

Assignment – Section 38

1. A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.
2. An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section(1), where it has sufficient reason to believe that such transfer or assignment is not bonafide or is not in the interest of the policy-holder or in public interest or is for the purpose of trading of insurance policy.
3. The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policy-holder not later than thirty days from the date of the policy-holder giving notice of such transfer or assignment.
4. Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.
5. Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer.
Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being served.
6. The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy, and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which notices referred to in sub-section (5) are delivered:
Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.
7. Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given or if the transferee or assignee, on payment of such fee as may be specified by the regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.
8. Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (5), recognize the transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.
9. Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Ordinance, 2014 shall not be affected by provisions of this section.
10. Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that
 - a. The proceeds under the policy shall become payable to the policyholder or the nominee or nominees in the event of either the assignee or transferee predeceasing the insured; or
 - b. The insured surviving the term of the policy , shall be valid:
Provided that a conditional assignee shall not be entitled to obtain a loan on the policy surrender a policy.
11. In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.