

VIATICAL SETTLEMENT CONTRACTS

Application Process/Instructions

The Viatical Settlements Act of 2002, K.S.A. 40-5001 through 5016 (as amended by Senate Substitute for House Bill 2110 (effective 7/1/2008), can be accessed at <http://www.kslegislature.org>.

The above statutes regulate the application process to engage in the business of Viatical Settlement contracts in the State of Kansas. Review the following instructions and submit the required documentation.

- I. A non-refundable filing fee of \$1,000, payable to the Kansas Insurance Department. If your home state insurance regulator requires a higher non-refundable fee in advance of filing an application for a Certificate of Authority, we ask that you submit that fee to us pursuant to K.S.A. 40-253.
- II. An explanatory cover letter describing and attaching the requested documentation about the following subjects:

A. REQUIRED FILINGS

1. Completed Application for Certificate of Authority

- a. Identification – Identify applicant’s status as an individual, partnership or corporation. Name the state of incorporation and give the legal and mailing street address of applicant’s principal place of business. Also provide the Federal Tax I.D. number.
 - b. Certificate of Good Standing – If incorporated, applicant must be registered with Kansas Secretary of State and obtain a Certificate of Good Standing, which must be furnished with application to the insurance department for a Certificate of Authority.
 - c. Appointment of Agent for Service of Process – If applicant is not a resident of Kansas the enclosed “Letter of Attorney” form must be completed in accordance with K.S.A. 2007 Supp. 40-5003(i). Also there must be attached to that form a certified copy of the minutes of the board of directors meeting at which the above mentioned resolution was adopted. (See attached forms L-100 and L-101.)
2. Name Approval – File for name approval with the enclosed Secretary of State’s Form NR – Reservation of Corporate Name.
 3. Viatical Settlements Contract Form – Submit a copy if all applicant’s Viatical Settlement contract forms and discount rates used and/or to be used in Kansas.
 4. Biographical Affidavits – List the names of applicant’s officers, directors and key management personnel, the job title of each person and a brief description of the job duties. Also, name the individual owners of applicant which have a beneficial interest or ownership of more than 10% of applicant. Specify the corresponding percentage of ownership for each named individual. Complete the enclosed organizational and individual affidavit forms (L-104 and L-105). Please follow the enclosed affidavit instructions (L-103). For the purpose of these affidavits, the term “insurance” or “insurer” shall also include the “Viatical Settlement contract” business.
 5. Financial Information – The following information and documents must be enclosed:

Financial Statements – Independent CPA Audited Financial Statements for the past three years, including balance sheet and income statement. The financial statements must show litigation expenses as well as out-of-pocket “underwriting” expenses, and/or the costs incurred in processing viators’ applications.

III. ORGANIZATIONAL AND LICENSING INFORMATION

- A. Plan of Operation – Give a narrative overview of applicant’s business. The Plan of Operation must be verified by an officer of the applicant who has knowledge of the facts set forth in the Plan. Include in your description the notarized verification displayed on L-102.
 1. Type of Business – Explain the types of business, e.g., Viatical Settlement contracts, real estate sales, financial investment, etc., that applicant transacts and the geographical locations where it engages in a particular type of business. Describe the percentage of overall income and expense devoted to each type of business. Explain whether the Viatical Settlement contract business is or will be applicant’s primary business.
 2. Business Licenses – List all business licenses held by applicant from any government entity (i.e., state, county, municipality, etc.), the term of such license, the type of license, and the issuing government entity.

