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**IDAPA 18
TITLE 03
CHAPTER 02**

18.03.02 – LIFE SETTLEMENTS

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the director under Sections 41-211 and 41-1965, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. Title. This rule is titled IDAPA 18.03.02, “Life Settlements.” (3-29-10)

02. Scope. This rule sets forth requirements regarding the sale and settlement of life insurance contracts where the owner of the contract is an Idaho resident. (3-29-10)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (3-29-10)

003. ADMINISTRATIVE APPEALS.

All administrative appeals will be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General - General Provisions. (3-29-10)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. (3-29-10)

005. OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB SITE.

01. Office Hours. 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-29-10)

02. Mailing Address. P.O. Box 83720, Boise, ID 83720-0043. (3-29-10)

03. Street Address. 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (3-29-10)

04. Web Site Address. The department’s website is <https://doi.idaho.gov>. (3-29-10)

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-29-10)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Advertising Materials. (3-29-10)

a. Printed and published material, audio visual material, and descriptive literature of a broker or provider used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other internet displays or communications, other forms of electronic communications, billboards and similar displays; (3-29-10)

b. Descriptive literature and sales aids of all kinds issued by a provider or broker for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and (3-29-10)

c. Prepared sales talks, presentations and material for use by providers and brokers. (3-29-10)

02. Affiliation. For purposes of this rule and the Life Settlements Act, an affiliation shall include any contractual relationship outside of the proposed life settlement contract, any ownership interest or relation, any familial relation, an employment relation, any relationship creating financial dependency, any arrangement that provides one party the ability to control or influence the actions of another party, or any other arrangement or relationship that might reasonably result in parties treating one another in a less than arm's length manner. (3-29-10)

03. Broker. A life settlement broker as defined at section 41-1951(6), Idaho Code. (3-29-10)

04. Operating as a Broker. A person is operating as a broker if the person, for a fee, commission or other valuable consideration, offers or attempts to negotiate a life settlement contract between an owner who is a resident of Idaho and one or more providers. A person working on behalf of a broker by offering or attempting to negotiate a life settlement contract for a fee, commission or other valuable consideration is operating as a broker regardless of whether the person has a direct contractual relationship with the owner. (3-29-10)

05. Operating as a Provider. A person is operating as a provider if the person offers to enter into or attempts to effectuate a life settlement contract with an owner who is a resident of Idaho. A person attempting to effectuate a life settlement contract on behalf of a provider is also operating as a provider regardless of whether the person will be a party to the life settlement contract. (3-29-10)

06. Owner. A life insurance owner or certificate holder as defined at section 41-1951(9), Idaho Code. (3-29-10)

07. Provider. A life settlement provider as defined at section 41-1951(8), Idaho Code. (3-29-10)

011. REGISTRATION REQUIRED TO OPERATE AS LIFE SETTLEMENT PROVIDER OR LIFE SETTLEMENT BROKER.

01. Registration Required. Not later than ten (10) days after first operating as a provider or broker a person shall notify the Director that he is acting as a provider or broker by registering with the Department and paying applicable fees as set forth at IDAPA 18.01.02, "Schedule of Fees, Licenses and Miscellaneous Charges". Registration shall be in writing and in the form and include information as required by the Director along with a certification from the applicant that he has read and familiarized himself with the requirements of Sections 41-1950 through 41-1965, Idaho Code, and these rules. (3-29-10)

02. Renewal of Registration. Registration as a broker or provider shall continue until the next renewal date of the person's producer license. If the initial registration takes place within ninety (90) calendar days from the producer license expiration date, registration shall continue until the following producer license renewal date. Registration may be renewed by payment of the applicable renewal fee as set forth at IDAPA 18.01.02, "Schedule of Fees, Licenses and Miscellaneous Charges". An insurance producer who allows his registration as a broker or provider to lapse may, within twelve (12) months from the renewal due date, reinstate the registration by paying a penalty in the amount of double the unpaid renewal fee. If a registration is allowed to lapse for more than twelve (12) months without reinstatement, a producer wishing to act a broker or provider shall re-register with the Department and pay the applicable registration fee prior to operating as a broker or provider. (3-29-10)

012. FILING OF FORMS.

01. Filing of Life Settlement Contracts and Disclosure Forms. No person shall use a life settlement contract or disclosure form in Idaho unless the form is first filed with the Department along with a certification that the form meets the requirements of Sections 41-1950 through 41-1965, Idaho Code. The certification shall be in the form as prescribed by the Director and signed by a person registered as a provider or broker. (3-29-10)

