

60.88 AMENDMENT OF CERTIFICATE OF INCORPORATION OR ARTICLES OF ASSOCIATION OF DOMESTIC INSURANCE COMPANIES WITHOUT CAPITAL STOCK

The filing of a true copy of articles or amendments thereto constitutes "recording" within the purview of section 60.88. OAG Oct. 14, 1953 (249-A-2).

CHAPTER 61**LIFE INSURANCE**

HISTORICAL. Prior to 1872 there were no laws specifically regulating life insurance companies. Laws 1872, Chapter 1, was a complete insurance code, Article 5 containing the life insurance sections. The law was completely revised by Laws 1895, Chapter 175, and as amended and supplemented is found in Chapter 61.

Mutual companies are excepted from many of the financial requirements.

Cooperative life, endowment, and casualty associations were authorized by Laws 1885, Chapter 184. Laws regulating such companies were enacted by Laws 1907, Chapter 318, and since modified are sections 61.47 to 61.58.

LIFE INSURANCE COMPANIES**61.01 BUSINESS OF LIFE INSURANCE**

HISTORY. 1895 c 175 s 63; 1901 c 148 s 1.

Revocation of insurance trusts. 35 MLR 417.

61.04 DOMESTIC MUTUAL COMPANIES, RIGHTS OF MEMBERS

HISTORY. 1895 c 175 s 37; 1901 c 143 s 73; 1925 c 53 s 1; 1949 c 291 s 1.

61.05 DISCRIMINATION IN ACCEPTING RISKS

Classification of policies with and without disability benefits for purposes of anti-discrimination statutes. 32 MLR 186.

61.06 DISCRIMINATION; REBATES

Purposes of anti-discrimination statutes; information. 32 MLR 186.

61.08 SOLICITORS, AGENTS OF COMPANY

Where evidence disclosed that insurer had furnished a soliciting agent and its cashier with blank change-of-beneficiary forms to assist policyholders in making changes of beneficiary; had given specific instructions to such agent and cashier as to manner and method to be followed in assisting policyholders in bringing about such changes; and had delivered receipts for such notices and policies in name of insurer, such agent and cashier were agents of insurer rather than of insured in performing the described acts. *Boehne v Guardian Life Ins. Co.*, 224 M 58, 28 NW(2d) 54.

An insurance agent, a year after issuance of a life policy containing a double indemnity benefit clause excluding liability of insured's death resulting directly or indirectly from war or any act incident thereto or operating or riding in aircraft other than as a fare-paying passenger, stated to insured, in order to induce con-

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tinuation of policy, that the coverage was subject to no restrictions, did not entitle the beneficiary to recover under double indemnity benefit clause for an accident excluded by such clause or to have the policy reformed in conformity with such representation. *Heikes v N. Y. Life Ins. Co.*, 171 F(2d) 460.

61.09 POLITICAL CONTRIBUTIONS PROHIBITED

Self incrimination; confession covered by police; legislative investigations; production of writings; bodily or mental examination; jurisdictional limits of the privilege; waiver by testifying. 34 MLR 1.

61.10 MISREPRESENTATION

That insurance agent, a year after issuance of life policy containing a double indemnity benefit clause excluding liability if insured's death resulted directly or indirectly from war or any act incident thereto or operating or riding in aircraft other than as a fare-paying passenger, stated to insured, in order to induce continuation of policy, that coverage was subject to no restrictions, did not entitle beneficiary to recover under double indemnity benefit clause for an accident excluded by such clause or to have the policy reformed in conformity with such presentation. *Heikes v N. Y. Life Ins. Co.*, 171 F(2d) 460.

61.11 FUNDS, DOMESTIC LIFE INSURANCE COMPANIES; INVESTMENT

HISTORY. 1929 c 111 s 1; 1935 c 365 s 1, 2; 1937 c 87 s 1, 2; 1941 c 140 s 1; 1945 c 557 s 1; 1947 c 439 s 1; 1953 c 135 s 1.

Investment of funds of domestic life insurance companies. 32 MLR 388.