3. Marketing Techniques – Describe how applicant advertises and markets its business in general. More particularly, detail how individual clients/viators are contacted and communicated with. Explain how marketing representatives and other individuals who have direct contact with clients/viators are recruited, trained and compensated.
 4. Financial Resources – Describe the source(s) and terms of applicant’s financial resources.
 5. Litigation and Beneficiaries – Describe applicant’s procedures with regard to the client/viator’s beneficiaries and any litigation that has involved these beneficiaries.
 6. Discount Rate – Describe in detail applicant’s criteria for determining the “discount rate”, that is the amount of payment to the policyholder/viator. Include the range of life expectancies and correlating percentages of face amount of the insurance policy to be paid to the viators. Explain how any other factors may affect the discount rate, such as the type of insurance contract, beneficiaries’ interests, costs of financing, etc. Explain how payment is made to the viator, whether in lump sum or installments, and the timing of the payment(s). Describe how and why any monies are held back or put aside by applicant for later payment to applicant and/or any other beneficiary.
- B. MEDICAL INFORMATION– Describe applicant’s procedures with regard to the procurement of a written statement from the attending physician concerning the viator’s state of mind (the viator is the policyholder with a catastrophic or life threatening illness). Explain applicant’s procedures for keeping this and all medical information confidential. Describe and attach applicant’s form letters, medical release forms, or other formatted written material used for this purpose.
- C. VIATOR’S STATEMENTS
1. Describe applicant’s procedures for obtaining the viator’s statement setting forth his/her understanding and consent.
 2. Explain in detail what information is provided to the viator and by whom concerning the following subjects: (Describe and attach any related written materials including forms that are used for these purposes)
 - a. The catastrophic or life threatening nature of the viator’s illness.
 - b. The viatical settlement contract.
 - c. The benefits of the viator’s life insurance policy.
 - d. The release of medical records.
 3. Describe in general what steps applicant takes to ensure that the viator freely and voluntarily enters into the contract, and that he/she acknowledges a full and complete understanding of the terms of the contract.
 4. Please attach any additional form letters or written materials used by the applicant that has not been included with the answer to paragraph 2 above.
- D. DISCLOSURE AND ADVICE – Describe applicant’s procedures to disclose and advise the viator on the following subjects. Explain what information is given, who gives the information, and the qualifications of the informing party. Please refer to and attach any form or other written material used in disseminating the information. The subjects include:
1. Possible alternatives to Viatical Settlement contracts.
 2. Tax consequences.
 3. Effect on public assistance benefits.
- E. VIATOR’S RESCISSION – Describe applicant’s procedures to provide the viator the absolute right to rescind the contract within 15 days if execution and to advise the viator that any waiver of the right to rescind is void. Refer to and attach any forms or any other written materials used for this purpose.

LETTER OF ATTORNEY

TO ACKNOWLEDGE SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

That _____ desiring to transact the business of Viatical Settlement contracts within the State of Kansas, pursuant to the laws thereof, does by these present irrevocably consent that actions may be commenced against said Company in the proper court of any county in the State of Kansas in which the cause of action shall arise, or in which the plaintiff may reside, by service of process upon the Commissioner of Insurance of the State of Kansas; and the said _____ Company does hereby, in consideration of the privilege of doing business in the State of Kansas as aforesaid, stipulate and agree that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon said Company according to the laws of said State of Kansas, or of any other state.

In Witness Whereof, The said Company, in accordance with a resolution of its Board of Directors, duly adopted by said Board, on the _____ day of _____, 20____, (a certified copy whereof is hereto attached), hath to these presents affixed its corporation seal, and caused the same to be subscribed and attested to by its President and Secretary, at the city of _____ in the state of _____ on the _____ day of _____, 20____.

President

Attest:

Secretary

NOTE: THERE MUST BE ATTACHED TO THIS FORM A CERTIFIED COPY OF THE MINUTES OF THE BOARD OF DIRECTORS MEETING AT WHICH THE ABOVE MENTIONED RESOLUTION WAS ADOPTED.

SUBSCRIBED AND SWORN TO before this _____ day of _____, 20____.

My Commission expires

Notary Public _____

COPY OF RESOLUTION

BE IT RESOLVED by the Board of Directors of _____, meeting in regular session, this _____ day of _____, 20____, that the President and Secretary of said Company be and they are hereby authorized and directed to forthwith sign and execute letter of attorney to acknowledge service of process giving irrevocable consent that actions may be commenced against said Company in the proper court of any country in the State of Kansas in which the cause of action shall arise, or in which the plaintiff may reside, by service of process upon the Commissioner of Insurance of the State of Kansas, and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon said Company according to the laws of said State of Kansas or any other state.

CERTIFICATION

I, _____, Secretary of _____ state that this is a true and accurate copy of the resolution adopted by the Board of Directors at a meeting held on the _____ day of _____, 20_____.

Secretary

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

My Commission expires _____.

