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Defenses to Life Insurance Lapses for Non-Payment of Premiums

In New York, a life insurance policy can be terminated due to a single late or missed premium payment, even when the policy has been in effect for many years and payments were always timely made. This article discusses several scenarios when such a harsh penalty can be avoided.

By **Eric Dinnocenzo** | April 18, 2022



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As illustrated by a Feb. 10, 2022 New York Court of Appeals decision, *Bonem v. William Penn Life Insurance Company*, a life insurance policyholder who either misses or is late in making a single premium payment, even by only a few days and even if the policy has been in effect for many years, can lose important coverage that is vital for surviving family members.

Although not raised by the particular facts of *Bonem*, policyholders have a defense to a policy lapse due to non-payment, if premium notices do not meet the strict requirements of New York Insurance Law §3211.

Grace Periods. To begin, premiums must be paid within a specified grace period or the policy will lapse. New York Insurance Law §3203 provides the minimum time periods for grace periods, and these time periods are replicated in the language of all policies issued in New York.

For term life policies, premiums must be paid within a grace period of 31 days after the due date. For whole and universal life policies—those which contain a cash value—premiums must be paid within a grace period of 61 days from when the cash value is not enough to keep the policy in force.

'Bonem.' In *Bonem v. William Penn Life Insurance Company*, the Court of Appeals held that a \$1 million policy lapsed when the annual premium due on Jan. 14, 2018 was not paid when the insured died at age 55 on Feb. 26, 2018, just 12 days after the grace period expired. In a 5-2 decision, the Court of Appeals held that the insured's wife was not entitled to the death benefit, even though the policy had been in effect since 2002.

Arguably, this is a harsh result. Many policyholders, for instance, religiously make premium payments over the life of a policy but may neglect or be unable to do so when they are seriously ill. Consequently, they can pay for an insurance policy for decades and then lose coverage only a few days before death.

It has been observed by one court that, "[f]or many couples, life insurance is, apart from their home, the largest single estate-planning device that they possess." *Vasconi v. Guardian Life Ins. Co.*, 124 N.J. 338, 342 (N.J. 1991). But if a single home mortgage payment is not timely made, the penalty is not the loss of the home. Even something less consequential, such as a single late car payment, will not result in forfeiture of the vehicle. But the consequences of a late life insurance premium payment are severe.

Equitable considerations are not discussed in either the majority or dissenting opinions in *Bonem* or in the other case law for lapsed life insurance policies. The specific terms of virtually all life insurance policies, which are viewed as contracts between insurers and insureds, provide that coverage will lapse if the required payment is not made within the grace period.

However, a defense in these situations may be that the insurer has failed to send a premium notice that complies with Insurance Law §3211, and pursuant to the statute, the policy will remain in force for an additional year after a default in payment—sufficient time in many cases to cure the default or to warrant payment of the death benefit.

In a way, the application of Insurance Law §3211, which courts have held is to be "construed strictly in favor of the insured," can be viewed as a countermeasure to the harsh result that occurs from a late or missed premium payment. See *Speziale v. Nat'l Life Ins. Co.*, 328 F. Supp. 2d 295, 301 (N.D.N.Y. 2004) citing 45 C.J.S. Insurance §697 (2003) *aff'd* 159 Fed. Appx. 253, 2005 U.S. App. LEXIS 27399 (2d Cir. 2005) (unpublished). In other words, while a policyholder must make timely premium payments, the insurance company also has a responsibility to send proper premium notices.

Insurance Law §3211's requirements for premium notices. Insurance Law §3211 provides that a premium notice must (a) be mailed to the last known address of the policyholder; (b) state the amount due; (c) the date due; (d) the place where and the person to whom payment must be made; and (e) that the policy will

terminate or lapse unless payment is made “on or before the date when due or within the specified grace period thereafter.”

In the case of term life policies (except those where premiums are paid monthly), the notice must be mailed at least 15 but not more than 45 days before the due date. For whole and universal life policies, the notice must be mailed within 30 days of when “the net cash surrender value under the policy is insufficient to pay the total charges that are necessary to keep the policy in force.”

Last known address of the policyholder. An incorrect address can vitiate the effectiveness of a premium notice. In *Bradley v. William Penn Life Insurance Company of New York*, 170 A.D.3d 936 (2d Dept. 2019), the premiums were paid annually for a policy that began in 2007. The payment due on March 14, 2012 was not made and the insured died on May 19, 2012, roughly one month after the grace period expired.

The Second Department awarded summary judgment to the beneficiary because William Penn was aware that the policyholder had changed his address, but did not send a premium notice to the new address at least 15 days prior to the due date. The court held that, “[c]onsequently, in accordance with the statute, the policy remained in effect for one year after the March 14, 2012, premium due date” and thus was payable on the date of death.

The amount due. A misstatement of the premium amount due can render a premium notice ineffective to cancel a policy. However, courts have held that the error must be a “significantly higher” amount and not “*de minimis*.” *Blau v. Allianz Ins. Co. of N. America*, 2018 U.S. Dist. LEXIS 25936, *13-14, 14-CV-3202 (E.D.N.Y. Feb. 16, 2018). Of note, the case law does not correspondingly excuse a late premium payment of just a handful of days that is likewise *de minimis* in nature.

In a case from the Eastern District of New York, *Blau v. Allianz Insurance Company of North America*, the premium notice requested a payment in the amount of \$71,900.72, but the plaintiff’s expert stated that the correct amount should have been \$41,786.12. *Id.* The court held that the disputed amount created an issue of fact.

The correct due date. In a Suffolk County Supreme Court case, *Rivera v. Allstate Life Insurance Company of New York*, the insured died from cancer on Sept. 28, 2013, leaving her 19-year-old son as her life insurance beneficiary. *Rivera v. Allstate*, 63509/14, 2015 NYLJ LEXIS 5855 (Sup. Ct., Suffolk County June 16, 2015). The insured had recently closed her bank account which she held jointly with a former boyfriend, who left her when she became ill, and so the automatic electronic payment for the policy was not made. The insured had neglected to change the withdrawal to a different account.

The court ordered Allstate to pay the death benefit because the premium notice was unclear whether the due date was Aug. 27 or Sept. 27. If the due date had been Aug. 27 and the notice had complied with the statute, the grace period would have expired one day before death and no death benefit would have been paid. Because of the ambiguity concerning the proper due date, the policy was not effectively terminated and remained in effect on Sept. 28, the date of death.

Place where and the person to whom payment must be made. A lack of clarity about to whom and where the premium payment should be sent will also invalidate a premium notice under Insurance Law §3211. In an Eastern District of New York case, *Stein v. American General Life Insurance Company*, the premium notice indicated three different names of AIG-related entities along with the name of an individual, and it also listed addresses for both Houston, Texas and Brooklyn, New York. The court held “that there is a genuine issue of material fact as to whether the Grace Period Notice adequately identified the place where and the person to whom a remittance was payable.” *Stein v. Am. Gen. Life Ins. Co.*, 34 F. Supp. 3d 224, 233 (E.D.N.Y. 2014).

Conclusion. Aristotle, who is arguably the progenitor of modern legal thought, theorized that equity is intended to correct injustices that result from the strict application of the law. He wrote that “equity, though just, is not legal justice, but a rectification of legal justice.” Under New York law, a life insurance policy may terminate due to a single late or missed premium payment, even when the policy has been in effect for many years and payments were always timely made. Yet how courts apply Insurance Law §3211 can counterbalance the severe penalty of losing life insurance coverage in such scenarios when the insurance company fails to meet its obligations.

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