

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 75

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO LIFE SETTLEMENTS; AMENDING CHAPTER 19, TITLE 41, IDAHO
 2 CODE, BY THE ADDITION OF NEW SECTIONS 41-1950 THROUGH 41-1965,
 3 IDAHO CODE, TO PROVIDE A SHORT TITLE AND SCOPE, TO DEFINE TERMS,
 4 TO REQUIRE LICENSURE, TO MANDATE THE FILING OF CONTRACTS AND
 5 DISCLOSURE STATEMENTS, TO DESCRIBE REPORTING REQUIREMENTS
 6 AND TO PROTECT PRIVACY, TO PROVIDE FOR THE EXAMINATION OF
 7 LICENSEES, TO PROVIDE FOR RECORDKEEPING REQUIREMENTS, TO
 8 SPECIFY DISCLOSURES TO BE MADE TO THE OWNER UPON APPLICATION,
 9 TO SPECIFY REQUIRED DISCLOSURES, TO REQUIRE CERTAIN NOTICES,
 10 TO SET FORTH GENERAL RULES GOVERNING THE TRANSACTION OF
 11 LIFE SETTLEMENTS, TO DESCRIBE PERMISSIBLE LIFE SETTLEMENTS
 12 AND RELATED DOCUMENTATION REQUIREMENTS, TO PROHIBIT CERTAIN
 13 PRACTICES AND CONFLICTS OF INTEREST, TO PROHIBIT MISLEADING
 14 ADVERTISING, TO PROVIDE PENALTIES, TO AUTHORIZE RULEMAKING AND
 15 TO PROVIDE FOR SEVERABILITY.
 16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Chapter 19, Title 41, Idaho Code, be, and the same is hereby amended
 19 by the addition thereto of NEW SECTIONS, to be known and designated as Sections 41-1950
 20 through 41-1965, Idaho Code, and to read as follows:

21 41-1950. SHORT TITLE AND SCOPE. (1) Sections 41-1950 through 41-1965, Idaho
 22 Code, may be cited as the "Life Settlements Act."

23 (2) Nothing contained herein is intended to abrogate or conflict with the Idaho uniform
 24 securities act contained in chapter 14, title 30, Idaho Code, or supersede the duty of persons
 25 to comply with that or any other applicable law. Given the combined interest and regulation
 26 of life settlements by the department and the department of finance, the director and the
 27 director of the department of finance should cooperate in the exercise of discretionary acts and
 28 enforcement of the applicable laws within their respective authority and responsibility.

29 (3) Unless clearly inapplicable, other provisions and chapters of title 41, Idaho Code,
 30 apply to licensees and persons subject to sections 41-1950 through 41-1965, Idaho Code,
 31 including, but not limited to, chapters 1 through 5, 10, 13, 18 and 19, title 41, Idaho Code.
 32 Specifically, section 41-220, Idaho Code, applies to licensees under sections 41-1950 through
 33 41-1965, Idaho Code.

34 41-1951. DEFINITIONS. In sections 41-1950 through 41-1965, Idaho Code:

35 (1) "Advertising" means any written, electronic or printed communication or any
 36 communication by means of recorded telephone messages or transmitted on radio, television,
 37 the internet or similar communications media, including film strips, motion pictures and videos,
 38 published, disseminated, circulated or placed directly before the public, in this state, for the

1 purpose of creating an interest in or inducing a person to sell, assign, devise, bequest or transfer
2 the death benefit or ownership of a life insurance policy pursuant to a life settlement contract.

3 (2) "Business of life settlements" means an activity involved in, but not limited to, the
4 offering to enter into, soliciting, negotiating, procuring or effectuating a life settlement contract.
5 The transaction of the business of life settlements is within the scope of the transaction of the
6 business of insurance as provided in section 41-112, Idaho Code.

7 (3) "Chronically ill" means:

8 (a) Being unable to perform at least two (2) activities of daily living such as eating,
9 toileting, transferring, bathing, dressing or continence; or

10 (b) Requiring substantial supervision to protect the individual from threats to health and
11 safety due to severe cognitive impairment.

12 (4) "Financing entity" means an underwriter, placement agent, lender, purchaser of
13 securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer
14 or any entity that has a direct ownership in a policy or certificate that is the subject of a life
15 settlement contract, but:

16 (a) Whose principal activity related to the transaction is providing funds to effect the life
17 settlement or purchase of one (1) or more settled policies; and

18 (b) Who has an agreement in writing with one (1) or more licensed life settlement
19 providers to finance the acquisition of life settlement contracts.

20 "Financing entity" does not include a nonaccredited investor. An "accredited investor" is
21 defined by rule 501 of regulation D, 17 CFR 230.501(a).

22 (5) "Life insurance producer" means any person licensed in this state as a resident or
23 nonresident insurance producer who has received qualification or authority for life insurance
24 coverage or a life line of coverage pursuant to section 41-1008, Idaho Code.

