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## ILLINOIS LAW MANUAL

### CHAPTER XI

### INSURANCE COVERAGE AND DEFENSES

#### C. POLICY LAPSE DUE TO NON-PAYMENT OF PREMIUM

##### 1. Basic Law

A policy lapse for non-payment of premium is the cessation of the policy at the conclusion of the policy period due to the insured's failure to renew through payment of the renewal premium. Lapse is not cancellation.

In Shiairas v. Chupp, 61 Ill. 2d 164 (1975), the Illinois Supreme Court distinguished between cancellation and a lapse or non-renewal for failure to pay premium. The court stated that "cancellation" refers to a unilateral termination by an insurer before the end of a policy period, while "non-renewal" refers to the automatic expiration of a policy at the end of the policy period.

The Illinois Insurance Code defines "non-payment of premium" as:

[F]ailure of the named insured to discharge, when due, any of his obligations in connection with the payment of premiums or any installment of such premium that is payable directly to the insurer or to its agent. Premium shall mean the premium that is due for an individual policy which shall not include any membership dues or other consideration required to be a member of any organization in order to be eligible for such policy.

215 ILCS 5/143.13 (e).

In defining "cancellation," the Insurance Code expressly exempts the policies automatically expiring at the end of the policy period for nonpayment of premium. The Insurance Code defines "cancellation" as:

"Cancellation" or "cancelled" means the termination of a policy by an insurer prior to the expiration date of the policy. A policy of automobile or fire and extended coverage insurance which expires by its own terms on the Policy expiration date unless advance premiums are received by the insurer for succeeding Policy periods shall not be considered "cancelled" or a "cancellation" effected by the insurer in the event such premiums are not paid on or before the policy expiration date.

215 ILCS 5/143-13(g).

##### 2. Analysis

The fundamental *quid pro quo* of an insurer's extension of coverage is the insured's payment of premium. Every insurance contract provides, in some form or another, that the insurer agrees to provide coverage in exchange for the payment of premium. In this regard, a typical policy states in pertinent part:

We agree to provide the insurance described in this policy:

1. Based on your payment of premium for the coverages you chose;

...

You agree, by acceptance of this policy, that:

1. You will pay premiums when due and comply with the provisions of the policy.

Lapse is not to be confused with "intention not to renew." "Intention not to renew" is the unilateral decision of the insurer not to renew the insured's policy at the end of the policy period for a specific reason. See, First National Bank of Pittsfield v. Country Mut. Ins. Co., 175 Ill. App. 3d 860 (1998); Steward v. Allstate Ins. Co., 92 Ill. App. 3d 637 (1980). "Intention not to renew" is governed by Section 143.17 of the Illinois Insurance Code, 215 ILCS 5/143.17, and provides that at least 30 days' advance notice of the insurer's intention not to renew be given to the insured, as well as a specific explanation of the reasons for non-renewal. This section governing "notice of intention not to renew" does not apply, per the statute, if the insurer has manifested its willingness to renew directly to the named insured. Such a willingness to renew is

manifested by the notice of premium due. See Shiaras v. Chupp, 61 Ill. 2d 164 (1975); Olympic Federal v. American Interinsurance Exchange, 203 Ill. App. 3d 942 (1990); Librizzi v. State Farm Fire & Cas. Co., 236 Ill. App. 3d 582 (1992).

An insurer attempting to assert, as a coverage defense, that a policy was not in force due to nonpayment of premium must prove that it mailed the appropriate notices to the insured in a timely fashion as prescribed by the statute. (Notice of renewal 30 days prior to effective date and notice of cancellation for non-payment of premium at least 10 days prior to cancellation). The insurer need not prove that the insured actually received the notice. Marketview Motors, Inc. v. Colonial Ins. Co. of California, 175 Ill. 2d 460 (1997).

As to the mailing of the notice of any policy changes, including cancellation for non-payment of a premium, an insurer must maintain proof of mailing on a recognized U.S. postal service form, or a form acceptable to the postal service or other commercial delivery service. Guillen v. Potomac Insurance Company, 203 Ill. 2d 141 (2003).