Section 61.11, as amended by Laws 1947, Chapter 439, Section 1, is controlling as to all real estate investments of every domestic life insurance company. The insurance company may invest only in kinds of securities or property therein specified, with the exception that such company has the additional power to invest in real estate as otherwise provided by law. The purpose of section 60.49 is to prevent too great investment in real estate. The 25 percent refers to the amount actually invested rather than the total market value of the property acquired. OAG March 8, 1949 (253-A-5).

61.12 REAL ESTATE HOLDINGS

Authority granted to domestic life insurance companies to acquire housing project. 32 MLR 389.

A domestic life insurance company may take a mortgage and foreclose it by advertisements without complying with any other statute. *Young v Penn Mutual*, 196 M 403, 265 NW 278.

The five-year limitation on the holding of real property as far as domestic life insurance companies are concerned only applies to real property of the character specified in section 61.12, subdivision 1, clauses 2, 3 and 4. If foreign companies are entitled to make investments in Minnesota under the same clauses of section 61.12 the five-year limitation provided for in section 60.49 applies. So far as the 25 percent limitation on home office property is concerned that restriction still applies to all classes of insurance companies. Sections 60.49 and 61.12 must be read together. OAG June 23, 1947 (251).

61.14 LIFE POLICY, WHO ENTITLED TO PROCEEDS

Insurable interest of an employer in life of ordinary employee; promissory estoppel. 32 MLR 835.

Insurance; beneficiaries; change of beneficiary; rights of previously designated beneficiary. 33 MLR 79.

The general rule that contracts required to be in writing under the statute of frauds cannot be modified, contradicted, or altered orally is subject to the exception

that an agreement for a substituted method of performance may be shown by parol. Method for settlement of loss under insurance policy could be orally altered so as to substitute another method of settlement if mutually agreed upon between insurer and insured. Evidence examined and held insufficient to sustain finding of oral agreement to change method of settlement under policy of insurance. *Mandel v Atlas Assur. Co.*, 230 M 347, 41 NW(2d) 590.

The exemption created by sections 61.14 and 61.15 is not given to the insured but to his beneficiary and is in the nature of a preference which the beneficiary enjoys over the insured's creditors as to the proceeds of the insurance policy; and in the absence of the exercise by the insured of his opposition to take the cash surrender value and dividends of a policy that has not matured, there is no debt due and payable by the insurer to the insured, and the right of the insured to create such a debt by the exercise of the opposition is not an asset available to creditors but is a right purely personal to the insured alone. *Fox v Swartz*, 235 M 337, 51 NW(2d) 80.

If an owner of property intends to make inter vivos gift of property in trust, but the title does not pass to the intended third-party trustee for want of delivery of the subject matter or for want of delivery of the instrument of conveyance, no trust is created and the title to the property remains in the owner free of trust. *Cooney v Equitable Assurance Society*, 235 M 377, 51 NW(2d) 285.

61.15 EXEMPTIONS; CHANGE OF BENEFICIARY

Change of beneficiary; rights of previously designated beneficiary. 33 MLR 79.

Attempted designation of a new beneficiary who was dead. 33 MLR 79.

Where evidence disclosed that prior to his death insured had executed change-of-beneficiary form furnished to him by insurer through its soliciting agent and cashier and had left same, together with the policy, with them, with instructions to insert date in notice and thereafter forward same to insurer's home office upon notification by insured that his divorce had been granted; and where insured subsequently notified soliciting agent that his divorce had been granted and to insert date in notice and forward it with policy at once to insurer's home office, such acts and instructions on part of insured were sufficient to establish that insured had set in motion the transmission of notice and policy to insurer's home office and had done everything reasonably possible to effectuate the desired change, and that such change had been effectuated thereby, notwithstanding failure of agent to deposit notice and policy in mail until subsequent to insured's death the following morning. *Boehne v Guardian Life Ins. Co.*, 224 M 58, 28 NW(2d) 54.

