STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105

NOTICE OF PROPOSED EMERGENCY ACTION PURSUANT TO INSURANCE CODE SECTION 12921.7 AND GOVERNMENT CODE SECTION 11346.1

DATE: July 9, 2010 **REGULATION FILE:** ER-2010-00001

LIFE SETTLEMENT REGULATIONS

OPPORTUNITY FOR INTERESTED PARTIES TO SUBMIT COMMENTS TO THE OFFICE OF ADMINISTRATIVE LAW

Paragraph (a)(2) of Government Code section 11346.1 requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency must provide notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency action to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. ***This Notice supersedes the Notices that were mailed to interested parties on May 17, 2010 and June 11, 2010.*** **The proposed regulations mailed with the May 17, 2010 Notice and June 11, 2010 Notice were *not* filed with the Office of Administrative Law and should be considered fully superseded and replaced by the instant Notice of Proposed Emergency Action and Text of Life Settlement Regulations dated July 9, 2010.**

EXPRESS FINDING OF EMERGENCY

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 10113.1, 10113.2 and 10113.3 (Stats. 2009, ch. 243 sections 1-10(SB 98).). Insurance Code sections 10113.2(k) and 10113.35(a) provide authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian,* 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi,* 8 Cal. 4th 216 (1994).

INFORMATIVE DIGEST; DESCRIPTION OF THE PROBLEM AND THE NECESSITY FOR THE REGULATION

Summary of Existing Law

Signed into law on October 11, 2009, SB 98 (Calderon) gives the California Insurance Commissioner jurisdiction to regulate life settlements. SB 98 also simultaneously repeals the Insurance Code's viatical settlement provisions, which are codified at Insurance Code, sections 10113.1 and 10113.2. While the effective date of SB 98 is January 1, 2010, SB 98 provides that its provisions "shall not apply to any life settlement contract entered into on or before July 1, 2010." Stats. 2009, ch. 243, § 8. Thus, the practical effect of this provision is to give the Commissioner an opportunity to adopt emergency regulations prior to or as soon as possible after the provisions of SB 98 actually applying to life settlement transactions.

SB 98 amends the insurable interest provisions of the Insurance Code, establishing that trusts that are used to apply for and initiate insurance for investors where the beneficiaries of such trusts do not have an insurable interest in the life of the insured violate the insurable interest provisions of the Insurance Code. Ins. Code § 10113.1(d). SB 98 also amends the insurable interest provisions of the Insurance Code to establish that "any device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws." Ins. Code § 10113.1(e).

A life settlement is a contract in which an owner of a life insurance policy assigns his or her policy to a third party for consideration that is less than the policy's death benefit. Ins. Code § 10113.1(k). The original owner of the policy is thus relieved from making further premium payments, and the new owner acquires the policy as an investment and will receive the policy's death benefit upon the death of the insured. Life settlements require the exchange of sensitive confidential medical and financial information, and are a transaction that is primarily entered into by or on behalf of elderly or sick insureds.

SB 98 contains a comprehensive list of definitions relevant to the transaction of life settlement business. It defines the following: "advertisement", "broker", "business of life settlements", "Commissioner", "financing entity", "financing transaction", "fraudulent life settlement act", "insured", "life expectancy", "life insurance producer", "life settlement contract", "net death benefit", "owner", "patient identifying information", "person", "policy", "premium finance loan", "provider", "purchaser", "related provider trust", "settled policy", "special purpose entity", "stranger-originated life insurance", and "terminally ill". Ins. Code §§ 10113.1(a), 10113.1(b), 10113.1(c), 10113.1(d), 10113.2(e), 10113.1(f), 10113.1(g), 10113.1(h), 10113.1(i), 10113.1(j), 10113.1(k), 10113.1(l), 10113.1(m), 10113.1(n), 10113.1(o), 10113.1(p), 10113.1(q), 10113.1(r), 10113.1(s), 10113.1(t), 10113.1(u), 10113.1(v), 10113.1(w), 10113.1(x).

SB 98 constitutes a comprehensive regulatory scheme for life settlements, including the imposition of licensing requirements for those involved in the transaction of such business. That is, "providers," or those entities entering into a contract with an owner of an insurance policy must be licensed by the Commissioner, as well as life settlement brokers, or those persons who, for a fee negotiate a life settlement agreement between a provider and a policyowner. Ins. Code §§ 10113.2(b)(1), 10113.1(b). With respect to a "life settlement broker," SB 98 allows this licensing requirement to be satisfied by eligible life producers who have complied with a procedure whereby they notify the Commissioner of

their transaction of life settlement business. Ins. Code §§ 10113.2(b)(1)(D)(i) and (ii). Individuals not eligible to use the latter procedure (namely those who have not been licensed as a California life agent for at least one year) may apply for a life settlement broker's license. Ins. Code § 10113.2(b)(1)(A).

SB 98 allows for the grandfathering as life settlement providers and brokers those viatical settlement providers and brokers whose licenses were in good standing at year-end 2009. Ins. Code § 10113.2(b)(1)(C). It also has a provision enabling life settlement brokers and providers lawfully transacting life settlement business in California prior to the effective date of SB 98 to continue to do so, as long as they file their applications for a license within 30 days after the Commissioner's publication of the application/s. Ins. Code § 10113.3(u). Thus, providers and brokers who previously lawfully transacted life settlement business in California may continue to do so pending the Commissioner's review of their applications. (With respect to life settlement brokers, SB 98 imposes the additional requirement that they have transacted life settlement business for at least one year prior to the effective date of SB 98. Ins. Code § 10113.3(u).)

At the heart of SB 98 are consumer protection provisions. Both providers and brokers must comply with strict consumer disclosure requirements. For example, the provider must disclose commissions paid in a transaction, and brokers are required to disclose all of the offers received on a policy sought to be sold, among other disclosures. Ins. Code §§ 10113.2(d), (e) and (f). In addition, the new law imposes restrictions on the frequency and manner in which insureds can be contacted by providers after the consummation of the life settlement transaction. Ins. Code § 10113.2(d)(11). SB 98 also imposes protections for the insured's confidential medical and financial information, requiring the access to information to be limited to persons involved in the settlement transaction, and only with the insured's consent. Ins. Code §§ 10113.2(d)(10), 10113.2(g) and 10113.2(h).

SB 98 also imposes provider escrow and provider records retention requirements. Ins. Code §§ 10113.3(j), 10113.2(t). SB 98 requires life settlement providers to file an annual statement with the Insurance Commissioner reporting important information about their transaction of life settlement business. Ins. Code §10113.2(p). The law contains a comprehensive list of fraudulent life settlement practices, and grants the Commissioner the broad power to investigate, examine or discipline a provider or broker. Ins. Code §§ 10113.1(g), 10113.3(s), 10113.2(l), 10113.2(m) and 10113.2(b)(2). The Commissioner may also issue cease and desist orders and monetary penalties against licensees. Ins. Code §§ 10113.2(n) and 10113.2(o).

SB 98 includes important provisions designed to curb transactions involving "STOLI" or "stranger originated life insurance." STOLI is an arrangement to initiate the issuance of a life insurance policy for the benefit of a third-party investor who, at the time of the policy's origination, has no insurable interest in the life of the insured. Ins. Code § 10113.1(w). Pursuant to SB 98's amendments, these rules violate the insurable interest provisions of the Insurance Code, as well as laws prohibiting the wagering on a life. Ins. Code §§ 10110.1(d) and 10110.1(e). SB 98 also authorizes an insurer to make specific inquiries of prospective insureds to detect unlawful STOLI schemes. Ins. Code §10113.2(i). In addition, SB 98 includes "entering into stranger-originated life insurance" as a fraudulent life settlement act. Ins. Code § 10113.1(g).

