

INSURANCE POLICIES AS CONTRACTS

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The insurance relationship is basically contractual in nature. As a result, insurance policies must satisfy all of the elements required for a binding contract.

The standard practice in insurance is to have the potential insured make an offer to enter an insurance contract by completing an application provided by the insurer's agent and submitting it and the premium to the insurer. The insurer may then either accept or reject this offer. What constitutes acceptance depends on the kind of insurance requested and the language of the application. It is very important to know the precise time when an acceptance occurs. Any losses suffered prior to this point must be borne by the insured.

Applications for life insurance often provide that acceptance does not occur until the insurer delivers the policy to the insured. If the application calls for the policy to be delivered to an agent of the insured, delivery to the agent constitutes acceptance, unless the agent has discretionary power not to deliver the policy.

In property insurance contracts, the application may be worded so that insurance coverage begins when the insured signs the application. This can provide temporary coverage until the insurer either accepts or rejects the policy. The same result may also be achieved by the use of a binder, an agreement for temporary insurance pending the insurer's decision to accept or reject the risk.

Applicants for insurance have a duty to reveal fully to insurers all the material facts about the nature of the risk so that the insurer can make an intelligent decision about whether to accept the risk. Misrepresentation of material facts or failure to disclose such facts generally has the same effect in insurance cases that it does in other contracts cases; it makes the contract voidable at the election of the

insurer. There are, however, two common provisions in life insurance policies that help to offset the potentially harsh effects that could otherwise result from strictly applying the general rule.

This is in the case of 1. Misstatement of Age Clause, it is common for life insurance policies to contain a misstatement of age clause. Such clauses allow the insurer, in cases in which the insured has misstated his age, to adjust the benefits payable on the insured's death to reflect the amount of protection that the insured's premiums would have purchased for a person of the insured's true age.

2. Another common clause in life insurance policies is an Incontestability clause, this clause bars the insurer from contesting its liability on the policy on the basis of the insured's misrepresentations if the policy has been in force for a specified period of time. Incontestability clauses, however, do not bar the insurer from objecting on the basis of absence of insurable interest, an imposter taking the required physical exam in the insured's place, or the purchase of the policy with the intent to murder the insured.