A life insurance policy may be defined as a mutual contract whereby the insurer in consideration of the payment to it by the insured of a certain premium or premiums, assumes an immediate hazard of loss to itself and creates for a third-party beneficiary an immediate estate in a fixed amount by agreeing to pay a given sum upon the happening of a particular event, that of death, which in turn is contingent of the duration of the life of the insured. *Fox v Swartz*, 235 M 337, 51 NW(2d) 80.

Insured, an experienced insurance salesman, executed a written assignment which purportedly changed the beneficiary of an annuity policy on his life but retained personal possession of all copies of the claimed assignment and never delivered the assignment to the insurer and the insurer never instructed his attorney or any other person to forward the assignment to the insurer and the insured never attempted to have the insurer change the name of the beneficiary, the insured did not intend that the purported written assignment should operate to change the beneficiary. *Cooney v Equitable Life*, 235 M 377, 51 NW(2d) 285.

The promises of a valid contract, by which an insured promises to make the promisee an irrevocable beneficiary of an insurance policy carried by the insured on his own life, can recover the proceeds of the policy after insured's death as against a person who was expressly and gratuitously named the beneficiary of the policy subsequent to the making of such contract. *Prudential Insurance Co. v Rader*, 98 F. Supp. 44.

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61.19 Repealed, 1947 c 182 s 16.

61.20 NO WAIVER OF PROVISIONS

Where an uncle lived with his niece for 20 years doing work around the house and assisting in raising the children, enabling her to earn money from employment, the niece has an insurable interest in his life. *Clayton v Industrial Life Ins. Co.*, 162 Pa. Super 17, 56 At.(2d) 292.

A "waiver" is a voluntary relinquishment of a known right and consideration is not essential to establish it. The evidence supported a finding that the insurer waived the forfeiture clause relating to double indemnity and the insurer could not thereafter revoke its action in so doing. The instructions given by the trial judge when read as a whole sufficiently presented the question of the insurer's waiver of the right to declare a forfeiture of the double indemnity provision. *Farmers & Bankers Life Ins. Co.*, 230 M 308, 41 NW(2d) 422.

An insurance agent, a year after issuance of a life policy containing a double indemnity benefit clause excluding liability of insured's death resulting directly or indirectly from war or any act incident thereto or operating or riding in aircraft other than as a fare-paying passenger, stated to insured, in order to induce continuation of policy, that the coverage was subject to no restrictions, did not entitle the beneficiary to recover under double indemnity benefit clause for an accident excluded by such clause or to have the policy reformed in conformity with such representation. *Heikes v N.Y. Life Ins. Co.*, 171 F(2d) 460.

In action by mother to have herself declared the beneficiary of her deceased soldier son under national service life policy, evidence that insured advised his aunt by letter that insured had left aunt his insurance did not make aunt a beneficiary under the act so as to entitle aunt to recover proceeds of policy. *Bearhart v United States*, 88 F. Supp. 652.

61.24 MISSTATEMENT, WHEN NOT TO INVALIDATE POLICY

A standard life insurance policy issued without medical examination is subject to section 61.24 and not to section 60.85. *Pomeranke v Farmers Life Ins. Co.*, 228 M 256, 36 NW(2d) 703.

A standard life insurance policy issued without medical examination is subject to section 61.24 but is not subject to section 60.85; and where an application for insurance is made out by an insurance agent in the course of his agency, and the insured truthfully gives the agent the correct answer which the agent records on the application incorrectly without any collusion on the part of the insured, and the insured signs the application without reading it, the insurance company is not relieved from liability on the policy. *Pomeranke v Farmers Life Co.*, 228 M 256, 36 NW(2d) 703.

61.25 DESCRIPTION OF POLICY ON ITS FACE

Judicial control of matters relating to sterile premiums. 34 MLR 240.

Repealed, 1947 c 182 s 16.

STANDARD VALUATION LAW

61.261 Unnecessary.

61.27, 61.28 Repealed, 1947 c 182 s 16.

STANDARD NONFORFEITURE LAW

61.281 Unnecessary.

61.282 PROVISIONS IN POLICIES

War risk exclusion clauses; meaning term "war." 32 MLR 74.

