



General Insurance Council of Saskatchewan

The General Insurance Council is committed to a fair, ethical and professional industry which ensures that consumers receive responsible, trustworthy advice and service regarding insurance and related financial matters.

Agent Code of Conduct

This Code builds on the requirements of the Saskatchewan Insurance Act and the Bylaws of the General Insurance Council to provide specific guidance for the conduct of a licensee. It also gives the public information about what they should expect from licensees. It identifies minimum standards of conduct with the recognition and hope that in many areas, conduct of licensees will rise above the minimum requirements.

1. Table of Contents

Each Topic of the Code (Sections 5 through 18) has the following headings which are not included in the Table of Contents below:

- A. The Principle
- B. Related Bylaws
- C. Requirements: Licensees must:
- D. Contraventions: Licensees must not:
- E. Examples of Misconduct

Contents

General Insurance Council of Saskatchewan	1
Agent Code of Conduct	1
1. Table of Contents	2
2. How to Use this Code of Conduct.....	5
3. Executive Summary of Conduct Principles	6
4. Definitions.....	8
5. Honesty	10
F. Situational Guidance	12
1 Lying:.....	12
2 Part of the Truth:.....	12
3 Coverage Problems:.....	12
4 Insurer-client responsibilities:.....	13
5 Untruthful clients.....	13
6 'They told me to...':.....	13
6. Privacy, Confidentiality, and Use of Information.....	15
F. Situational Guidance	17
1 Electronic Security:.....	17
2 Cellular Phones:.....	17
3 Staff Confidentiality Agreements:.....	17
4 Insurer Websites:.....	17
5 Electronic Eavesdropping:.....	17
6 Information Left in View:.....	18
7 Credit/Debit Cards.....	18

8	Voice Mail:	18
9	Email or Texts:	18
10	Mailing mistakes:	18
11	Privacy Commissioner:	18
7.	Requirements of the Act and Other Legislation	19
F.	Situational Guidance	22
1	Unlicensed insurers	22
2	Finders' fees and referral fees:	22
8.	Competence	23
F.	Situational Guidance	24
1	Handling Specialized Risks	24
9.	Designated Representatives	25
F.	Situational Guidance	27
1	Absence of the Designated Representative:	27
2	Sale of an Agency:	27
3	Suspected misconduct by staff:	28
4	Reasons for withdrawal of sponsorship:	28
5	Criminal Record Checks:	28
10.	Financial Integrity and Management	29
F.	Situational Guidance	31
1	Small balances owing or refunds due:	31
2	Inducements:	31
11.	Conflicts of Interest	32
F.	Situational Guidance	35
1	Disclosure:	35
2	Agency ownership:	35
3	Markets:	35
4	Cancellation of Insurer Contracts:	36
5	Business Relationships:	36
6	Other occupations:	36
7	Personal and Family Relationships:	36
8	Conflicts between Clients:	37
9	A Practical Guideline:	37
12.	Advertising and Respect of the Public	38

F.	Situational Guidance	39
1	Contests, Raffles, Incentives and Gifts:	40
2	Business Names and Operating Names:.....	40
13.	Handling Claims.....	41
F.	Situational Guidance	42
1	Assisting with Claims:	42
14.	Dealing with Clients (including Prospects) and Quality of Service	43
F.	Situational Guidance	45
1	Withdrawing services:	45
2	Portfolio transfers:.....	46
3	Cancellations:	46
4	File retention:	47
5	Binding Coverage:.....	48
15.	Dealing with Insurers	49
F.	Situational Guidance	50
1	Trust Accounts:.....	50
16.	Dealing with Interested Third Parties	51
F.	Situational Guidance	52
1	Additional Insureds:.....	52
2	Lenders, Lessors and Mortgage Companies:.....	52
17.	Dealing with Other Licensees.....	53
F.	Situational Guidance	54
1	Replacement on Renewal:.....	54
2	Broker Appointment Letters:.....	54
3	Sub-brokering:.....	54
18.	Dealing with Council	56
F.	Situational Guidance	57
1	Client Privacy Concerns:	57
2	Public Information:	58
3	Reports of potential misconduct or unsuitability:.....	58
4	Licensees' access to own information from Council:	58

2. How to Use this *Code* of Conduct

A *Code* of Conduct is like a roadmap for a professional which lays out the standards and expectations to follow in his or her career. Whether an insurance professional is zooming through that career at great speed, at an intersection of two paths, or in a bumpy patch, frequent use of this 'roadmap' will ensure that the professional stays on the right path and avoids actions or practices which harm consumers or may constitute misconduct and lead to disciplinary action.