Comparable Federal Law.

There is no existing federal statute or regulation that is comparable to the proposed regulations.

Policy Statement Overview

Quite simply, the purpose of the proposed regulations is to implement SB 98, which brings comprehensive life settlement regulation to California. A life settlement transaction is a complex and sensitive matter. It is a transaction typically entered into by or on behalf of elderly or sick individuals, involves the exchange of confidential medical information to investors, and ultimately entails the assignment of a life insurance policy's death benefit to a party who has no insurable interest in the life of an insured. SB 98 gives the Commissioner broad jurisdiction to regulate this business in a comprehensive manner.

Although SB 98 is a lengthy piece of legislation, there are still many critical areas that require further specification. For example, SB 98 requires those involved in a life settlement transaction to be licensed as life settlement brokers and providers. However, SB 98 does not specify how this is to be accomplished other than the law's general reference to a license application "in the form prescribed by the commissioner." Ins. Code § 10113.2(b)(1). Thus, SB 98 leaves to the discretion of the Commissioner what the license application is to contain, as well as what the fees shall be. SB 98 is also silent on many other licensing issues, including procedures for the grandfathering in of those currently licensed to transact viatical settlements, as well as standards for determining when the sale of an interest in a provider triggers a new licensing requirement. Similarly, SB 98 contains a general requirement for all life settlement licensees to file life settlement forms with the Commissioner prior to their use, but offers no specifics as to the procedure for this requirement. In the same vein, SB 98 spells out provider records retention requirements, but is silent on the subject of required records retention for brokers. The new law contains a provider annual reporting requirement, but offers only general parameters on what the report can and cannot contain, leaving the rest to the discretion of the Commissioner.

SB 98 allows providers to transfer an interest in a life settlement to a financing entity or purchaser, even though there is no separate licensing requirement for the latter. SB 98, however, is silent on whether the provider has the obligation to notify the insured when a policy has been transferred and the identity of the new owner.

Thus, the goal of the proposed regulations is to provide specificity and clarification to SB 98 and to prescribe comprehensive procedures for the regulation of the life settlement industry that are efficient, fair, and provide adequate protection for the consumer in a uniquely sensitive transaction.

Effect of Proposed Action

The proposed regulations define comprehensive procedures for the licensing of life settlement providers and brokers, and contain specific forms. The latter include applications for life settlement providers and brokers, templates for the consumer disclosures mandated by SB 98, as well as a suggested provider verification of coverage (VOC) form.

Turning to specific licensing issues, SB 98 allows two avenues for those desiring to broker life settlements in California, they may either apply to be licensed as a life settlement broker, or may meet the licensing eligibility requirements by virtue of being a life producer who has been licensed in California for at least one year and who has complied with a notification procedure. The proposed emergency regulations therefore have two sets of forms and procedures to satisfy these two avenues of licensure. Further, inasmuch as life settlement brokers can be a natural person or a business entity, the proposed regulations provide a specific licensing procedure for both, as well as specify procedures to endorse individually licensed individuals onto that business entity's license. The proposed regulations also define procedures for the grandfathering in of viatical settlement providers and brokers and address the issue of at what point a sale of an interest in a provider triggers an obligation to file an application for a new license. The proposed regulations give added clarity and specificity to SB 98's provider escrow requirement for the protection of consumers in a life settlement transaction.

In addition, the proposed regulations include a procedure for licensees' compliance with SB 98's requirement for them to file with the Commissioner all life settlement forms prior to their use. The proposed regulations also prescribe records maintenance requirements for providers and brokers.

SB 98 requires lengthy and comprehensive consumer disclosures, and the proposed regulations provide suggested templates that can be used by licensees for their convenience and for the benefit of California consumers. For the additional protection of consumers, particularly insureds, the proposed regulations require providers to inform the insured of any subsequent transfers of the purchased life insurance policy to another party.

The proposed regulations implement SB 98's requirement for providers to file an annual statement, and the regulations include the annual statement form, along with the requirement that providers file an audited financial statement along with their annual statement.

Finally, SB 98 includes the requirement that providers use a verification of coverage form approved by the Commissioner, and the proposed regulations include a suggested template for this form.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COSTS OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

The Department will incur costs relating to the general implementation of SB 98. These costs will include processing provider and broker applications and enforcing the statute, as well as

adapting the Department's online filing procedures to handle the influx of life settlement provider and broker applications. Based upon the Department's projections of the number of new provider and broker applications, the Department estimates that it will require an additional $405,000 for fiscal year (FY) 2010/11 to fund two additional attorney positions, as well as support implementation-related tasks in the Department's Statistical Analysis and Informational Division. The Department anticipates requiring $298,000 per year to implement SB 98 in fiscal years following 2010/11. It should be emphasized, however, that these costs are ultimately derived from SB 98, and not directly from the implementing regulations. They are also based upon the Department's projections, and actual experience may prove the estimates to be too low or too high.

DESCRIPTION OF SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION; DESCRIPTION OF THE JUSTIFICATION FOR ADOPTION OF THE REGULATION AS AN EMERGENCY REGULATION

SB 98 explicitly gives the Department emergency rulemaking power. Specifically, Insurance Code section 10113.35(a) provides, in pertinent part "the adoption or amendment of the regulations required to be adopted pursuant to this article *is an emergency* and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety and general welfare." (Emphasis added.)

The Department has historically regulated viatical settlements, and until the passage of SB 98, had no jurisdiction to regulate life settlements. While unregulated in California, the life settlement market grew significantly in the last decade. SB 98 allows those life settlement providers and brokers currently lawfully operating in the unregulated market to continue to do so, as long as they file their license applications within 30 days of the applications' availability by the Department. Ins. Code § 10113.3(u). SB 98 applies to life settlement transactions beginning on July 2, 2010; therefore, it is urgently necessary for the Department to have a comprehensive regulatory framework in place as near as is reasonably possible to the statute's July 2, 2010 effective deadline. In this regard, it is of upmost importance for those consumers involved in a life settlement transaction--who are typically among California's most vulnerable and elderly-- to have the full benefit of the consumer protections of SB 98. Inasmuch as the proposed regulations are a comprehensive effort to implement SB 98, it is urgently necessary for these regulations to be in force as near to the July 2 implementation date as is reasonably practicable.

STUIDES AND REPORTS

The Department has relied upon no technical, theoretical, and empirical study, report, or similar document in connection with this action.

NECESSITY OF EACH PROPOSED PROVISION TO ADDRESS DEMONSTRATED EMERGENCY

SB 98 contains an explicit grant of emergency rulemaking power, stating that "the adoption . . . of the regulations required to be adopted pursuant to this article. . . *is* an emergency. Ins. Code § 10113.35(a). SB 98 further gives the Department broad authority to adopt regulations

"reasonably necessary to govern life settlement transactions." Ins. Code § 10113.2(k). These two provisions taken together vest the Commissioner with broad authority to craft regulations governing California life settlement transactions, as well as affirm that this rulemaking is an urgent undertaking. Because the regulations directly relate to the implementation to SB 98, which begins to apply to life settlement transactions on July 2, 2010, each provision meets the emergency necessity standard of Government Code section 11346(a)(2), as further elaborated below.

