

# Montana

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## Formation of a Life Insurance Contract

### *Insurable Interest Requirement*

Under Montana Code §33-15-201(1), “[a]ny individual of competent legal capacity may procure or effect an insurance contract upon the individual’s on life or body for the benefit of any person.” A person may not, however, insure the life or body of another unless that individual is made the beneficiary of the insurance contract. *Id.* If persons are related by blood or marriage, the non-insured person must have a “substantial interest engendered by love and affection.” Mont. Code §33-15-201(3)(a). For all others, there must exist “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.” Mont. Code §33-15-201(3)(b). Furthermore, under Mont. Code §33-15-103(2), a competent minor fifteen years of age or older may insure his or her own life or another in whom lies an insurable interest. If a contract of insurance is obtained in violation of Mont. Code §33-15-201, the person insured or their representatives may bring an action to recover the benefits from the person improperly receiving them. Mont. Code §33-15-201(2).

### *Must the Insured Sign the Application?*

An individual wishing to procure life insurance must apply and consent in writing but stops short of a signature requirement. Mont. Code §33-15-401. The consent in writing requirement does not apply if (1) a spouse is insuring the life of the other spouse; (2) a person insuring the life of a minor or person upon whom the minor is dependent for support and

maintenance; or (3) family policies insuring multiple family members. Mont. Code §33-15-401(1)–(3).

### *Conditional Receipt/Temporary Insurance Application and Agreement (“TIAA”)*

Montana has not addressed temporary insurance applications and agreements. Montana does recognize that conditional receipts can create condition precedents to coverage under an insurance policy. *Hildebrandt v. Washington Nat. Ins. Co.*, 593 P.2d 37 (Mont. 1979). For instance, when a conditional receipt states that there shall be no coverage “unless and until [the receipt’s] conditions are met,” and approval of the application is dependent upon a medical examination, the failure of the insured to obtain a medical examination precludes the creation of a binding contract. *Id.* at 39.

### *Does the Insurer’s Acceptance and Retention of a Premium Create a Life Insurance Policy?*

In *Hildebrandt*, the court rejected the argument that the acceptance and retention of a life insurance premium effectively create a temporary contract. *Id.* at 40. However, the court’s ruling was based on the specific facts of the case. The court does not appear to have rejected the idea that, in some circumstances, the retention and acceptance of an insurance premium could create an enforceable contract. *Id.* According to the court, two facts separate *Hildebrandt* from those cases so holding acceptance and retention creates a contract. First, in *Hildebrandt* the conditional receipt stated that coverage was subject to specific conditions, as opposed to where the receipt or application could lead a reasonable person to believe coverage was effective immediately. *Id.* Second, in *Hildebrandt* there was equal bargaining power between the insured and insurer because the

insured was an, and acted as his own, insurance agent. *Id.*

### **Good Health Requirement at Time of Delivery**

If the policy requires that the insured be in good health at the time of delivery, it is a condition precedent to coverage, requiring strict compliance. *McDonald v. Northern Ben. Ass'n*, 131 P.2d 479, 486 (Mont. 1942). As stated by the Montana Supreme Court, “[g]ood health’ or ‘sound health’ does not apply to temporary or minor indisposition but means freedom from any physical affliction or disease of a serious nature tending to undermine the constitution of the subject.” *Id.*

The question remains in Montana whether “good health” is a subjective or objective test. If the test is objective, the insured’s knowledge of his or her own health is immaterial, as his or her health will be judged in retrospect. If subjective, however, the insured may be found in good health despite serious illness as long as the insured was unaware of the illness at the time of delivery. *Friez v. National Old Line Ins. Co.*, 703 F.2d 1093, 1095 (9th Cir. 1983) (applying Montana law). In *McDonald*, the court wrote that “there can be no doubt that the applicant was not in good health when the certificate was issued. 131 P.2d at 486. While apparently adopting the objective test, a crucial fact in *McDonald* was the insured’s awareness at the time of receipt that he was, indeed, suffering from serious illness. *Id.*

The Ninth Circuit, applying Montana law, found ambiguity in a “good health” clause, partly on the grounds that it was unclear whether the test was objective or subjective. 703 F.2d at 1095. Construing the term against the insurer, the court noted that “[n]o Montana court has ever held an insured who is unaware of a serious illness is not in ‘good health[.]’” *Id.* According to the Ninth Circuit, “[t]he import of Montana case law is that if the validity of an insurance policy is to be conditioned upon the insured’s objective good health, irrespective of what he knew or should have known, the condition must be clearly and conspicuously set forth.” *Id.*

### **Free Look Period After Policy Delivery**

By statute, an insured has ten days, or longer if provided in the policy, to return a life insurance policy to the insurer. Mont. Code §33-15-415. This notice must be stated within the policy. *Id.* The insured can return the policy for any reason and all premiums will be returned to the paying party. *Id.* If returned, the policy is treated as having been void from the beginning. *Id.*

### **Electronic Signature Requirements**

Under Mont. Code §30-18-106(1), “[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form.” Similarly, a contract cannot be denied because “an electronic record” was used in its formation.” Mont. Code §30-18-106(2). A signature is satisfied if that signature is provided by electronic means. Mont. Code §30-18-106(4).