25 (6) "Life settlement broker" or "broker" means a person who, working exclusively
26 on behalf of an owner and for a fee, commission or other valuable consideration, offers or
27 attempts to negotiate life settlement contracts between an owner and one (1) or more life
28 settlement providers or one (1) or more life settlement brokers. Notwithstanding the manner
29 in which the life settlement broker is compensated, a life settlement broker is deemed to
30 represent only the owner, and not the insurer or the life settlement provider, and owes a
31 fiduciary duty to the owner to act according to the owner's instructions and in the best interest
32 of the owner. Nothing in this definition reduces or impairs the scope of the definitions in
33 section 30-14-102, Idaho Code, including, but not limited to, agent, broker-dealer, investment
34 adviser, and investment adviser representative. The term does not include an attorney, certified
35 public accountant or a financial planner accredited by a nationally recognized accreditation
36 agency, who is retained to represent the owner and whose compensation is not paid directly or
37 indirectly by the life settlement provider or purchaser.

38 (7) "Life settlement contract" means an agreement between an owner and a life
39 settlement provider or any affiliate, as that term is defined in section 41-3801(1), Idaho Code,
40 of the life settlement provider establishing the terms under which compensation or anything of
41 value is or will be paid, which compensation or value is less than the expected death benefits of
42 the policy, in return for the owner's present or future assignment, transfer, sale, hypothecation,
43 devise or bequest of the death benefit or ownership of any portion of the insurance policy or
44 certificate of insurance. Nothing in this definition reduces or impairs the scope of the definition
45 of security contained in section 30-14-102(28), Idaho Code.

1 (a) "Life settlement contract" includes a premium finance loan made for a life insurance
2 policy on or before the date of issuance of the policy where one (1) or more of the
3 following conditions apply:

4 (i) The loan proceeds are not used solely to pay premiums for the policy and any
5 costs or expenses incurred by the lender or the borrower in connection with the
6 financing;

7 (ii) The owner or the insured receives on the date of the premium finance loan a
8 guarantee of a future life settlement value of the policy; or

9 (iii) The owner or the insured agrees on the date of the premium finance loan
10 to sell the policy or any portion of its death benefit on any date following the
11 issuance of the policy.

12 (b) "Life settlement contract" includes the transfer, for compensation or value, of
13 ownership or beneficial interest in a trust or other entity that owns such policy if the trust
14 or other person was formed or availed of for the principal purpose of acquiring one (1)
15 or more life insurance policies which life insurance contract insures the life of a person
16 residing in this state.

17 (c) "Life settlement contract" does not include any of the following:

18 (i) A policy loan or accelerated death benefit made by the insurer pursuant to the
19 policy's terms;

20 (ii) A loan, the proceeds of which are used solely to pay:

21 (A) Premiums for the policy; and

22 (B) The costs of the loan, including, without limitation, interest,
23 arrangement fees, utilization fees and similar fees, closing costs, legal fees
24 and expenses, trustee fees and expenses, and third party collateral provider
25 fees and expenses, including fees payable to letter of credit issuers;

26 (iii) A loan made by a bank or other licensed financial institution in which the
27 lender takes an interest in a life insurance policy solely to secure repayment of a
28 loan or, if there is a default on the loan and the policy is transferred, the transfer
29 of such a policy by the lender, provided that neither the default itself nor the
30 transfer of the policy in connection with the default is pursuant to an agreement or
31 understanding with any other person for the purpose of evading regulation under
32 sections 41-1950 through 41-1965, Idaho Code;

33 (iv) A loan made by a lender that does not violate the Idaho consumer credit
34 code, provided that the premium finance loan is not described in paragraph (a) of
35 this subsection;

36 (v) An agreement where all the parties are closely related to the insured by
37 blood or law or have a lawful substantial economic interest in the continued life,
38 health and bodily safety of the person insured, or are trusts established primarily
39 for the benefit of such parties;

40 (vi) Any designation, consent or agreement by an insured who is an employee of
41 an employer in connection with the purchase by the employer, or trust established
42 by the employer, of life insurance on the life of the employee;

43 (vii) A bona fide business succession planning arrangement:

44 (A) Between one (1) or more shareholders in a corporation or between
45 a corporation and one (1) or more of its shareholders or one (1) or more
46 trusts established by its shareholders;

1 (B) Between one (1) or more partners in a partnership or between a
 2 partnership and one (1) or more of its partners or one (1) or more trusts
 3 established by its partners; or

4 (C) Between one (1) or more members in a limited liability company or
 5 between a limited liability company and one (1) or more of its members or
 6 one (1) or more trusts established by its members;

7 (viii) An agreement entered into by a service recipient, or a trust established by
 8 the service recipient, and a service provider, or a trust established by the service
 9 provider, who performs significant services for the service recipient's trade or
 10 business; or

11 (ix) Any other contract, transaction or arrangement exempted from the definition
 12 of life settlement contract by the director based on a determination that the
 13 contract, transaction or arrangement is not of the type intended to be regulated by
 14 sections 41-1950 through 41-1965, Idaho Code.

