

304.15-700 Licensing requirements governing life settlement providers and brokers -- Contracts -- Commissioner's approval required -- Forms.

- (1) No person may act as a life settlement provider without first having obtained a license as a life settlement provider from the commissioner.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate life settlement contracts between an owner and one (1) or more life settlement providers or otherwise act on behalf of an owner without first having obtained a license as a life settlement broker from the commissioner as follows:
 - (a) All applicants for a life settlement broker license shall attend the required life broker training and pass a life broker examination designated by the commissioner through administrative regulation;
 - (b) A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), shall be deemed to meet the licensing requirements of a life settlement broker and shall be permitted to operate as a life settlement broker without obtaining a license as a life settlement broker as set forth in this subtitle if:
 1. That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;
 2. Not later than thirty (30) days from the first day of operating as a life settlement broker, the agent notifies the commissioner, on a notification form prescribed by the commissioner, that he is acting as a life settlement broker and pays any applicable fees to be determined by the commissioner. The notification shall include an acknowledgment by the agent that he will operate as a life settlement broker in accordance with this subtitle; and
 3. Irrespective of the manner in which a life settlement broker or life insurance agent is compensated, the life settlement broker or life insurance agent is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interests of the owner;
 - (c) Notwithstanding this subsection, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts without having to obtain a license as a life settlement broker; and
 - (d) A life insurance agent operating as a life settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the life settlement contract by all the parties for which such agent is operating as a life settlement broker, shall have in force evidence of financial responsibility as follows:
 1. A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker, and insuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less

than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or

2. An agreement with a licensed life settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the life settlement provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker on a life settlement contract to which the life settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or
 3. A cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker.
- (3) Application for a life settlement provider license or a life settlement broker license shall be made in accordance with KRS 304.9-150.
 - (4) Licenses for life settlement providers and life settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a life settlement broker or life settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
 - (5) Prior to issuance of a license as a life settlement broker or life settlement provider, except as provided in subsection (2)(d) of this section, the applicant shall obtain, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than twenty thousand dollars (\$20,000) per occurrence, and the sum of one hundred thousand dollars (\$100,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee. This subsection shall not apply to a life insurance agent operating as a life settlement broker in accordance with subsection (2) of this section.
 - (6) No person shall use a life settlement contract form or provide to an owner a disclosure statement form in this Commonwealth unless it has been filed with and approved by the commissioner in the following manner:
 - (a) At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the commissioner has by order given prior approval or disapproval. Approval of a form by the commissioner shall constitute a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The commissioner shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval,

the form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any approval. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the owner. Upon notice and hearing the commissioner shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public; and

- (b) Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.
- (7) A licensed life settlement provider shall not use any person to perform the functions of a life settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license or is a licensed insurance agent authorized pursuant to this subtitle to operate as a life settlement broker. A licensed life settlement broker shall not use any person to perform the functions of a life settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a life settlement provider.
- (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the department may take disciplinary action against the employer licensee.
- (9) When a life settlement provider elects to use a related provider trust, the life settlement provider shall file notice of its intention to use that trust with the department with a copy of the trust agreement. Any change in the trust agreement shall be filed with the commissioner prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a life settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
 - (a) The beneficiary last named by the policy owner prior to entering into the life settlement contract; or
 - (b) To the estate of the owner in the absence of a beneficiary.
- (11) An insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of the life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.
- (12) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in the Commonwealth.

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History: Amended 2012 Ky. Acts ch. 74, sec. 11, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 1190, effective July 15, 2010. -- Amended

2008 Ky. Acts ch. 32, sec. 2, effective July 15, 2008. -- Amended 2006 Ky. Acts ch. 54, sec. 1, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 58, sec. 7, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 472, sec. 2, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 403, sec. 2, effective July 15, 1998.