



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

The Assembly of Muslim Jurists Of America

# Recommendations of the 16<sup>th</sup> Annual Imams' Conference on Contemporary Financial Issues (Real Estate and Retirement Accounts)

All praise be to Allah alone and may blessings and safety be upon the Messenger of Allah, his family, his Companions and all who follow him. To proceed:

On March 1-3, 2019 (Jumada al-Akhira 24-26, 1440), the Assembly of Muslim Jurists in America held its sixteenth annual Imams' Conference in Houston, TX, USA, under the title, "Contemporary Fiqh Issues: Real Estate and Retirement Accounts." More than 400 Imams from the various parts of the United States attended the conference. After three consecutive and long days of presentations, the conference came up with the following conclusions and recommendations. It should be noted that these recommendations are not the final resolutions of AMJA. Instead, these recommendations will be presented to the general conference for the AMJA scholars to approve or make adjustments to these recommendations as they see fit according to the majority view of the AMJA scholars. We ask Allah for support and guidance.

## CONTEMPORARY ISSUES RELATED TO REAL ESTATE

### Being of Limited Income does not, in and of itself, Constitute a Necessity that Allows One to Get an Interest-Based Loan

1. Borrowing money on interest is forbidden in and of itself and its prohibition is intended in and of itself. Either a small or large amount of interest is forbidden. With respect to its default ruling of prohibition, there is no difference between a low rate of interest and a high one nor between a consumption loan vis-à-vis a business loan. Having a limited income, being entitled to government allotments or a fall in the interest rates are not considered the justification for invoking the Shareeah concept of necessity. By themselves, these are not considered sufficient causes to enter into an interest-based loan agreement. The prohibition of interest does not change due to a change in locale. There is no exemption for it save in the case of the actualization of a state of necessity for a specific individual.
2. The state of necessity must be present before anyone is permitted to engage in an interest-based loan. This exemption is available to anyone who meets the conditions of necessity in the Shareeah sense. For example, a person may not be able to find a house to rent due to the number of children that he has and, at the same time, there is no Shareeah-compliant alternative available to him to buy a house. If someone thinks that he may be in such a state of necessity that forces him to take an interest-based loan, he should first consult with someone whose knowledge and religion he trusts to determine if he is truly in a state of necessity.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

### Buying Foreclosed Houses Directly from the Bank

3. Purchasing real estate directly from a bank that owns it after its previously purchasers failed to live up to their loan agreements is a matter of ijihad. This is because such a transaction will involve two contracts together: the contract of purchasing the property and the mortgage (interest-based loan) contract. This issue was previously discussed by the AMJA Fatwa Committee with varying opinions. Some of its members saw the interest-based contract as a mere formality and they considered the contract to be simply that of instalment payments, and thus permissible. Some were of the opinion that the interest-based portion was more than a mere formality and considered the contract forbidden. Some suspended judgment, noting that if the interest portion was a mere formality, it is difficult to state clearly that it is forbidden but would rather fall into unclear matters. It may be one of the options that one may resort to in the absence of other options or of a Shareeah-compliant option.

### Purchasing Real Estate from a Construction Company that Also Has a Financing Arm

4. Purchasing real estate from a construction company that has a financing arm is also a matter of ijihad. This is because dealing with such a company, as in the previous case of foreclosures, will involve two contracts: the purchasing contract and the interest-based loan contract. In any case, one must verify that that the company actually has complete ownership of the financing arm. If that is the case, then the same differences of opinion are present here as they were with the previous issue of foreclosures. The reason for the extra condition here, though, is that in many states, construction companies are not allowed to entirely own a financing branch due to a conflict of interest, as they then both evaluate the property as well as advance the loan at one and the same time. If it is confirmed that the construction company does not actually completely own the financing arm, then the deal reverts to the default of being forbidden as it involves explicit interest.

### Purchasing Mortgaged Property (due to an interest-based loan) directly from the owner

5. There is no harm in buying mortgaged property (due to an interest based loan) directly from the owner if the purchaser is able to transfer the ownership completely and does not purchase the loan from the bank, as the lending bank allows a new agent to purchase the proper directly from the owner and then after two years gives him the right to purchase the debt from the bank, thus becoming the debtor and, with respect to the loan, taking the place of the original borrower. The first act described above is simply buying real estate while the second is taking an interest-based loan.

