

**REPORT ON
LIFE SETTLEMENTS ACT
TO THE 24TH LEGISLATURE**

**Submitted Pursuant to
Act 177, Session Laws of Hawaii (2008)**

Prepared by the

**Insurance Division
Department of Commerce
and Consumer Affairs
State of Hawaii
December 2008**

I. INTRODUCTION

Section 4 of the Life Settlements Act, Act 177, Session Laws of Hawaii (2008) (“Act 177”), directs the Insurance Commissioner (“Commissioner”) to submit a report to the 2009 Legislature.

The report shall include:

- (1) Any issues and concerns relating to the implementation and effects of Act 177;
- (2) The total number and disposition of life settlement cases investigated by the Commissioner under Act 177;
- (3) An evaluation by the Commissioner of the effectiveness of Act 177 in regulating life settlement contracts; and
- (4) Any recommendations, including proposed legislation, to improve the provisions of Act 177.

This report presents the interim findings of the Commissioner for further improvements to Act 177.¹

II. OVERVIEW

The 2008 Legislature passed House Bill No. 94, H.D. 1, S.D. 2, C.D. 1, which was enacted into law as Act 177 on June 16, 2008. Codified as Hawaii Revised Statutes (“HRS”) chapter 431E, Act 177 automatically sunsets two years after its effective date.²

¹ Act 177 also requires the submission of a report to the Legislature prior to the convening of the 2010 legislative session. Act 177, § 4.

² Act 177, § 7.

Act 177 authorizes the Commissioner to regulate the form of life settlement contracts³, to license life settlement brokers and providers⁴, and to examine and investigate the business and affairs of any licensee or applicant. It also prohibits fraudulent life settlement acts, including stranger-originated life insurance (“STOLI”).⁵ As a consumer protection measure, Act 177 is intended to protect individuals, particularly senior citizens and those suffering from chronic or terminal illness, from fraudulent activity relating to the selling and buying of life insurance policies.

Act 177 adopted the National Conference of Insurance Legislators’ (“NCOIL”) Life Settlements Model Act, rather than the National Association of Insurance Commissioners’ (“NAIC”) Viatical Settlements Model Act.⁶

III. IMPLEMENTATION OF ACT 177

A. Publication of Licensing Applications

Act 177 required the publication of the life settlement broker and provider licensing applications. Publication triggered the thirty-day deadline for life settlement

³ A life settlement contract is defined as a written agreement between a provider and an owner where compensation is paid for the owner’s assignment of the life insurance policy’s death benefit, where the contract’s minimum value is greater than the policy’s cash surrender value or accelerated death benefit. There are other transactions that may meet the statutory definition. HRS § 431E-2.

⁴ A life settlement broker is defined as a person who represents a policyowner for a fee to negotiate a life settlement contract with providers. A life settlement provider is defined as a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. HRS § 431E-2.

⁵ Stranger-originated life insurance (“STOLI”) is defined as a practice or plan to initiate a policy for the benefit of a third-party investor who has no insurable interest in the insured at the time of policy initiation. HRS § 431E-2. For other fraudulent life settlement acts, see HRS § 431E-42.

⁶ The NAIC Viatical Settlements Model Act was introduced as House Bill No. 3099 and Senate Bill No. 3021. These bills proposed incorporating a regulatory scheme within the Insurance Code, HRS chapter 431, proposed a five-year ban prohibiting investors from collecting on a viatical settlement, and included a bond requirement for brokers to ensure financial responsibility.

brokers and providers to submit their licensing applications with regard to pending life settlement transactions and negotiations.⁷

The application forms were published statewide in newspapers at a cost of approximately \$4,000.⁸ In addition, the applications were posted on the Insurance Division website and provided electronically to the Life Insurance Settlement Association.⁹

B. Licenses Issued

To date, life settlement broker and provider licenses have been granted as shown in the table below.

License	Resident	Nonresident
Broker	9	21
Broker Agency	2	14
Provider	1	23
Provider Agency	-	21

C. Licensing Inconsistencies

There are inconsistencies between requirements for life settlement licenses and insurance licenses.

⁷ Act 177, § 3.

⁸ Act 177 did not provide an appropriation to the Insurance Division.

⁹ The Life Insurance Settlement Association (“LISA”) is a trade association for the life settlement industry.

Life settlement brokers or providers may apply as a resident or nonresident for an individual or business entity (agency) license. Under the Insurance Code, the licensing of a business entity requires the naming of at least one designated representative who is responsible for regulatory compliance.¹⁰ The designated representative must also be licensed to ensure that this individual has sufficient familiarity with substantive law. Act 177 does not contain an express statutory requirement for the naming of designated representatives.

