



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 15, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 16

The Honorable Ginger Barr  
State Representative, 51st District  
State Capitol, Room 155-S  
Topeka, Kansas 66612

Re: Insurance -- General Provisions Relating to Life  
Insurance Companies -- Standard Nonforfeiture Law;  
Waiver of Statutory Rights

Synopsis: Absent further legislative direction, the rights  
granted by the standard nonforfeiture statute in  
the Kansas insurance code may not be waived. Cited  
herein: K.S.A. 40-420; 40-428.

\* \* \*

Dear Representative Barr:

You have requested our opinion regarding the Kansas insurance code. Specifically, you ask whether certain life insurance nonforfeiture rights may be waived by a policyholder.

All life insurance policies issued or delivered in this state, other than industrial insurance, annuities or pure endowments, must provide the nonforfeiture benefits and cash surrender values as provided in the standard nonforfeiture law, K.S.A. 40-428. K.S.A. 40-420(6). Additionally, such policies must contain a table showing the loan values. K.S.A. 40-420(8). You state that these policy benefits are resources of the insured for purposes of determining social security benefits. Therefore, in order to fund insurance for burial expenses

without losing SSI or Medicaid eligibility, you ask whether the statutory provisions may be waived by the insured.

It is generally recognized that statutory nonforfeiture provisions cannot be waived. Couch on Insurance 2d (Rev. ed.) § 32:178. The purpose of nonforfeiture statutes was stated in Fayman v. Franklin Life Insurance Company, 386 S.W.2d 52 (Mo. 1965):

"The purpose of the nonforfeiture statutes was to prevent the unfair situation which existed before the enactment in which insurance companies could forfeit and keep all of the net value of a policy when it lapsed, [citation omitted], 'to prevent the forfeiture of the policy reserve when the policy lapsed for nonpayment,' [citation omitted], 'to secure to an insured who has paid premiums 3 or more years substantially what the excess of his contributions over the cost and expense properly attributable to the carrying of his insurance to the date of the lapse will purchase in the way of extended or paid up insurance,' [citations omitted]. [T]he law jealously guards and protects the rights of policy holders in the excess reserves built up in the early years of level premium life insurance policies. The benefits conferred by these statutes cannot be abrogated, waived, or contracted away, either by agreement in the policy or by agreement made between the parties prior to default." [Emphasis added].  
386 S.W.2d at 58.

See also 3 Appleman, Insurance Law and Practice (1941) § 1864.

Upon reviewing the Kansas nonforfeiture statute, we believe that the same policy considerations obtain as were stated in Fayman. The rights granted by statute for the benefit of the insured's investment may not be contracted away.

It is argued that the public policy against waiver of standard nonforfeiture law rights is legitimate only when the insurance contract is subject to default, i.e., before the premiums are fully paid-up. This argument is based upon the general

purpose of such statutes, as stated in Fayman, which apply most visibly to someone who has partially paid the entire contract price and would lose the reserve, or excess premium over the cost of the insurance in the early years, by a lapse in premium payment. This public policy is most compelling when the insurance contract is subject to default. However, the statutes grant valuable rights to those who have fully paid the policy premiums in advance. For example, K.S.A. 40-428(a)(iv) states that if the policy is paid-up by completion of all premium payment, the company must pay a cash surrender value if the policy is surrendered within 30 days of the policy anniversary. As this is a right granted by the legislature, we believe that this right may not be waived absent further legislative direction.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford  
Assistant Attorney General

RTS:JLM:MWS:bas