15 (8) "Life settlement provider" or "provider" means a person, other than an owner, who
 16 enters into or effectuates a life settlement contract with an owner resident in this state. Nothing
 17 in this definition reduces or impairs the scope of the definitions of section 30-14-102, Idaho
 18 Code, including, but not limited to, agent, broker-dealer, investment adviser, and investment
 19 adviser representative. "Life settlement provider" does not include:

20 (a) A bank, savings bank, savings and loan association, credit union or other licensed
 21 lending institution that takes an assignment of a life insurance policy solely as collateral
 22 for a loan;

23 (b) A premium finance company making premium finance loans that takes an assignment
 24 of a life insurance policy solely as collateral for a loan;

25 (c) The insurer of the life insurance policy;

26 (d) An authorized or eligible insurer that provides stop loss coverage or financial
 27 guaranty insurance to a life settlement provider, purchaser, financing entity, special
 28 purpose entity or related provider trust;

29 (e) A financing entity;

30 (f) A special purpose entity;

31 (g) A related provider trust; or

32 (h) Any other person that the director determines is not the type of person intended to be
 33 covered by the definition of life settlement provider.

34 (9) "Owner" means the owner of a life insurance policy or a certificate holder under
 35 a group policy who resides in this state and enters or seeks to enter into a life settlement
 36 contract. For the purposes of sections 41-1950 through 41-1965, Idaho Code, an owner shall
 37 not be limited to an owner of a life insurance policy or a certificate holder under a group policy
 38 insuring the life of an individual with a terminal or chronic illness or condition except where
 39 specifically addressed.

40 (a) If there is more than one (1) owner on a single policy and the owners are residents
 41 of different states, the transaction shall be governed by the law of the state in which
 42 the owner having the largest percentage ownership resides or, if the owners hold equal
 43 ownership, the state of residence of one (1) owner agreed upon in writing by all the
 44 owners.

45 (b) "Owner" does not include:

1 (i) A licensee under sections 41-1950 through 41-1965, Idaho Code, including
2 a life insurance producer acting as a life settlement broker pursuant to sections
3 41-1950 through 41-1965, Idaho Code;

4 (ii) Qualified institutional buyer as defined, respectively, in rule 144A, 17 CFR
5 230.144A, promulgated under the federal securities act of 1933, 15 USC section
6 77a et seq., as amended;

7 (iii) A financing entity;

8 (iv) A special purpose entity; or

9 (v) A related provider trust.

10 (10) "Policy" means an individual or group policy, group certificate, contract or
11 arrangement of life insurance owned by a resident of this state, regardless of whether delivered
12 or issued for delivery in this state.

13 (11) "Premium finance loan" means a loan made primarily for the purpose of making
14 premium payments on a life insurance policy, which loan is secured by an interest in such life
15 insurance policy.

16 (12) "Related provider trust" means a titling trust or other trust established by a licensed
17 life settlement provider or a financing entity for the sole purpose of holding the ownership
18 or beneficial interest in purchased policies in connection with a financing transaction. The
19 trust shall have a written agreement with the licensed life settlement provider under which the
20 licensed life settlement provider is responsible for ensuring compliance with all statutory and
21 regulatory requirements and under which the trust agrees to make all records and files related to
22 life settlement transactions available to the director as if those records and files were maintained
23 directly by the licensed life settlement provider.

24 (13) "Settled policy" means a life insurance policy or certificate that has been acquired by
25 a life settlement provider pursuant to a life settlement contract.

26 (14) "Special purpose entity" means a corporation, partnership, trust, limited liability
27 company or other similar entity formed solely to provide either directly or indirectly access
28 to institutional capital markets:

29 (a) For a financing entity or licensed life settlement provider;

30 (b) In connection with a transaction in which the securities in the special purposes entity
31 are acquired by the owner or by "qualified institutional buyers" as defined in rule 144 of
32 the federal securities act of 1933, as amended; or

33 (c) In connection with a transaction in which the securities pay a fixed rate of return
34 commensurate with established asset-backed institutional capital markets.

35 (15) "Stranger-originated life insurance" or "STOLI" means an act, plan, practice, or
36 arrangement to initiate a life insurance policy for the benefit of a third party investor who,
37 at the time of policy origination, has no insurable interest in the insured. STOLI practices
38 include, but are not limited to, cases in which life insurance is purchased with resources or
39 guarantees from or through a person, who, at the time of policy inception, could not lawfully
40 initiate the policy himself or itself, and where, at the time of inception, there is an arrangement
41 or agreement, whether oral or written, to directly or indirectly transfer the ownership of the
42 policy or the policy benefits to a third party. Trusts that are created to give the appearance
43 of an insurable interest and are used to initiate policies for investors violate insurable interest
44 laws and the prohibition against wagering on life. STOLI arrangements do not include those
45 practices set forth in subsection (7)(c) of this section.