Section 2548.1[1] Authority and Purpose

Section 2548.1 is necessary to state the authority pursuant to which the regulations are being promulgated and that the purpose of the regulations is to implement and clarify the life settlement statute.

Section 2548.2 Definitions

This section provides the statutory references for the definitions of "Broker", "Insured", "Life Insurance Producer", "Owner, and "Provider." A life settlement transaction is a complex transaction requiring the identification of different parties and their role in the transaction. Although all the parties defined in Section 2548.2 are currently defined in SB 98, Section 2548.2 directs the reader to the correct statutory reference and is inserted for the reader's ease of reference.

Section 2548.3 Licensing of Provider

Section 2548.3(a) This provision specifies the need for a provider's license, as well as the provider license application fee of $3,180. This provision also specifies that the Commissioner may require Applicant to disclose the identification of all stockholders holding more than a 10% interest in the company, as well as all partners, directors, members and key management personnel. The Commissioner may also refuse to issue a license to the Applicant if any stockholder, partner, director, member or person in a key management position fails to meet the standards of Insurance Code sections 10113.2(b)(1) and 10113.2(b)(2).

Section 2548.3(a) is reasonably necessary to the implementation of SB 98 as the statute is currently silent on the procedures for the licensing of providers and contains no express fee. The fee of $3,180 is approximately the same fee established for the licensing of viatical settlement providers, which is a directly analogous licensing category. It is necessary for the Commissioner to request information about the identity of a business entity's stockholders holding a 10% or greater interest, partners, directors, etc., as these individuals play key ownership or management roles in the organization, and if there were any significant problems concerning such individuals' backgrounds, it would not be in the public's interest to grant the entity a license.

[1] All references in subheadings are made to sections in the Commissioner's Proposed Emergency Life Settlement Regulations.

Section 2548.3(b) This section clarifies that if a provider's license is issued to a legal entity, it authorizes all officers, partners and key management personnel to act as a provider. This provision is necessary because it clarifies how individuals may transact activities on behalf of a business entity licensed as a provider, an area where SB 98 is silent.

Section 2548.3(c) This section provides that a provider is required to renew its license each year, and specifies the renewal fee of $199. This provision is necessary as SB 98 does not currently state the renewal fee for providers. The renewal fee is designed to be of an amount sufficient for the Department to capture its costs associated with regulating providers, and is consistent with what it has traditionally charged viatical settlement providers.

Section 2548.4 Grandfathering of Viatical Settlement Providers

Section 2548.4 delineates specifics for the grandfathering of viatical settlement providers as life settlement providers. It provides that a provider licensed at year-end 2009 as a viatical settlement provider shall be issued a new life settlement provider's license effective July 1, 2010, and shall be subject to the renewal requirements for such license as if originally licensed as a life settlement provider. This provision is necessary to the full implementation of SB 98 because the statute lacks details on the mechanics of the grandfathering provision

Section 2548.5 Sale of Shares or Change of Control of Provider

Section 2548.5 clarifies that a provider must provide the Department with new or revised information about officers, stockholders holding more than 10% of the company's shares, partners, directors, or key management personnel within 30 days of the change. The section also clarifies under what conditions a provider that transfers more than 10% of its stock to another entity triggers the requirement for a new provider application. A new application must be filed when the provider transferring more than a 10% interest is either incorporated in California or otherwise conducting a substantial portion of its business in California, as defined by more than 50% of the provider's total business as reported in Section 5.d. of the provider's last annual statement.

This provision is necessary to the implementation of SB 98 because while the latter specifies the general circumstances under which a provider's license may be granted, it lacks specifics on the consequences of selling an interest in that provider's license. It stands to reason that if the ownership of a provider undergoes a significant change, the entity originally licensed by the Commissioner no longer remains the same entity and must submit a new license application. The Commissioner has determined that providers transferring more than 10% of their business which have sufficient connection to California--either because they are incorporated in the state or conduct the majority of their business in California--must reapply for licensure. All other providers transferring a 10% or greater interest in their business are simply required to notify the Commissioner of the transfer or change within 30 days of its occurrence.

Section 2548.6 Provider Escrow Requirements

Section 2548.6(a) This provision states that, within 3 business days of the provider's receipt of documents to effect the transfer of an interest in a life insurance policy which is the subject of a life settlement, the provider shall deposit the owner's settlement proceeds into an escrow or trust account in a state or federally chartered financial institution the deposits of which are FDIC-insured. The requirement for the consumer's funds to be placed in a properly chartered, government-insured financial institution is necessary to ensure the security of those funds.

Section 2548.6(b) This section requires for the escrow/trust account to be managed by a trustee or escrow agent who is independent of the parties to the settlement contract, and pursuant to a written agreement signed by the provider and the owner. It also clarifies that an attorney or law firm representing the provider shall not be the escrow agent for the provider. These provisions are necessary to maintain the security of the policyowner's funds. Funds held in an account where there is neither an escrow agreement nor an independent trustee could easily be the subject of embezzlement by an unscrupulous provider in collusion with the party holding the funds.

Section 2548.6(c) This provision requires any persons receiving compensation under the escrow agreement to be clearly identified, including their name, business address and telephone number and compensation amount. This provision is necessary to specify the amount of commission payments to be received by any life settlement broker involved in the transaction, and to give the consumer and the Department a cross-reference and means to verify the payments identified in paragraph 2 of the Life Settlement Provider Disclosure to the Owner (See Section 2548.12(c) and 2548.29.)

Section 2548.7 Licensing of Broker; Life Insurance Producer Notification of Brokering Life Settlements.

This section clarifies that persons wishing to act as a life settlement broker have two potential avenues open to them: they can either submit a life settlement broker's application or they can submit a Life Producer Notice of Brokering Life Settlements. This provision is placed in the regulation for the reader's ease of reference and to clarify that the life producer notification procedure is available only to those life agents who have held a California license for at least one year. The actual license application forms are referenced later in the regulations, with all other forms. (See Sections 2548.19 through 2548.25.)

Section 2548.8 Grandfathering of Viatical Settlement Brokers

Section 2548.8(a) This provision states that any person licensed as a viatical settlement broker as of December 31, 2009 shall be issued a life settlement broker's license effective July 1, 2010. It also clarifies that such persons shall be exempted from the life settlement law's continuing education requirements, but that their life settlement license shall be subject to renewal just as if that person were originally licensed as a life settlement broker. This section is necessary to implement Insurance Code section 10113.2(b)(1)(C) which deems any viatical settlement broker licensed as of December 31, 2009 to be qualified for licensure as a life settlement broker, but is silent on when the license period begins and whether or not the individual should have to take continuing education. The Commissioner

has determined that in implementing SB 98, the life settlement broker's license should be effective July 1, 2010, and that in order for licensees to receive the full benefit of being grandfathered in as life settlement brokers, it is necessary to exempt them from SB 98's continuing education requirement.

Section 2548.8(b) Most of the Department's current viatical settlement licensees are licensed as entities, not individuals. Section 2548.8(b), like Section 2548.8(a), states that such entities will be issued either a one-year business entity life settlement broker's license or a two-year life settlement broker notification, effective July 1, 2010. Whether entities are licensed as a life settlement broker, which is a one-year license, or instead are eligible for a two-year broker notification depends on whether the entity is already licensed as a producer for at least one year in California. If so, they will receive a broker notification that corresponds to their life license. Otherwise, such entities will receive a one-year business entity life settlement broker's license. The reason for the distinction in the duration of the license (one year versus two years) is that Insurance Code section 10113.2(3) requires a life settlement broker license to be renewed annually; however, a life producer's license is a two-year license.

