

The group life insurance policy might not allow Name 1 to elect additional coverage, although this option might be available in a flexible employment benefits plan.

K. NO SURRENDER OR TERMINATION WITHOUT CONSENT/UNILATERAL SURRENDER OR TERMINATION [§10.13]

[Version 1]

[Name 1] may not, unless [Name 2] otherwise consents in writing:

- (a) change the beneficiary designation; or
- (b) surrender, terminate, or otherwise deal with the [Insurance Policy].

Consider including a general clause (such as the clause on “Consent” in chapter 17) that provides that whenever consent is required it may not be unreasonably refused, or revise this clause accordingly.

[Version 2]

[Not standard] [Name 1] may change the beneficiary designation or surrender, terminate, or otherwise deal with the [Insurance Policy] after giving [Name 2] [for example, 30] days’ notice of [Name 1]’s intention.

Version 2 does not require Name 2’s consent. It is used where:

- there is, at the time, no one that Name 1 wishes to benefit. However, if a new relationship develops, Name 2 will lose the benefits in favour of Name 1’s new partner; or
- there is a need for short-term security while, for example, Name 2 re-enters the job market (although in such a case it would be possible to revise the clause to refer to such a fact directly).

This clause can be adapted for pensions (and other plan) designations. See also the clause on “Obligation to Pay Spousal Support Ends” in chapter 9.

L. ENTITLEMENT TO INFORMATION ABOUT INSURANCE [§10.14]

[Version 1]

[Name 1] will *[annually/quarterly/monthly/within 10 days of the date any premium or assessment is due under the Insurance Policy]*, give *[Name 2]* a copy of the receipt for payment.

If the payor spouse is supposed to pay the insurance premiums, the payee spouse will require some continuing assurance that the policy remains in good standing. One method is to require the payor spouse to provide the payee spouse with a copy of the receipt issued for each payment made.

The *Insurance Act* provides a 30-day grace period, after which the insurer may treat non-payment as a lapse of the policy (*Insurance Act*, ss. 50 and 57). Requiring proof of payment within 10 days of the date that premiums are payable (an option listed in Version 1) would give the payor spouse 20 days to remedy the default before the lapse of the grace period.

Reinstatement is allowed for a two-year period. If the payor spouse is no longer insurable, however, it will be necessary to find other security if available.

[Version 2]

[Name 1] will provide proof to *[Name 2]* *[, on request no more than once in any calendar year/annually,]* that the *[Insurance Policy]* remains in good standing.

[Version 3]

[Name 1] will provide to *[Name 2]* an irrevocable letter of instruction to the Insurer that directs the Insurer to provide *[Name 2]* with:

- (a) notice of any default in payment of premiums; and
- (b) information on request about the *[Insurance Policy]*.

Some versions of this clause include a specific obligation on Name 1 to “make all such arrangements and sign all such assignments, assurances, or other documents as may be necessary to ensure that *[Name 2]* will receive notification from the insurer”. This specificity is unnecessary if the general assurance clause (the clause on “Co-operating to Give Full Effect to Agreement: Further Assurances” in chapter 17) is included in the agreement.

M. IF INSURANCE PREMIUMS ARE NOT PAID [§ 10.15]

[Version 1]

If the premium to maintain the *[Insurance Policy]* becomes due and payable, *[Name 2]* may pay the premium and recover the cost from *[Name 1]*.

This clause can be revised to provide that if Name 2 pays the premium on the policy, then Name 2 is entitled to either recover the cost from Name 1, or become the owner of the policy and receive the benefit of all premiums to that date paid by Name 1. The most that such a clause can achieve is to make Name 2 the beneficial owner of the policy. Legal ownership would require the parties to complete a formal assignment and file it with the policy issuer.

Another option is to assign the policy immediately (see the clause on “Assignment of the Insurance Policy” in this chapter).