The *Code* is divided into a number of sections, each of which addresses a specific principle or area of a *licensee's* activity. Each Principle is defined, correlated to the definitions of Misconduct in the General Insurance *Council* Bylaws and specific sections of the Saskatchewan Insurance Act, and further clarified with stated Requirements and Contraventions. To provide additional information on what is allowed and what should be done or not done, each section also includes Examples of Misconduct and Situational Guidance. Many Examples of Misconduct are actual cases from *Council's* disciplinary records, some are from other provinces, and some are hypothetical.

It is not possible to foresee every possible situation and describe the proper conduct. The examples of misconduct are not complete or exhaustive. If *licensees* or consumers have questions that are not answered by this *Code*, inquiries to *Council* are encouraged. When reading the *Code*, keep in mind that although presented separately, all principles and requirements are interconnected. For example, the principle of Trustworthiness is fundamental to all activities of a *licensee* and to each of the other principles and activities.

The *Code* applies to all insurance *agencies*, agents, salespeople and brokers, who for simplicity are called *licensees*. This and other key definitions are found in the Definitions section.

The *Code* is in plain language. It is intended to be read and used in conjunction with the Saskatchewan Insurance Act and the *Council* Bylaws. Excerpts from the *Act* or Bylaws are included for convenience of the reader and in all cases the entire legal framework must be considered and these excerpts not taken in isolation. The Bylaws, the *Act* and other legislation which affects *licensees* such as privacy legislation set the fundamental legal requirements and this *Code* provides interpretative and supplemental information. Further information may be found on the *Council* website at www.skCouncil.sk.ca

3. Executive Summary of Conduct Principles

Honesty

Licensees must operate with utmost good faith, which means being honest, truthful, reliable and trustworthy.

Privacy, Confidentiality, and Use of Information

Licensees must protect the privacy and personal information of consumers, obtaining proper consent and sharing information as needed to arrange the requested insurance.

Requirements of the Act and Other Legislation

Licensees must follow the requirements of the Saskatchewan Insurance Act and its Regulations and the Insurance Council Bylaws.

Competence

Licensees must have the appropriate qualifications and adequate knowledge to handle the requested and needed insurance, and only handle risks for which they are competent.

Designated Representatives

An individual designated by the *agency* is responsible to the Insurance Council for the licensing, education and conduct of all insurance professionals in the firm.

Financial Integrity and Management

Licensees must safeguard the financial assets of consumers and *insurers*, including keeping adequate records. They must also obtain the consumer's consent in writing before charging any fee in addition to a policy premium.

Conflicts of Interest

Licensees must place their client's interests before their own. This means looking out for consumers' needs, even when the consumers may not know what those needs are.

Licensees must identify any conflicts of interest with consumers or *insurers*, avoiding them or disclosing them fully in writing when they occur.

Advertising and Respect of the Public

Licensees must accurately represent themselves, their credentials, ownership, services, markets, products and prices to consumers so that consumers know who is serving them and what products or *insurers* are offered.

Handling Claims

Just as a *licensee* must always act in the best interest of the *client* in selling insurance, a *licensee* must also act in the *client's* best interest in handling claims.

Licensees must fully disclose all relevant information to *insurers* when reporting claims.

Dealing with Clients (including Prospects) and Quality of Service

Licensees must make adequate inquiries into *clients'* insurance needs and provide recommendation and explanation of options, including information about risks which are not covered. *Licensees* must give *clients* fair, full and accurate information and explain limitations or exclusions in coverage, in order for the *clients* to make informed decisions. *Licensees* must document needs assessment, sales process, and subsequent service. Responses and services should be provided promptly and efficiently with courtesy and respect. The interests of the *client* must be paramount at all times.

Dealing with Insurers

Licensees must fully and accurately disclose all relevant information to *insurers*, represent *insurers'* products fairly, follow *insurers'* procedures and any authority granted to them by *insurers*, and promptly and courteously respond to inquiries, pay premiums, deliver documents and report claims.

Dealing with Interested Third Parties

Clients must authorize any situation where an *interested third party* receives information or any benefit or involvement in the insurance policy. *Interested third parties* are due the same duty of honesty, competence, courtesy and prompt service as *clients*.

