



Betty Ireland
Secretary of State

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

2008 JUN 26 PM 1:32

SECRETARY OF STATE
STATE OF WEST VIRGINIA

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 AMENDMENT: June 13, 2008

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 16, 2008

DECISION NO. 4-08

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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EMERGENCY RULE DECISION
(ERD 4-08)

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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 amendment with supporting documents with the Secretary of State June 13, 2008 and with the LRMRC June 13, 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:

The emergency rule regulates companies operating in the business of viatical settlements. This rule as adopted by the National Association of Insurance Commissioners as a model regulation in 2004. The rule establishes standards that are to be followed by viatical settlement companies conducting business in this state. The emergency amendment is to correct and change language found in emergency rule 114CSR80 filed on May 16, 2008. The language, found at 114CSR80 §3.1 and 114CSR80 §4.1 was placed in the emergency rule to allow for a period of time prior to the licensing requirement deadline for Viatical Settlement Providers and Insurance Commission to process applications for licensure. The current language suggests Viatical Settlement Providers and Viatical Settlement Brokers must currently have a license & implies that after June 28, 2008 a Viatical Settlement Provider and Viatical Settlement Broker may operate without a license. This is not the intended purpose of these subsections. The intent was to give a grace period to Viatical Settlement Providers and Viatical Settlement Brokers to comply with the licensing requirement deadline and that after the grace period, Viatical Settlement Providers & Viatical Settlement Brokers would not be permitted to operate in this state without first obtaining a license from the Insurance Commission. the date of June 28, 2008 is also being changed to August 1, 2008 to provide more time to Viatical Settlement Providers & Viatical Settlement Brokers to pull together all of the required application information. This extension of time will also give the Insurance Commission more time to process the required application information & issue licenses.

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 4-08 or ERD 4-08 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.


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STATE OF NEW YORK
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