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| **Maine Bureau of Insurance** |
| Form Filing Review Requirements Checklist |
| TOI - LS01 and VS01 |
| Life Settlements and Viatical Settlements |
| Revised – 4/5/2018 |
| Carriers must confirm compliance and IDENTIFY the LOCATION (Form number, Page number, Section, Paragraph, etc.) of the standard in the form in the last column. Any response of N/A requires that a carrier explain why the requirement is not applicable. |
| This checklist is intended to provide a summary of State and Federal requirements for the TOI listed above. Please see the laws/rules referenced in the checklist below for the full requirement. |

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| **REVIEW REQUIREMENTS** | **REFERENCES** |  | **COMPLIANCE** |
| **GENERAL SUBMISSION REQUIREMENTS** |  |  |  |
| Electronic (SERFF) Filing Requirements: | [Title 24-A § 2412](https://legislature.maine.gov/statutes/24-A/title24-Asec2412.html)(2) [Bulletin 360](https://www.maine.gov/pfr/insurance/sites/maine.gov.pfr.insurance/files/inline-files/360_0.pdf) | All filings must be filed electronically, using the NAIC System for Electronic Rate and Form Filing (SERFF). See http://www.serff.com. |  |
| FILING FEES | [Title 24-A § 601](https://legislature.maine.gov/statutes/24-A/title24-Asec601.html) (17) | $20.00 for Rate filings, rating rules filings, insurance policy, forms, riders, endorsements and certificates. See General Instructions page in SERFF for additional information on filing fee structure. Filing fees must be submitted by EFT in SERFF at the time of submission of the filing. All filings require a filing fee unless specifically excluded per 24-A M.R.S.A. §4222(1), and/or are a required annual report. |  |
| Grounds for disapproval | [Title 24-A § 2413](https://legislature.maine.gov/statutes/24-A/title24-Asec2413.html) | Seven categories of the grounds for disapproving a filing. |  |
| Readability | [Title 24-A § 2441](https://legislature.maine.gov/statutes/24-A/title24-Asec2441.html) | Minimum of 50.  Riders, endorsements, applications all must be scored. They may be scored either individually or in conjunction with the policy/certificate to which they will be attached. Exceptions: Federally mandated forms/language, Groups > 1000, Group Annuities as funding vehicles. Scores must be entered on form schedule tab in SERFF. |  |
| Variability of Language | [Title 24-A § 2412](https://legislature.maine.gov/statutes/24-A/title24-Asec2412.html)  [Title 24-A § 2413](https://legislature.maine.gov/statutes/24-A/title24-Asec2413.html) | Forms with variable bracketed information must include all the possible language that might be placed within the brackets. The use of too many variables will result in filing disapproval as Bureau staff may not be able to determine whether the filing is compliant with Maine laws and regulations. |  |
| **DISCLOSURE PROVISIONS: With each application for a settlement, a settlement provider shall disclose in writing at least the following disclosures to a viator. Disclosure to a viator must include distribution of a brochure, approved by the superintendent,** |  |  |  |
| Alternatives or options | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(1) | Possible alternatives to or options that can be used in conjunction with settlement contracts, including, but not limited to, accelerated death benefits or policy loans offered by the issuer of the life insurance policy; |  |
| Claims of creditors | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(4) | The fact that proceeds of the settlement could be subject to the claims of creditors. |  |
| Effect on government benefits | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(5) | The fact that receipt of the proceeds of the settlement may adversely affect the recipient's eligibility for Medicaid or other means-based government programs, benefits or entitlements and that advice should be obtained from the appropriate agencies. |  |
| Federal tax implications | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(2) | The fact that some or all of the proceeds of the settlement contract may be free from federal income tax under the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and that restrictions, qualifications and other tax laws, particularly those of the state in which the viator resides, may apply and assistance should be sought from a professional tax advisor. |  |
| Funds | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(8) | The fact that funds will be sent to the viator within 3 business days after the settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated. |  |
| Potential inability to purchase additional insurance | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(7-A) | The fact that, because of limits insurers may set on the amount of insurance on a single life, a change of ownership could leave the viator without the ability to purchase insurance in the future to replace the transferred policy. |  |
| Potential reduction or loss of benefits to beneficiary | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(7) | The fact that entering into a settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser. |  |
| Privacy disclosure | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(9) | A statement containing the following language: "All medical, financial or personal information solicited or obtained by a settlement provider or settlement producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the settlement contract between the viator and the settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every 2 years. |  |
| Right to rescind | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(6) | The fact that the viator has the right to rescind a settlement contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the date upon which payment is received by the viator as provided in section 6809. If exercised by the viator, rescission is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the settlement contract is deemed to have been rescinded, subject to repayment of all proceeds and any premiums, loans and loan interest to the settlement provider. |  |
| State tax implications | [Title 24-A § 6808](https://legislature.maine.gov/statutes/24-A/title24-Asec6808.html)(3) | The fact that some or all of the proceeds of the settlement may be free from state income tax under section 6809 and that restrictions, qualifications and other tax laws, including those of the state in which the viator resides, may apply and assistance should be sought from a professional tax advisor. |  |
| **ESCROW AGREEMENT PROVISIONS** |  |  |  |
| Escrow Agreement & Application | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(4) | Has a copy of the agreement between the viatical settlement provider and an escrow agent or trustee been filed along with the application? This agreement establishes the escrow or trust account into which the proceeds of the settlement are to be paid. |  |
| Independent escrow agent or trustee | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(4) | Is the agreement with an independent escrow agent or trustee (i.e. one with no known ties to the viatical settlement provider)? |  |