### Purchasing Commercial Property which has Pre-existing Leases for Tenants Engaged in Haram Practices

6. An exemption is made for purchasing commercial property which has pre-existing leases for business engaged in haram practices if those leases cannot be cancelled. There is no harm in accepting those



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

payments as long as one does not renew the contracts of those tenants after their terms come to an end. It would be preferable, if possible, to have the seller of the property accept a reduction in the price of the property in exchange for that original owner continuing to receive the payments from those tenants.

### Leasing Property to one who will use it for Forbidden or “Mixed” (Forbidden and Permissible) Purposes

7. It is not allowed for lease property to a tenant who will use the property solely for forbidden purposes, such as dealing in alcohol, gambling or tobacco, or that will be used for forbidden forms of entertainment, such as nightclubs. This is prohibited as it would be a form of assisting people in sin and transgression.
8. If one has the option of renting to others, then it is also not permissible to lease property to those who will use the location for activities that are a mix of the permissible and a slight amount of forbidden that occurs of a secondary nature, such as hotels or restaurants that serve alcohol and pork, although that is not the bulk of their business. If one is only able to rent the property to businesses of this nature, an exemption is made for that but the owner is advised to increase his or her acts of charity in order to purify his or her wealth from any forbidden or doubtful sources.

### Purchasing Houses via Buying the Unpaid Loans

9. Purchasing houses via buying the unpaid loans refers to the mortgage companies selling an existing loan for less than its face value to investors or others. By buying this loan from the original mortgagee, the purchaser becomes the owner of the property or he requests him to vacate the proper and takes over the property. Selling a debt to a third part is not permissible due to what it contains of interest and speculation. It is a sale of debt for cash in an unequal manner and with payments overtime. In addition, the end result contains aspects of uncertainty.

### Purchasing Real Estate by Paying Off Unpaid Real Estate Taxes

10. There is no harm in purchasing real estate by paying the value of the unpaid real estate taxes. In this case, the owner of the property has not been able to pay the required, governmental real estate taxes for a period of time. The owner will receive a warning and then a public announcement will be made concerning the value. Eventually, a public auction will be made and purchasers can buy the property for the concluding amount, large or small. However, this is a conditional sale. The original homeowner will then be given some time to pay that tax debt, either one year or six months depending on whether they are residing in the property or not. According to some scholars, a conditional sale is permissible. There is also not a problem with the original owner being compelled as long as the compulsion is via due process. However, if the original owner is to come back to redeem his property, the new buyer/investor has to take only the principal amount and not any additions on top, for the additions are considered interest.

### Buying Real Estate via a Short Sale

11. Buying real estate via a short sale refers to a buyer coming in between the lending bank and the original borrower and owner of the house in order to help the original borrower by purchasing the house by an



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

amount that is less than the remaining debt on the house. This is resorted to when the owner fears that he will not be able to make the house payments and will face foreclosure or when the value of the house is now actually less than the remaining mortgage debt due to a housing crisis or a fall in the prices of houses. In reality, there is no difference between a long sale and a short sale, as a short sale is nothing more than a contract in the end to purchase the property. What is permissible in the one case is also permissible in other and what is impermissible in the one case is also impermissible in the other. If the house is purchased with cash or via Shareeah-compliant financing, it is permissible. If it is bought via an interest-based loan from the bank, it is not permissible. The buyer should not make a secret agreement with the owner of the house to buy it from him, given that that would be strange anyway as the laws have been established from the beginning to protect those who have been harmed by a financial crisis.

### Repenting from Purchasing a Home via Interest (Riba)

12. If someone bought a house through interest knowing that it was forbidden, then from the completeness of his repentance, he must seek to refinance the house through trusted Islamic financing, strive to increase his monthly payments as much as he can, as the increase in monthly payments will go toward the principle and will remove some of the interest payments, or sell the house and pay off the principle that will exclude any additional interest payments, if that is possible for the Muslim without any unmanageable loss. If a Muslim bought a house while being ignorant that such a transaction was forbidden or while following a ruling that someone gave that it was permissible, then there is no sin upon him concerning that interpretation. However, he should strive his best to increase his monthly payments or refinance through an Islamic company.