Section 2548.8(b) also provides that viatical settlement brokers which are organized as business entities will have 30 days from the effective date of the regulation to submit a list of all individuals authorized to act pursuant to the entity's license as of June 30, 2010, and the latter individuals will thereafter be issued individual life settlement broker's licenses, and will also be exempted from the CE requirements. Both the individual license and the business entity license shall be subject to renewal requirements. The Commissioner has determined that it makes the most sense to grant individual licenses to brokers transacting pursuant to the entity's licenses, with an organizational (life settlement) license granted to the business entity itself. Any broker authorized to act pursuant to the (viatical settlement) license as of June 30, 2010, would be exempt from SB 98's CE requirements, but any individuals hired thereafter would not be eligible for grandfathering and would also have to comply with CE (or otherwise comply with the broker notification procedure in Section 2548.20). This provision is necessary to address all technical licensing issues relating to the grandfathering in business entity viatical settlement brokers. In order to receive the full benefit of being grandfathered in, it makes sense for such brokers to be exempted from the CE requirements imposed upon new life settlement brokers. On the other hand, it is not reasonable for brokers to be exempted from the CE requirements if they are hired by a grandfathered business entity after June 30, 2010.

Section 2548.9 Provider and Broker Form Filing Requirements

Section 2548.9(a) and (b) These provisions set forth the procedures for life settlement providers and brokers with respect to their compliance with SB 98's form filing requirements. Specifically, Insurance Code section 10113.2(c) provides that life settlement licensees cannot use a form unless it has been provided in advance to the commissioner. This section is necessary to set forth specific procedures for filing such forms, namely that the licensee is to use a specific cover sheet that identifies the form, and then file the form online with the Department's OASIS system.

Section 2548.9(c) This section clarifies that licensees which have been grandfathered in as a life settlement providers and brokers are all subject to the form filing requirements and have 60 days from the effective date of the regulation to file their forms with the Department. While viatical settlement

licensees are grandfathered in as life settlement licensees, SB 98 is silent on when and how they comply with the statute's form filing requirements, and this provision is necessary to spell that out.

Section 2548.10 Provider and Broker Records Retention Requirements

Section 2548.10 (a) This section provides that providers transacting business in California shall retain copies of those records defined at Insurance Code section 10113.2(t). This provision is necessary for the reader's ease of reference.

Section 2548.10(b) This section provides that brokers are to retain copies of life settlement transactional records for a period of not less than five years. It also contains an itemization of records required to be maintained for this period. SB 98 contains no records maintenance provision for brokers, only for providers, and this provision is necessary to clarify that critical broker records must be maintained as well. The five-year requirement is consistent with the Insurance Code's general records retention requirements imposed on life agents and property and casualty brokers. The itemization of records required to be maintained are the key records in memorializing a life settlement transaction. It is also necessary for the broker to maintain copies of consumer disclosures as well as documents memorializing that he or she has shopped the market for a competitive provider bid, as these responsibilities are integral to the broker's fiduciary role.

Section 2548.10(c) This section clarifies that any records maintained pursuant to Sections 2548.10(a) or (b) must be available for inspection to the Commissioner during reasonable business hours and that the Commissioner may initiate license disciplinary proceedings if a licensee fails to comply with the Commissioner's request to review the records. These provisions are a necessary adjunct to the Commissioner's role in reviewing broker records and in generally enforcing compliance with the life settlement statute.

Section 2548.11 Disclosures Required at the Time of Application

Insurance Code section 10113.2(d) mandates a list of disclosures that are required at the time of application for a life settlement contract. Section 2548.11 is necessary to refer the reader to the Department's suggested template for the disclosures. Furthermore, in some life settlement transactions there is no life settlement broker; Section 2548.11 is necessary to clarify that in this instance, the life settlement provider is required to provide the disclosures enumerated at Insurance Code section 10113.2(d) and may, but is not required, to use the template in Section 2548.27. The provider's fulfillment of this disclosure requirement is necessary in those instances when the provider is effectively acting as a broker; the consumer is entitled to information that would ordinarily be provided by the broker. (The actual disclosure template is included with the group of forms at the back of the regulations, specifically at Section 2548.27.)

Proposed Section 2548.12 Disclosures Required Prior to Execution of Contract

Section 2548.12(a) In addition to a list of disclosures at the time of application, SB 98 requires a list of disclosures to be given to the consumer by both the broker and the provider prior to the execution of a life settlement contract. Section 2548.12(a) is necessary to direct the reader, (specifically, a life

settlement broker) to the Department's disclosure template that the licensee may but is not required to use to fulfill these broker disclosure requirements. (That actual template is at Section 2548.28.)

Section 2548.12(b) Section 2548.12(b) fulfills the same function for life settlement providers as does Section 2548.12(a) for life settlement brokers. (The actual provider disclosure template is at Section 2548. 29.)

Section 2548.12(c) The disclosure templates are not mandatory, although the disclosure of certain information is. Section 2548.12(c) clarifies that if a provider uses its own form, it must contain a clear itemization of the following amounts: the life settlement provider's gross purchase price for the policy, the amount of the gross purchase price to be paid to the owner, and the amount of the gross purchase price to be paid to the broker. These provisions are necessary toward the goal of transparency in a life settlement transaction and to facilitate disclosure to the consumer of commissions paid to the participants in a life settlement transaction. If commissions appear excessive, this could be an indication that the broker is not fulfilling his or her fiduciary obligation to shop the market for the most competitive bid to the owner.

Section 2548.13 Provider's Obligation to Notify Insured of Sale of Policy

This provision obligates a provider who transfers ownership or changes the beneficiary of an insurance policy to communicate in writing the change to the insured within 20 days after the change. The notification must also identify the new owner or beneficiary. A life settlement transaction is an inherently sensitive transaction where the death benefit of an insurance policy is assigned to a third party who has no insurable interest in the life of the insured. The insured is entitled to know who holds the death benefit on his or her life, and Section 2548.13 is necessary to give the insured this critical piece of information whenever a life insurance policy is sold to someone other than the provider, whether that sale takes place contemporaneous to the life settlement transaction or thereafter.

Section 2548.14 Provider Annual Statement

Section 2548.14(a) This provision is placed into the regulations for the reader's ease of reference as it refers the reader to Section 2548.30, which is the emergency regulation's Provider Annual Statement. Also, while Insurance Code section 10113.2(p) refers to the general obligation of a licensed provider to file an annual statement, the law is not specific on what period the statement is to cover. This section is therefore necessary to provide that specificity.

Section 2518.14(b) This section requires all licensed providers to file an audited financial statement along with their provider annual statement. SB 98 does not have any provider bonding or minimum capital requirements. This provision is thus necessary to ensure that licensed providers are adequately capitalized to meet their obligations in purchasing life settlements, and that their balance sheet has been subjected to an outside audit. Because an audited financial statement is a very important component of the annual statement, Section 2548.14(b) further provides that the Commissioner may reject the annual statement if it does not include this essential item. This provision also requires a provider's audited annual statement to be exempt from disclosure under the Public Records Act in order to protect a provider's confidential financial information from disclosure to other competitors.

