurance agent must continue to meet all applicable license and continuing education requirements for the life insurance agent license.

(d) Continuing education subject requirements. The 15 hours of continuing education that a broker must complete during each two-year license period must include:

(1) at least six hours on the duties of life settlement brokers under Insurance Code Chapter 1111A, the requirements of this subchapter, and additional topics addressing statutes enacted and rules adopted subsequent to the effective date of this section, provided that the statutes or rules relate specifically to life settlement contracts;

(2) at least three hours on ethics and consumer protection; and

(3) at least six hours on life insurance.

(e) Credit for other licenses. Licensees may count a life settlement course toward completion of the non-ethics or consumer protection-related continuing education requirements prescribed in Insurance Code Chapter 4004, and §19.1003 of this title (relating to Licensee Requirements). If a licensee uses a life settlement course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this title, the licensee must comply with §19.1013 of this title (relating to Licensee Record Maintenance).

(f) Out-of-state continuing education. For license holders determining equivalent course hours, the licensee must maintain a list of all course approved times and states in which the course is approved and provide the list to the department on request. The equivalent hours are determined by using the average of approved times in other states.

(g) Proof of course completion. A licensee must maintain proof of completion of a life settlement continuing education course for a period of four years from the date of completion of the course. On request, the licensee must provide proof of completion of the life settlement continuing education course to the department. A licensee must immediately report to the department any discrepancy the licensee discovers between a course taken by the licensee and the credit hours certified to the licensee by the continuing education provider.

(h) Automatic fine. A broker's failure to comply with the provisions of this section is subject to automatic penalties of \$50 per credit hour. Paying the automatic fine does not preclude other administrative action.

(i) Administrative action. Filing a properly completed renewal application constitutes a licensee's certification that all required continuing education hours for the reporting period have been completed. The department's renewal of a license does not relieve a licensee or any individual from compliance with the continuing education requirements for any reporting period, and the failure to obtain required continuing education hours subjects the licensee to administrative action.

§3.1724. Continuing Education Providers.

(a) A continuing education provider for life settlement broker continuing education must comply with:

(1) Sections 19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) Section 19.1009 of this title (relating to Types of Courses);

(3) Section 19.1010 of this title (relating to Hours of Credit);

(4) Section 19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses); and

(5) Section 19.1014 of this title (relating to Provider Compliance Records).

(b) A life settlement broker continuing education provider that fails to comply with the requirements of this section is subject to:

(1) Section 19.1015 of this title (relating to Failure to Comply); and

(2) Section 19.1016 of this title (relating to Automatic Fines).

§3.1725. Life Insurance Agent Notification.

(a) Operating as a life settlement broker. A licensed life insurance agent may operate as a life settlement broker, provided that:

(1) the life insurance agent has held a license as a life insurance agent:

(A) in this state for at least one year; or

(B) in the person's home state for at least one year and is licensed as a nonresident agent in this state;

(2) notifies the commissioner, within 30 days after the first date of operating as a life settlement broker, by filing a completed Life Agent Notification to TDI to Act as a Life Settlement Broker form accompanied by the \$50 fee; and

(3) has an active life insurance agent's license.

(b) Temporary notification. A life insurance agent that has been operating under a temporary notification must submit a notification in accord with this section no later than 30 days after the effective date of this subchapter.

(c) Compliance required. A life insurance agent acting as a life settlement broker under Insurance Code Chapter 1111A must comply with all statutes and rules applicable to the business of life settlements.

(d) Sanctions. The commissioner may revoke the license of a life insurance agent or impose other sanctions in accord with Insurance Code Chapters 82, 83, and 84 for a violation of Chapter 1111A or this subchapter.

§3.1726. Life Expectancy Estimators.

(a) Insurance Code §§1111A.003(p), 1111A.012, and 1111A.014(l) and (m) do not apply to a life settlement broker who acts solely as a life expectancy estimator.

(b) A life settlement broker or life insurance agent who solely performs estimates of life expectancy must indicate on the License Application for a Life Settlement Provider or Broker form; the Application for Renewal, Surrender, or Change of

Information for a Life Settlement Provider or Broker form; or the Life Agent Notification to TDI to Act as a Life Settlement Broker form, as applicable, that the broker or life insurance agent will act solely as a life expectancy estimator.