Act 177 requires life settlement brokers to complete 15 hours of continuing education in life settlements and life settlement transaction each biennium, except for life insurance producers operating as brokers.¹¹

The Insurance Code currently requires insurance producers to complete 20 or 30 hours of continuing education every biennium.¹² Since brokers must be licensed life producers, the statutory reference to 15 continuing education hours appears to be unnecessary.

D. Rulemaking

Act 177 provides the Commissioner with express rulemaking authority, with certain provisions expressly referring to rules adopted by the Commissioner.¹³

For example, HRS § 431E-31(a) requires the provider to make certain disclosures to the owner prior to signing the life settlement contract, including the

¹⁰ HRS § 431:9A-106(b).

¹¹ HRS § 431E-3(p). There is no continuing education requirement for life settlement providers.

¹² HRS § 431:9A-124(b) requires 20 hours of continuing education for a life producer and 30 hours for a producer authorized to sell both life and property and casualty insurance. The Commissioner is proposing legislation in an Administration measure to require 24 hours of continuing education for all producers.

¹³ HRS § 431E-53. HRS § 431E-21 also contains a reference to rules.

delivery of a “*Buyer’s Guide* or similar consumer advisory package in the form prescribed by the commissioner”.¹⁴ HRS § 431E-34 states that “[t]he commissioner by rule shall require delivery of a *Buyer’s Guide* or a similar consumer advisory package to owners during the process of soliciting a life settlement contract.” On the Insurance Division website, the Commissioner has posted consumer guides on life settlements.¹⁵ In this instance, rulemaking may be unnecessary and reference should be deleted.

The Insurance Division is currently determining the necessity of rules for other provisions in Act 177.

IV. NUMBER AND DISPOSITION OF LIFE SETTLEMENT CASES

To date, there have been no life settlement complaints received by the Insurance Division. There have been no life settlement investigations conducted by the Insurance Division.¹⁶

V. EVALUATION AND RECOMMENDATIONS

At this stage, it is too early to gauge the effectiveness of Act 177 in regulating life settlements, given that the Act has been in effect for approximately six months.¹⁷

The Commissioner has endeavored to implement and interpret Act 177 in a reasonable manner as a means of effectuating its legislative purpose.

¹⁴ HRS § 431E-31(a)(10).

¹⁵ The consumer guides are located at <http://hawaii.gov/dcca/areas/ins/consumer>. There are two consumer guides: Selling Your Life Insurance Policy; and Buying Life Settlements as Investments.

¹⁶ The number of life settlement contracts involving Hawaii residents is unknown, as there is no reporting requirement for this information other than the annual report requirement in HRS § 431E-6(a) for policies settled within five years of issuance.

¹⁷ Life settlement providers are required to file on or before March 1 of each year an annual statement identifying life settlement transactions for any policy settled within five years of policy issuance where the insured is a State resident. HRS § 431E-6(a).

In this vein, the Commissioner makes the following recommendations for proposed legislation:

1. Require the business entity to name one or more designated representatives who are responsible for regulatory compliance, similar to the requirement in HRS § 431:9A-106(b);
2. Clarify the continuing education requirement in HRS § 431E-3(p); and
3. Delete the reference to rules in HRS § 431E-34.

A follow-up report will be submitted to the 2010 Legislature, pursuant to Act 177,

§ 4.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 431E-3, Hawaii Revised Statutes, is
2 amended by:

3 1. Amending subsection (b) to read:

4 "(b) Application for a provider or broker license shall be
5 made to the commissioner by the applicant on a form prescribed
6 by the commissioner, and the application shall be accompanied by
7 a fee in the amount provided by section 431:7-101. The
8 requirements for a business entity license in section 431:9A-
9 107(b) shall apply, provided that the business entity shall
10 designate a licensed provider or broker who is a natural person
11 responsible for the business entity's compliance with applicable
12 laws and rules."

13 2. Amending subsection (p) to read:

14 "(p) ~~[An individual licensed as a broker shall complete on~~
15 ~~a biennial basis fifteen hours of training related to life~~
16 ~~settlements and life settlement transactions, as required by the~~
17 ~~commissioner; provided that a life insurance producer who is~~
18 ~~operating as a broker pursuant to this section shall not be~~

____.B. NO. _____

1 ~~subject to the requirements of this subsection.]~~ A broker shall
2 complete the required number of credit hours as set forth in
3 section 431:9A-124(a) in approved continuing education courses.
4 Any person failing to meet the requirements of this subsection
5 shall be subject to the penalties imposed by the commissioner."

6 SECTION 2. Section 431E-34, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§431E-34 Buyer's guide.** The commissioner [~~by rule~~] shall
9 require delivery of a *Buyer's Guide* or a similar consumer
10 advisory package to owners during the process of soliciting a
11 life settlement contract."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2009.

15

16 INTRODUCED BY: _____

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By Request