Section 2518.14(c) This section states that a provider's failure to timely file an annual statement shall be grounds for the suspension of the provider's license until such time that the statement is filed. This provision is necessary because in the Commissioner's experience with viatical settlement licensees, there have been a significant percentage who fail to file their annual statement in a timely fashion, thereby causing the Department to expend valuable resources enforcing compliance with this requirement. The annual statement provides the Department with valuable information, and as regulated entities providers should expect and be required to file the document in a timely fashion. If they are unable to fulfill this reasonable and necessary obligation directly related to their licensure, they should be prepared, at least temporarily, to give up the transaction of life settlement business in California until such time as they are able to comply.

Section 2548.15 Verification of Coverage Form

Insurance Code section 10113.3(b) provides that life settlement providers are to use verification of coverage forms that have been approved by the Commissioner, but is otherwise silent on what the form should contain or how the Commissioner's approval is secured. This section of the regulations directs the licensee to Section 2548.31, which references the verification of coverage form that has been adopted by the National Association of Insurance Commissioners (NAIC). Section 2548.16 provides that if the NAIC form is used the Commissioner's approval shall be deemed; otherwise, if the provider elects to use its own form, it must file the latter for the Department's approval.

Section 2548.16 Life Settlement Provider Application

Insurance Code section 10113.2(b)(1) states simply that a life settlement provider or broker "shall file an application for a license in the form prescribed by the commissioner." Section 2548.16 is the Commissioner's proposed life settlement provider application and each question is necessary to give the Commissioner a full and complete picture of the Applicant so that the Commissioner may determine whether it is in the best interest of the public to grant the application. The question and the Department's demonstrated necessity for each question are summarized as follows:

Provider Name and Fictitious Names: In addition to the life settlement provider's legal name, it is essential for the provider to list any fictitious name it intends to use. This information is required so that the Department can ensure that the Applicant's prospective DBA is not one already in use or similar to one already in use. In addition, it is essential for the Department to have knowledge of prior fictitious names that may have been used by the licensee, so that the Department can determine if there were any enforcement actions against the licensee under a different name.

Life Settlement Provider Types: The Department is required to know how the business entity is organized to assist in identifying the Applicant, and also for the purpose of reviewing the entity's formation documents. For Applicants who are natural persons, a social security number is required to run a search of licenses held by that individual.

Federal Employer Identification Number A "FEIN" is a necessary means of identifying a business entity.

Incorporation/Formation Date and State of Incorporation/Formation: the Department is required to have this information to confirm the identity of the Applicant and that it is organized in the manner in which it states on the application.

Business Address, City, State, Zip Code, Business Phone Number, Fax, E-mail Address and Website Address: this information is essential for purposes of identifying the Applicant and facilitating the Department's communication with it. This information is also useful for enforcement reasons. The Department could, for example, have received complaints of unlawful activities associated with a particular address. This would require further investigation into whether the Applicant may have been linked to any of the unlawful activities.

Contact Person: the Department needs a person to whom to address future correspondence.

States in Which Applicant is Currently Licensed as a Provider: This information is necessary for the Department to contact other states in which the Applicant is licensed and thereby learn if there are any regulatory or enforcement concerns with respect to the Applicant.

Biographical Information on Applicant's Officers, Directors, Partners and Key Management Personnel; Job Description: The Department requires this information to determine whether there are any criminal, relevant civil and/or administrative actions with respect to persons identified as managing the entity's business. The social security number on such individuals is required to determine what licenses they have in California and in other states. Fingerprints are required to determine whether any such individuals have been subject to arrest in the past. Checks can also be run on whether or not the individual has been convicted of a crime. This information collectively is necessary for the Department to determine if the individuals comprising the business entity possess the minimum character and competency requirements to be eligible for licensing in a particularly sensitive capacity dealing with the elderly and the infirm.

Biographical Information on Applicant's 10%+ Owners: The Department requires this information to determine whether there are any criminal, relevant civil and/or administrative actions with respect to persons identified as owning the entity's business. The rationale described above in the immediately preceding paragraph applies in the same manner to Applicant's 10%+ owners. The Department is charged with making an assessment of whether it is in the public interest to license an entity, and it clearly would not be if any of its significant owners have engaged in prior misconduct.

Copy of Applicable Organizational Documents: This component is necessary so that the Department can confirm that Applicant is organized in the manner Applicant states on Application.

Non-California Applicants: Certificate of Good Standing, Certificate of Qualification, and Appointment of Agent for Service of Process: These items are required for Applicants which are not organized in California. The certificate of good standing is required so that the Department can confirm that the applicant is in good standing in its state of domicile. The certificate of qualification is required so that the Commissioner is assured that Applicant has complied with all of the California Secretary of State qualification requirements for foreign business entities. An Applicant that is not a California entity must also appoint an agent for service of process so that California consumers are able to sue the Applicant in California.

Plan of Operation:

Applicant's *marketing plan* is required so that the Commissioner has a complete picture of how and where Applicant intends to market life settlements. How Applicant intends to solicit life settlements is of particular importance to the Department for purposes of evaluating whether Applicant may be primarily transacting STOLI policies.

Information relating to Applicant's *organizational structure* is required so that the Commissioner has a full understanding of who owns and controls Applicant, and can check for any enforcement problems with respect to any individual or entity within the organizational structure.

A description of *criminal, civil, regulatory and administrative actions taken against Applicant and its controlling parent:* this information is essential to the Commissioner's determination of whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether Applicant is forthcoming about any prior criminal or regulatory actions.

3 Years of CPA Audited Financial Statements Concerning Applicant: the Commissioner requires three years of audited financial statements to determine whether Applicant possesses sufficient financial strength to support its life settlement operations. This provision is necessary as thinly capitalized providers show a greater propensity to engage in fraud and misconduct. It is important that the statements are completed by an independent CPA to prevent the risk of inflated, inaccurate financial statements prepared by an in-house employee. All statements are received in confidence within the meaning of Government Code Section 6254 and are exempt from disclosure under the Public Records Disclosure Act. This is so that information submitted by providers is protected from disclosure to the public, including to competitors.

Description of Escrow Procedures/Copy of Escrow Agreement/s: the Department is entitled to review the escrow procedures and contract to make sure they are in compliance with Insurance Code section 10113.3(j), and the Commissioner's regulations. It is particularly important that the escrow agreement is reviewed since the Department views the latter as essentially being a contract of adhesion.

Description of Applicant's Procedures for Protecting Insured/Policyowner's Sensitive Medical and Financial Information: A life settlement contract involves the scrutiny and potential dissemination of an insured's confidential medical and financial information. It is of upmost importance that the Commissioner is able to evaluate a provider's procedures for the protection of that information.

Applicant's Life Settlement Forms SB 98 imposes on licensees the requirement that they file all life settlement forms with the Department prior to their use. It is essential for the Commissioner to review the forms of life settlement applicants to make sure that they are in full compliance with SB 98 and the Commissioner's regulations.

Application's Certification The Commissioner needs absolute assurance that an individual submitting information to the Department on a provider application submits only complete and accurate information, and is willing to do so under penalty of perjury. Further, the Commissioner

requires absolute assurance that in the pursuit of a provider's license, the Applicant is fully conversant in California's life settlement law and regulations, possesses adequate competence, and is absolutely aware of the obligations associated with the license.

Section 2548.17 Application for Life Settlement Broker License

Applicant's Full Name: The Applicant's complete name, along with suffix is necessary for purposes of identifying Applicant.

Social Security Number: Applicant's social security number is required to run a check of all professional licenses held by Applicant, both in and outside of California.

Male /Female: This information is necessary so that the Department can identify the Applicant.