§3.1727. Unauthorized Insurance. For purposes of Insurance Code §§101.051(b)(8) and (9), unauthorized insurance includes participation of a life settlement broker or provider in connection with a life settlement contract for which the insured resides in this state but for which the owner is a trust or similar entity domiciled in another state and created primarily to avoid the requirements of Insurance Code Chapter 1111A.

§3.1728. Life Settlement Broker Fiduciary Duty. Breach of a life settlement broker's fiduciary duty includes, but is not limited to:

(1) receiving compensation for negotiating a life settlement contract that would result in the owner receiving less than either the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract.

(2) a contractual agreement or arrangement to directly or indirectly exclusively negotiate life settlement contracts with a single life settlement provider.

§3.1729. Maintenance of Records. A life settlement broker or provider must maintain a copy of the life settlement contract, verification of coverage, and any life expectancy estimate for each settled policy for five years from the date of execution of the contract.

§3.1730. Health Status Verification.

(a) Who can verify health status. Only a licensed life settlement broker, licensed life settlement provider, or authorized representative of a licensed life settlement broker or licensed life settlement provider may contact an insured to determine the insured's health status or to verify the insured's address.

(b) Written delegation. An authorized representative must have a written authorization from a licensed life settlement broker or provider to be an authorized representative. An authorized representative must agree in writing to adhere to the privacy provisions in Insurance Code Chapter 1111A.

DIVISION 3. Form Filing and Usage Requirements

§3.1740. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms; Fees.

(a) General form filing requirement. A person must not use a form used to effectuate a life settlement in this state unless the form has been filed with and approved by the commissioner under this section, if prior approval is required by subsection (f) of this section.

(b) Required life settlement contract form filings. Forms that must be filed

include the following:

- (1) settlement contracts, including any amendments;
- (2) disclosures;
- (3) verification of coverage forms;
- (4) escrow or trust agreements;
- (5) documents used to obtain or release confidential information,

including documents used by the life settlement broker or provider that in any way refer to, affect, request, or relate to a life settlement broker or provider obtaining or releasing confidential information;

- (6) owner consent forms;
- (7) power of attorney forms;
- (8) settlement applications;
- (9) premium finance loan documents as specified in Insurance Code

§1111A.002(11)(B), unless exempted by §1111A.002(11-A); and

(10) any other form used by a life settlement broker or provider to effectuate a life settlement contract in this state.

(c) Submission. Licensees must submit one copy of forms as required by this section. Non-electronic filings must be submitted to the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701. A filing submitted electronically must be submitted through the System for Electronic Rate and Form

Filing. A person must hold a life settlement broker's or provider's license issued by the department, have authority to operate as a life settlement broker, or be authorized under subsection (d)(2) of this section to submit forms.

(d) Transmittal checklist requirement. The commissioner adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings (revised May 2013) to be filed with and attached to forms filed pursuant to subsection (c) of this section. The form may be obtained from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The transmittal checklist must provide complete and accurate information about the filing, be signed by a duly authorized representative or attorney of the life settlement broker or provider, and include the following information:

(1) the name and license number of the submitting life settlement broker or provider;

(2) a designated contact person for the filing, including the individual's name, address, phone number, and, if available, fax number, and email address. If the form filing is submitted by anyone other than the life settlement broker or provider, the filing must include an attachment executed by the life settlement broker or provider, or by an officer of an entity, that designates the person submitting the filing as the contact for that filing;

(3) a list of all submitted forms and an explanation of the purpose and use of each form;

(4) if applicable, a list of the form numbers and approval dates of all previously reviewed forms with which the submitted form will be used and a statement explaining when the submitted form will be used;

(5) a designation indicating the type of filing, as those types are described in subsection (h) of this section; and

(6) any applicable information, attachments, and certifications specified in this section.

(e) Specific form filing requirements. Forms filed pursuant to this section are subject to the requirements set forth in paragraphs (1)–(3) of this subsection.