02. Filing of Advertising Materials. No person shall use advertising materials promoting or advertising the availability of life settlements or life settlement services in Idaho unless the materials are first filed with the Department. If the advertising is not in written form, a written script shall be filed. All advertising relating to the business of life settlements shall have a unique identifying form number in the lower left hand corner of the advertising piece and shall comply the following standards: (3-29-10)

a. Be truthful and not misleading in fact and implication. All information shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading. (3-29-10)

b. Reference the complete form number of any life settlement contract being advertised and clearly identify the full and complete name of the provider or broker using the promotional material. Advertising materials shall not use a trade name, any insurance group designation, name of the parent company of the provider or broker, name of a particular division of the provider or broker, service mark, slogan, symbol or other device which would have the capacity and tendency to mislead or deceive as to the true identity of the provider or broker without disclosing the name of the actual provider or broker using the advertising material. (3-29-10)

c. No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving sellers or prospective sellers as to the nature or extent of any policy benefit payable. The fact that the contract offered is made available to a prospective seller for inspection prior to consummation of the sale or an offer is made to rescind the life settlement contract if the seller is not satisfied, does not remedy misleading statements. (3-29-10)

d. Advertising materials shall not use words or phrases in a manner which exaggerates any benefits beyond the terms of the life settlement contract and shall fairly and accurately describe the negative features as well as the positive features of the life settlement contract and life settlement program. An advertisement shall not represent or imply that life settlements by the provider are “liberal” or “generous,” or use words of similar import, or that benefits of a life settlement are or will be beyond the actual terms of the life settlement contract. (3-29-10)

e. Advertising materials shall not be designed to encourage or promote the purchase of life insurance for the purpose of transferring ownership to third party investors who lack an insurable interest in the in the life of the insured. (3-29-10)

f. An advertisement shall not create the impression directly or indirectly that a provider, a broker, its financial condition or status, a life settlement contract or program, or the payment of life settlement benefits is approved, endorsed, or accredited by any division or agency of this state or the United States Government. (3-29-10)

g. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the life settlement contract advertised and be accurately reproduced. A provider or broker using a testimonial makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the provider or broker, or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: “Paid Endorsement.” (3-29-10)

h. The source of any statistics used in an advertisement shall be identified in the advertisement. (3-29-10)

03. Font Size for Printed Materials. Pertinent text of all printed materials required to be filed with the director under the Life Settlement Act, including, but not limited to, notices, disclosure forms, contract forms, and advertising material, is required to be formatted using at least a twelve (12) point font. Signature blocks, footnotes or text not relevant to the understanding of the printed material may be printed in a smaller font, but in no case smaller than a ten (10) point font. (3-29-10)

04. Disapproval of Noncompliant Forms. The Director may disapprove for use in Idaho any form required to be filed pursuant to this Section if, in the opinion of the Director, the form does not comply with any part of Title 41, Idaho Code, or these rules, or the form is unreasonable in its terms, contrary to the interests of the public, misleading to the public, unfair to the owner, or is printed or provided in a manner making any part of the form substantially illegible. (3-29-10)

013. ANNUAL REPORTING REQUIREMENTS.

All persons registered with the Director as a provider shall file with the Director, on or before March 1st of each year, an annual statement. An annual report is required regardless of whether any life settlement contracts with Idaho owners were executed during the year. (3-29-10)

014. EXAMINATION AND RECORDS.

Brokers and providers are subject to examination by the Director in accordance with Chapter 2, Title 41, Idaho Code, and shall pay, at the direction of the Director, the actual travel expenses, reasonable living expense allowance, and reasonable compensation incurred on account of the examination upon presentation of a detailed account of the charges and expenses. (3-29-10)

015. REQUIRED DISCLOSURES TO OWNER.

01. Disclosure to Owner Upon Application. A broker or provider shall not provide an owner with an application for a life settlement contract unless the owner has also been provided a disclosure form containing all the information required by Idaho Code, 41-1956 and in substantially the same form as the sample form found on the Department website. The disclosures shall be provided in a separate document in at least twelve (12) point font. Each page of the disclosure document shall be initialed by the owner indicating that it has been received and read by the owner, and the final page shall be dated and signed by the owner and the broker or provider that delivered the disclosure document to the owner. (3-29-10)

