

STATUTORY CONDITIONS ON FIRE INSURANCE POLICIES

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This paper does not pretend to be anything more ambitious than an attempt to explain in as brief and untechnical a manner as possible some of the Quebec statutory conditions to which all insurance contracts in the Province of Quebec are subject; an endeavour is made to discuss only certain points of most frequent and practical application.

Formerly every company had its own conditions and the Courts applied the well-known principle that clauses in a contract prepared by one of the parties must of necessity be construed against that party. Now that these conditions are imposed by law, there is no reason why this principle of construction should be applied.

All the Provinces of Canada, except Prince Edward Island, have enacted statutory conditions peculiar to each Province. Efforts have been made during the past few years by the Insurance Federation, the Canadian Bar Association and the C.F.U.A. to bring about uniformity of such conditions, and it is to be hoped that this end will be attained in the near future.

The term "condition precedent" is of common use; there are two kinds of conditions precedent: those precedent to liability and those precedent to action or recovery. The former nullify the contract from the outset, unless complied with; such would be a condition that the insured must be the owner of the property, unless his interest is stated on the policy. Conditions precedent to action or recovery are such formalities as must be complied with after a fire has occurred, and the Courts have almost invariably held that these will not be too rigidly enforced where there is evidence of the good faith of the insured.

An insurance contract need not necessarily be in the shape of a policy; in principle it may be in any other form, or even verbal, although, of course, in practice it would be impossible to transact business in that manner. Every contract of fire insurance in the Province of Quebec is held to be subject to the statutory conditions, whether they are endorsed on or incorporated with the policy, or whether any formal policy is issued or not. The law requires that all these conditions should appear on the contract, but if they do not, the insurance is still subject to them. There is no need for them to be printed on the interim receipt. It is sufficient that any variations shall be printed on such receipt. The company may waive compliance or overlook a breach of a condition by the insured, but the latter cannot rely on such breach by himself to avoid the policy to his own benefit.

Condition No. 1 provides that misrepresentation by the assured in describing his property or otherwise voids the policy. Attention is drawn to the fact that such penalty is incurred only as to the particular item regarding which the misrepresentation has occurred, even if the policy covers several items. When the application is made out by the company's agent, the application is deemed to be the act of the company. There is a distinction between an agent and a broker in insurance practice. A broker represents the insured and binds him; an agent represents and binds the company. An agent however, only binds the company within the limits

of the authority which the company grants him or holds him out to possess. As a rule, an agent cannot delegate or pass on to another the authority given to him; for instance, an agent having authority to sign interim receipts cannot delegate this authority to a clerk or sub-agent.

The rule is fairly well established now that the knowledge of the agent is the knowledge of the company. Some policies contain a condition that they shall not be valid unless countersigned by the agent; this is not sacramental and the company may be held even if the policy has been delivered without such signature.

Condition No. 2 lays down for fire insurance a rule different from that established in life insurance. In the latter case the insured is expected to read his policy after receipt, and, if it differs from his application, its retention without objection bars him from complaining later.

Under this condition, however, the insured is justified in taking it for granted that any policy sent him is in accordance with the terms of his application or of the interim receipt; and if it should happen to differ from the contract he stipulated for, or the receipt, he is entitled to insist on holding the company to what the contract ought to be and not to the exact terms of the policy. In other terms, this condition secures to him the very policy he applied for.

Condition No. 3 deals with changes in the use or condition of the property of a nature to increase the risk; such change avoids the whole policy, even as to other items not affected by the alteration. It is not every change which will have this result; it must be one within the control or knowledge of the assured and increasing the risk and rate of premium. Such would be the change of residential premises into a store, shop or factory. Vacancy is an alteration which causes the most frequent trouble. It is a fallacy to think that the mere fact of vacancy annuls the policy; the Courts of this Province have held on several occasions that vacancy per se is not an increase of risk, so that the burden and duty is thrown on the company to prove affirmatively that in any particular case the fact that the building was unoccupied actually did increase the risk.

An Alberta court held not long ago that a variation making vacancy a ground for rescission of the policy was not reasonable. The Supreme Court, however, in December, 1918, in the case of *Ross v. Scottish Union Insurance Co.*, denied the plaintiff's right to collect in the case where the buildings destroyed had ceased to be occupied. In another recent case, decided a few weeks ago by the Court of Appeal of this Province, the court brushed aside the defence based on vacancy, apparently on the ground that the agent knew that the building was vacant when he insured it and that no prejudicial change had occurred. A breach of this condition will annul the policy not only as to the item re which the alteration has taken place, but as to any other items covered by the same policy.

The customary mortgage clause usually attached to policies protecting the interests of mortgagees contains a provision holding the company liable, even in the event of vacancy or increased hazard and it continues, that if such change comes to the knowledge of the mortgagee he must inform the company and a higher premium will be exacted.

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