(1) Any form filed pursuant to this section must:

(A) prominently display the full name, home office mailing address, and telephone number of the life settlement broker or provider;

(B) include specimen language and specimen fill-in material. A broker or provider is prohibited from including the confidential information of any policy owner in the filed form. Fill-in lines, blanks, and text boxes that are clearly titled with the information to be filled in do not require specimen language;

(C) be submitted on 8 1/2- by 11-inch paper or formatted for that size if submitted electronically. The department will not accept bound forms;

(D) be submitted in typewritten, computer-generated, or printer's proof format and be clearly legible;

(E) include a unique form number designation sufficient to distinguish it from all other forms used by the life settlement broker or provider. The

form number must be located in the lower left-hand corner of the cover page or on the first page of the form, if visible with the cover closed; and

(F) a designation indicating whether the form is filed as file and use or review and approval prior to use as those categories are described in subsection (f) of this section.

(2) A form filed under this section may contain variable language, provided the variable language is both bracketed and accompanied by a clear explanation of how the material will vary and how it will be used.

(3) The department will not accept handwritten forms or handwritten corrections.

(f) Categories for form filings.

(1) Review and approval prior to use; deemer. A life settlement broker or provider must file life settlement contract forms, disclosures, and verification of coverage forms under this paragraph with the department not less than 60 days prior to the life settlement broker's or provider's use or delivery of such form. After the submission of a filing under this subsection, the life settlement broker or provider may not use or deliver the form on or before 60 days from the date the department receives the form unless the department approves the form during the 60-day period. If the department has not approved the form by the 60th day after the date the department receives the form, the life settlement broker or provider may deem the form approved only if:

(A) the life settlement broker or provider has not requested an extension or waiver of the review period; and

(B) the department has not disapproved the form.

(2) File and use. A life settlement broker or provider may immediately use and deliver a form filed under this category in this state until the department makes a request for corrections or disapproves the form. A life settlement broker or provider may file any other form identified in subsection (b)(4) – (10) of this section under this paragraph. A filing under this category must include the information and certifications specified in subsection (i)(1) and (2) of this section. Any form that the department has previously disapproved pursuant to subsection (k) of this section is not eligible for filing under this category.

(3) Forms approved prior to the effective date of this section. Forms approved prior to the effective date of this section must comply with this subchapter six months from the effective date of this section.

(g) Extension or waiver of review period. A request for extension of time for the approval of a form must comply with paragraphs (1) – (5) of this subsection.

(1) A life settlement broker or provider may request in writing an extension to the approval period for a form for an additional period not to exceed 45 days.

(2) The department automatically grants a timely request for extension under this section on the date it receives the request.

(3) The department will only grant one extension under this section.

(4) If the department grants an extension under this section and does not affirmatively approve or disapprove the form before the extended period expires, the form is considered approved on the first day after the date the extended period expires.

(5) A life settlement broker or provider may waive the deeming of the form filings.

(h) Types of form filings. The types of life settlement contract form filings available for designation on the transmittal checklist are as follows:

(1) New form. A form that the department has not previously reviewed or approved under Insurance Code §1111A.005 and this subchapter, except for a form withdrawn by a life settlement broker or provider pursuant to paragraph (6) of this subsection.

(2) Informational form. A form submitted for informational purposes only.

(3) Substantially similar to a previously approved form. A form that is substantially similar to a form that the department reviewed or approved on or after the effective date of this subchapter. This type of form filing requires the information and certification specified in subsection (i)(1), (2), and (4) of this section.

(4) Exact copy. A form that, except for the life settlement broker's or provider's name, address, phone number, or other similar life settlement broker's or provider's identification information, is an exact copy of a form the department reviewed or approved on or after the effective date of this subchapter. This type of form filing requires the information and certifications specified in subsection (i)(1) and (4) of this section and is approved as of the date the department receives it.

(5) Substitution for a previously approved form. A form that is a substitute for a form the department previously reviewed or approved on or after the effective date of this subchapter for the same life settlement broker or provider, provided that the broker or provider has not issued or otherwise used the previously reviewed or approved form in Texas and will not use it in Texas at any time. This type of form filing requires the information and certifications specified in subsection (i)(1) and (4) of this section.

