

Cessions

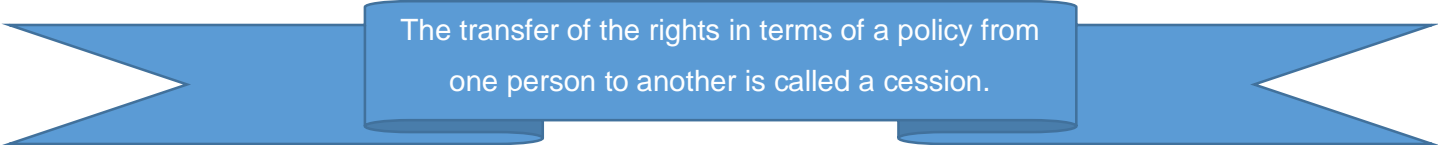
A cession takes place when a person (cedent) transfers his rights in terms of a policy to another person or institution (cessionary).

Ownership

If someone takes out a policy on his own life, the policy belongs to him (he is the rightful owner) and he may deal with it as he wishes. If someone else takes out a policy on another person's life, the policy belongs to the proposer and not to the insured. The proposer is the full and sole owner of the policy and he may deal with it as he wishes without the permission of the insured. The proposer must pay the premiums and the proceeds are payable to him. The proposer must have an insurable interest in the life insured, at the date of proposal.

If two or more people take out a joint policy on their lives, the policy belongs to them jointly and the proceeds are payable to them jointly (endowment), or to the survivor (whole-life insurance).

Except for minors under the age of 18 years who are policy- owners, the owners of most types of policies may cede their rights to someone else who will then be the rightful owner.



The transfer of the rights in terms of a policy from one person to another is called a cession.

Restrictive conditions

A cession may be subject to certain restrictive conditions which do not grant the cessionary full contractual capacity with regard to the policy. A policy may be ceded subject to the following condition:

"Provided that the cessionary does not deal with the policy during my lifetime without my permission." A restrictive condition which is often used is **reversion**.

The owner cedes his rights but he wants them back should a certain event occur, e.g.

- if the cessionary dies before him;
- if the marriage is dissolved;
- if the policy is paid out before he dies etc.

If a policy is ceded with reversion, both the cessionary and the cedent must consent to any dealings with the policy.

Types of cessions

Basically there are two types of cessions, namely a cession effected as

1. Security (as collateral) or
2. An outright cession.

1. Collateral security cession

A collateral security cession usually occurs when the policy-owner offers the policy as security for a loan. The collateral security cession allows the creditor a preferential claim to the benefits on the policy and it also prevents the policy-owner from dealing with the policy without the creditor's permission.

Upon the death of the life assured the creditor is only entitled to a sum from the death benefit equal to the amount owed to him. The balance of the death benefit must be paid to the policy-owner's estate or to the beneficiary (if a beneficiary was nominated).

With this type of cession the policyholder transfers his rights to the creditor, subject to a proviso. The proviso is that the creditor may exercise his rights under the policy only if the debt is not paid and only up to the amount of the debt. The insurance company notifies the cessionary if the premiums are not paid.

2. Outright cessions

The cessionary obtains full right of ownership and has a right to the full proceeds of the policy in the event of a claim.

He may

- terminate it early,
- borrow against it, or
- cede it to somebody else, etc.

Outright Cession - Free gift

- In an outright cession the cedent cedes all his rights, title and interest in and the policy to the cessionary.
- This type of cession is used mainly when a person donates his policy to someone else as a sign of goodwill, e.g. to his godchild. The cedent then falls out of the picture entirely and the cessionary holds all rights to the policy.
- It is often difficult to reverse the transaction, as the cedent may not simply cancel the cession; it has to be cancelled by the cessionary or the policy must be ceded back to the cedent.
- A free gift cession could also result in unnecessary estate duty being paid at the death of the cedent, because the policy is taken into account as insurance on the life of the deceased.

Outright Cession – Marriages out of community of property

- Often a man wants to donate a policy to his wife (or vice versa) as a gift and the policy is then ceded to her "as a free gift". He still pays the premiums. If he dies, the proceeds are paid to his wife direct. The wife becomes the rightful owner of the policy and may deal with the policy as she wishes. She may even bequeath the policy to one of her children and after her death the child will be the owner of the policy, even though the proceeds are not yet payable as the husband is still alive.
- If persons marry out of community of property, donations are often made in the **ante nuptial contract**. The donation of a life policy is common practice.
- A policy donated by the husband or wife in accordance with the provisions of an ante-nuptial contract is equally binding on both husband and wife. In an ante-nuptial contract, the donor usually undertakes to pay the premiums, and in such a case, the cessionary has a claim against the cedent's estate for an amount equal to what the proceeds of the policy would have been if the premiums had been paid regularly. The proceeds of such a policy are paid to the beneficiary direct and not to the estate of the donor.

The ante-nuptial contract may also contain restrictive provisos, e.g. a proviso that should the cessionary die before the donor or if the marriage is dissolved, the policy would revert to the donor.

Outright Cession – Marriages in community of property

- Here the situation is a little different. Notwithstanding the cession, the policy will still fall in the joint estate and the parties will still require each other's written permission to deal with it.

Beneficiaries

The policy contract nearly always stipulates that the claim value of a policy must be paid to the policy-owner if he survives the term stipulated, or to his estate should he die. If the policy-owner wishes somebody else to receive the benefits of the policy, he must arrange this by means of a cession, or he must appoint a beneficiary. (Marriage in community of property: spouse must give consent.)

The beneficiary clause results in payment being made directly to the beneficiary and not to the estate. This appointment may be revoked or altered in writing at any time before the death of the insured.

Payment of the death benefits in terms of a beneficiary clause means that the proceeds of the policy are not treated as an asset in the estate of the deceased policy owner for administration purposes, with the result that no executor's fee will be payable on it. However, for estate duty purposes the policy proceeds will still be an asset.

In the case of an outright cession, all the policy-owner's (cedent's) rights in terms of the policy are transferred to the cessionary so that the latter thereafter has full contractual capacity in respect of that policy and is entitled to all the policy benefits.

If the owner of a policy, in respect of which a beneficiary has been appointed, cedes that policy outright, the beneficiary clause lapses. However, if such a policy is ceded as collateral security, the beneficiary clause does not lapse, but the rights of the cessionary will have priority over those which the beneficiary may acquire in respect of the death benefits at the death of the life insured.

Example

A, the owner of a policy on his own life, appointed his wife as beneficiary. A borrows R100 000 from the bank and cedes this policy to the bank as collateral security. The death benefit under the policy is R150 000. A dies while the full R100 000 is still outstanding. The insurer pays the bank R100 000 and A' estate R 50 000 which will be paid over to his wife as she is the nominated beneficiary. The executor is entitled to fees on the full R150 000.

Note that some may argue that the executor is not entitled to charges fees on the R50 000 payable to the spouse. However, the question then beckons “who is responsible to ensure that the bank actually pays the balance to the spouse?” The executor is likely to handle the balance upon investigation that the debt has been repaid in full with the proceeds of the life policy and that there is a balance owing to the said beneficiary. Thus we take the conservative view, that the executor will charge a fee on the full life policy.