1 (16) "Terminally ill" means having an illness or sickness that can reasonably be expected
2 to result in death within twenty-four (24) months or less.

3 41-1952. LICENSE REQUIREMENT. (1) A person shall not act as a life settlement
4 provider or life settlement broker where the owner of the life insurance policy is a resident of
5 this state without first obtaining a license from the director as a life insurance producer under
6 chapter 10, title 41, Idaho Code, and complying with the additional requirements set forth in
7 sections 41-1950 through 41-1965, Idaho Code.

8 (2) Not later than ten (10) days from the first day of operating as a life settlement
9 broker or provider, and thereafter upon renewal of the life insurance producer license, the life
10 insurance producer shall notify the director that he or she is acting as a life settlement broker or
11 provider on a form prescribed by the director, and shall pay any applicable fee to be determined
12 by the director specified by rule pursuant to section 41-401, Idaho Code. Notification shall
13 include an acknowledgment by the life insurance producer that he or she will operate as a life
14 settlement broker in accordance with sections 41-1950 through 41-1965, Idaho Code.

15 (3) The insurer that issued the policy being settled shall not be responsible for any
16 act or omission of a life settlement broker or life settlement provider arising out of or in
17 connection with the life settlement transaction, unless the insurer receives compensation for
18 the placement of a life settlement contract from the life settlement provider or life settlement
19 broker in connection with the life settlement contract.

20 41-1953. FILING OF LIFE SETTLEMENT CONTRACTS AND DISCLOSURE
21 STATEMENTS. A person shall not use a life settlement contract form or provide to an owner
22 a disclosure statement form in this state unless first filed with the director accompanied by a
23 certification that the form is in compliance with sections 41-1950 through 41-1965, Idaho Code.
24 The director may disapprove a life settlement contract form or disclosure statement form if, in
25 the director's opinion, the contract or provisions contained therein fail to meet the requirements
26 of sections 41-1950 through 41-1965, Idaho Code, or are unreasonable, contrary to the interests
27 of the public, or otherwise misleading or unfair to the owner. At the director's discretion, the
28 director may require the submission of advertising material.

29 41-1954. REPORTING REQUIREMENTS AND PRIVACY. (1) Each life settlement
30 provider shall file with the director, on or before March 1 of each year, an annual statement
31 containing such information on a form prescribed by the director or as prescribed by rule. Such
32 information shall be limited to only those transactions where the owner is a resident of this
33 state.

34 (2) Except as otherwise allowed or required by law, a life settlement provider, life
35 settlement broker, insurance company, insurance producer, information bureau, rating agency or
36 company, or any other person with actual knowledge of an insured's identity, shall not disclose
37 that identity as an insured, or the insured's financial or medical information to any other person
38 unless the disclosure is:

39 (a) Necessary to effect a life settlement between the owner and a life settlement provider
40 and the owner and insured have provided prior written consent to the disclosure;

41 (b) Provided in response to an investigation or examination by the director or any other
42 governmental officer or agency;

43 (c) A term of or condition to the transfer of a policy by one (1) life settlement provider
44 to another life settlement provider;

- 1 (d) Necessary to permit a financing entity, related provider trust or special purpose entity
 2 to finance the purchase of policies by a life settlement provider and the owner and insured
 3 have provided prior written consent to the disclosure;
 4 (e) Necessary to allow the life settlement provider or life settlement broker or their
 5 authorized representatives to make contacts for the purpose of determining health status;
 6 (f) Required to purchase stop loss coverage or financial guaranty insurance; or
 7 (g) Permitted by any other provision of applicable law.

8 41-1955. EXAMINATION AND RECORDS. (1) A person required to be licensed by
 9 sections 41-1950 through 41-1965, Idaho Code, is subject to examination as authorized in
 10 chapter 2, title 41, Idaho Code, and shall for five (5) years retain copies of all:

- 11 (a) Proposed, offered and executed contracts, purchase agreements, underwriting
 12 documents, policy forms, executed disclosure statements and applications from the date of
 13 the proposal, offer or execution of the contract or purchase agreement, whichever is later;
 14 (b) All checks, drafts or other evidence and documentation related to the payment,
 15 transfer, deposit or release of funds from the date of the transaction; and
 16 (c) All other records and documents related to the requirements of sections 41-1950
 17 through 41-1965, Idaho Code.

18 (2) The provisions of this section does not relieve a person of the obligation to produce
 19 these documents to the director after the retention period has expired if the person has retained
 20 the documents.

21 (3) Records required to be retained by this section must be legible and complete and
 22 in accordance with section 28-50-107, Idaho Code, and may be retained in paper, photograph,
 23 microprocess, magnetic, mechanical, or electronic media, or by any process that accurately
 24 reproduces or forms a durable medium for the reproduction of a record.

