



VIATICAL SETTLEMENTS

OHIO DEPARTMENT OF COMMERCE, DIVISION OF SECURITIES
77 South High Street Columbus, OH 43215-6131 • (800) 788-1194 • (614) 644-7381
TTY/TDD (800) 750-0750 www.securities.state.oh.us

Don't be Misled by Viatical Settlements What Every Investor Should Know

Viatical settlements are investment interests in the death benefits of insurance policies of terminally ill or older Americans. Typically, the person holding a life insurance policy, the viator, sells the life insurance policy to a third party “broker” in return for a portion of the death benefit. The “broker” then sells shares of the policy to investors who collect a share of the death benefit from the “broker” when the original policy holder or viator dies.

Viatical settlements are fairly new. Although “originating” in the 1980’s, they have only been widely available to the general public for the last several years. Investors may have dual reasons for making this type of investment: one, it sounds like a humanitarian thing to do—help someone out when they haven’t any place to turn; and two, the investment itself sounds good at first.

Problems and Pitfalls

Let’s use an example to further explain this unique type of investment—and, to explain the problems and pitfalls that may occur.

Mary, a 43-year old woman residing in Columbus, Ohio, has a terminal illness, an inoperable tumor, and is not expected to live more than 24 to 36 months. Mary has some bills to pay and would like to visit a friend across the country, but she just doesn’t have the money to make the expensive trip. The only asset she has is her \$100,000 life insurance policy that will go to her estate when she dies—she has no living relatives. Mary sells her life insurance policy to a “broker” who is not licensed to sell securities in Ohio, and she receives a percentage of the death benefit. Now she has the money to visit her friend, pay some bills, and enjoy some of the benefits of her own life insurance policy.

The “broker” sells interests in Mary’s \$100,000 life insurance policy to three investors and indicates that the premiums will be paid by the broker for the next three years. In essence, the investors become the new owners and/or beneficiaries of the life insurance policy. Since Mary only has 24 to 36 months to live, the investors anticipate receiving a good return on their investment when she dies.

Mary is happy and the investors believe they have made a good investment. Isn’t this a “win-win” situation for everyone? So—what’s the problem? Several problems, really....

First, this investment opportunity is a security which means the “broker” selling the security or viatical settlement must be licensed to sell securities in Ohio. Licenses are issued by the Department of Commerce, Ohio Division of Securities. In our example, the “broker” was not licensed.

Second, since viatical settlements are securities, prior to being sold, an application to sell the securities must be submitted to the State securities regulator. Again, this would be the Ohio Division of Securities. In our example, the sale of interests in Mary’s life insurance policy were not registered with the State.

There are more problems with our example. Although Mary's tumor or cancer was considered inoperable at the time she sold her life insurance policy, six months after she sells the policy, there is a new, wonderful medical breakthrough that gives Mary hope of living a long, healthy life. To the investors in her life insurance policy, the anticipated return on their investment within 24 to 36 months now looks like it won't be for years—and, if Mary remains healthy—possibly decades.

Mary still has the money from selling her life insurance policy, so really, selling it was a good thing for her. The investors still have an interest in her life insurance policy. However, what was to be a short-term investment with a perceived good return for the investors may turn into a long-term investment with not so good a return. But wait—how can the return be affected? The payoff amount of the policy is still \$100,000 and death is certain, so what's the problem?

Although death is indeed certain, that is not the same as saying the investment is guaranteed. Sure, everyone dies, but there is no guarantee as to *when* death will occur. Receiving \$100,000 in three years is a lot better than receiving \$100,000 in twenty years. Remember, that \$100,000 policy isn't going to grow—it's going to stay the same amount. The time value of money will effectively reduce the amount of the profit the investors will receive years down the road—especially if expenses eat into it.

And oops!—when the investors purchased interests in Mary's policy, the purchase contract indicated the premiums would only be paid by the broker for three years—who's going to pay them after three years? After that period of time, will it become the responsibility of the investors to pay the insurance premiums? If the investors don't want to lose their investment, the investors will have to keep up with the premium payments. Over years, those premium amounts will slowly eat away at the profit the investors will receive when Mary does pass away.

[If It Sounds Too Good To Be True, It Probably Is](#)

What originally sounded like a pretty good investment and a sure thing for the investors now doesn't sound so promising.

While [every investment](#) carries with it the risk of loss due to fraud or otherwise, many investors who lose money to viatical settlement investments lose it because they were not given the full or correct information concerning the risks of investing in viaticals. Sometimes it is because the “broker” misled the investors; sometimes it is because the information given was convoluted or complex—to both the “broker” and the investor; and sometimes, the information was available, but the investor did not ask for it. Regardless of the reason investors were misled, as demonstrated by our example, there are several risks inherent in viatical investments of which all investors should be aware.

What should all investors be aware of before investing in viaticals?

- Check with the Division of Securities to make sure the **broker or person selling** you this investment is duly licensed. Call the Division of Securities' Hotline at (800) 788-1194, the Division of Securities' general information number at (614) 644-7381, or contact the Division at www.securities.state.oh.us.
- Check with the Division of Securities to make sure the **viatical investment itself** has been registered.
- Talk with an **attorney** about the purchase contract.

- Make sure the purchase contract addresses who is responsible for paying the **premiums** and for how long. Is there a reserve fund from which premiums will be paid—if so, how is it funded? What if you are willing to pay your fair share of premiums, but other investors in the pool are not willing to do so?
- **If you don't understand it—don't invest in it.**
- Are you investing in the **entire policy** or are you just one of several investors purchasing an interest in the policy? Or, are you actually investing in a **“pool”** of policies in which you would own an undivided interest in the “pool”?
- If the life insurance policy in which you invested is a term policy, **can the policy be renewed?** What happens if it is not renewable—will you lose your investment?
- Where did the “broker” get its **data** about life expectancy? Actuary tables, physicians' statements—where?
- Is there a **“contestability” clause** in the life insurance policy? What are the consequences if the policy is contested?
- Is liquidity an issue for you? Viaticals are **not liquid assets**. Once you put your money in a viatical, you cannot access that money until the person dies.
- Contact the company issuing the insurance policy to help ensure the **person really exists**. In our example, check with the insurance company to determine whether Mary really exists. Likewise, with a physician issuing a statement regarding someone's life expectancy—does the physician really exist? Is he or she in good standing?
- Does the person (**viator**) **know their policy is being sold**—or are they being conned, as well?
- How much **commission** will the broker be making on your purchase of a viatical—and when will he or she receive it?
- Who is responsible for **making a claim** on the policy when the person dies? In our example, what if Mary lives in Ohio, but the investors live in California—who monitors these things on behalf of the investors?

Other questions to ask and things to consider before any investment:

- How did you become **aware of this investment?**
- Is this investment **suitable** for you—does it “fit” your goals, your values, your financial wherewithal? Can you handle the risk if the investment is a total loss?
- What have you received in **writing** about this investment?
- Are you **comfortable** with the person attempting to “sell” you this investment? Have you checked them out with third party sources, including government agencies?

You should not feel pressured to make any investment. Remember, you've worked long and hard to earn your money and generate a life's worth of savings. Before making any investment, investigate before you invest, ask questions, and if it sounds too good to be true...it probably is....

Ohio Department of Commerce
Division of Securities
77 South High Street, 22nd Floor
Columbus, Ohio 43215-6131
Investor Hotline (800) 788-1194 General Information (614) 644-7381
TTY/TDD (800) 750-0750 www.securities.state.oh.us