Dealing with Other Licensees

Licensees must treat fellow *licensees* with honesty, courtesy, and respect. If a *licensee* is aware of misconduct by a fellow *licensee*, the *licensee* has a duty to report to *Council* to protect consumers and the reputation of the insurance industry.

Dealing with Council

Licensees and former *licensees* must respond promptly, fully, and honestly to inquiries from *Council*. *Licensees* must comply fully and in good faith with licensing regulations. Information about licensing is open to the public.

4. Definitions

Defined terms are shown in *italics* in this *Code*, and may be singular, plural or possessive with the meaning adjusted accordingly. Unless otherwise qualified in this *Code*:

- *Act* is the *Saskatchewan Insurance Act*;
- *agency* is the business, whether a corporation, a partnership, or an individual sole proprietorship *licensee*, which holds an All Classes other than Life Insurance *agency* licence to transact insurance business and meets the requirements as set out in the *Act*, regardless of whether the *agency* refers to itself as an Agency, Broker, or Brokerage;
- *client* is a *person* who may reasonably be expected to rely on an *insurer, agency* or *licensee* for advice or actions in relation to insurance and includes all insureds, prospective *clients*, current *clients*, and past *clients* where appropriate;
- *Code* is this *Code* of Conduct;
- *Council* is the General Insurance *Council* of Saskatchewan;
- *Designated Representative* is an individual that holds a Level 3 All Classes other than Life Insurance licence and is responsible for the *management* and *supervision* of the *agency*;
- *fees* includes any finance charge or service charge for delayed payments, administration fee, inspection fee, policy issuing fee, commission, and any other charge over and above the premium set by the *insurer* for the policy.
- *insurer* is any insurance company on a client's insurance policy, an insurance company who has been asked to quote on a client's policy, or an adjuster or appraiser who has been authorized by the insurance company to act on their behalf
- *interested third party* is a loss payee, mortgagee, landlord, additional insured or other similar party who has been authorized by the insured to be shown on the insured's policy or receive information about the policy, and includes legal representatives of such parties including law firms and processing centres;
- *licensee* is an individual that holds an All Classes other than Life Insurance salesperson licence to transact insurance business as defined in the *Act*; and also includes an *agency* where the context allows the *Code* to apply to the business as

well as an individual. In quotations from the *Act*, 'agent' is used with the same meaning as '*licensee*' in the rest of the *Code*.

- *management* includes direction and/or control of the operations of an insurance *agency*;
- *other parties* are *persons* who have an involvement in the insurance process and may include mortgage companies, leasing companies, lawyers, auto body shops, repair contractors, competitors, third party claimants or the representative of third party claimants;
- *person* is an individual, corporation, partnership, society, association or other organization or legal entity;
- *principal* is a *person* on whose behalf a *licensee* has undertaken to perform adjusting services;
- *supervision* means reasonable and prudent oversight of an insurance *transaction*;
- *transaction* is a situation in which a *licensee* provides an insurance product or service to any *person* and may include a quote, new policy, renewal, endorsement, change, revision, inquiry, or claim report.

5. Honesty

A. The Principle

Trust and good faith is the foundation of the insurance business. Whether it is called trustworthiness, good faith, honesty, reliability, forthrightness or integrity, this is the fundamental quality demanded of every *licensee*, at all times with all people. Honesty is a key element of every aspect of this *Code*, just as utmost good faith is a foundation of any insurance relationship.

B. Related Bylaws

BYLAW 5 – REGISTER AND LICENSING

Section 2 (1)

- (c) A person applying for licensing must:
provide evidence of suitability to be licensed and demonstrate the proposed licensing is not for any reason objectionable; and

Section 3 (3) (a)

To be licensed for each subsequent year a person must:

- (a) be suitable;

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licensees or insurance companies; or
- (b) may harm the standing of licensees in the insurance industry.

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (a) engages in any practice that is coercive or has the intended effect of inducing a consumer to making a decision that is not in the best interests of the consumer;
- (b) demonstrates an unsuitability or an untrustworthiness to act as a licensee;
- (c) in the course of promoting, selling or servicing insurance business, provides in any advertising or other communications information that is false or misleading;
- (d) makes a material misstatement in an application for licence or report to continue a licence;

C. Requirements: *Licensees* must:

- 1 tell the truth in their professional life and in other areas where a dishonest statement or action may call into question whether the *licensee* is suitable to hold an insurance licence.