61.29 Repealed, 1947 c 182 s 16.

PROVISIONS OF POLICIES

61.30 NECESSARY PROVISIONS

HISTORY. 1907 c 220 s 5; 1913 c 152 s 1; 1925 c 247 s 1; 1947 c 182 s 15; 1951 c 280 s 1.

Chronic alcoholism as self-inflicted injury. 31 MLR 499.

Insurable interest of an employer in life of ordinary employee; promissory estoppel. 32 MLR 835.

Failure of coverage in antedated insurance. 34 MLR 231.

In loco parentis in national service life insurance. 36 MLR 757.

Where upon application a Massachusetts life insurance company was empowered to do an insurance business in Minnesota, it agreed to come under the provisions of the Minnesota insurance laws and a life insurance policy delivered by it in Minnesota was a Minnesota contract. In an aviation policy and exclusion rider attached thereto it would have no effect and would be void where it was issued prior to the enactment of section 61.335. *Onstad v Minn. Mutual Life Ins. Co.*, 226 M 546, 32 NW(2d) 185.

Where life insurance has become incontestable by lapse of the time specified in the policy, a reinstatement of the policy that had lapsed for nonpayment of the premiums may be shown to have been procured by the insured by false statements in the application therefor as to whether he had suffered injury or disease or consulted a physician within the time therein stated. *Sellwood v Equitable Life*, 230 M 529, 42 NW(2d) 346.

61.31 ADDITIONAL CONDITIONS IN POLICIES

Classification of policies with and without disability benefits for purposes of anti-discrimination statutes. 32 MLR 186.

61.335 POLICIES MAY CONTAIN CERTAIN PROVISIONS

Laws 1943, Chapter 156, authorized an aeronautics clause in life policies. 31 MLR 58.

Investment of funds of domestic insurance companies. 32 MLR 388.

Laws 1943, Chapter 156, [Section 61.335] which requires that insured counter-sign a statement that provisions of rider have been read and explained to him, does not require that such statement be attached to or made a part of the rider or policy, and statement thus signed by insured may be retained by and form a part of files of insurer without violation of such statutory provisions. *Onstad v Minn. Mutual Life Ins. Co.*, 226 M 546, 33 NW(2d) 691.

61.34 PROVISIONS WHICH NO POLICY MAY INCLUDE

Sterile premiums; views justifying; Minnesota treatment. 34 MLR 233.

A change of title or interest was not affected by a contract for sale of insured property entered into prior to loss between named persons as agents of the owners, one of whom was an infant, as vendors, and plaintiff, as vendee, subject to the conditions precedent, (a) that the vendors obtain deed signed by the adult owners, and (b) that they obtain an order of license from the probate court authorizing

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the sale of the infant's interest, and providing that upon failure to comply with such conditions the sale should be null and void; and the performance of the contract after loss did not constitute a change of title or interest which related back so as to void the policy prior to the occurrence of the loss. *Windey v North Star Ins. Co.*, 230 M 279, 43 NW(2d) 99.

61.35 Repealed, 1947 c 182 s 16.

61.36 FORMS OF POLICY, APPROVAL

Judicial control of matters relating to sterile premiums. 34 MLR 240.

Measure of damages for wrongful cancelation of a life insurance policy. 35 MLR 212.

Where insurer has submitted to commissioner of insurance aviation rider form in conformity with Laws 1943, Chapter 156, MSA, Section 61.335, and commissioner has approved such rider, and insurer subsequently attaches to its policy of life insurance such form of rider, but with minor variations not relating to the restrictive or promissory provisions involved, and otherwise complies with statutory requirements, such rider when thus attached to policy becomes a valid part of contract of insurance. *Onstad v Minn. Mutual Life Ins. Co.*, 226 M 546, 33 NW(2d) 691.

Laws 1943, Chapter 156, MSA, Section 61.335, which requires that insured countersign a statement that provisions of rider have been read and explained to him, does not require that such statement be attached to or made a part of the rider or policy, and statement thus signed by insured may be retained by and form a part of files of insurer without violation of such statutory provisions. *Onstad v Minn. Mut. Life Ins. Co.*, 226 M 546, 33 NW(2d) 691.

