



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland

Secretary of State

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May 28, 2008

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of the Insurance Commissioner

RULE: New Rule, 114CSR80, Viatical Settlements

DATE FILED AS AN EMERGENCY RULE: May 16, 2008

DECISION NO. 1-08

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


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Secretary of State

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EMERGENCY RULE DECISION
(ERD 1-08)

AGENCY: Office of the Insurance Commissioner
RULE: New Rule, 114CSR80, Viatical Settlements
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- par. 1 The Insurance Commissioner (Commissioner) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State May 16, 2008 and with the LRMRC May 16, 2008.
- par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §33-13C-3(b) reads:

(b) Application for a viatical settlement provider or viatical settlement broker license and for renewals of such licenses shall be made in the manner prescribed by the commissioner and shall be accompanied by fees established in legislative rules, including emergency rules, promulgated by the commissioner
- par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commissioner are as follows:

SB 704, effective May 29, 2008, mandates for the first time that brokers and providers involved in the life settlement or viatical business be licensed by the Insurance Commissioner; this emergency rule regulates companies and individuals operating in the business. This rule is based on a model regulation adopted by the National Association of Insurance Commissioners in 2004. This rule

- establishes licensing requirements for viatical settlement providers and brokers to submit to the Insurance Commissioner before a license can be obtained
- provides the standards of reasonable payments to terminally or chronically ill insureds, requires that payouts be based on life expectancy and sets forth factors the Commissioner shall consider to determine whether a payment is unreasonable or unjust
- lists the reporting requirements a viatical provider or viatical settlement broker must submit annually to the Insurance Commission about viatical settlements entered into for the past year; such a report is required for contracts entered into with all residents of this state and for those who were residents at the time the contract was signed. Additional requirements are required in the event the viator has become deceased during the reporting period.
- provides requirements regarding payments of viatical settlements as well as payments to a broker.
- provides the provisions required to be in a contract for a viatical settlement
- prohibits any type of discrimination in making or soliciting settlements or between viators with or without dependents
- provides a protection to insureds in the life insurance industry on these types of contracts. To delay the protections born by rule would be detrimental to the public's interest.

The Commissioner's adoption of this emergency rule has been in a timely manner. Because the statute passed by the Legislature of West Virginia requires rules to be

promulgated and the statute goes into effect before a legislative rule can be approved, it must be adopted as an emergency rule to be effective for June 1, 2008.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 1-08 or ERD 1-08 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
Secretary of State

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SECRETARY OF STATE

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