### Refinancing

13. Refinancing is the same as purchasing from the point of view of what is permissible or forbidden. It is nothing more than financing in general. If a Muslim buys a house through interest and then makes a contract via Islamic financing with a company that meets the conditions of being Shareeah-compliant as testified to by trustworthy Islamic scholars, then the action is permissible. If he refinances with an interest-based company, then the transaction is forbidden, unless the goal is to reduce the amount of interest that he is paying which he is unable to escape completely, regardless of whether that is with the same financing institution or another one. The Shareeah is built upon the principle of removing or lessening evil.
14. If he or she bought a house via Islamic financing and wishes to refinance via the same or another Islamic company, he or she must avoid the prohibited act of selling a debt for a debt. If he bought the house via Islamic financing through murabahah (cost-plus financing), then the refinancing must be either through a forgiveness of some of the debt or an extension of the time to pay without any increase in the principle.

### Reverse Mortgage

15. A reverse mortgage is a mortgage that allows the owner of the property to borrow an amount of money equal to the value of his house or of his equity in the house. The mortgagor then will be able to recoup the



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

loan by selling the house after the death of the borrower. The ruling on it is the same as a mortgage. It is an interest-based loan and is not allowed unless driven by a constraining necessity.

### Islamic Windows at Conventional, Interest-Based Banks

16. Concerning the “Islamic windows” at conventional banks, if they meet the Shareeah criteria, such as mudharabah, musharakah, murabah and the like, then there is no harm in dealing with them. It does not matter that they receive the funds through non-Shareeah-compliant means. The Prophet (peace and blessings of Allah be upon him) dealt with the polytheists of Makkah and the Jews of Madinah—in fact, he even ate the food and meat of the Jews—while he was aware that they engaged in interest and other forbidden transactions.

### Selling a House to One who will Buy it on Interest

17. It is permissible for a Muslim who is selling his house to sign a contract with a buyer even though he knows that the buyer will get an interest-based loan to buy the house, as long as the Muslim is not involved in the financing, does not assist the attaining of interest, does not help in anyway in getting the loan by, for example, finding a mortgage company and the like. The Muslim is responsible for his deeds and not the deeds of others. “Every soul, for what it has earned, will be retained.”

### Assisting Those with Bad Credit Histories

18. Mortgage companies, in general, do not offer loans to those who have bad credit histories or no credit history. If someone in that state asks of another Muslim that he buy a house for him and sell it to him in the future, there is no harm in that, as long as the financing is Shareeah compliant. Anything beyond that is not permissible as it would be a form of assisting others in sin and transgression—except in a state of necessity. There are some practical difficulties in doing this that one should be aware of.

## RETIREMENT ACCOUNTS

19. Retirement accounts are financial rights given to an employee at the time of old age, disability or retirement.

### The Investing of Retirement Accounts

20. The funds of the optional retirement accounts are invested in a number of ways, including traditional banking interest-bearing accounts, stocks or bonds.
21. Placing the funds into the traditional banking interest-bearing accounts in order for the money to grow is not permissible.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

### Investing in Government Bonds

22. Government bonds are clearly interest-based loans. It is not allowed to hold them, except for the principle. This is not an investment option for a Muslim under any circumstance. Corporate bonds will have the same ruling as government bonds.
23. If the market faces a great economic collapse and bonds are the only means to preserve the value of one's capital as a temporary means, then an exemption is made for it. The individual will then give away to general welfare causes the interest that accrued from such accounts or investments! The intention was solely to preserve one's wealth and not for the sake of investment!