25 41-1956. DISCLOSURE TO OWNER UPON APPLICATION. With each application
 26 for a life settlement contract, a life settlement provider or life settlement broker shall provide
 27 the owner with at least the following disclosures no later than the time the application for the
 28 life settlement contract is signed by all parties. The disclosures shall be provided in a separate
 29 document that is signed by the owner and the life settlement provider or life settlement broker,
 30 and shall provide the following information:

31 (1) There are possible alternatives to life settlement contracts including any accelerated
 32 death benefits or policy loans offered under the owner's life insurance policy.

33 (2) That a life settlement broker represents exclusively the owner, and not the insurer or
 34 the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act
 35 according to the owner's instructions and in the best interest of the owner.

36 (3) Some or all of the proceeds of the life settlement may be taxable under federal and
 37 state law, and assistance should be sought from a professional tax advisor.

38 (4) Proceeds of the life settlement could be subject to the claims of creditors.

39 (5) Receipt of the proceeds of a life settlement may adversely affect the owner's
 40 eligibility for medicaid or other government benefits or entitlements, and advice should be
 41 obtained from the appropriate government agencies.

42 (6) The owner has the right to rescind a life settlement contract within twenty (20) days
 43 of the date it is executed by all parties. Rescission, if exercised by the owner, is effective only
 44 if both notice of the rescission is given, and the owner repays all proceeds and any premiums,

1 loans and loan interest paid on account of the life settlement contract within the rescission
2 period. If the insured dies during the rescission period, the life settlement contract shall be
3 deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all
4 life settlement proceeds and any premiums, loans and loan interest.

5 (7) Funds will be sent to the owner within three (3) business days after the life settlement
6 provider has received the insurer or group administrator's written acknowledgment that
7 ownership of the policy or interest in the certificate has been transferred and the beneficiary has
8 been designated.

9 (8) Entering into a life settlement contract may cause other rights or benefits, including
10 conversion rights and waiver of premium benefits that may exist under the policy or certificate,
11 to be forfeited by the owner. Assistance should be sought from a financial adviser.

12 (9) Disclosure to an owner shall include distribution of a brochure describing the process
13 of life settlements. The national association of insurance commissioners (NAIC) form for the
14 brochure shall be used unless another form is developed or approved by the director.

15 (10) The disclosure document shall contain the following language: "All medical,
16 financial or personal information solicited or obtained by a life settlement provider or life
17 settlement broker about an insured, including the insured's identity or the identity of family
18 members, a spouse or a significant other may be disclosed as necessary to effect the life
19 settlement between the owner and the life settlement provider. If you are asked to provide this
20 information, you will be asked to consent to the disclosure. The information may be provided
21 to someone who buys the policy or provides funds for the purchase. You may be asked to
22 renew your permission to share information every two (2) years."

23 (11) Following execution of a life settlement contract, the insured may be contacted for
24 the purpose of determining the insured's health status and to confirm the insured's residential
25 or business street address and telephone number, or as otherwise provided in sections 41-1950
26 through 41-1965, Idaho Code. This contact shall be limited to once every three (3) months
27 if the insured has a life expectancy of more than one (1) year, and no more than once per
28 month if the insured has a life expectancy of one (1) year or less. All such contacts shall be
29 made only by a life settlement provider licensed in the state in which the owner resided at the
30 time of the life settlement, or by the authorized representative of a duly licensed life settlement
31 provider.

32 41-1957. DISCLOSURE TO OWNER BY PROVIDER UPON SETTLEMENT
33 CONTRACT. A life settlement provider shall provide the owner with at least the following
34 disclosures prior to the time the owner signs the life settlement contract. The disclosures shall
35 be conspicuously displayed in the life settlement contract or in a separate document signed by
36 the owner and shall provide the following information:

37 (1) The affiliation, if any, between the life settlement provider and the issuer of the
38 insurance policy to be settled;

39 (2) The name, business address and telephone number of the life settlement provider;

40 (3) If an insurance policy to be settled has been issued as a joint policy or involves
41 family riders or any coverage of a life other than the insured under the policy to be settled, the
42 possible loss of coverage on the other lives under the policy and shall be advised to consult
43 with his or her insurance producer or the insurer issuing the policy for advice on the proposed
44 life settlement;

1 (4) The dollar amount of the current death benefit payable under the policy or certificate.
 2 If known, the life settlement provider shall also disclose the availability of any additional
 3 guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment
 4 benefits under the policy or certificate and the extent to which the owner's interest in those
 5 benefits will be transferred as a result of the life settlement contract; and

6 (5) The name, business address and telephone number of the independent third party
 7 escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow
 8 or trust agreements or documents.

