CHAPTER 45-16-02
LIFE SETTLEMENT ADVERTISING

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45-16-02-01. Definitions.

Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-33.4.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-01

45-16-02-02. Applicability.

1. This chapter applies to any advertisement of the business of life settlements intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of a provider or broker required to be licensed under North Dakota Century Code section 26.1-33.4-02.

2. Every provider and broker required to be licensed under North Dakota Century Code section 26.1-33.4-02 shall submit a statement of compliance regarding advertising as part of the initial application and at other times as requested by the commissioner.

3. Life settlement promotional, advertising, or marketing materials need not be filed with the commissioner except upon request or order of the commissioner.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-01

45-16-02-03. Disclosure requirements.

1. Advertisements must be accurate and truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

2. A person or trust may not directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy.

3. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

   a. An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an

offer is made to refund the payment if the owner is not satisfied or that the life settlement contract includes a free-look period that satisfies or exceeds legal requirements, does not remedy misleading statements.

b. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

c. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

d. The words "free", "no cost", or words of similar import may not be used in the marketing, advertising, soliciting, or otherwise promoting of a life settlement contract. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

e. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisal, or analysis, a licensee under this chapter makes as its own all the statements contained therein and the statements are subject to all the provisions of this section.

(1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(2) An advertisement shall not state or imply that a life settlement contract has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(3) When an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of five years after its use.

4. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

5. An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, life settlement investment agents, insurance producers, policies, services, or methods of marketing.

6. The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

7. An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the life settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

8. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

9. An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's website or contact the insurance department to find out if the state requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.

10. An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.

11. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

12. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

    a. Any life settlement licensee or its business practices or methods of operation;

    b. The merits, desirability, or advisability of any life settlement contract;

    c. Any life settlement contract; or

    d. Any life insurance policy or life insurance company.

13. If the advertiser emphasizes the speed with which the life settlement transaction will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

14. If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percentage of face value obtained by owners contracting with the licensee during the past six months.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-33.4-07, 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-07