| State-chartered or federally chartered financial institution | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(4) | Is the independent escrow agent or trustee in a state-chartered or federally chartered financial institution that is a member of the Federal Reserve System? |  |
| Transfer of insurance policy | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(4) | The settlement provider shall designate an independent escrow agent and instruct the viator to send the executed documents required to effect the change in ownership or assignment or change in beneficiary directly to the independent escrow agent. Within 3 business days after the date the escrow agent receives the document, or from the date the settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the settlement provider shall pay or transfer the proceeds of the settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or its successor. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership or assignment or change in beneficiary forms to the settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership or assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator. |  |
| **PURCHASE AGREEMENT/CONTRACT PROVISIONS** |  |  |  |
| Approval of settlements contracts; disclosure statements and applications | [Title 24-A § 6805](https://legislature.maine.gov/statutes/24-A/title24-Asec6805.html) | A settlement contract must be in writing and signed by all parties to the contract. A person may not use any contract, disclosure statement or application form with a viator who is a resident of this State unless it has been filed with and approved by the superintendent, pursuant to sections 2412 and 2413. The superintendent shall disapprove a settlement contract form or disclosure statement form if, in the superintendent's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator. All such forms must be approved or denied by the superintendent within 60 calendar days following receipt of submission by the superintendent. |  |
| Assignment or resale of policies | [Title 24-A § 6815](https://legislature.maine.gov/statutes/24-A/title24-Asec6815.html)(1) | Prohibited transfers.  A settlement provider may not sell, assign, transfer or pledge a policy acquired pursuant to a settlement contract except to a licensed settlement provider or a person exempt from licensing under section 6803. |  |
| Civil action | [Title 24-A § 6819](https://legislature.maine.gov/statutes/24-A/title24-Asec6819.html)(2) | 1. Civil remedies and enforcement.  In addition to the penalties available pursuant to section 6814, the superintendent may assess fines or take any other enforcement action permitted under section 12-A against any person who violates any provision of this chapter. 2. Superior Court action.  Any person who is injured by any action of a person in violation of this chapter may bring an action in Superior Court. The requirements for notice and filing of a cause of action under this subsection are governed by the Maine Rules of Civil Procedure. The person may recover damages, together with costs and disbursements. 3. No private right of action.  Except as specifically provided in subsection 2, this chapter provides no express or implied private right of action. |  |
| Consent to the contract | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(1)(B) | Prior to or at the time of execution of the settlement contract, a witnessed document in which the viator consents to the settlement contract, represents that the viator has a full and complete understanding of the settlement contract and that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator has entered into the settlement contract freely and voluntarily and, for persons who are terminally ill or chronically ill, acknowledges that the insured is terminally ill or chronically ill and that the terminal or chronic illness was diagnosed after the life insurance policy was issued |  |
| Contacts with the insured | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(9) [Title 24-A § 6815](https://legislature.maine.gov/statutes/24-A/title24-Asec6815-A.html)-A | An insured may designate one or more adult individuals in regular contact with the insured as the individual for all inquiries regarding the insured's health status and, if that designation is made, a settlement provider may not make these inquiries to the insured unless the settlement provider is unable, for more than 30 days, to contact the designee after diligent effort. The insured may change this designation at any time upon written notice to the settlement provider. Contacts with the insured for the purpose of determining the health status of the insured after the settlement has occurred are limited to once every 3 months for insureds with an estimated life expectancy of more than one year and once per month for insureds with a life expectancy of one year or less. The settlement provider shall explain to the insured the procedure for these contacts prior to the time the settlement contract is entered into. The limitation in this rule on contacts does not apply to contacts made for reasons other than determining the insured's health status or necessary to maintain the policy in force. Settlement providers are responsible for the actions of their authorized representatives. This chapter does not preempt the regulatory requirements set forth in the Maine Uniform Securities Act, as amended, including but not limited to the regulation of securities transactions in settlement contracts or viatical settlement contracts and the licensing of any person or entity engaged in the sale of securities. |  |
| Riders and post-settlement increases or additions | [Title 24-A § 6811](https://legislature.maine.gov/statutes/24-A/title24-Asec6811.html)(4) | With respect to policies containing a provision for double or additional indemnity for accidental death or any other riders or additional death benefits, including the increase in the death benefit in excess of the amount of the death benefits of the date the settlement contract is effected at the time the policy is assigned, transferred, sold, devised or bequeathed, unless otherwise mutually agreed to in writing by the viator and the settlement provider, the additional amount remains payable to the beneficiary last named by the viator prior to entering into the settlement contract or to such other beneficiary other than the settlement provider as the viator may thereafter designate or, in the absence of a designation, to the estate of the viator. |  |
| Unconditional rescission | [Title 24-A § 6809](https://legislature.maine.gov/statutes/24-A/title24-Asec6809.html)(3) | All settlement contracts must contain a provision that the viator has the right to rescind a settlement contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the date upon which payment is received by the viator as provided in section 6808. Rescission if exercised by the viator is effective only if both notice of the rescission is given and a full repayment of all proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the settlement contract is deemed to have been rescinded, subject to repayment of all proceeds and any premiums, loans and loan interest to the settlement provider. |  |