9 41-1958. DISCLOSURE TO OWNER BY BROKER UPON SETTLEMENT
 10 CONTRACT. A life settlement broker shall provide the owner with at least the following
 11 disclosures prior to the time the owner signs the life settlement contract. The disclosures shall
 12 be conspicuously displayed in the life settlement contract or in a separate document signed by
 13 the owner and provide the following information:

14 (1) The name, business address and telephone number of the life settlement broker;

15 (2) A full, complete and accurate description of all offers, counteroffers, acceptances and
 16 rejections relating to the proposed life settlement contract;

17 (3) A written disclosure of any affiliations or contractual arrangements between the
 18 life settlement broker and any person making an offer in connection with the proposed life
 19 settlement contracts;

20 (4) The amount and method of calculating the broker's compensation, which term
 21 "compensation" includes anything of value to be paid or given to a life settlement broker for
 22 the placement of a policy; and

23 (5) Where any portion of the life settlement broker's compensation is taken from a
 24 proposed life settlement offer, the total amount of the life settlement offer and the percentage of
 25 the life settlement offer comprised by the life settlement broker's compensation.

26 41-1959. NOTICE OF CHANGE BY PROVIDER. If the life settlement provider
 27 transfers ownership or changes the beneficiary of the insurance policy, the provider shall
 28 communicate in writing the change in ownership or beneficiary to the insured within twenty
 29 (20) days after the change.

30 41-1960. GENERAL RULES. (1) A life settlement provider entering into a life
 31 settlement contract shall first obtain:

32 (a) If the owner is the insured, a written statement from a licensed attending physician
 33 that the owner is of sound mind and under no constraint or undue influence to enter into a
 34 life settlement contract; and

35 (b) A document in which the insured consents to the release of his or her medical records
 36 to a licensed life settlement provider, life settlement broker and the insurance company
 37 that issued the life insurance policy covering the life of the insured.

38 (2) Within twenty (20) days after an owner executes documents necessary to transfer any
 39 rights under an insurance policy or within twenty (20) days of entering any agreement, option,
 40 promise or any other form of understanding, expressed or implied, to settle the policy, the life
 41 settlement provider shall give written notice to the insurer that issued that insurance policy
 42 that the policy has or will become a settled policy. The notice shall be accompanied by the
 43 documents required by subsection (3) of this section.

44 (3) The life settlement provider shall deliver:

- 1 (a) A copy of the medical release required under subsection (1)(b) of this section;
2 (b) A copy of the owner's application for the life settlement contract;
3 (c) The notice required under subsection (2) of this section; and
4 (d) A request for verification of coverage to the insurer that issued the life policy that is
5 the subject of the life transaction. The NAIC's form for verification of coverage shall be
6 used unless another form is developed and approved by the director.

7 (4) The insurer shall respond to a request for verification of coverage submitted on an
8 approved form by a life settlement provider or life settlement broker within thirty (30) calendar
9 days of the date the request is received and shall indicate whether, based on the medical
10 evidence and documents provided, the insurer intends to pursue an investigation at that time
11 regarding the validity of the insurance contract or possible fraud. The insurer shall accept a
12 request for verification of coverage made on an NAIC form or any other form approved by the
13 director. The insurer shall accept an original or facsimile or electronic copy of such request
14 and any accompanying authorization signed by the owner. Failure by the insurer to meet its
15 obligations under this subsection shall be a violation of section 41-1964, Idaho Code.

16 (5) Prior to or at the time of execution of the life settlement contract, the life settlement
17 provider shall obtain a witnessed document in which the owner consents to the life settlement
18 contract, represents that the owner has a full and complete understanding of the life settlement
19 contract, that he or she has a full and complete understanding of the benefits of the life
20 insurance policy, acknowledges that he or she is entering into the life settlement contract freely
21 and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges
22 that the insured has a terminal or chronic illness and that the terminal or chronic illness or
23 condition was diagnosed after the life insurance policy was issued.

24 (6) If a life settlement broker performs these activities required of the life settlement
25 provider, the provider is deemed to have fulfilled the requirements of this section.

26 (7) All medical information solicited or obtained by any licensee shall be subject to the
27 applicable provisions of state and federal law relating to confidentiality of medical information.

28 (8) All life settlement contracts entered into in this state, or covering a resident of this
29 state as owner, shall provide the owner with an absolute right to rescind the contract within
30 twenty (20) calendar days of the date upon which the life settlement contract is executed
31 by all parties. Rescission by the owner is conditioned upon the owner both giving notice
32 and repaying to the life settlement provider within the rescission period all proceeds of
33 the settlement and any premiums, loans and loan interest paid by or on behalf of the life
34 settlement provider in connection with or as a consequence of the life settlement. If the
35 insured dies during the rescission period, the life settlement contract shall be deemed to have
36 been rescinded, subject to repayment to the life settlement provider or other person of all life
37 settlement proceeds, and any premiums, loans and loan interest that have been paid by the
38 life settlement provider or other person. In the event of any rescission, if the life settlement
39 provider has paid commissions or other compensation to a life settlement broker in connection
40 with the rescinded transaction, the life settlement broker shall refund all such commissions and
41 compensation to the life settlement provider within five (5) business days following receipt of
42 written demand from the life settlement provider, which demand shall be accompanied by either
43 the owner's notice of rescission if rescinded at the election of the owner, or notice of the death
44 of the insured if rescinded by reason of the death of the insured within the applicable rescission
45 period.