02. Disclosures to Owner by Provider Upon Settlement. Prior to the time an owner signs a life settlement contract, the provider shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1957 and in substantially the same form as the sample form found on the Department website. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest of the contract on a separate page or as a separate section using at least twelve (12) point font and with a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the provider. (3-29-10)

03. Disclosure to Owner by Broker Upon Settlement. Prior to the time an owner signs a life settlement contract, the broker shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1958 and in substantially the same form as the sample form found on the Department website. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest of the contract on a separate page or as a separate section using at least twelve (12) point font, and a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the broker. (3-29-10)

04. Affiliations to be Disclosed. As a part of the disclosures required under this Section, a provider shall disclose in writing to the owner any affiliation between the provider and the issuer of the insurance policy to be settled, and a broker shall disclose in writing any affiliation or contractual arrangement between the broker and any person making an offer in connection with a proposed life settlement contract. (3-29-10)

016. ADDITIONAL REQUIREMENTS.

01. Owner's Statement.

(3-29-10)

a. Prior to entering into a life settlement contract, the provider shall obtain from each owner a written statement in substantially the following form: "I, [owners name], have freely and voluntarily consented to the life settlement contract that accompanies this statement. I have carefully read my insurance policy that is the subject of the life settlement contract and I understand the benefits that are available under the policy. I further understand that by entering into the life settlement contract, the right to benefits under the insurance policy will be sold to another

party and I, my heirs or former beneficiaries will no longer have any right to receive those policy benefits.” (3-29-10)

b. If the owner has a terminal or chronic illness, the following wording shall also be included in the owner’s statement: “I am currently suffering from a terminal or chronic illness that was not diagnosed until after the policy that is the subject of the life settlement contract was issued.” (3-29-10)

c. The statement of the owner must also be acknowledged by a notary public. (3-29-10)

02. Owner’s Right to Rescind Life Settlement Contract. (3-29-10)

a. The life settlement contract shall conspicuously inform the owner in bold type of at least twelve (12) point font that the owner has an absolute right to rescind a life settlement contract within twenty (20) calendar days of the date the contract is executed and shall set forth the manner in which notice is to be given. (3-29-10)

b. Upon being informed of the owner’s intention or desire to rescind a life settlement contract, the provider shall immediately provide the owner with a full accounting of the amount that must be repaid by the owner in order to rescind the policy. The amount due shall include only amounts actually paid to and received by the owner pursuant to the terms of the life settlement contract along with any premiums, loans and loan interest paid by or on behalf of the provider in connection with or as a direct consequence of the life settlement contract. An owner shall not be required to pay any financial penalties, liquidated damages or other punitive fees or charges in connection with rescission of a life settlement contract. (3-29-10)

c. Until the owner receives from the provider an accounting of the full and correct repayment amount needed to rescind the life settlement contract, a tender of payment by the owner of amounts actually received and reasonably believed to be due upon rescission shall be deemed substantial compliance with the requirement of notice and repayment of proceeds within the twenty (20) day rescission period. (3-29-10)

03. Life Settlements Occurring Within Two Years of Policy Origination. (3-29-10)

a. No broker or provider shall solicit, arrange for or enter into a life settlement contract within two (2) years of the date of issuance of the life insurance policy or certificate being settled unless one (1) or more of the conditions identified in Section 41-1961, Idaho Code, applies. If one (1) or more of the conditions is present, the provider shall obtain from the owner a written statement sworn before a notary public setting forth in detail the circumstances permitting the early settlement of the contract. The sworn statement shall also include the following or substantially similar wording: “I hereby affirm that there was no plan or arrangement in place or under discussion, or any promises made, regarding the settlement of this life insurance policy at the time the policy was purchased.” (3-29-10)

b. In addition to the sworn statement, the provider shall obtain and retain as a part of its records independent documentation of the circumstances permitting early settlement of the life insurance policy along with all documentation relating to any premium financing arrangements made in connection with the policy being settled. (3-29-10)

c. The sworn statement and copies of all supporting documentation shall be provided to the insurer at the time a request for verification of coverage is submitted to the insurer. A request for verification of coverage relating to a policy or certificate that has been in effect for two (2) years or less will be considered incomplete if it is not accompanied by the owner’s sworn statement and supporting documentation. An insurer that determines a request for verification of coverage is incomplete shall, without undue delay, inform the broker or provider in writing that the verification is incomplete and identify all items needed to complete the request. (3-29-10)

017. -- 999. (RESERVED)

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