### **Maintenance of a Life Insurance Policy**

#### **Grace Period**

Each life insurance policy shall contain a grace period of at least 30 days, or one month at the option of the insurer, within which the payment of any premium after the first premium may be made during which the policy shall continue in full force. Mont. Code §33-20-104. For industrial life policies, this period may be shortened to four weeks. *Id.*

#### **Lapse for Failure to Timely Pay Premiums**

“Punctuality in the payment of the premiums is a prerequisite in all contracts of life insurance... [A] failure on the part of the insured to meet the payments within the time provided removes the liability of the insurer, unless... it has evinced an intention to waive the evidence of continued insurability[.]” *Nelson v. Mut. Life Ins. Co. of New York*, 190 P. 927, 929 (Mont. 1920).

Before a policy can be cancelled, written notice as well as any billing statement must be mailed or delivered to the named insured or policyholder stating the date that the policy is to be cancelled. Mont. Code §33-20-141. Cancellation may not take effect less than 30 days after the date of mailing or delivery. *Id.*

## Changes in the Beneficiary

### Substantial Compliance Rule

Montana has adopted the substantial compliance rule. Application of the rule is fact intensive. As stated by the Supreme Court of Montana, the rule is properly applied when an insured has done all in his or her power to comply with the law:

We think the true rule is that, if the insured has pursued the course pointed out by the laws of the association and has done all in his power, under the facts and circumstances of the case, to change the beneficiary, but before the new certificate is actually issued or the change of beneficiary is indorsed on the old, he dies, a court of equity will decree that to be done which ought to be done, and act as though the certificate had been issued or the indorsement made.

*Bell v. Criviansky*, 37 P.2d 673, 678 (Mont. 1934). In *Bell*, the insured requested the appropriate forms but became seriously ill and passed away before the forms could be completed, signed, and returned. For the court, this was sufficient compliance to enforce the intended change in designated beneficiaries. *Id.* In contrast to *Bell*, the court in *Eschler v. Eschler*, 849 P.2d 196, 202 (Mont. 1993), ruled that obtaining the beneficiary change forms, entering the names of the new beneficiaries, but failing to sign and return the forms was not sufficient to evidence that change in beneficiary. This was so because the insured had the forms in his possession for over six months and there was no evidence put forth that he was unable to complete the forms or return them to the insurer. *Id.*

### Revocation of Death Benefits by Divorce or Annulment

A former spouse's entitlement to death benefits from life insurance is revoked upon divorce or annulment under Montana's general revocation-on-divorce statute, Montana Code 72-2-814. *Thrivent Financial for Lutherans v. Andronescu*, 300 P.3d 117, 120 (Mont. 2013). The statute states that the divorce or annulment "revokes any revocable... disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument[.]" Mont. Code §2-814(2)(a)

(i). The revocation not only applies to the former spouse, but any relative of the former spouse as well as any appointment to a fiduciary or representative capacity, such as trustee. Mont. Code §72-2-814(2)(a)(i)–(iii).

## Payment of Life Claims

### Interpleader

Montana Rules Civ.P, Rule 22(a)(1) and (2) provides that "[p]ersons with claims that may expose a plaintiff [or defendant] to double or multiple liability may be joined as defendants and required to interplead." A party may not object to the interpleader action even when the plaintiff alleges the he or she is not liable in whole or in part to the claimants. Rule 22(a)(1)(B).

In Montana, attorneys' fees are generally not awarded unless permitted by statute or contract. *National Cas. Co. v. American Bankers Ins. Co. of Florida*, 19 P.3d 223, 227 (Mont. 2001). An exception exists, however, when a court determines a party was forced to defend "a wholly frivolous or malicious action." *Id.* (citing *Youderian Const., Inc. v. Hall*, 945 P.2d 909, 917 (Mont. 1997); *Newman v. Wittmer*, 917 P.2d 926, 933 (Mont. 1996); *Tanner v. Dream Island, Inc.*, 913 P.2d 641, 651 (Mont. 1996); *Holmstrom Land Co. v. Hunter*, 595 P.2d 360, 363 (1979)). A party cannot recover attorneys' fees in an interpleader action based upon a "false" claim. *American Bankers Ins. Co. of Florida*, 19 P.3d at 227.

