

ACTIVE CITIZENS

Learning partnership
Grundtvig

DIDACTIC GUIDE

Module 6: Living... with security



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MODULE 6: "Living... with security"

Home insurances, life insurances, etc.: To learn how they work and what the rights are

1. PRESENTATION

This is one of the subjects that cause most conflicts between consumers. One of the reasons of these conflicts is that the consumer usually is not well informed about the content of the policy when signing the insurance.

Therefore, this multimedia material shows a real conflictive case which, at the moment of recording, was coming to a solution. And, as the main character of the video says, it is not sufficient to think that *"the insurances exist to help the individuals in case of problems with their possessions and health"*, because the insurances are only responsible for the damages which are clearly mentioned in the policy text. The rest, even if it seems logical, may not be that clear in the text and in the law and cause conflicts to one or the other part. Consequently and following the last words of the mentioned main character: *"It is better to prevent!"*

This is the objective of this didactic material which is also expressed in the Spanish proverb *"Cuando las barbas de tu vecino veas pelar, echa las tuyas a remojar"* (Literal translation: When you see that neighbour's beard burns, you better soak yours. Equivalent to: When your neighbour's house starts burning, look to your own.). It means: to learn from other persons' errors.

2. EDUCATIONAL OBJECTIVES

- To be aware of the importance to obtain information before signing a contract.
- To know the rights and obligations at the moment of signing an insurance contract.
- To be able to identify the conflicts in specific situations that happen in the real life and identify what would be the measures that have to be taken in order to prevent.

3. CONTENTS

INSURANCES

Through the insurance contract the insurer is obliged, by means of receiving a premium and in the case of an event whose risk is reason to be covered by the insurance, to compensate the damage caused to the policyholder or to pay the capital, income or other agreed services within the limit stipulated in the contract.

The insurance contract contains general and special terms. The general terms may not have a detrimental character for the policyholders and must be included in the policy of the contract. The policyholder must have a copy of the contract.

The policy terms must be written in a clear and precise way and the clauses limiting the rights of the policyholders, which have to be accepted in writing, must be emphasized.

POLICY

The policy must be written in simple terms, be easily understandable and contain at least the following specifications:

- Name and surname or corporate name of the parties signing the contract as well as the appointment of insurer and beneficiary, if appropriate.
- Concept of the insurance.
- Covered risk.
- List of insured objects and their locations.
- Insured sum or coverage limit.
- Premium rate as well as the corresponding extra charges and taxes.
- Expiry dates of premiums and method of payment.
- Duration of the contract with clear mention of the date and time when the coverage starts and ends.
- Names of the agents, in case they were involved.

The policy is structured in four basic parts which have to be read carefully before signing the contract. In case of doubts, the company or experts in the subject have to be asked.

The four parts are as follows:

GENERAL TERMS. They are previously drawn up by the entity and usually common for similar risks. It is obligatory that they are approved by the Directorate General of Insurances. They explain the different concepts of risks which can be covered, the obligations and rights as well as information related to the extinction and cancellation of the contract.

SPECIAL TERMS. They are added to specify the covered risk so that the insurance is individualized. In this part, the premium rate, periodicity, description of the insured risks, etc. have to be mentioned.

SPECIAL CONDITIONS. They are used only in few occasions because they modify the general terms.

ADDITIONAL TERMS. In this part, special circumstances like change of the holder, move of the insured objects, etc. have to be mentioned.

Duration of the contract

The duration of the contract has to be mentioned in the policy which may not last more than 10 years.

It can be extended one or more times by annual periods.

In case one of the parties is against the extension of the contract, the other party has to be informed in writing 2 month in advance.

Expiry

The actions deriving from the insurance contract expire in two years in case of damage insurances and in five years in case of insurances related to persons.

In any case, it is advisable:

- To ask for offers to various entities.
- To compare the relation quality-coverage-price.
- To inform the insurer in writing about all circumstances that may modify the risk.
- To read the policy and not sign clauses which cannot be understood before asking for information and not sign any abusive clauses.
- To verify that the contract has been signed.

- To verify that the policy contains clear information about coverage and exclusions.
- To request any modification in writing.
- To keep the copy of the policy.
- To keep the receipts.
- To respect the deadlines and way of informing about the accident.

Complaint procedure

The conflicts that may appear between policyholders, insurers, beneficiaries, third parties and rightful claimants can be solved as follows:

Client defender

The insurances are obliged to deal with and solve claims and complaints presented by the users with respect to their interests and rights.

For the service of these complaints, the insurer must have a customer service or department. Furthermore, there are following ways to make a complaint:

- The competent judicial process
- The consumer arbitration
- Administrative protection

The Ministry of Economy and Trade protects the policyholders by imposing administrative sanctions, in case of abusive practices, through the Directorate General of Insurances and Pension Funds. In order to ask for the intervention of the Complaint Service of the Directorate General of Insurances, it is necessary to prove that the following requirements have been fulfilled:

A previous complaint in writing made to the Defender of the policyholder named by the entity or customer service.