(6) Correction to a pending form. A form containing corrections to a pending form submitted subsequent to the life settlement broker or provider receiving notification of the pending form's deficiencies from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (5) of this section. The department must receive the filing no later than 30 days following the date the life settlement broker or provider receives written notification from the department of the form's deficiencies. The department will consider the originally submitted form withdrawn if it does not receive a corrected form within 30 days following the date the notification of the form's deficiencies is sent. The department will not approve or review a withdrawn form until the broker or provider refiles it as a new form filing.

(7) Resubmission of a previously disapproved form. A form containing corrections to a form subsequent to the life settlement broker or provider receiving a disapproval letter from the department. This type of form filing requires the information and certifications specified in subsection (i)(1) and (7) of this section.

(i) Certifications, attachments, and other information. A life settlement broker or provider must include in a filing the certifications, attachments, and other information referred to in this section as follows:

(1) A life settlement broker or provider, or the broker's or provider's duly authorized representative or attorney, filing any form with the department must certify on the transmittal checklist that:

(A) the filer has reviewed and is familiar with all applicable statutes and regulations of this state;

(B) the filer has reviewed the form filing; and

(C) to the best of the filer's knowledge and belief, the filed form complies in all respects with the applicable statutes and regulations of this state.

(2) A life settlement broker or provider filing a form as file and use under subsection (f)(2) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that:

(A) no corrections to the form have been requested by the department; and

(B) the form has not been previously disapproved by the department.

(3) A life settlement broker or provider filing a form as review and approval prior to use under subsection (f)(1) of this section must, in addition to providing the certification specified in paragraph (1) of this subsection, certify that it will not use the form until the department approves it. If, following the 60th day from the date the

department receives the form, the life settlement broker or provider elects to use, issue, or deliver such form prior to receiving approval from the department, the life settlement broker or provider must have provided the certifications specified in paragraphs (1) and (2) of this subsection.

(4) A life settlement broker or provider submitting a form under subsection (h)(3), (4), or (5) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number and approval date of the previously approved form, including the broker's or provider's name if different from the submitting broker or provider;

(B) a summary of the differences between the previously approved form and the submitted form, including a description of any deleted text. The submitted form must clearly identify all changes, with new or modified text underlined; and

(C) a certification that the form contains no changes other than those identified.

(5) A life settlement broker or provider submitting a form pursuant to subsection (h)(6) of this section must provide the certification specified in paragraph (1) of this subsection, in addition to the following information and certification:

(A) the form number of the pending form;

(B) the name of the department's form review specialist who reviewed the form;

(C) the date of notification of any form deficiencies;

(D) the tracking number of the pending form assigned by the department;

(E) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text. The corrected form must clearly identify all changes, with new or modified text underlined; and

(F) a certification that the form contains no changes other than those identified.

(6) A life settlement broker or provider submitting a form pursuant to subsection (h)(5) of this section must provide the certification specified in paragraph (1) of this subsection and a certification that the broker or provider has not issued or used the original version of the form in Texas and will not use it in Texas at any time.

(7) A life settlement broker or provider submitting a form pursuant to subsection (h)(7) of this section must provide:

(A) a certification specified in paragraph (1) of this subsection, as well as the information and certifications specified in paragraph (5)(B), (D), (E), and (F) of this subsection;

(B) the form number of the disapproved form; and

(C) the date of disapproval by the department.

(j) Forms not qualified for review. The department will not accept for review and will return to the life settlement broker or provider form filings that are not accompanied by a completed transmittal checklist or that do not contain all required information or certifications. No filing fees will be refunded.

(k) Disapproval or withdrawal of previous approval; request for corrections.

Form disapprovals, withdrawals of previous approvals, and requests for corrections to filed forms subject to paragraphs (1) and (2) of this subsection.

(1) The department may disapprove, withdraw previous approval, or request that a life settlement broker or provider make corrections of any form filed pursuant to this section if the form:

(A) fails to comply with any applicable statutes or regulations of this state;

(B) fails to meet any requirements of the Insurance Code, including §§1111A.011, 1111A.012, 1111A.014, and 1111A.023(b);

(C) is unreasonable or contrary to the interests of the public; or

(D) is otherwise misleading or unfair to the owner.

(2) When the department makes a request for corrections, disapproves a form, or withdraws approval of a form pursuant to this section, the department may require that the life settlement broker or provider discontinue using the form, replace the form, or any other appropriate remedy available by law.