### Slayer Statute and Related Common Law Rule

As with revocation-on-divorce, a party who feloniously and intentionally kills is prohibited from benefiting under a life insurance policy under Montana's general slayer statute. Mont. Code §72-2-813. "The felonious and intentional killing of the decedent... revokes any revocable... disposition or appointment of property made by the decedent to the killer in a governing instrument. Mont. Code §72-2-813(3)(a)(i). A person is conclusively established to be the killer after entry of judgment and exhaustion of all right to appeal. Mont. Code §72-2-813(7). A guilty plea, however, is not conclusive evidence of felonious and

intentional killing and such a plea in the criminal proceeding will not have a preclusive effect in the life insurance proceeding. *In re Estates of Swanson*, 187 P.3d 631, 634 (Mont. 2008).

### **Interest on Life Insurance Proceeds**

If life insurance proceeds are not paid out within 30 days, interest accrues thereafter. Mont. Code §33-20-114(2). The rate of interest is to “be paid at the monthly average discount rate on 90-day AA asset-backed commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death or at the rate stated in the policy, whichever is greater.” *Id.*

## **Contested Life Insurance Claims**

### **Contestability Period**

With the exception of nonpayment of premiums, a life insurance policy becomes incontestable after the policy has been in force for two years. Mont. Code §33-20-105(1). If the policy itself provides an incontestability period, such a clause applies only to the validity of the contract. It does not “preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage.” Mont. Code §33-20-118. *See also Stevens v. Woodmen of the World*, 71 P.2d 898 (Mont. 1937). A policy that is reinstated may be contested on grounds of fraud or misrepresentation for a two year period beginning from reinstatement. Mont. Code §33-20-119(a)

### **Can a Claim Still Be Contested After Expiration of the Contestability Period?**

Montana has not addressed to what degree an insurer can contest a life insurance policy or provisions therein after the statutorily required two year contestability period. As stated above, if the policy itself provides an incontestability period, such a clause applies only to the validity of the contract. It does not “preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage.” Mont. Code §33-20-118. *See also Stevens v. Woodmen of the World*, 71 P.2d 898 (Mont. 1937).

## **Suicide**

As an exception to the general rule that a life insurer may not exclude or restrict liability “for death caused in a specified manner,” an exception exists for suicide. Mont. Code §33-20-121(1)(b). A life insurer may exclude or limit liability “in the event of death... within 2 years from the date of issue of the policy as a result of suicide.” Mont. Code §33-20-121(1)(b)(v). If the policy contains a suicide exclusion, it must also provide for the payment of an amount based upon the commissioner’s valuation table, which in turn is based on mortality tables and the interest rate specified in nonforfeiture benefits or as specified by the policy. Mont. Code §33-20-121(2).

However, this section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance or annuities or to provisions within a life insurance policy relating to disability benefits or additional benefits. Mont. Code §33-20-121(3). In cases of dispute whether the death is accidental or suicide, the presumption is in favor of an accident. *Nichols v. New York Life Ins. Co.*, 292 P. 253 (Mont. 1930).

### **STOLI/BOLI/COLI and Stranger Owned Annuity Contracts**

Montana has no law on this subject.

## **Material Misrepresentations in the Application**

### **Applicable State Statute**

Under Mont. Code §33-15-403, misrepresentations, omissions, concealment of fact, and incorrect statements do not prevent recovery under a policy unless such are (a) fraudulent; (b) “material either to the acceptance of the risk or to the hazard assumed by the insurer; or (c) the insurer can show in that it would not have issued the policy, would not have issued a policy as high of limits, would not have issued the policy for the same premium, or would not have covered the hazard if the true facts were known. Mont. Code §33-15-403(2)(a)–(c).

### **Prima Facie Case of Misrepresentation**

To prevent an insured’s recovery under a policy for misrepresentation, an insurer must prove:

- (a) the defendant made a representation as to a past or existing material fact;
- (b) the representation must have been untrue;
- (c) regardless of its actual belief, the insured must have made the representation without any reasonable ground for believing it to be true;
- (d) the representation must have been made with the intent to induce the plaintiff to rely on it;
- (e) the plaintiff must have been aware of the falsity of the representation; it must have acted in reliance upon the truth of the representation and it must have been justified in relying upon the representation;
- (f) the plaintiff, as a result of its reliance, must sustain damage.