Notary Public _____

Secretary of State/Corporation Division

Reservation of Corporate Name



The undersigned hereby makes application to the Secretary of State of the State of Kansas, pursuant to K.S.A. 14-7402, to reserve the following name for corporate use:

(corporate name to be reserved)

Name of applicant

Mailing address of applicant

City State Zip Code

Signature

Title (if applicable)

Please Note: The application must be submitted in duplicate together with the \$35 filing fee. The right to a reserved name may be transferred by filing with the Secretary of State a written consent executed by the original applicant. The name reservation is effective for 120 days from the date of filing.

Name reservations may not be renewed. If a reservation is submitted prior to the expiration of a current name reservation, the new reservation and fee will be returned to the applicant. A previously reserved name can only be reserved by another upon expiration of its original filing.

Mail to: KRIS W. KOBACH
Secretary of State
Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

ORGANIZATIONAL AFFIDAVIT

See Affidavit Instructions for Completing Affidavit

1. Name of Applicant (and intended Fictitious Business name, if any):
 - A. Reason for Application
 - B. Statutory Home Address of Applicant
 - C. Primary Location of Books and Records for Applicant
 - D. Applicant's State of Domicile
 - E. Federal Employer Identification Number of Applicant
 - F. File Articles of Incorporation showing action authorizing conducting the business of Viatical Settlement contracts
2. If Applicant is part of a holding system, or has subsidiaries, or affiliates, provide a detailed Organizational Chart. Place an asterisk * by all Insurers holding a Certificate of Authority in Kansas.
3. Name of Applicant's Ultimate Controlling Parent
 - A. Statutory Home Address of Applicant's Ultimate Controlling Parent
 - B. Primary Location of Books and Records for Applicant's Ultimate Controlling Parent
 - C. Ultimate Controlling Parent's State of Domicile
4. List names and titles of each of the Applicant's Officers and Directors as shown in the format below.

Name

Title

- A. Under "Name", show name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate NMN. If there is an Initial Only, indicate IO.
 - B. Under "Title(s)", indicate the title of each officer/director. Do not abbreviate.
5. List the names of all entities and/or individuals who hold ten (10) percent or more of Applicant's capital stock utilizing the format below.

Name

Percent of Stock

- A. Under "Name", if the holder is an entity, show the name of the Corporation and DBA. Under "Name", if the holder is an individual, show the name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate NMN. If there is an Initial Only, indicate IO.
 - B. Under "Percent of Stock", show the percent of stock held by each entity or person.
6. Please provide the names of all entities and/or individuals who hold ten (10) percent or more of the capital stock of Applicant's Ultimate Controlling Parent, utilizing the following format. (If any of these individuals have not previously submitted an Individual Affidavit they are required to do so.)

Name

Percent of Stock

- A. Under "Name", if the holder is a corporation, show the name of the corporation and DBA. Under "Name", if the holder is an individual, show the name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate NMN. If there is an Initial Only, indicate IO.
 - B. Under "Percent of Stock", show the percent of stock held by each entity or person.
7. Provide a list, and certified copies of all criminal, civil, regulatory and administrative action(s) taken against Applicant and/or Applicant's Ultimate Controlling Parent by any governmental body including actions outside the United States, within the last ten (10) years utilizing the following format:

Date: Show exact date of action.

Example: 2-10-82.

Reason for Action: Be specific. Provide code sections if applicable. Give a brief summary of the alleged violation.

Government Body Taking Action: Be specific. Do not abbreviate. Include name, and full address of agency, including zip code.

Case Number (Or Other Reference): Include both the agency and court case/reference number.

Results of Action: Give a brief summary of the results of the action.

- 8. Provide the names, FDBA, and complete addresses of all Managing General Agents utilized by applicant. If the Managing General Agent is a corporation, provide the full name of all officers, directors, producers, and stockholders who hold ten (10) percent or more of the capital stock. If the Managing General Agent is an individual utilizing a fictitious name, provide the full name of the individual and fictitious name. Indicate in which states the Managing General Agent is acting on behalf of the applicant. Indicate the type(s) of license(s) the Managing General Agent holds in each state.
- 9. Provide the names of all states in which applicant holds a Certificate of Authority or License.
- 10. Have you ever been denied a License to offer this type of business by any State, Federal or Local authority?
- 11. Provide the names of all countries in which applicant does business.