[Version 2]

If [Name 1] defaults on the obligations under clause[s] [see, for example, clause “Obligation to Maintain Insurance Policy” (concerning payment of premiums), clause “Irrevocable Beneficiary Designation/Filing Designation with Insurer” (making the irrevocable beneficiary designation), and clause “Insurance Policy May Not Be Encumbered” (not encumbering the policy)]:

- (a) [Name 2] may take any action required to cure the default; and
- (b) [Name 1] will reimburse [Name 2] for any expense or loss incurred by [Name 2] because of the default.

Even without this clause, an action for damages for breach of an agreement to designate and maintain the payee spouse as a beneficiary can be brought against the executors of the payor spouse’s estate (*Phillips v. Spooner*, 1980 CanLII 2109 (SK CA); see also *Re Taylor*, 1985 CanLII 842 (BC SC); *Fraser v. Fraser*, 1995 CanLII 1594 (BC SC); and *Munro v. Munro Estate*, 1995 CanLII 1396 (BC CA)). However, a claim for damages is not helpful if the estate is insolvent (*Ladner v. Ladner*, 2004 BCCA 366).

Unless the agreement addresses the issue adequately, if there is a subsequent claim for damages, a question may arise concerning whether the measure of damages is the stated amount of the policy, or the obligation the policy was intended to secure (*Ladner v. Ladner*, 1997 CanLII 4032 (BC CA) where the question was returned to the trial judge; *Adams v. Adams Estate*, 2001 ABQB 173, where damages in amount of the face value of the policy were awarded).

Breach of an agreement to designate the payee spouse as the beneficiary may also result in the life insurance proceeds being impressed with a trust in the payee spouse’s favour (*Shannon v. Shannon*, 1985 CanLII 2026 (ON SC); *Fraser v. Fraser*, 1995 CanLII 1594 (BC SC); *Gregory v. Gregory*, 1994 CanLII 2274 (BC SC) (Chambers); *Ladner v. Ladner*, 2004 BCCA 366; but see *Barton v. Barton Estate* (1992), 37 R.F.L. (3d) 330 (Ont. Gen. Div.). See *MacMichael v. Strocel*, 2009 BCSC 290, with respect to breach of an agreement on pension benefits. See

also chapter 13 (Testamentary Issues in Family Law) in the *Family Law Sourcebook for British Columbia*, 3rd ed. (CLEBC, 2002–).

The complexities in this area of the law were considered in *Moore v. Sweet*, 2018 SCC 52. When the parties in that case separated, there was an oral agreement that the husband would maintain the former spouse as beneficiary under an insurance policy and the former wife would pay the premiums. Before he died, the husband made an irrevocable designation in favour of his current spouse. The court decided that, in these circumstances, the irrevocable beneficiary designation was not a juristic reason against finding a constructive trust in favour of the former spouse. As a result, she was entitled to the insurance proceeds.

A general clause may be included to define more fully the obligation to indemnify (see the clause on “Reimburse” in chapter 17).

N. ASSIGNMENT OF THE INSURANCE POLICY [§ 10.16]

(1) *[Name 1]* will assign to *[Name 2]* all of *[Name 1]*'s interest in the *[Insurance Policy]*.

(2) [Version 1] When *[Name 1]*'s obligation to pay Spousal Support under this Agreement ends:

- (a) *[Name 2]* must assign the *[Insurance Policy]* to *[Name 1]*, who may name a new beneficiary; and
- (b) *[Name 2]* must do everything reasonably necessary to complete the assignment and to assist in changing the beneficiary designation.

(2) [Version 2] In consideration of the assignment, *[Name 2]* will pay *[\$amount]* to *[Name 1]* from *[Name 2]*'s share of the proceeds of the sale of the Family Residence.

An insurance policy, or an interest in it, may be assigned (*Insurance Act*, s. 69). Assignment may help to protect the payee spouse from a default by the payor spouse. Insurance companies, once notified of the assignment, will usually advise an assignee if premiums are not paid, although they are not required to do so.

In most cases, Name 2 will also be the designated beneficiary of the policy.

As a matter of good practice, the assignment should be signed by Name 1 when the family law agreement is signed.

Another advantage of an assignment is that it can prevent or limit the payor spouse's ability to borrow against the policy.

The transaction does not fall within the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (see s. 4(c)).