



INSURANCE AND INDEMNITY 101

Anti-Assignment Clauses in Insurance Policies

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Insurance policies are generally considered personal contracts between the insured and the insurer. Because an insurer underwrites, assesses risks, and calculates premiums explicitly based on an individual's specific risk profile, history, and traits, policies cannot be transferred or assigned to another person without the insurer's formal written consent.¹ This prohibition against assignment of policies applies regardless of whether the assignment occurs before or after a loss.

This means that the policy insures the specific named insured against loss, not the physical property, peril, or exposure itself. Consequently, the policy does not automatically transfer when property ownership changes. For example, if an insured sells his or her home, the homeowners insurance policy can't (and shouldn't) be transferred to the new buyer.

Due to the unique underwriting nature of each prospective insured, insurance policies often contain anti-assignment clauses which prohibit an insured from transferring his or her insurance policy without first obtaining the insurer's written consent. Anti-assignment clauses are generally enforceable when it comes to transferring the *policy* itself, but clauses that seek to restrict an insured's right to assign a *claim* under the policy are not enforceable. When determining whether an assignment is valid, the focus must always be on what specifically is being assigned: the policy or the claim.

Because insurance policies are contracts, they are primarily governed by standard contract principles. "Under general contract law, rights can be assigned unless the assignment is clearly restricted."² "Michigan law recognizes the validity of contractual provisions against assignment of contracts, including insurance policies."³ When an "antiassignment clause is unambiguous, it must be enforced unless it violates the law or public policy."⁴

Anti-assignment clauses that require an insured to obtain consent before transferring a policy are generally enforceable, and do not violate public policy, because insurers naturally need to be aware of the risks they're agreeing to insure. In this context, anti-assignment clauses help insurers recognize any potential changes in risk associated with a transferred insurance policy. If an insured does assign a policy in violation of an applicable anti-assignment clause by doing so without consent, this constitutes an invalid assignment, and any coverage under that policy will likely be voided.⁵

Alternatively, anti-assignment clauses that seek to prohibit an insured from assigning a claim under the policy are unenforceable because they violate public policy.⁶ Anti-assignment clauses in this context are unenforceable because an accrued claim is essentially an accrued cause of action. Under Michigan law, "[g]enerally, all legitimate causes of action are assignable."⁷ Once a loss occurs, no policy provision may restrict the insured's right to assign his or her accrued claim:

The assignment having been made after the loss did not require consent of the company. The provision of the policy forfeiting it for an assignment without the company's consent is invalid, so far as it applies to the transfer of an accrued cause of action. It is the absolute right of every person—secured in this state by statute—to assign such claims, and such a right cannot be thus prevented.⁸

The moral of the story: Generally, policies can't be assigned, but a claim can, and a claim assignment doesn't require the insurer's consent.⁹

About the Author

Rabih Hamawi is a past chairperson of the Insurance and Indemnity Law Section. He is a principal at the Law Office of Rabih Hamawi, P.C. and focuses on representing policyholders in fire, property damage, and insurance-coverage disputes against insurers and in errors-and-omissions cases against insurance agents. He has extensive expertise in insurance coverage and is a licensed property and casualty, life, accident, and health insurance producer and counselor (LIC). He earned the Chartered Property and Casualty Underwriter (CPCU), Certified Insurance Counselor (CIC), and Certified Risk Manager (CRM) designations. He is a frequent author on insurance and indemnity topics. His email address is rh@hamawilaw.com

Endnotes

- 1 While most property and casualty policies are strictly personal and can't be transferred or assigned, life insurance policies can generally be assigned or transferred to another owner because the risk is based on the insured's life, not who owns the policy.
- 2 *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 197; 920 NW2d 148 (2018) (citation omitted).
- 3 *Century Indem Co v Aero-Motive Co*, 318 F Supp 2d 530, 539 (WD Mich, 2003) (citations omitted).
- 4 *Shah, supra*, 324 Mich App at 198 (citation omitted).
- 5 See *Employers Mut Liab Ins Co v Mich Mut Auto Ins Co*, 101 Mich App 697, 702; 300 NW2d 682 (1980).
- 6 See *Shah, supra*, 324 Mich App at 200, citing *Roger Williams Ins Co v Carrington*, 43 Mich 252; 5 NW 303 (1880).
- 7 *Grand Traverse Convention and Visitor's Bureau v Park Place Motor Inn, Inc*, 176 Mich App 445, 448; 440 NW2d 28 (1989) (citation omitted).
- 8 *Roger Williams, supra*, 43 Mich at 254.
- 9 This article discusses assignment of policies and claims only. In future articles, I will discuss anti-assignment clauses in settlement agreements.