1 (9) The life settlement provider shall instruct the owner to send the executed documents
 2 required to effect the change in ownership, assignment or change in beneficiary directly to
 3 an independent escrow agent. Within three (3) business days after the date the escrow agent
 4 receives the documents, or from the date the life settlement provider receives the documents,
 5 if the owner erroneously provides the documents directly to the provider, the provider shall
 6 pay or transfer the proceeds of the life settlement into an escrow or trust account maintained
 7 in a state or federally-chartered financial institution whose deposits are insured by the federal
 8 deposit insurance corporation (FDIC). Upon payment of the settlement proceeds into the
 9 escrow account, the escrow agent shall deliver the original change in ownership, assignment
 10 or change in beneficiary forms to the life settlement provider or related provider trust or other
 11 designated representative of the life settlement provider. Upon the escrow agent's receipt of the
 12 acknowledgment of the properly completed transfer of ownership, assignment or designation of
 13 beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to
 14 the owner.

15 (10) Failure to tender consideration to the owner for the life settlement contract within
 16 the time set forth in the disclosure pursuant to section 41-1956(7), Idaho Code, renders the life
 17 settlement contract voidable by the owner for lack of consideration until the time consideration
 18 is tendered to and accepted by the owner.

19 (11) Contacts with the insured for the purpose of determining the health status of the
 20 insured by the life settlement provider or life settlement broker after the life settlement has
 21 occurred shall only be made by the life settlement provider or broker licensed in this state or
 22 its authorized representatives and shall be limited to once every three (3) months for insureds
 23 with a life expectancy of more than one (1) year, and to no more than once per month for
 24 insureds with a life expectancy of one (1) year or less. The provider or broker shall explain
 25 the procedure for these contacts at the time the life settlement contract is entered into. The
 26 limitations set forth in this subsection shall not apply to any contacts with an insured for
 27 reasons other than determining the insured's health status. Life settlement providers and life
 28 settlement brokers shall be responsible for the actions of their authorized representatives.

29 41-1961. PERMITTED LIFE SETTLEMENTS AND SUPPORTING
 30 DOCUMENTATION. (1) It is a violation of the provisions of sections 41-1950 through
 31 41-1965, Idaho Code, for any person to enter into a life settlement contract at any time prior
 32 to the issuance of a policy which is the subject of a life settlement contract or within a two
 33 (2) year period commencing with the date of issuance of the insurance policy or certificate
 34 unless the owner certifies to the life settlement provider that one (1) or more of the following
 35 conditions have been met within the two (2) year period:

36 (a) The policy was issued upon the owner's exercise of conversion rights arising out of
 37 a group or individual policy, provided the total of the time covered under the conversion
 38 policy plus the time covered under the prior policy is at least twenty-four (24) months.
 39 The time covered under a group policy shall be calculated without regard to any change
 40 in insurance carriers, provided the coverage has been continuous and under the same
 41 group sponsorship;

42 (b) As part of the certification, the owner submits independent evidence to the life
 43 settlement provider that one (1) or more of the following conditions have been met within
 44 the two (2) year period:

45 (i) The owner or insured is terminally or chronically ill;

- 1 (ii) The owner's spouse dies;
- 2 (iii) The owner divorces his or her spouse;
- 3 (iv) The owner retires from full-time employment;
- 4 (v) The owner becomes physically or mentally disabled and a physician
- 5 determines that the disability prevents the owner from maintaining full-time
- 6 employment; or
- 7 (vi) A final order, judgment or decree is entered by a court of competent
- 8 jurisdiction on the application of a creditor or the owner, adjudicating the owner
- 9 bankrupt or insolvent, or approving a petition seeking reorganization of the owner
- 10 or appointing a receiver, trustee or liquidator to all or a substantial part of the
- 11 owner's assets.

12 (2) Copies of the independent evidence described in subsection (1)(b) of this section and
 13 documents required in section 41-1960(1) through (5), Idaho Code, shall be submitted to the
 14 insurer when the life settlement provider or other party entering into a life settlement contract
 15 with an owner submits a request to the insurer for verification of coverage. The copies shall be
 16 accompanied by a letter of attestation from the life settlement provider that the copies are true
 17 and correct copies of the documents received by the life settlement provider.