### Investing in the Stock Market

24. Investing in the stock market, regardless of whether it be a domestic company or a multinational corporation and regardless of it being the company in which one works, is only permissible given the following conditions.
- One must avoid investing in industries that are forbidden or doubtful, such as commercial banks that dealing in interest, government bonds, insurance companies, pornography, companies that sell or produce tobacco or alcohol, gambling casinos, nightclubs, companies that sell forbidden food items or drugs and the like.
  - For those scholars who allow investing in "mixed companies" (those companies that produce a mixture of permissible and impermissible products), which is a large number of scholars, they add the additional conditions for such companies:
    - The essential business or goals of the company must be something that is permissible, such as agricultural products, trade, manufacturing, technology and so forth.
    - The proportion of forbidden dealings must be small and as minimum as possible with respect to the overall activity of the company, whether that be with respect to their expenses, loans, revenue or investments. Some of the Shareeah Advisory Boards have, via ijtiḥad, come up with the following recommendations: The forbidden expenses of the company cannot be more than 5% of the total expenses of the company; the total debt of the company divided by the market capitalization cannot be more than 30%; forbidden income as a percentage of total income cannot be more than 5%; and total interest-bearing securities divided by market capitalization must be less than 30%. These percentages are approximations determined through ijtiḥad. The goal is to minimize the forbidden aspects as much as possible.
    - One should then "purify" the profits they receive by giving away the percentage that comes from forbidden sources.

### Types of Retirement Accounts

25. In general, one can divide such accounts into two types:
- Mandatory Accounts



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

- i. These accounts are required by law or the social system. These are the social security apparatuses that are established by governments and general agencies to take care of the workers in the face of old age, disability, need and unemployment. The goal of these funds is not profit. Indeed, it returns to the worker what they contributed to it or more. It is a form of social security and protection. Close to that is also the pension plans that are invested. They are divided into defined benefit plan and defined contribution plan.
  - ii. As long as it is one's employment that leads to these investments and as long as the employee is bound to participate in it, there is no harm in the individual benefiting in the long run from such programs. In the same way that an employee does not ask his employer about his source of income from which he pays his salary, he also does not have to ask about the source of these benefits. Only out of great caution with respect to Allah or out of doing a recommended act would be it be necessary not to accept these funds.
- b. Optional Retirement Accounts: These are accounts that the employee opts into and are not required by law. At the same time, they are actually benefits that represent a portion that is deducted, equal or more, from their wages. Examples of this nature are the following:
- i. 401K and 403B: The balances in these accounts are invested, in general, according to the direction of the employee, in their portfolio, and not the investment firm. These are optional for small businesses.
  - ii. IRA and ROTH IRA: These are completely optional for the employee; they can participate in these accounts or refuse them completely.

## The Losses that Accrue for the One who Declines to Participate in Optional Retirement Plans

26. By not participating in these optional retirement accounts, the employee loses out on the portion that the employer contributes to this fund, which represents a decrease of his wages. In addition, there are tax ramifications as well as the tax burden is lessened by the government for those take part in these funds. In addition, the employee loses the opportunity to invest his funds in stocks that could give the employee an opportunity to manage his financial affairs when he becomes aged! In addition, he can secure wealth for his heirs and dependents in this a society in which there is very little social support and in which the ties of kinship have been cut off!

## The Ruling of Participating in Optional Retirement Accounts

27. If this is the only way to get such benefits from the company as the result of work, it reduces the tax burden and missing out on this opportunity would affect one's ability to manage one's affairs in old age, then there is no harm in participating in such accounts due to the great need of preparing for one's old age and the lack of resources at that time. This is in addition to the fact that the Muslim community could be losing out on millions, if not billions, of dollars by all not participating in these accounts.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

28. The one who participates in such accounts must strive his best to direct his investments to accounts that are Shareeah compliant, in general, and seek the assistance of investment firms that will assist him to distinguish between the pure and the rotten.
29. Without any doubt, the employee has the right to what has been deducted from his wages, the benefits that are offered to him and the returns on Shareeah-compliant investments. The only questionable issue is the returns that come from mixed or forbidden investments.
30. Upon receiving the funds after retirement, the employee must do his best to free himself from accepting what he believes to be forbidden income that he was not able to prevent from such accounts. He can give that money to meet public needs. It is hoped that he will be rewarded for that in that he is trying to remain away from what is forbidden. He may keep it himself if he is in need, even if he could find general welfare causes to give it to.