Date of Birth: This is also required for purposes of identifying Applicant.

Resident Address, City State,Zip Code; Home Phone Number and Citizenship: Information concerning an Applicant's personal residence is important for enforcement reasons. If for example, an Applicant or licensee's business address is no longer valid, the Applicant can be contacted at his or her residence. Information regarding citizenship is necessary to determine whether Applicant is authorized to work in the US and also for purposes of identifying the Applicant.

Business Address, City State, Zip Code, Business Phone Number, Fax, E-mail Address and Web Address: this information is essential for purposes of identifying the Applicant and facilitating the Department's communication with it. This information is also useful for enforcement reasons. The Department, for example, may have received complaints of unlawful activities associated with a particular address.

Mailing Address: It is necessary for the Applicant to state his or her mailing address in order to identify the Applicant, facilitate communication with the Applicant, and allow for enforcement of applicable laws.

Work/Personal History, Description of Employment Held for Last 5 Years: This information is necessary for purposes of checking on whether Applicant may have been employed by businesses that have engaged in misconduct and/or had been the subject of numerous consumer complaints.

Insurance Licenses Held in California and Other States: This information is necessary for the Department to contact other agencies or other states in which the Applicant is/was licensed and thereby learn if there are/were any regulatory or enforcement concerns with respect to the Applicant.

AKA's/Aliases: This information is necessary so that the Department may determine if there are any prior instances of misconduct concerning the Applicant, including under a different name.

Fictitious Names: In addition to the Applicant's legal name, it is essential for the Applicant to list any fictitious name it intends to use. This information is required so the Department can make sure that

the Applicant's prospective DBA is not one already in use or similar to one already in use, and to ensure that the name does not mislead the public in any respect.

15-Hour CE Requirement: This information is required to ensure compliance with Insurance Code section 10113.2(b)(1)(A).

Prior Felony Convictions: This information is critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior criminal convictions.

Felony Convictions Involving Dishonesty or Breach of Trust: This information is required to ensure compliance with federal law (18 USC 1033). This information is also critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior criminal convictions.

Consent of Insurance Commissioner: This information is required to ensure compliance with federal law (Title 18 USC 1033).

Prior Misdemeanor Convictions: This information is necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior criminal convictions.

Prior Military Offense Convictions: This information is necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior military convictions.

Currently Charged with Commissioner of a Crime: This information is necessary to determine whether the Applicant has the required competence and integrity to transact life settlements, as well as whether the Applicant is forthcoming about any pending criminal actions.

Administrative Proceedings Regarding Professional/Occupational License: This information is necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior administrative actions.

Business in Which Applicant Was an Owner, Partner, Officer, Director Involved in Administrative Proceeding: This information is critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior administrative actions.

Judgment for Overdue Monies by Insurer, Insured, Producer, or Prior Bankruptcy Proceeding: This information is critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior civil actions of this nature.

Delinquent Tax Obligation: This information is necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California.

Lawsuit/Arbitration Involving Allegations of Fraud, Misappropriation, Conversion of Funds, Misrepresentation or Breach of Fiduciary Duty: This information is critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California, as well as whether the Applicant is forthcoming about any prior civil actions of this nature.

Insurance Agency Contract Termination or Alleged Misconduct: This information is critically necessary to determine whether the Applicant has the required competence and integrity to transact life settlements in California.

Section 2548.18 Required Fingerprinting for Life Settlement Broker's License Applicants

Fingerprints are an effective, efficient and reliable means by which the Commissioner can determine whether an Applicant has a criminal background that should result in the denial of the life settlement broker's application. The Department has opted to use the Life Scan system for reasons of efficiency and practicality; this system has already been implemented by the Department of Justice, and the Department of Insurance currently uses the system in the licensing of other insurance producers. In the Department's experience, use of the Live Scan system ensures that the criminal background checks are conducted thoroughly and that the results of those checks are properly communicated to the Department, in the format the Department requires.

Section 2548.19 Life Producer Notification of Brokering Life Settlements

This provision is necessary to set forth the requirements for completing the notification by a life producer of his or her brokering life settlements pursuant to Insurance Code section 10113.2(b)(1)(D)(i) and (ii). The form is structured so that the individual must supply his or her full legal name and social security number. The former is necessary for the Department's identification of the individual. The social security number is essential so that the Department can conduct a search of licenses held by the Applicant in California and in other states. The producer notification procedure pursuant to Insurance Code section 10113.2(b)(1)(D) is conditioned upon Applicant's licensure for at least one year in California as a life agent. It is necessary for Applicant to provide his or her producer license number so that the Department can confirm this.

The Applicant must thereafter certify under penalty of perjury that he or she has read and correctly filled out the notification, and moreover, that he or she is familiar with SB 98 and the Commissioner's life settlement regulations and thoroughly understands that business and his or her obligations as a broker. This certification is essential in that SB 98 exempts life insurance producers from the CE requirements imposed upon life settlement brokers, and the Department needs the producer's attestation that he or she understands life settlements and the California laws which govern them. The Applicant is also required to certify that that he or is aware that any false statement on a document submitted to the Commissioner may subject his or her license to suspension or revocation.

Section 2548.20 Notification / License Terms

Section 2548.20(a) SB 98 offers very little guidance on the license terms for either a life producer who has complied with the notification procedure of Insurance Code section 10113.2(b)(1)(D) or that of a life settlement broker. The Commissioner has determined that a two-year term is appropriate for a life producer complying with the notification procedure because life agents currently have a two-year license term, and it promotes administrative efficiency to have the notification term and renewal procedures track the same license term as for a life producer's license.

Section 2548.20(b) SB 98 has language indicating that a life settlement broker's license shall be for a one-year term. For example, Insurance Code section 10113.2(b)(3)states that each licensee shall pay in advance to the Commissioner an "*annual* renewal fee." (Emphasis added.) Therefore, Section 2548.20(b) implements this provision by specifying that a life settlement broker's license shall be for one year, and also clarifies that the renewal date is the last day of the month in the year following the year of the license's issuance.

Section 2548.20(c) This provision is necessary to state the consequence for life settlement licensees' failure to renew their license or notification. Specifically, they must discontinue transacting life settlements and either reapply or re-notify the Commissioner pursuant to Section 2548.7. This provision is necessary to ensure that those transacting life settlements timely renew their licenses or otherwise discontinue transacting life settlements until such time as they renew.

Section 2548.21 Fees

Section 2548.21 is necessary to establish fees for both individuals and business entities applying for a life settlement broker's license. The fees established by Section 2548.21 are for both individuals and entities applying for a life settlement broker's license, and individuals and entities complying with the statute's producer notification procedure.

Insurance Code section 10113.2(b)(1) provides that the "license and renewal fees for a broker shall be reasonable and . . . shall not exceed the license and renewal fees established for an insurance producer who is acting as a life settlement broker." The fees for both life settlement brokers and for those complying with the agent notification process are set at $128 per license term, as this is currently the fee for a life agent's two-year license. Section 2548.21 further states procedures for paying the required fee; namely, those complying with the online life producer notification procedure must pay by credit card. This provision further clarifies that individuals applying for a life settlement broker license are responsible for paying fees to the Life Scan vendor, as well as the criminal history processing fees collected by the California Department of Justice and FBI.

Section 2548.22 Business Entity Application

Because many life settlement brokers will be organized as business entities, section 2548.22(a) is necessary to establish the procedure to license such entities as a life settlement broker.