The complaint must be addressed to the complaint authority, sent by registered letter with acknowledgement of receipt or by any other medium that proves the delivery.

It is necessary that two months have passed since the date of the complaint without having been resolved by the Defender or by the corresponding department, or the admission of the complaint has been refused, or, in case of being admitted, it has been rejected.

4. DIDACTIC PROPOSALS

The activity will be based on three conflictive cases related to insurance companies: one case is included as video in the PowerPoint presentation and the other two cases are included as sheets for teachers and pupils.

The process of the activity can be as follows:

- To view the video and divide the participants in groups. Each group will receive the three cases (see sheet for pupils no. 1).
- Each group has to prepare a dramatization including the following phases:
 - The moment in which the conflict appears.
 - The moment in which the consumer and the insurance company meet.
 - The moment in which the consumer presents its case at the Court of Law.
 - The process at the Court of Law.
 - The moment of the verdict.
- The dramas will be presented to the whole group.
- Idea-sharing session. The person leading the activity will also present the sentences pronounced by the Courts to the two cases mentioned on the sheets for pupils.

5. DIDACTIC SHEETS

SHEET FOR PUPILS No. 1

CASE 1: WITH OR WITHOUT POLICY?

A farmer, who has signed a policy with an insurance company, suffers an accident with one of the vehicles which is part of the insured objects. Of course, the farmer informs the insurance company about the accident so that the insurer can take care of it.

However, the insurance company informs the farmer that the insurance policy does not exist as it is considered as extinguished in the moment of the accident, without that the farmer has been informed. Therefore, the policyholder sues the company. The Court of First Instance says that the policy was indeed extinguished in the moment of the accident as more than six months have passed since the expiry of the corresponding premium, without being paid. It is important to know that the payment of the premiums was effected by direct debit. The policyholder appealed in second instance.

CASE 2: TO REFUSE TO PAY

As consequence of a traffic accident between two vehicles, one of the parties involved in the accident – in concrete, the party supposed to be responsible of the accident – refuses to pay the damages caused to the other vehicle because the owner does not have the obligatory car insurance. The insurance company of the person responsible of the accident also refuses to pay. The person affected by the accident argues that indeed there is no policy but the questionnaire – application of the insurance. The case is processed by the Court of First Instance which condemns the person responsible of the accident and its insurance company to pay 1.202 EUR to the person affected by the accident. The case is appealed in second instance at the Provincial Court.

SHEET FOR TEACHERS No. 1

CASE 1: WITH OR WITHOUT POLICY?

- Sentence of the Section 3^a of the Provincial Court of Burgos, 13/11/97.

Reasoning of the Court

The law of insurance contracts states that, six months after the expiry of the premium and in case of non-payment on the part of the policyholder, the corresponding policy extinguishes. However, if the policyholder agrees on payment by direct debit, the premium is considered as paid in time unless the collection cannot be effected within one month and there are not sufficient funds on the corresponding account. In this case, the insurer has to inform the policyholder that the bill is at the disposal of the policyholder in the office of the insurer. If the payment has not been effected after one month and there are still no funds in the corresponding account, the insurer has to inform the policyholder by registered letter or another provable medium about a new deadline of one month to inform the insurer in what way the amount will be paid.

The Court considers it proved that the payment of the premium was arranged by direct debit. It also considers it proved that the extinction of the contract cannot be due to the non-payment of the premium because the receipt should have been presented.

The insurer claims that the policyholder has verbally agreed on the extinction of the contract's extension (saying it to the insurance agent) which has led to the extinction. But in cases of an opposition to the extension, it is necessary to express it in writing so that the verbal opposition of the policyholder does not have decisive effects. The Court decides to sentence the insurer to respond to the damages suffered by the policyholder.

CASE 2: TO REFUSE TO PAY

- Sentence of the Section 1^a of the Provincial Court of Santa Cruz de Tenerife, 7/11/96.

Reasoning of the Court

The Court distinguishes between a simple insurance application and an insurance proposal. An insurance application has to include only the identification of the person who wants to receive the insurance and the type of insurance asked for. The simple application does absolutely not bind the applicant, and, of course, it does not mean the origin of any contractual relation.

The insurance proposal is something more and is written by the insurance company stating the minimum content of a future insurance policy. That means, it is a real offer of the insurance company and the future policyholder has to answer within 15 days according to the Law of Insurance Contract. It is considered as part of the negotiation process and comes to a final conclusion through the signature of the policy.

In this concrete case, although the denomination of the controversial document is “application – questionnaire”, the Court says that, in reality, it is an insurance proposal because a complete data list of the possible policy has been mentioned, together with the signature and stamp of the corresponding insurance agent. According to the Insurance Regulations of Obligatory Subscription, “risk coverage” exists within the period, which the policyholder has, to answer to the insurance proposal. Consequently, and leaving aside other considerations which the Court may use to solve the case, it is considered that the person affected by the accident had an Obligatory Civil Responsibility Insurance.