*Watts v. Westland Farm Mut. Ins. Co.*, 895 P.2d 626, 629 (Mont. 1995) (citations omitted).

### **Impact of “to the Best of My Knowledge and Belief” Language in Application**

Life insurance applications often require the applicant to certify that “to the best of my knowledge” he or she is in good health. When an insurer contests this certification as untrue or inaccurate, Montana courts apply a subjective test to determine whether, at the time of the application, the applicant believed they were in good health. *Lentz v. Prudential Ins. Co. of America*, 520 P.2d 769, 772 (Mont. 1974). The applicant’s actual health at the time of certification is irrelevant, as long as the applicant formed the belief in good faith. *Id.* Compare **“Formation of a Life Insurance Policy: Good Health Requirement at Time of Delivery,”** *supra*.

### **Materiality**

Montana Code Section 33-15-403(2)(b) provides that a statement or omission may preclude recovery if it is “material... to the risk.” The Supreme Court of Montana has defined materiality as “an omission or misrepresentation may be material if, had the truth been known, the reasonable insurer would not have issued the policy or would have issued it at a higher premium.” *Schneider v. Minnesota Mut. Life Ins.*

*Co.*, 806 P.2d 1032, 1035 (Mont. 1991). Note that this definition is strikingly similar to the third situation under which an insurer may preclude recovery due to a misrepresentation under Mont. Code §33-15-403(2)(c). The distinction, therefore between Mont. Code §33-15-403(2)(b) (which incorporates the *Schneider* definition of materiality) and (c) (which employs language similar to *Schneider*’s definition) is that section “(2)(b) deals with an objective standard of materiality, reasonableness, while (2)(c) refers to a subjective standard, good faith.” *Schneider*, 806 P.2d at 1035. The statute does not, however, contain a scienter element.

In other words, under (2)(b), a statement is material if it objectively “diminishes the insurer’s opportunity to determine or estimate its risk.” *Id.* (quoting *Berger v. Minnesota Mut. Life Ins. Co. of St. Paul, Minn.*, 723 P.2d 388, 391 (Utah 1986)). One factor in judging materiality is to inquire whether the application specifically asked about the facts misrepresented or not disclosed or whether the insurer has written underwriting instructions on the particular subject. *Id.* Under (2)(c), however, the inquiry is whether the insurer, in good faith, would have denied the application or issued the policy under different terms. *Id.*

### **Casual Connection**

Montana has no law on this subject.

### **Impact of Agent’s Knowledge and False Responses**

The knowledge of the insurance agent is imputed to the insurer. *Curtis v. Zurich General Accident & Liability Ins. Co., Limited of Zurich, Switzerland*, 89 P.2d 1038, 1040 (Mont. 1939) (third-party insurance). An insured, therefore, can avoid an insurer’s defense of misrepresentation by showing that the agent knew the true facts. *Id.*

### **Defenses**

#### **Statutes of Limitation/Contractual Limitations Period**

If an insurer wishes to rescind a life insurance policy, it must do so within the two years of contestability as provided by Mont. Code §33-20-105(1). After expiration of this period, the validity of the life

insurance policy will become incontestable. Otherwise, the insurance contract will be governed by an eight-year statute of limitations applicable generally to contracts. Mont. Code §27-2-202(1).

### ***Duty to Read Policy***

The failure of an insured to read a policy will not bar coverage, but may be considered by the jury in apportioning fault. *Fillinger v. Northwestern Agency, Inc., of Great Falls*, 938 P.2d 1347, 1352 (Mont. 1997). In apportioning fault, the jury should be instructed to consider whether it was reasonable, under the circumstances, for the insured not to read the policy. *Id.* And, if so, did the failure to read contribute to the damages? *Id.* An insured, however, may be entitled to rely upon the insurance agent when the insured has specifically instructed the agent to procure specific coverage. *Id.*

### ***Waiver/Estoppel***

If an insurer has cause to rescind a contract due to misrepresentation, it must act on that cause promptly or it may be estopped from contesting the validity of the contract. *McLane v. Farmers Ins. Exchange*, 432 P.2d 98, 99–100 (Mont. 1967). Likewise, when an insurance agent fills out an application fails to report the facts accurately, the knowledge of the agent will be imputed to the insurer. *Webber v. Massachusetts Bonding & Ins. Co.*, 263 P. 101, 104 (Mont. 1928). The insurer will therefore be estopped from denying coverage.

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