Section 2548.22(a) Pursuant to this provision, the Applicant is required to disclose the identification of all stockholders holding more than a 10% share of the company, as well as all partners, directors, members, officers, managers, controlling persons or designated employees. This is provision is necessary so that the Department knows the identity of who actually owns and controls the business entity. This provision further specifies that the commissioner may refuse to issue a license to the

business entity if he is not satisfied that any stockholder, partner, director, etc., meets the standards of Insurance Code sections 10113.2(b)(1) and 10113.2(b)(2). It is necessary for the Commissioner to request information about the identity of a business entity's stockholders holding a 10% or greater interest, partners, directors, etc., as these individuals play key ownership or management roles in the organization, and if there were any significant problems concerning such individuals' backgrounds, it would not be in the public's interest to grant the entity a license.

Section 2548.22(b) A life settlement brokerage will have individuals transacting pursuant to the entity's license, and section 2548.22(b) clarifies that for this to occur, a life settlement broker that is organized as a business entity is required to file an endorsement appointing individuals to act on its behalf. The Department uses this procedure in other licensing contexts involving an individual's exercise of power on behalf of an insurance brokerage, and it is a procedure tailored to inform the Department which individuals have the authority to transact life settlement business under the a licensed entity's name or DBA. It is also for the protection of the business as well in the event that a rogue agent purports to transact pursuant to that business entity's name. Similarly, if a business entity wishes to establish that a particular life settlement broker no longer has the authority to broker settlements pursuant to the entity's name, it must file a business entity endorsement termination to sever that relationship from a licensing standpoint.

Section 2548.23 Business Entity Application Form

SB 98 is silent on what a life settlement broker application is to contain; each question in Section 2548.23 is tailored to inform the Commissioner's determination as to whether the entity should be granted a life settlement license, as elaborated below.

Business Entity Type, Business Entity Name, FEIN, Formation Date and State of Incorporation
This information is critically necessary to identify the Applicant, and can also be used to verify other licenses held by the entity, as well as check for enforcement, civil, criminal and administrative actions involving the entity.

Business Address, Phone Number, Fax, E-mail and Website Address and Mailing Address

This information is also necessary to identify the Applicant, and to monitor the Applicant's life settlement business, including advertising. It also provides a way to link past misconduct connected to that address to the Applicant. It further facilitates the Department's communication with Applicant.

Fictitious Names This Department is required to have this information and to monitor the Applicant's life settlement business, and to ensure that its DBA is not misleadingly similar to one used by another licensee. The Department is required to know any past names used by Applicant to determine if there were any prior instances of misconduct concerning the Applicant, albeit under a different name.

Insurance Licenses Held by Applicant This information is necessary so that the Commissioner has a sense of the scope of Applicant's licensed activities, and can check on any enforcement matters concerning the Applicant in another state.

Designated/Responsible Life Settlement Broker This information is necessary so the Department has a list of all individually licensed brokers who will be transacting life settlement business pursuant to the entity's license. With this information, the Department has the necessary means for verifying that broker endorsement forms are correctly filed. The individual's social security number is necessary to run a search of other licenses held by that individual. The individual's license number is required to ensure that he or she is a properly licensed life settlement broker or has otherwise complied with the producer notification requirement.

Business Entity Disclosure The Department is required to know who owns and controls a business entity, to determine if it is in the public interest to license that Applicant. Obviously, it is not in the public interest to license an Applicant associated with questionable or dubious owners even if the Applicant itself appears to have no prior regulatory mishaps. A social security number or FEIN number is required so that the Department can run a check to determine whether the named individuals or entities hold insurance licenses in California or other states. The Department can then follow up with such states to determine if there are any enforcement or regulatory concerns with respect to the individual or entity. The Department is required to know who owns and controls that entity as well to make sure that it is of sound reputation and has not engaged in misconduct such that it would be against the public interest to license the Applicant.

Background Information This section of the application asks various questions regarding any prior criminal, administrative and other actions with respect to any business entity or any of its partners, members, controlling persons, officers, directors, managers or 10% or more shareholders. The actions to be disclosed include prior criminal actions, administrative proceedings involving a professional or occupational license, bankruptcies, tax obligation delinquencies; liability in a lawsuit due to fraud, etc., and termination by an insurer for misconduct. This information is critically necessary to determine whether Applicant has the required character, competence and integrity to transact life settlements in California, as well as whether Applicant is forthcoming about any prior criminal or regulatory actions involving its owners and principals.

Applicant's Certification The Application has key provisions requiring Applicant to certify under penalty of perjury; namely; that it intends to carry out the business of life settlements in good faith faith, that it would be acting within the scope of its formation documents to engage in life settlement business, that the license for which it applies is compatible with the work it does and with any other licenses it possesses, and that only those natural persons authorized to transact life settlement business pursuant to the entity's license will do so. Applicant is also required to certify under penalty of perjury that that it has read the application and will attest to the truth of the information submitted on the application to the Commissioner. Finally, Applicant must attest its familiarity with the California life settlement law and the Commissioner's regulations as well as the Applicant's obligations as a broker.

These certifications, taken collectively, are necessary for the Commissioner to be assured that an individual with sufficient authority in the enterprise has thoroughly reviewed and can attest to the accuracy of information submitted to the Commissioner. The Commissioner also wants absolute assurance that Applicants applying for life settlement broker's licenses are thoroughly knowledgeable with respect to California's life settlement laws and regulations.

Section 2548.24 Business Entity Endorsement Form

This form is necessary to provide the Department with the most basic of information showing which individuals are authorized to transact on a business entity's life settlement license. This is extremely important from an enforcement standpoint to the Department, and is also for the protection of the business entity to ensure that rogue agents do not attempt to transact pursuant to that entity's license.

Section 2548.25 Business Entity Endorsement Termination

This form is required whenever a business entity transacting life settlements terminates an individual's authority to transact in the name of the business entity. The Termination form is important for the protection of the business entity which would have a clear interest in establishing which brokers are no longer authorized to transact on behalf of the entity.

Section 2548.26 Life Settlement Licensee Form Filings

This form requires basic information to enable licensees' compliance with Insurance Code section 10113.2(c) which requires life settlement licensees to file their life settlement forms used in California with the Department prior to their use. The form requires the name of the licensee, along with their California or NAIC Number, License Number, FEIN Number and/or Application Number. As to the latter, the licensee needs to select only as many of these identifiers that apply to it. The licensee is also requested to identify whether it is a provider, broker, or life producer. It then is required to describe the form and any identifying form numbers, when it will use the form, and who is submitting the form on behalf of the licensee. The latter information is necessary so that the Department has a basic summary reference of the form and the name of a contact person if the Department should have any questions regarding the form.

Section 2548.27 Life Settlement Licensee Disclosure to Life Settlement Applicant

This form is suggested, but is not required, for the licensee's compliance with Insurance Code section 10113.2(d). Although the specific form is not required, each disclosure is specifically mandated by Insurance Code section 10113.2(d) and each disclosure in the suggested form is therefore necessary as it is required by SB 98.

It should be mentioned that there is one disclosure in Insurance Code section 10113.2(d) that the Department opted to omit from the template. Specifically, section 10113.2(d)(9) requires the disclosure of "The date by which the funds will be available to the owner and the transmitter of funds." The broker would not have this information at the time someone applies to be considered for a life settlement contract, however. In fact, the exact date would not be known until after a life settlement contract is entered into, and the insurer has acknowledged change in ownership of the policy. A general statement of the latter procedure, and an approximate time for when funds are available is already contained in the template in Section 2548.27. (See Disclosure #8.)

