

Annexure 3 – A Simplified Summary of Section 38 of the Insurance Act, 1938 (Assignment and Transfer)

1. This policy may be transferred or assigned, wholly or in part, with or without consideration. Such assignment or transfer may be made by an endorsement upon the policy itself or by a separate instrument under notice to the Insurer.
2. The instrument of assignment should indicate:
 - a) the fact of transfer or assignment;
 - b) the reasons for the same;
 - c) antecedents of the assignee;
 - d) the terms on which assignment/transfer is made.
3. The assignment must be signed by the transferor or assignor or their duly authorized agent and attested by at least one witness. Unless the following is delivered to the insurer, the insurer may not act upon the transfer or assignment:
 - a) a written notice of the transfer/ assignment; and
 - b) either the endorsement or instrument itself or its copy certified to be correct by both transferor and transferee or their duly authorised agents.
4. On receipt of notice along with the prescribed fee, the insurer shall issue written acknowledgement. Such acknowledgment will be conclusive evidence against the insurer of duly receiving the notice.
5. If the insurer maintains one or more places of business, such notices shall be delivered only at the place where the policy is being serviced.
6. The insurer may accept or decline to act upon any transfer or assignment or endorsement, if it has sufficient reasons to believe that it is:
 - a) not bonafide; or
 - b) not in the policyholder's interest; or
 - c) not in public interest; or
 - d) is for the purpose of trading of the insurance policy.
7. Before refusing to act upon a notice of transfer or assignment, the insurer should communicate the reasons for doing so in writing to policyholder within thirty (30) days from the policyholder giving the notice. Any person aggrieved by such refusal may prefer a claim to the IRDAI within thirty (30) days of receipt of the refusal letter from the insurer.
8. The priority of claims of persons interested in an insurance policy would depend on the date on which the notices of assignment or transfer is delivered to the insurer; where there are more than one instruments of transfer or assignment, the priority will depend on dates of delivery of such notices. Any dispute in this regard as to priority should be referred to IRDAI.
9. Every assignment or transfer shall be deemed to be absolute assignment or transfer and the assignee or transferee shall be deemed to be absolute assignee or transferee, except:
 - a) where assignment or transfer is subject to terms and conditions of transfer or assignment; or
 - b) where the transfer or assignment is made upon condition that the proceeds under the policy shall become payable to policyholder or nominee(s) in the event of assignee or transferee dying before the insured; or the insured surviving the term of the policy.
10. Such conditional assignee will not be entitled to obtain a loan on policy or surrender the policy.

In other cases, the insurer shall, subject to terms of assignment, recognize the transferee or assignee as the absolute transferee or assignee and such person:

 - a) shall be subject to all liabilities and equities to which the transferor or assignor was subject to;
 - b) may institute any proceedings in relation to the policy; and
 - c) obtain loan under the policy or surrender the policy.

[Disclaimer: This is only a simplified version of Section 38 of the Insurance Act, 1938 prepared for general information. You are advised to refer to the Insurance Act, 1938 as amended by the Insurance Laws (Amendment) Act, 2015 for complete and accurate details]