COUNTRY

ADDRESS OF OFFICES

I HEREBY CERTIFY, under penalty of perjury under the laws of the State of Kansas, that the foregoing answers, statement, and information are true and correct.

I, the undersigned affiant, under penalty of perjury, do declare that I have carefully examined each of the questions asked in this ORGANIZATIONAL AFFIDAVIT and each of my responses thereto, and do solemnly swear or affirm that all of my responses, information, exhibits and documentary evidence submitted in support thereof are true and correct.

Dated and signed on this _____ day of _____, 20_____ at (City) _____

(State) _____

_____	_____	_____
Name of Officer (Typed)	Title	Signature of Officer

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission expires _____

Notary Public _____

10. How long in this position: _____

How long with this employer: _____

How are you affiliated with applicant? _____

11. List all other jobs, positions, directorates, or officerships held within the last ten (10) years:

12. For the last ten (10) years, I have lived at the following address or addresses (please put current address first and indicate dates of residence):

13. I have never been adjudicated as bankrupt, except as follows:

14. I have never been convicted of any misdemeanor or felony, except as follows (a plea of guilty or nolo contendere is considered a conviction):

*Provide certified copies of complaint and final judgment.

15. I have never been found in violation of, or pled no-contest to charges of violation of, or entered into a settlement based upon charges of a violation of, any (1) insurance law, regulation or rule, or (2) State or Federal securities law, regulation or rule, except as follows:

*Provide certified copies of complaint and final judgment.

16. During the last ten (10) years I have held the following professional, occupational and/or vocational license(s). (Indicate license type, expiration date and issuing authority.)

17. During the last ten (10) years I have neither been refused a professional, occupational and/or vocational license, nor has such a license held by me ever been suspended or revoked, except as follows:

18. I have never been named a defendant in a suit brought by any public or governmental licensing agency or regulatory authority for violation of, or to prevent the violation of, any securities or insurance law, except as follows:

*Provide certified copies of complaint or accusation.

19. I have never been found liable in a civil action for fraud, except as follows:

*Provide certified copy(ies) of action.

20. I have never been the subject of a cease and desist order, or entered into a settlement with any State or Federal regulatory agency, except as follows:

*Provide certified copy(ies) of the order(s).

21. Within the last ten (10) years, no insurer of which I was an officer, director, trustee, managing general agent, investment committee member or controlling stockholder has ever, while I occupied such position:

- A. Become insolvent, or been
- B. Placed in Conservatorship, Receivership, or Liquidation, or
- C. Ordered to cease and desist doing business in whole or in part, or
- D. Had its Certificate of Authority/License suspended, revoked or denied, or
- E. Voluntarily withdrawn its application; except as follows:

22. Within the last ten (10) years, I have not been an officer, director, controlling stockholder, trustee, partner or owner of any organization that has been the subject of a conservatorship, liquidation or other receivership proceeding by a State or Federal Agency, except as follows:

I hereby certify under penalty of perjury under the laws of the State of Kansas that the foregoing statements are true and correct.

Dated and signed on this _____ day of _____, 20_____ at (City) _____
(State) _____.

Signature

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission expires _____.

Notary Public _____

AFFIDAVIT INSTRUCTIONS

As part of the application process, it will be necessary for the Applicant to ensure completion of both the enclosed Organizational Affidavit and the Individual Affidavit(s).

The Organizational Affidavit (Part I) must be completed by an executive officer of the applicant organization.

The Individual Affidavit (Part II) must be completed by all of the following individuals:

1. Applicant's Officers, Directors & Key Management Personnel
2. Individuals who have ten (10) percent or more beneficial ownership of Applicant (direct or indirect including attribution)
3. Individuals who are ten (10) percent or more shareholders of Applicant's Ultimate Controlling Parent

The responses to the affidavits must be typed and all questions must be answered. If the answer is "none" or "no exceptions", please so state. Do not leave a space blank. If additional space is required, attach an addendum numbering the response to the corresponding question. Submit originals only.

Key Management Personnel

For Insurers, all persons responsible for the oversight of the following function:

1. Underwriting
2. Claims
3. Investments
4. Reinsurance
5. Finance
6. Sales and Marketing
7. Actuarial
8. Risk Management
9. Rating

**STATE OF KANSAS
DEPARTMENT OF
INSURANCE**

VERIFICATION

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct.

Date

Signature