18 (3) If the life settlement provider submits to the insurer a copy of the owner or insured's
 19 certification described in and the independent evidence required by subsection (1)(b) of this
 20 section when the provider submits a request to the insurer to effect the transfer of the policy or
 21 certificate to the life settlement provider, the copy shall be deemed to conclusively establish that
 22 the life settlement contract satisfies the requirements of this section and the insurer shall timely
 23 respond to the request.

24 (4) No insurer may, as a condition of responding to a request for verification of coverage
 25 or effecting the transfer of a policy pursuant to a life settlement contract, require that the owner,
 26 insured, life settlement provider or life settlement broker sign any forms, disclosures, consent or
 27 waiver form that has not been filed with the director for use in connection with life settlement
 28 contracts in this state.

29 (5) Upon receipt of a properly completed request for change of ownership or beneficiary
 30 of a policy, the insurer shall respond in writing within thirty (30) days with written
 31 acknowledgment confirming that the change has been effected or specifying the reasons why
 32 the requested change cannot be processed. The insurer shall not unreasonably delay effecting
 33 change of ownership or beneficiary and shall not otherwise seek to interfere with any life
 34 settlement contract lawfully entered into in this state.

35 41-1962. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST. (1) It is a
 36 violation of the provisions of sections 41-1950 through 41-1965, Idaho Code, for any person to
 37 engage in any act that constitutes or promotes a STOLI regarding any resident of this state.

38 (2) With respect to any life settlement contract or insurance policy, no life settlement
 39 broker knowingly shall solicit an offer from, effectuate a life settlement with or make a sale to
 40 any life settlement provider, life settlement purchaser, financing entity or related provider trust
 41 that is an affiliate of such life settlement broker unless such relationship is first disclosed to the
 42 owner.

43 (3) With respect to any life settlement contract or insurance policy, no life settlement
 44 provider knowingly shall enter into a life settlement contract with an owner, if, in connection
 45 with such life settlement contract, anything of value will be paid to a life settlement broker

1 that is an affiliate of such life settlement provider or any investor, financing entity or related
2 provider trust that is involved in such life settlement contract unless such relationship is first
3 disclosed to the owner.

4 (4) No person shall enter into a premium finance agreement with any other person
5 or affiliate thereof pursuant to which such person shall receive any proceeds, fees or other
6 consideration, directly or indirectly, from the policy or owner of the policy or any other
7 person with respect to the premium finance agreement or any life settlement contract or other
8 transaction related to such policy that are in addition to the amounts required to pay the
9 principal, interest and service charges related to policy premiums pursuant to the premium
10 finance agreement or subsequent sale of such agreement; provided further that any payments,
11 charges, fees or other amounts in addition to the amounts required to pay the principal, interest
12 and service charges related to policy premiums paid under the premium finance agreement shall
13 be remitted to the original owner of the policy or to his or her estate if he or she is not living at
14 the time of the determination of overpayment.

15 (5) In the solicitation, application or issuance of a life insurance policy, no person shall
16 employ any device, scheme or artifice that would result in a violation of section 41-1804, Idaho
17 Code.

18 (6) No life settlement provider shall enter into a life settlement contract unless the life
19 settlement promotional, advertising and marketing materials, as may be prescribed by rule, have
20 been filed with the director. In no event shall any marketing materials expressly reference that
21 the insurance is "free" for any period of time. The inclusion of any reference in the marketing
22 materials that would cause an owner to reasonably believe that the insurance is free for any
23 period of time shall be considered a violation of the provisions of sections 41-1950 through
24 41-1965, Idaho Code.

25 (7) No life insurance producer, insurance company, life settlement broker or life
26 settlement provider shall make any statement or representation to the applicant or policyholder
27 in connection with the sale or financing of a life insurance policy to the effect that the insurance
28 is free or without cost to the policyholder for any period of time unless provided in the policy.

29 41-1963. ADVERTISING FOR LIFE SETTLEMENTS. No person required to be
30 licensed pursuant to sections 41-1950 through 41-1965, Idaho Code, shall engage in any false
31 or misleading advertising, solicitation, or practice. In no case shall a life settlement broker or
32 provider directly or indirectly market, advertise, solicit or otherwise promote the purchase of a
33 new policy with the primary emphasis on settling the policy or use the words "free," "no cost"
34 or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of
35 the purchase of a policy.

36 41-1964. PENALTY - UNFAIR TRADE PRACTICES. A violation of the provisions of
37 sections 41-1950 through 41-1965, Idaho Code, shall be considered an unfair trade practice
38 under chapter 13, title 41, Idaho Code, subject to the penalties contained in that chapter.

39 41-1965. AUTHORITY TO PROMULGATE RULES. The director shall have the
40 authority to promulgate rules implementing the provisions of sections 41-1950 through
41 41-1964, Idaho Code.

42 SECTION 2. The provisions of this act are hereby declared to be severable and if any
43 provision of this act or the application of such provision to any person or circumstance is

1 declared invalid for any reason, such declaration shall not affect the validity of the remaining
2 portions of this act.