### Withdrawing Funds and Borrowing from Retirement Accounts

31. The general principle is that a person is in charge of his or her wealth. He or she can withdraw it whenever and however they wish. In general, there will be neither any penalty or interest when they do so. The default would therefore also be that there can be no imposing of fines or interest when a person withdraws money from his own account. At the same time, by consensus, any increase in payment due to a loan is clearly interest. However, since the increased amount actually goes to the owner of the account, the interest is actually figurative—it looks like interest but it is not interest in reality! Thus, if there is a need, there is an exemption for doing this, even though it goes against the normal ruling.

### Converting Stock Funds into Bonds During Financial Crisis in Order to Protect the Principle

32. The default ruling concerning bonds is that they are forbidden as they are clearly interest. This is something that no one differs about or should differ over. It has been confirmed in numerous resolutions of various fiqh academies and councils.
33. If the market faces an economic collapse and bonds are the only way to protect one's wealth, then an exemption is made to switch to bonds, if this is done as a short-term temporary means to protect one's principle amount. One must afterward purify one's wealth from any interest-based gains from such accounts or investments and direct that many to general welfare causes. The intention was simply to protect one's wealth and not invest it to make a gain.

### Zakaat on Retirement Accounts

34. Having "complete ownership" is one of the conditions for the obligation of zakat. It implies the possession of something, having the sole right to dispense of it and having direct ownership rights over it. This is Shareeah defined relationship between the human and an object that he or she has freedom to conduct transactions with and can prevent others from using. If a retirement account meets this description, then zakat is





بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

- obligatory upon those funds after deducting for taxes and penalties. Otherwise, there is no zakat upon such funds until the individual takes possession of them.
35. The default is that zakat should be reckoned according to the Hijri (lunar) calendar, as this is what Allah has decreed for the timings of humans. If that is not feasible, due to the law or logistics, then one can determine the zakat based on the solar calendar while taking into consideration the difference in the number of days in a year between the two calendars. The zakat rate given the lunar calendar is 2.5%. If one is using the solar calendar, it will be 2.575%. This is for cash and merchandise. If the zakat rate was “half of a tenth,” which it is for agricultural produce that is mechanically irrigated, the adjusted rate will be 5.150%. With respect to rainwater irrigated land, the rate is 10.300%.
  36. Retirement accounts that have stocks in companies that have wealth, such as cash, merchandise and debt from solvent clients, must have zakat paid on them. If the individual is not able to determine the zakatable amount of his stocks, he must do his best to estimate it if possible. He should pay zakat on the equivalent value of the stocks that are zakatable. The above applies if the company is not in a state where it is insolvent.
  37. However, if the company does not possess such zakatable wealth, then one pays zakat only on the dividends received and not on the value of the stocks.
  38. Government bonds are interest-based loans and it is not permissible to keep them, except for the principle only. The remainder must be given away for the benefit of general welfare needs. This is true even if the person resorted to it on a temporary basis to protect the value of his wealth. Allah has said, “But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged” [al-Baqarah 279]. Similar is the case with stocks in companies whose dealings are prohibited, such as alcohol, gambling and the like.

## INSOLVENCY AND BANKRUPTCY

### Insolvency

39. Insolvency is a situation wherein a person is not able to meet his financial obligations or is in default with respect to his debts. Insolvency could be with respect to debt or with respect to meeting Shareeah obligations, such as maintaining one’s family. It is different from bankruptcy in that bankruptcy is only with respect to debt. The one who is insolvent should be given time to resolve his situation if it is confirmed through Shareeah approved means that he is truly insolvent. Allah has said, “And if someone is in hardship, then [let there be] postponement until [a time of] ease” [al-Baqarah 280]. The ruling for one who declares bankruptcy is different in that he will be prevented from access to his wealth and his wealth will be distributed among his creditors.
40. Defaulting on one’s debts is insolvency. It would not be considered bankruptcy from a Shareeah perspective if the assets of the company can cover its debts. The creditors can turn to the court to issue a judgment of bankruptcy. Similarly, the debtor can turn to the court to demand a restructuring of the debt by the creditors.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

### Suggested Solution for Insolvency

41. A suggested solution for insolvency for companies and Islamic financial institutions is the following:
- The company can disburse with specific wealth or usufruct in order to fulfil the debt upon them.
  - The company can convert the debt into equity in the company by increasing the capitalization of the company and giving common stock to their creditors according to the value of the debt. Now, the debtors are owners of the company to the extent of the original debt.
  - The creditors and debtors can agree on a restructuring in consultation with a specialist in the field that can determine the state of the company or the industry and lay down the necessary conditions for such restructuring.