Section 2548.28 Life Settlement Broker Disclosure to Owner and Insured

This form is suggested, but is not required, for the broker's compliance with Insurance Code section 10113.2(f). Although the specific form is not required, each disclosure is specifically mandated by SB 98 and each disclosure in the suggested form is therefore necessary as it is required by SB 98.
It should be noted, however, that Disclosure #4, relating to life expectancy estimates, is to be provided only where the owner of the policy is also the insured. This is because providing such estimates to policyowners who are not also the insured could violate state and federal privacy laws, and SB 98 specifically requires this disclosure only when such laws would not be violated. (See Insurance Code section 10113.2(f)(4).)

Section 2548.29 Life Settlement Provider Disclosure to Owner

As was stated in the discussion of Section 2548.12(c), none of the disclosure templates are mandatory although the disclosure of certain information is. If the provider choses to comply with the mandatory disclosure requirements of Insurance Code section 10113.2(e) and Section 2548.12(c) of the regulations by using the "Life Settlement Provider Disclosure to Owner" template, the information requested therein is necessary for the following reasons:

The name, address and telephone number of the life settlement broker are for the policyowner's ease of reference should it have any questions regarding the life settlement transaction. Item Number 2 is necessary for the owner to have a complete breakdown of commissions paid by the provider to the owner's life settlement broker. This is necessary to help prevent excessive commissions and fraud in life settlements. It is also necessary from an enforcement standpoint. If for example, the Commissioner learns in an investigation that actual commissions paid were different than those required to be disclosed, this would be basis for discipline of a provider license.

Section 2548.30 Life Settlement Provider Annual Statement

Insurance Code section 10113.2(p) requires that all licensed life settlement providers file an annual statement with the commissioner on or before March 1 of each year, in the form prescribed by the Commissioner. The information required on the Annual Statement is necessary to ensure ongoing compliance with SB 98's requirements, as well as monitor the provider's solvency. Each question on the annual statement and the Department's demonstrated necessity for the required information is summarized below.

Year Covered by Report: It is necessary that the annual report state the year for which the report is filed.

Provider FEIN: It is necessary that the report contain the provider's FEIN as a unique numeric identifier for each provider.

Provider Information:

Provider Name and Fictitious Names: In order to ensure compliance SB 98's requirements, it is necessary for the provider to state its name and any other names under which the provider does business. The information is necessary for the Department to identify Applicant,

monitor California life settlement business as required by statute, ensure compliance with licensing requirements, and check for potential fraud, enforcement actions, etc.

State of Organization: It is necessary for the Department to know where the provider is organized to identify the provider and ensure ongoing compliance with licensing requirements.

Licensing Date: In order to identify the provider and reduce the Department's records review burden, it is necessary that the provider state the year in which it was licensed in California.

Provider Administrative Office Address: It is necessary that the provider state the address of its administrative offices in order to identify the provider, and facilitate communication with the provider

Location of Books and Business Records: It is necessary for the provider to disclose the location of its books and records in order to ensure compliance with reporting requirements and allow for the enforcement of SB 98, particularly should the Commissioner decide to investigate the provider or examine its books and records.

Provider Administrative Mailing Address: It is necessary that the provider state its mailing address in order to identify the provider, and facilitate communication with the provider.

Name and Telephone Number of Contact Person: It is necessary that the provider state the name and telephone number of a contact person in order to facilitate communication with the provider.

Contact Telephone Number: It is necessary that the provider state the telephone number for a contact person in order to facilitate communication with the provider and allow for enforcement of applicable laws.

Life Settlement Provider Ownership Information:

Name, Title, Percentage Owned, Business and Residence Address: In order to ensure compliance with the requirements set forth in SB 98, it is necessary for the provider to state the names of any parties owning a substantial interest in the provider, along with their Title and percentage of their interest. The information is necessary for the Department to monitor life settlement business as required by statute, particularly the provider's obligation to comply with Section 2548.5's requirement to notify the Department and/or file a new provider application when there has been a sale of shares or change in control of provider. This information also enables the Department to check for potential fraud, enforcement actions, or license revocations concerning specific individuals.

Provider Acknowledgement: The Department's regulatory mission is dependent on obtaining reliable information from regulated entities. Therefore, it is necessary that individuals who provide information to the Department on behalf of a provider sign a

declaration under penalty of perjury attesting their knowledge of the provider's operations and the veracity of the information provided.

Policy Information (total number of policies nationwide; aggregate face amount nationwide; total number of polices, and California aggregate face amount): It is necessary for the Commissioner to understand the general scope of the provider's operations so that it can assess the magnitude of consumer complaints to the Department concerning a particular provider. Data regarding the scope of the provider's settlements is also important for purposes of evaluating whether its assets as set forth in its audited financial statement are sufficient to support its business. Most importantly, the portion of its California-related settlement business in relation to its nationwide business is directly linked to whether or not the provider is required to file a new application whenever it has a change in control. (See Section 2548.5.)

Audited Financial Statement: In order to prevent fraud and ensure proper capitalization of providers, it is necessary that providers submit an audited financial statement with the annual report.

General Interrogatories:

Changes to Provider Business Operations: This information is necessary for the Department to monitor any change in provider ownership potentially triggering a new provider application pursuant to Section 2548.5. Even if a new application is not required, providers are still required to file with the Department the correct documentation, fingerprints and biographical affidavits, and this provision is necessary to inform the Department that this obligation may have not been fulfilled.

Statement of Legal Actions against Provider's Owners, Members, Stockholders, Employees or Directors: It is necessary for the Commissioner to review any action of the sort named in this interrogatory to ensure that it remains in the interest of the public for the provider to continue to be licensed in California to transact life settlement business. If any person who wields influence over provider has been subject to the sort of legal action involving dishonesty, fraud and/or incompetence, the Commissioner would have potential grounds for revoking the license.

Statement of Legal Actions by or against Provider: It is necessary for the Commissioner to review any action of the sort named in this interrogatory to ensure that it remains in the interest of the public for the provider to continue to be licensed in California to transact life settlement business.

Escrow Complaints: This information is necessary for the Commissioner to monitor the provider's obligation to fulfill the most fundamental of its duties to the policyowner: to pay life settlement proceeds in a timely fashion out of a properly-established escrow account.

with investor fraud that has come to the attention of the Commissioner, the Department must have assurance that the provider is duly complying with state and federal securities laws concerning investors.

Disclosure Information: This information is necessary to ensure compliance with provider statutory disclosure obligations.

Form Information: This information is necessary to ensure compliance with statutory form filing requirements.

Confidential Information: This information is necessary to ensure compliance with state and federal laws protecting private medical and financial information.

Examination Information: It is necessary for the Commissioner to review any provider exams performed by the domestic regulator to monitor the provider's solvency and/or market conduct.

Escrow Account Information: This information is necessary for the Department to monitor the provider's compliance with the escrow requirements of SB 98 and these regulations.

Section 2548.31 Verification of Coverage for Life Insurance Policies

As explained in the portion of this Notice discussing Section 2548.15, life settlement providers may but are not required to use the specific verification of coverage form referenced at Section 2548.31 of the regulations. The form suggested for use has been borrowed from the NAIC and is commonly used in the life settlement industry. If the life settlement provider needs to tailor its form to meet its own particular needs, it is free to do so, as long as it submits the form to the Department prior to its use pursuant to Insurance Code section 10113.2(c).