

## **CHAPTER 26.1-29 INSURANCE CONTRACTS**

### **26.1-29-01. Insurance contract defined.**

An insurance contract is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

### **26.1-29-02. Insurer and insured defined.**

An insurer is a person who undertakes to indemnify another by an insurance contract and the insured is the person indemnified.

### **26.1-29-03. Who may be parties to insurance contract.**

Anyone who is capable of making a contract, except as restricted by law, may be an insurer, and anyone except a public enemy may be an insured.

### **26.1-29-04. Insurable interest defined and classified.**

An insurable interest is an interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might damnify directly the insured, and may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or
3. An expectancy coupled with an existing interest in that out of which the expectancy arises.

### **26.1-29-05. Insurable interest essential to insurance contract.**

The sole object of insurance is the indemnity of the insured, and if the insured has no insurable interest, the contract is void.

### **26.1-29-06. When insurable interest must exist.**

An insurable interest must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime.

### **26.1-29-07. Measure of insurable interest.**

The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury of the property.

### **26.1-29-08. Carrier or depositary has insurable interest.**

A carrier or depositary of any kind has an insurable interest in a thing held by the carrier or depositary as such to the extent of its value.

### **26.1-29-09. Insurable interest in life or health insurance.**

Repealed by S.L. 1987, ch. 357, § 2.

#### **26.1-29-09.1. Insurable interest in personal insurance.**

1. An individual of competent legal capacity may procure or effect an insurance contract upon that individual's own life or body for the benefit of any person. A person may not procure or cause to be procured an insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or that individual's personal representatives, or to a person having, at the time the contract was made, an insurable interest in the individual insured.
2. If the beneficiary, assignee, or other payee under a contract made in violation of this section receives from the insurer any benefits from the contract upon the death, disablement, or injury of the individual insured, the individual insured or that individual's executor or administrator may maintain an action to recover the benefits from the person receiving the benefits.

3. "Insurable interest", with reference to personal insurance, includes only the following interests:
- a. In the case of an individual related closely by blood or by law, a substantial interest engendered by love and affection.
  - b. In the case of a person other than an individual described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
  - c. In the case of an individual party to a contract or option for the purchase or sale of an interest in a business partnership or firm, of a membership interest in a limited liability company, or of shares of stock of a closed corporation or of an interest in the shares, an interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest that may otherwise exist as to the life of the individual.
  - d. In the case of a religious, educational, eleemosynary, charitable, or benevolent organization, a lawful interest in the life of the individual insured if that individual executed a written consent to the insurance contract.
  - e. In the case of an employer or the trustee of a trust providing life, health, disability, retirement, or similar benefits to employees of one or more employers, and acting in a fiduciary capacity with respect to the employees, retired employees, or the employees' dependents or beneficiaries, an employer or the trustee of a trust has an insurable interest in the lives of employees for whom the benefits are to be provided and the employer or trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance as a beneficiary or owner. Written consent of the insured individual is required if the personal insurance purchased names the employer or the trustee of a trust as a beneficiary.
  - f. In the case of a service recipient or the trustee of a trust providing a nonqualified deferred compensation plan, as defined by section 409A(d)(1) of the Internal Revenue Code [26 U.S.C. 409A(d)(a)], to a service provider, an insurable interest in the life of the service provider for whom the nonqualified deferred compensation plan is provided. The service recipient or the trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance with the trust as a beneficiary or owner. Written consent of the insured individual is required. As used in this subdivision:
    - (1) "Service provider" means an individual, other than an employee, who provides significant services to a service recipient.
    - (2) "Service recipient" means the entity for which services are performed by a service provider.

**26.1-29-10. Contingent or expectant interest not insurable.**

A mere contingent or expectant interest in anything, not founded on an actual right to the thing nor upon any valid contract for it, is not insurable.

**26.1-29-11. What may be insured against.**

Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against the person may be insured against, subject to this title, with the exception of an insurance for or against the drawing of any lottery or for or against any chance or ticket in a lottery drawing a prize.

**26.1-29-12. Effect of change in insurable interest.**

A change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent until the interest in the thing insured and the interest in the insurance are vested in the same person, except as follows:

1. In the cases of life, accident, and health insurance.
2. A change of interest in a thing insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss.
3. A change of interest in one or more of several distinct things insured by one policy does not avoid the insurance as to the others.
4. A change of interest by will or succession on the death of the insured does not avoid an insurance, and the decedent's interest in the insurance passes to the person taking the decedent's interest in the thing insured.
5. A transfer of interest by one of several partners, joint owners, or owners in common who are insured jointly to the others does not avoid an insurance even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.
6. The encumbering of one or more of several distinct things insured by one policy does not render void any insurance upon the things not covered by the encumbrance, but in case of loss or damage, such an amount must be deducted from the insurance as the value of the property so encumbered bears to the value of all the property covered by the policy.