### Bankruptcy

42. Being bankrupt is wherein one's current debts are greater than one's assets. It is a state that exists before the judgment of bankruptcy is made by the court. Bankruptcy or the announcement of bankruptcy is a court ruling wherein it is made public that the debtor is bankrupt.
43. Bankruptcy is of the following types:
- A true bankruptcy: This is where a person was engaged in business in the customary and normal fashion, without any cheating or deception, and he was afflicted with some [business] hardship that he had no role in.
  - A deceptive bankruptcy: This is where the person uses some kind of cheating, deception or fraud, such as claiming debts that he does not have, hiding some of his assets, hiding or destroying documents and the like.
  - A derelict bankruptcy: This is where the person has been derelict in his business practices, such as being negligent or transgressing; it can also be the result of extravagance and clear overspending in the business.
44. The one who has engaged in a deceptive bankruptcy will face criminal punishments by the law. Similar is the case with a derelict bankruptcy if it is feared that he may try to flee without fulfilling the people's rights. Such bankrupt individuals can be imprisoned as a discretionary punishment for their deception or to force them to fulfill the debts if it is feared that they may flee. It is not permissible to try to deceive people out of their rights by declaring bankruptcy in order to take advantage of what the law allows of dropping the debts of a bankrupt person. The rights of other humans are not dropped as a result of this but only by being fulfilled or discharged.
45. The effects of bankruptcy include:
- The debtor is prevented from using his wealth in any way that may harm the creditors as the rights of the creditors are connected to that wealth.
  - It is permissible to prevent the debtor from traveling if the traveling in any way harms the rights of the creditors.
  - Deferred debt solutions.
  - The assets of the debtor may be sold off to meet the rights of the creditors.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

- e. A creditor may repossess his property if he finds it among the wealth of the debtor, if it is still in its original state and if its price had not yet been paid.
  - f. Natural persons [as opposed to legal entities, such as corporations] retain their rights to have their debts repaid if the bankrupt person receives new wealth, as the rights of humans are not dropped due to lapse in time and one's responsibility are not dropped except by fulfillment or dischargement. If the debtor receives some new wealth or if he leaves wealth in his estate, paying off the debts takes precedence over distributing the wealth to the heirs. Insurance companies, customarily, do not reimburse creditors who are natural persons. In any case, their payments are in consideration as agents of those who paid the premiums from their wealth.
  - g. It is a matter of ijtihaad regarding whether or not the rights of legal entities [like corporations] are dropped even if the bankrupt person receives new wealth, as such entities are reimbursed by their insurance companies. However, the argument that their rights are dropped is weakened by the fact that the insurance companies are agents of the creditors and not of the debtor and that it is the creditors who paid premiums and, therefore, reap the benefits of their payments. However, the custom of the law is that the debt will be wiped away and custom of this nature becomes similar to something stipulated in a contract. If that is understood at the time of the contract, then the interpretation that the debt is absolved has some basis. The matter is still, then, questionable. Out of precaution and care with respect to Allah, if the bankrupt person receives new wealth, he should move immediately to clearly pay off all of his old debts as much as he can, even if that means giving that money away for general welfare causes.
46. AMJA appeals to all Muslims that they do not delay in fulfilling the rights of the creditors and investors, that they do not borrow more than what they feel they will be able to repay and that they do not gamble with other people's money. Texts have warned about such behavior, as, for example, the statement of the Messenger of Allah (peace and blessings of Allah be upon him), "Anyone who takes a loan and had resolved not to repay it will meet Allah as a thief." (Recorded by ibn Maajah.)