- 2 be frank and candid in all dealings with *clients, insurers, and other parties*, subject to the *client's* right to privacy.
- 3 take reasonable steps to properly inform themselves to ensure they do not mislead *clients, insurers, Council* or other *persons* through false statements or failure to provide material information.
- 4 be reliable, promising only what they honestly expect to provide and taking all reasonable steps to live up to what they have promised.

D. Contraventions: *Licenses* must not:

- 1 make untrue representation or conceal facts from a *client, insurer, Council, or other parties*.
- 2 deal dishonestly with money, property or premiums collected, or commit acts involving theft or fraud.
- 3 make improper use of their knowledge or position as *licenses*.
- 4 make or assist anyone to make a false insurance claim.
- 5 make or assist anyone to make a false declaration to an *insurer*.
- 6 make representations to *insurers* or *clients* without reasonable steps to verify that what they are saying is accurate and true.
- 7 counsel a *client* to misrepresent information in an application for insurance or knowingly transmit information which they have reason to believe is not true.
- 8 take advantage of a *client's* inexperience, ill-health, lack of sophistication or difficulties with language or reading.
- 9 engage in conduct, within or outside the insurance profession, which causes consumers or *clients* to lose trust in the *licensee* in particular or the insurance industry in general.

E. Examples of Misconduct:

- 1 A *licensee* drafted and signed a false certificate of insurance when coverage did not exist.
- 2 A *licensee* "witnessed" a signature when he did not see the individual sign the document or "witnessed" a signature known to be a forgery.
- 3 A *licensee* directed an employee to sign a document as the producing *licensee* when the employee had not been involved in the sale of the policy.
- 4 A *licensee* backdated a *client's* automobile insurance and subsequently lied about when and how the *transaction* was processed.

- 5 A *licensee* misappropriated funds from a volunteer organization while acting in a position of trust for the organization.
- 6 A *licensee* provided false information to an *insurer* about the amount of a *client's* gross sales of products in the US in order to negotiate a lower premium and keep the account on renewal.
- 7 A *licensee* advised a *client* that several *insurers* had declined to quote on the *client's* policy when in fact the risk had not been submitted to those *insurers* for a quote.
- 8 A *licensee* accepted and kept premium payments from *clients* without placing the coverage with an insurance company.
- 9 An applicant for a licence, while writing an insurance examination, took unauthorized material into the examination room.
- 10 A *licensee* provided intentionally misleading testimony to *Council* during an appearance before a Disciplinary Hearing Committee.
- 11 A *licensee* falsified records of continuing education courses.

F. Situational Guidance

1 Lying:

It is never acceptable for *licensees* to lie during the course of insurance work.

2 Part of the Truth:

It is never acceptable to withhold information or provide misleading information which will affect a decision by a *client*, *insurer*, or *interested third party* in an insurance *transaction*.

3 Coverage Problems:

Bylaws include as misconduct a situation where the licensee

- (o) fails to deal with consumer complaints or disputes or refer the consumer to the appropriate person or authority or process in a timely and forthright manner; or
- (j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;

In addition, *licensees* must at all times follow basic principles of honesty and put the interests of the *client* before their own interests (see Council Bylaw 8 (2) (h)).

When a coverage problem appears to arise from a *licensee's* error, *licensees* must not mislead anyone to cover up or hide the error. When efforts are made to hide or cover up an error, an innocent mistake may lead to misconduct.

The Errors and Omissions coverage carried by *licensees* normally requires that potential claims be reported as soon as they are discovered and that the *licensee* shall not admit liability or assume any obligation on a potential claim. It is important for the sake of both *clients* and *licensees* that any situation which may lead to an E & O claim should be handled in such a way that the *licensee's* E & O coverage is not jeopardized.

At the same time, **Council requires *licensees* to provide to the *client* all relevant information on how *clients* can protect themselves from further risk and make informed decisions, including information about their options** when there is a coverage problem. This can be done without accepting responsibility or liability.

To avoid jeopardizing E & O coverage, situations where an uninsured or underinsured loss may be due to an error should be reported to licensee's E & O insurer promptly.

4 Insurer-client responsibilities:

As intermediaries, *licensees* have responsibilities to both *insurers* and *clients* and must be truthful to both. In some situations a *client* may ask a *licensee* not to report certain information to the *insurer*. In others, the *insurer* may ask the *licensee* not to report information to the *client*. Both of these situations put the *licensee* at risk, as withholding information from either party may be misconduct. *Licensees* must carefully consider whether the information is material and whether the second party has a right to the information in question and whether it would prejudice their interest to keep them in the dark. If so, the *licensee* must explain to the party requesting confidentiality that the *licensee* has a legal obligation to communicate the information.