(l) Notification of approval or disapproval. The department will provide written notification of any approval or disapproval of any form filed under this section.

(m) Additional requested information. The department may request any additional information necessary for a comprehensive review of any form in accord with the requirements in Insurance Code Chapter 1111A.

(n) Request for hearing. The life settlement broker or provider may make a written request for a hearing to the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, on receiving notification under subsection (l) of this section of any withdrawal of approval or disapproval of a form by the department.

(o) Filing fees. Applicable fees for filings made pursuant to this division are set forth in paragraphs (1)–(4) of this subsection.

(1) For filing a complete life settlement contract, including forms related to the life settlement contract, a fee of \$100.

(2) For filing life settlement contract forms individually, a fee of \$100 for each filing.

(3) For filing a resubmission of a previously disapproved life settlement contract form, a fee of \$50.

(4) For each refiling of a previously withdrawn life settlement contact form, a fee of \$50.

§3.1741. Required Form Provisions.

(a) Life settlement contracts. All contracts used to effectuate life settlements must contain the provisions set forth in paragraphs (1)–(8) of this subsection, as follows:

(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;

(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;

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

(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;

(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;

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

(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

(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.

(b) Prohibited provisions. 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.

(c) Accidental death benefits. 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.

(d) Retained ownership. 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:

(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;

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

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

(B) 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

(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.

(e) General contract requirements. All life settlement contracts, in addition to meeting the other requirements of this section, must contain:

(1) consistent terminology;

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

(3) the name of the owner and insured;

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

(5) the name of the insurance company underwriting the policy at the time of contract;

(6) the amount of the net death benefit of the policy; and

(7) signature lines for the life settlement provider and the owner.

(f) Required disclosures. All life settlement contracts, in addition to meeting the other requirements of this section, must contain the written disclosures required by Insurance Code §1111A.012 and §1111A.014 for delivery to the owner by the life settlement broker, or provider if there is no broker involved in the transaction, with each application for a life settlement contract. For purposes of Insurance Code §1111A.012(a)(8), if the amount of compensation is not known at the time of application, the method of calculation must be provided at the time of application, and the amount of compensation must be provided at the date the life settlement contract is signed by the owner.

(g) Escrow and trust. A life settlement provider that places the proceeds of the life settlement contract into an escrow or trust account must comply with the following:

(1) the escrow agent may not be any person under common control with a life settlement broker or provider;

(2) the escrow or trust agreement must contain:

(A) the name of the owner;

- (B) the number of the policy that serves as the basis for the life settlement contract;
- (C) the name of the insurance company underwriting the policy at the time of contract execution;
- (D) the name of the life settlement provider purchasing the policy;
- (E) the name, address, and telephone number of the escrow agent or trustee;
- (F) the amount of the owner's proceeds placed into the escrow or trust account;
- (G) all terms and conditions of the escrow or trust agreement;
- (H) the name and address of the financial institution holding the escrow funds into which the provider will pay the funds to the owner;
- (I) a description of the purpose of the escrow or trust account;
- (J) the circumstances that will trigger disbursement of the funds from the escrow or trust account;
- (K) the limitations concerning, or time restrictions for, the insurance company's affirmative acceptance and acknowledgement of the assignment of the policy;
- (L) if applicable, the process for required notices for communication if the owner rescinds the life settlement contract pursuant to Insurance Code §1111A.012(a)(5) or if the insurance company does not accept the policy assignment or transfer of ownership;

(M) the duties of the escrow agent or trustee;

(N) the designation of the escrow agent or trustee;

(O) the limits of liability for the escrow agent or trustee;

(P) 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

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

(h) Medical release. A medical release form must:

(1) be in writing and signed by the insured; and

(2) 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.

(i) Policy release. A policy release form must:

(1) be in writing and signed by the owner; and

(2) 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.

(j) Power of attorney. 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.

(k) Verification of coverage. 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.

(l) Owner's copies. The life settlement broker or provider must provide the owner with a copy of the life settlement contract and all materials used to effectuate the life settlement contract, including the application, a copy of the escrow or trust agreement, and any consent forms or any other document that the life settlement broker or provider required the owner or the owner's representative to sign to effectuate the life settlement contract. The life settlement contract and all other materials used to effectuate the life settlement contract must be provided at no charge to the owner.