## LIFE INSURANCE

### The Fiqh Councils are All in Agreement that Life Insurance is Forbidden

47. We would like to emphasize the view of the various fiqh councils, including that of AMJA, that life insurance is forbidden in all of its forms. The only exception to that is a life insurance policy that one receives as a benefit through one's work that the employee himself has had no role in. In that case, it is simply something given by the employer to its employees and can be considered a type of incentive and compensation that an employee receives.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

### The Only Exception for Getting Life Insurance is due to Necessity or a Need that is Considered Comparable to Necessity

48. There are some contemporary scholars who are of the opinion that life insurance is permissible. However, AMJA and other fiqh and academic councils have concluded that the only permissible case for is it under the state of necessity or a need that is considered comparable to necessity, and that is after a trustworthy person of knowledge capable of giving a fatwaa has determined that there is such a necessity or need. An example of that nature would be someone who has reached old age and his or her children are weak and he or she has no other source of income or any social support system that will take care of his or her children after his or her death.

### Accepting Life Insurance Payouts

49. It is permissible for the heirs to receive life insurance payouts related to the death of the policy holder. This is because when there is some illegitimate means of money, the sin for that money is only on the one who reaped it and does not transfer to the heirs or to others who deal with the one who reaped it, such as in buying, selling, gifting or inheritance.

### The Legality of Cooperative Insurance Schemes in all of Its Forms

50. AMJA also emphasizes the permissible all forms of cooperative insurance, whether they be related to life, wealth or legal responsibility. This is also agreed upon by the contemporary fiqh councils.

### The Beneficiaries of Cooperative Life Insurance Policies

51. The ones who are to receive the benefits of a cooperative life insurance are the beneficiaries that are stated on the policy, even if that distribution differs from the Islamic inheritance distribution. This is because these benefits are not considered part of the deceased's estate. Instead, it is like a donation whose conditions have been laid out by the participants in the cooperative insurance policy. Thus, whoever is stated as a beneficiary in the insurance policy has the right to it.

### The Beneficiaries of Commercial Life Insurance Policies

52. The default is that any wealth that a person has earned before his death from his payments to a commercial insurance company and that he has not yet received are the right of his or her heirs and should be distributed according to Islamic inheritance law. Similar to this is what any life insurance payouts that will come as a result of the death of the policyholder, unless the insurance contract, pension plan or retirement plan state otherwise. Whoever has received such payments should return them to the estate to have them distributed according to Islamic inheritance law.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
مجمع فقهاء الشريعة بأمريكا

## The Assembly of Muslim Jurists Of America

### COMPENSATION FOR HARM OR INJURY

#### The Legality of Making a Legal Claim to Restore One's Reputation and End Harmful Actions

53. It is forbidden in the Shareeah to cause harm to others and also to repel harm by harmful acts. Harm here is inclusive of physical or bodily harm in all of its forms. It is also inclusive of psychological harm as a result of libel, slander, casting doubt on one's trustworthiness, making false allegations in court, insults and the like. This would certainly be inclusive of what occurs over social media as that can cause great psychological pain and also unjustly ruin a person's reputation.
54. It is allowed from a Shareeah perspective to make a legal case in order to restore one's reputation and end such harmful actions, whether done by an individual or an organization. This can be done when the Shareeah and legal prerequisites for raising such a case to the courts have been met.

#### There is No Harm in Receiving Financial Compensation for Either Physical or Psychological Harm

55. There is no harm [that is, it is permissible] for the one who has been harmed to receive financial compensation via the legal system for the physical or psychological harm that they, based on the Shareeah legal principles of removing harm and based on how that has become the customary norm in contemporary times. However, the compensation should not exceed what is considered the norm, based on the legal maxim, "The custom or norm is the source of judgment." The harmed person should consult with specialists, such as a Muslim lawyer or Islamic institutions that specialize in such matters in the United States.

#### Avoid Exaggerated Compensations

56. The one who has been harmed must fear Allah and not make exaggerated financial claims, seeking to benefit from the situation or trying to cause harm to those who caused him psychological harm. There is no problem in accepting a compensation that is greater than the actual harm as determining the compensation is a matter of trying to determine what is a fair compensation for the harm suffered and is a judgment call and people make come up with different estimates. It would be good for the person of piety to free himself from any additional funds received by spending them to meet general welfare needs.