Where insurance commissioner had not approved nonpromissory provisions of life insurance policy rider, which were mere recitals of fact not limiting or affecting promissory provisions of policy or rider and not in violation of any statutory requirements, and had approved promissory provisions of such policy, such rider attached to policy was valid and binding upon insured, who had applied for and received policy with the limitations set forth in such rider. Where uncontradicted evidence showed that insured could not have escaped scene of airplane crash and that, had he survived crash, he could not have lived for more than a short time thereafter because of extremities of weather and terrain, as a matter of law insured's death occurred as a result of aviation or aeronautics, within meaning of Laws 1943, Chapter 156, MSA, Section 61.335, and within limitation set forth in rider attached to policy, which limited liability of insurer in event of death as result of aviation or aeronautics. *Onstad v Minn. Mut. Life Ins. Co.*, 226 M 546, 33 NW(2d) 691.

61.37 RECIPROCAL PROVISIONS IN POLICIES

Retaliatory insurance tax laws. 32 MLR 256.

This section and section 61.36 should be read in conjunction with section 300.081. OAG May 26, 1947 (249-B-9-H).

61.38 EXCEPTIONS

Domestic life insurance companies are entitled to acquire housing projects. 32 MLR 389.

61.40 LIFE POLICIES TO CONTAIN ENTIRE CONTRACT

Incontestable clause as precluding reformation for mutual mistake. 33 MLR 784.

Failure of coverage in antedated life or accident-health insurance. 34 MLR 231.

An insurance agent, a year after issuance of a life policy containing a double indemnity benefit clause excluding liability of insured's death resulting directly or indirectly from war or any act incident thereto or operating or riding in aircraft other than as a fare-paying passenger, stated to insured, in order to induce continuation of policy, that the coverage was subject to no restrictions, did not entitle the beneficiary to recover under double indemnity benefit clause for an accident excluded by such clause or to have the policy reformed in conformity with such representation. *Heikes v N.Y. Life Ins. Co.*, 171 F(2d) 460.

Plaintiffs were children by a prior marriage of the decedent alleged to have been feloniously killed by his widow. Plaintiffs alleged that at the time of decedent's marriage to the defendant decedent was a robust man in good health but that with premeditation and design to impair his health and hasten his death defendant began a course of conduct which weakened defendant physically and mentally. At a time when decedent was suffering from a serious heart ailment, aggravated by asthma, defendant knowing decedent's condition and that exertion might be fatal, coerced decedent to walk with her through deep snow on a cold and windy day which exertion and exposure caused his death after he had walked two blocks. It was sufficient that the acts complained of accelerated the decedent's death. It was held that if the defendant was responsible for decedent's death a constructive trust would be imposed upon the balance of a joint and several bank account for the benefit of the estate of the decedent. *Vesey v Vesey*, 237 M 10, 54 NW(2d) 385.

61.41 COUPON POLICIES FORBIDDEN

Recovery by insured of attorney's fees incurred in defending a declaratory judgment action contesting policy coverage. 37 MLR 139.

61.42 Repealed, 1949 c 287 s 2.

STOCK AND MUTUAL LIFE INSURANCE

61.461 DOMESTIC INSURANCE CORPORATIONS MAY BECOME MUTUAL CORPORATIONS

Laws 1943, Chapter 231, authorizes certain stock corporations to convert to mutual corporations. 31 MLR 58.

COOPERATIVE LIFE AND CASUALTY INSURANCE

61.47 COOPERATIVE LIFE AND CASUALTY COMPANIES

Measure of damages for wrongful cancelation of a life insurance policy. 35 MLR 212.

61.57 EXEMPTION FROM TAXATION

Upon mutualization of assessment life and casualty company, premiums on policies thereafter written and on revised policies are subject to tax as well as premiums on new and revised policies of mutualized companies in Minnesota, not elsewhere licensed, even though the policy-holders reside outside this jurisdiction. Policies continued under the old plan are exempt. OAG Jan. 10, 1949 (254-D).