§3.1742. Shopper's Guide. The commissioner adopts by reference the form Important Information You Should Know Before Entering Into A Life Settlement (revised April 2013), as a shopper's guide for delivery to owners during the solicitation process. The life settlement broker, or the provider if the transaction does not have a broker, must deliver the guide to the owner prior to the execution of the life settlement contract. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at

www.tdi.texas.gov/forms. The delivery of the shopper's guide satisfies only the requirements of Insurance Code §1111A.012(10), and this section.

§3.1743. Prohibited Life Settlements. A life settlement provider may not offer an owner a life settlement contract with a minimum value that is less than the cash surrender value or accelerated death benefit, if such accelerated death benefit may be claimed at the time the owner enters into the life settlement contract, of the life insurance policy payable at the time of application for a life settlement contract.

§3.1744. Advertising, Sales, and Solicitation Materials; Filing Prior to Use.

(a) Filing requirement. Each life settlement broker or provider must file with the department any advertisement or other solicitation materials used to market life settlement contracts or broker's or provider's services to owners in this state on or before the date such materials are disseminated. Advertising filings should be filed with the department at the address specified in §21.120 of this title (relating to Filing for Review).

(b) Information filing. The filings required by this section are for informational purposes only. Life settlement brokers or providers may use or disseminate the materials referenced in this section without prior review by the department.

DIVISION 4. Annual Reporting

§3.1760. Reporting Requirements.

(a) General reporting requirements applicable to all life settlement providers. All life settlement providers must comply with the general reporting requirements set forth in paragraphs (1) and (2) of this subsection.

(1) On or after January 1 and before March 1 of each year, each life settlement provider must submit electronically via email in Excel format to lifehealth@tdi.texas.gov, for the previous calendar year, the life settlement provider data report form that is adopted by reference in this section, whether or not the provider conducted any transactions during the reporting period.

(2) In complying with the requirements of this section, a life settlement provider may not include any confidential information in the report or in any other way compromise the anonymity of any owner, owner's family members, or owner's spouse.

(b) Report requirements. The commissioner adopts by reference the Life Settlement Provider Data Report form (revised March 2013), to be filed pursuant to subsection (a) of this section. The form is available from the Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701, or by accessing the department's website at www.tdi.texas.gov/forms. The report must include the following:

(1) the name and license number of the submitting life settlement provider;

(2) a designated contact person for the report, including the individual's name, address, phone number, fax number, and email address; and

(3) with respect to life settlement contracts executed in Texas for which the insured is a resident of Texas during the reporting period for a policy settled not later than the fifth anniversary of the issue date of policy, as follows:

(A) the total number of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year;

(B) the aggregate face amount of the policies settled during the immediately preceding calendar year, with the information categorized by policy issue year;

(C) the proceeds of life settlement contracts entered into during the immediately preceding calendar year, with the information categorized by policy issue year for policies issued in each of the last five years;

(D) the full name of each insurance company whose policies have been settled and the brokers that settled the policies; and

(E) the name and life settlement broker license number of any persons who estimated life expectancies for a life settlement contract.

(c) Disciplinary action. A life settlement provider that fails or refuses to submit any information required by this section is subject to disciplinary action under Insurance Code §1111A.006 in addition to any other applicable penalty.

(d) 2011 and 2012 data. Notwithstanding the requirements of subsection (a) of this section, each life settlement provider must submit a report with the information required in this section within 60 days from the effective date of this rule for data

regarding life settlement contracts entered during the period of January 1, 2011, to December 31, 2011, and January 1, 2012, to December 31, 2012, in Texas, for which the insured is a resident of Texas. A life settlement provider that has already provided complete information required in subsection (b)(3)(A)–(D) of this section by the effective date of this section meets the requirements of this subsection.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Issued at Austin, Texas, on June 21, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts new 28 TAC Chapter 3, Subchapter R, §§3.1701 – 3.1703, 3.1720 – 3.1730, 3.1740 – 3.1744, and 3.1760.



Julia Rathgeber
Commissioner of Insurance

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Adopted Sections

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