Any agreement to waive subsection 3 or 6 is void.

**26.1-29-13. Mutual disclosures required in insurance contract.**

Each party to an insurance contract shall communicate to the other in good faith all facts within the party's knowledge which are or which the party believes to be material to the contract and which the other party has not the means of ascertaining and as to which the party makes no warranty.

**26.1-29-14. Concealment defined.**

"Concealment" means a neglect to communicate that which a party knows and ought to communicate.

**26.1-29-15. Rescission for concealment - Exception.**

A concealment, whether intentional or unintentional, entitles the injured party to rescind an insurance contract. An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind. This section does not apply to automobile insurance policies, but such policies are subject to cancellation as provided in section 26.1-40-02.

**26.1-29-16. Matters as to which disclosure is not required.**

Neither party to an insurance contract is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those that the other knows.
2. Those that in the exercise of ordinary care the other ought to know and the former has no reason to suppose the other ignorant.
3. Those that the other waives communication.
4. Those that prove or tend to prove the existence of a risk excluded by a warranty and which are not otherwise material.
5. Those that relate to a risk excepted from the policy and are not otherwise material.

**26.1-29-17. Materiality of matters - How determined.**

Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming the party's estimate of the disadvantages of the proposed contract or in making the party's inquiries.

**26.1-29-18. Presumption of knowledge.**

Each party to an insurance contract is bound to know all the general causes which are open to the party's inquiry equally with that of the other and which may affect either the political or material perils contemplated and all general usages of trade.

**26.1-29-19. Communication of material facts may be waived.**

The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, when they distinctly are implied in other facts of which information is communicated.

**26.1-29-20. Information as to interest need not be communicated.**

Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as required to prepare the policy as prescribed by section 26.1-30-01.

**26.1-29-21. Matters of opinion need not be disclosed.**

Neither party to an insurance contract is bound to communicate, even upon inquiry, information of the party's own judgment upon the matters in question.

**26.1-29-22. Representation - Form - When made.**

A representation, either oral or written, may be made before or at the time of issuing the policy.

**26.1-29-23. Interpretation of representations regarding insurance.**

A representation is to be interpreted by the general rules of contract interpretation. A representation as to the future is a promise unless the representation appears that it was merely a statement of belief or expectation. A representation cannot qualify an express provision in an insurance contract, but it may qualify an implied warranty.

**26.1-29-24. False representation - Materiality and effect.**

A representation is false when the facts fail to correspond with its assertions or stipulations. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. The materiality of a representation is determined by the same rule which determines the materiality of a concealment.

**26.1-29-25. Misrepresentations - Determination of materiality - Effect.**

An oral or written misrepresentation made in the negotiation of an insurance contract or policy by the insured or in the insured's behalf is material or defeats or avoids the policy or prevents its attaching only if the misrepresentation has been made with actual intent to deceive or unless the matter misrepresented increased the risk of loss.

**26.1-29-26. Representations on information and belief.**

When a person insured has no personal knowledge of a fact, the person may repeat information which that person has upon the subject and which that person believes to be true with the explanation that that person does so on the information of others, or that person may submit the information in its whole extent to the insurer. In neither case is the person responsible for the truth of the representation unless it proceeds from an insurance producer of the insured who has a duty to give the information.

**26.1-29-27. Time to which representation refers.**

A representation must be presumed to refer to the time of the completion of the insurance contract.

**26.1-29-28. Alteration or withdrawal of representation.**

A representation may be altered or withdrawn before the effective date of the insurance but not afterwards.

**26.1-29-29. Insurance of mortgaged property - Act of mortgagor may avoid insurance.**

When a mortgagor of property effects insurance in the mortgagor's own name providing that the loss is payable to the mortgagee, or when the mortgagor assigns an insurance policy to the mortgagee, the insurance is considered to be upon the interest of the mortgagor. The mortgagor does not cease to be a party to the original contract, and any act of the mortgagor which otherwise would avoid the insurance will have the same effect although the property is in the hands of the mortgagee.

**26.1-29-30. New contract on transfer of insurance on mortgaged property - Effect of mortgagor's acts.**

If an insurer assents to the transfer of an insurance contract from a mortgagor to a mortgagee and at the time of the insurer's assent imposes further obligations on the assignee, making a new contract with the assignee, the acts of the mortgagor cannot affect the mortgagee's right under the insurance.

**26.1-29-31. Modification of insurance contract - Exercise of right of rescission.**

This chapter applies to a modification of an insurance contract as well as to its original formation. The right to rescind an insurance contract given to the insurer under the provisions of this title may be exercised at any time prior to the commencement of an action on the contract.