5 Untruthful *clients*:

If *licensees* have reason to believe that the information provided by a *client* is not truthful or not accurate, whether that information is for a policy application or a claim, *licensees* must explain to the *client* the importance of accurate and truthful information and the risks of misrepresentation. It is often advisable for a *licensee* to investigate or verify to a reasonable level the accuracy of information on an application for insurance. Information which *licensees* cannot confirm but believe may be inaccurate should be qualified or noted as 'advised by *client*...' and not passed on to *insurers* as fact. Should *licensees* have serious concerns about a *client's* honesty, it may be best to decline to serve the *client*.

6 'They told me to...':

Licensees have tried to justify misrepresentation by saying that they were told by the underwriter, their manager, a *client*, a leasing company, or *other parties* to omit information or change information on an insurance *transaction*. Sharing misconduct with others does not excuse or reduce the misconduct. **If someone asks you to be**

dishonest, you must decline and you may need to report the situation to *Council* or to others. See Dealing with *Council* - Section 18 of this *Code* for further guidance.

6. Privacy, Confidentiality, and Use of Information

A. The Principle

Licensees must hold in strict confidence and protect from disclosure all information acquired in the course of their professional relationship with *clients*, and shall not divulge any such information unless authorized by the *client* or required by law.

Licensees cannot provide adequate advice to *clients* without full knowledge of the *client's* circumstances and affairs as these affect the *client's* insurance needs. *Clients* therefore must be confident that the information they disclose to *licensees* will be treated with complete confidentiality by the *licensee* and all *persons* in the *agency*, and trust that their private information is protected from unauthorized access. Unless *licensees* foster and maintain this trust, they will be unable to provide the service expected and needed by their *clients*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

(m) fails to protect a consumer's personal information or divulges personal information about a consumer unless authorized to do so by the consumer or as required by law;

C. Requirements: *Licensees* must:

- 1 fully and accurately explain to *clients* what information is required, how that information will be used, and to whom it will be disclosed.
- 2 obtain consent for the collection, use and disclosure of personal information from all *clients*.
- 3 protect the confidential information of every *client* (which includes prospective *clients*) indefinitely, even after a *licensee* no longer acts for the *client*, whether or not differences have arisen between the *licensee* and the *client*.
- 4 implement and maintain proper safeguards for *clients'* personal information, including use of secure computer records and passwords, encryption of electronic data, protection of physical files in locking cabinets, alarms and other safeguards appropriate in the circumstances.

- 5 maintain records of *client* information as long as the information is needed to meet the *client's* insurance needs or as required by limitation laws. When it is appropriate to discard files or computer storage devices, *licensees* must do so in a manner that ensures confidentiality of the *clients'* personal information. Situational Guidance in Section 14 of this *Code* provides additional information about retention of files.
- 6 maintain confidentiality between related parties or co-insureds such as members of a family or business partners.
- 7 when supervising staff, ensure they have thorough training on privacy requirements and a clear understanding of their duty of confidentiality to *clients*.

D. Contraventions: *Licensees* must not:

- 1 collect information beyond what is reasonably needed to provide advice and quotes on the insurance needs for which the *client* has requested service.
- 2 use *client* information for any purpose or product other than that authorized by the *client*.
- 3 disclose information to any *person* other than those authorized by the *client* or as required by law.
- 4 access confidential *client* information from an *insurer's* database or records without express authority of the *client*.
- 5 use the name of one *client* to promote your services to another *client* without the first *client's* express permission.
- 6 when leaving the employ of an *insurer* or *agency*, take or use any information of the *insurer's* or *agency's clients* in order to offer or market insurance products to those *clients*. The *client's* permission for the use and collection of information was given to the initial *insurer* or *agency* and does not extend to the *licensee* who now works elsewhere.

E. Examples of Misconduct

- 1 A *licensee* used confidential information for purposes other than what was agreed by the *client*.
- 2 A *licensee* failed to provide for the safekeeping of records.
- 3 A *licensee* provided a copy of a *client's* policy to other prospective *clients* as an example of the coverage or product being offered.
- 4 A *licensee* accessed *insurer* computer data without authorization and provided that information to a third party.

