



Consumer Alert

for Residents of British Columbia

Financial Institutions Commission

Including:

Credit Union Deposit
Insurance Corporation

Superintendent of Real
Estate

Registrar of Mortgage
Brokers

Subject: **VIATICAL SETTLEMENTS**

Date: April 10, 2002

"Viatical settlement" is a term that is being heard more and more often among those who hold life insurance policies on the life of a person who suffers from a terminal illness and those who deal in certain kinds of investments.

A viatical settlement is an arrangement between the holder of an existing life insurance policy (the viator) and a third party who is prepared to purchase the benefits payable under that policy. That arrangement is feasible only where the person whose life is insured by that policy has a very limited life expectancy. Terminal illness is the usual situation that gives rise to a viatical settlement. The process of arranging a viatical settlement is known as "viatication".

A viatical settlement company may offer to buy such a life insurance policy from the existing holder for a lump sum cash payment that is a percentage of the benefits that would eventually be paid under the policy. That percentage will depend on the remaining life expectancy of the person on whose life the policy was written. The viator (the original owner of the policy) can then receive needed money before the insured person dies. The viatical settlement company acquires an investment that can be sold to another party, and which will generate a profit when the insured person dies and the insurance company pays the benefits due under the policy.

For example: a viatical settlement company might pay 60% of the expected death benefits under the policy where the life insured is expected to live less than two years. 80% might be paid where the person insured has less than six months to live. When a life insurance policy is viaticated, the buyer of the policy becomes the policy beneficiary, usually pays any premiums required while the person insured remains alive, and collects the death benefits when that person dies.

Viatical settlement companies are not permitted to arrange the purchase of life insurance policies in British Columbia. (See FICOM's [Information Bulletin INS-00-001](#)) Only insurance companies or their authorized agents are permitted to carry on that activity. Most Canadian provinces have similar prohibitions in their legislation. However, many American states and other countries permit people other than insurance companies to arrange viatication of insurance policies. Some of those have set up licensing requirements aimed at controlling the abuses of the process that have occurred in some places.

Viatical settlement companies will often raise cash to buy these policies by soliciting investors to buy an interest in the life insurance policies the company has acquired. There is no current prohibition in British Columbia against the sale of interests in life insurance policies that were acquired by a viatical settlement company in another country. High rates of return are often offered to offset the need to pay premiums before maturity and the uncertainty as to when the policy will mature.

If you are considering the purchase of an investment based on viatical settlements, bear in mind the following:

- Be skeptical. Any investment in viatical settlements is complex and can involve substantial risk. Make sure that you understand the complexities and how they match with your investment needs. Seek the advice of appropriate experts, such as a lawyer, financial planner, or accountant.
- Some viatical settlement companies solicit sales of partial interests in a pool of insurance policies instead of in individual policies. Some of these schemes may require clearance under the *Securities Act*. In these cases, the safety of the investment can depend as much on the honesty and financial health of the viatical settlement company as it does on payment of the benefits under the policies it has purchased and pooled. There are no industry protection funds that will repay the investment if the viatical settlement company collapses.
- Make sure that you understand who is responsible for payment of premiums on the policy while the insured person remains alive.
- When investing in viatical settlements, you are relying on the honesty and expertise of several parties who may not be subject to regulation or review by any government agency. The insurance company that issued the policy will not pay any benefits under that policy if the premiums are not paid on time, or if the insurance company finds that the policy was issued on the basis of a misrepresentation. "Clean-sheeting" is a name given to the practice of inducing an insurance company to issue a policy to someone with serious health problems by concealing those problems. This practice has been used

by a few viatical settlement companies in other countries, and can result in the total loss of the investment made by the purchaser of the viatical settlement. You should therefore take care to ensure that the viatical settlement company has a clean track record and that there is no reason to suspect that the policies involved were arranged with the intent of viaticating them.

- It is not possible to predict accurately when the policy will mature, because that depends entirely on how long the insured person continues to live. The investment yield depends heavily on the term to maturity. Advances in medical science sometimes result in life expectancies far beyond those originally predicted, resulting in lengthy delays in recouping investments in viatical settlements. You should obtain any statements concerning maturity dates and investment returns in writing, and review them very carefully with the help of expert advisors.

If you are considering the sale of an insurance policy that you hold, be sure that you are fully aware of all of the consequences of parting with your interest in that policy, including the impact on the present beneficiaries and family members. Be sure that you are dealing with reliable parties, and that you get independent expert advice from a qualified source, such as a financial planner, accountant, or lawyer.

Instead of viaticating your policy, you might consider reviewing the contract for any provision for accelerated benefits (*i.e.*, payment of an advance against the benefits that will eventually be paid under the policy). If there are no contractual provisions for accelerated benefits, you might consider contacting the insurance company that issued the policy to see if it would be willing to make special arrangements in the light of your particular circumstances.

If you must viaticate your policy, you will likely have to make a private arrangement because a viatical settlement company would not be permitted to buy your policy from you in British Columbia.

Further information can be obtained from:

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