- 5 A *licensee* accessed an *insurer* database for an auto insurance inquiry from a consumer and used that data to offer home insurance to the *client*.
- 6 Having been advised that a *client* was seeking renewal quotes elsewhere, a *licensee* submitted the *client's* risks for quotation to other *insurers* without the permission of the *client* in order to 'block' a competitor from obtaining quotes.

F. Situational Guidance

1 Electronic Security:

Protection of *client* information held electronically requires excellent computer security practices, including the use of individual secure passwords, regularly changing passwords, screen-blanking with password protection when a computer is not used for a short period or left unattended, removing computer and website access immediately upon the departure of an employee, encryption of electronic messages, secure backup and secure storage of data.

2 Cellular Phones:

Many *licensees* correspond with *clients* using email and text messages on cellular phones. It is important that all the guidelines for electronic security on computers also be used for telephones, including password protection and ensuring the phone is not borrowed or used by people who have not been authorized by the *client* to access the *client's* private information, including contact information. Electronic devices must be safeguarded to protect *client* privacy.

3 Staff Confidentiality Agreements:

It is recommended that every staff member in a *licensee* office, including unlicensed staff, sign a confidentiality agreement and be trained on privacy requirements.

4 Insurer Websites:

Licensees are responsible for privacy breaches involving *insurer* websites which happen through their access logins, with their staff, or from their premises. The security practices outlined in item 1 above must also be maintained with respect to any access to *client* information on websites of *insurers* or other third parties such as finance companies.

5 Electronic Eavesdropping:

Computer screens must be located where they are not visible to members of the public or *clients* other than the one whose information is on the screen.

6 Information Left in View:

To protect *client* files from casual intrusion, files should not be left open on a desk or counter or left unattended where there is public access. All *client* files should be stored and secured when the premises are not open for business. This includes securing information against improper access by contractors or cleaning services.

7 Credit/Debit Cards:

Protection of *clients'* personal information extends to protection of banking information and credit card terminals. This requires an office design which assures privacy and security of credit/debit *transactions*, and not repeating a *client's* credit card information back to them when others are within hearing range.

8 Voice Mail:

In leaving telephone messages, all possible care should be taken that the number dialed is accurate. Private information should not be left on a message or voice mail. Anything other than a simple request for a call back can create a privacy breach.

9 Email or Texts:

Private information should be communicated by email, text or other electronic means only with the agreement of the *client*, and then only after the *licensee* has ascertained that the destination address being used is correct. When setting up a new email or text address, a 'trial email' is recommended with a 'Read Receipt Request' to verify the address before sending any private information.

10 Mailing mistakes:

Errors in mailing policies or other documents to *clients* can result in significant privacy breaches. Envelopes should be checked to ensure that the addressee is correct and no information from another *client* is enclosed.

11 Privacy Commissioner:

If a *licensee* becomes aware of a privacy breach, in addition to informing the *licensee's* designated Privacy Officer and *Council*, the matter should be referred to the Office of the Saskatchewan Information and Privacy Commissioner.

7. Requirements of the *Act* and Other Legislation

A. The Principle

Licensees must be aware of and comply with their duties and obligations under the Saskatchewan Insurance *Act*, its Regulations, and the Bylaws of *Council*. *Licensees* must also be aware of and comply with any other legislation, such as the Income Tax Act, Personal Information Protection and Electronic Documents Act, employment and workplace safety legislation, the Auto Accident Insurance Act or any other legislation which governs their particular practice.

Key provisions of the *Act* which affect most *licensees* are provisions on who can act as an agent, the requirement for licensing, holding premiums in trust for *insurers*, and restrictions on using unlicensed *insurers*.

B. Related Bylaws and *Act* Sections

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

(g) violates any provision of the Act, the regulations or the bylaws;

Saskatchewan Insurance Act

Interpretation

2(1) In this Act, except where inconsistent with the interpretation sections of any Part:

(d) “agent” or “insurance agent” means a person who:

- (i) solicits, negotiates or effects for or on behalf of any insurer a contract of insurance;
- (ii) for compensation, acts in the solicitation or negotiation of insurance;
- (iii) transmits, for compensation, for a person other than himself, an application for or a policy of insurance to or from an insurer; or
- (iv) retains as compensation any portion of a premium received by him;

and includes a general agent but does not include an officer or salaried employee of an insurer;

Prohibition against effecting contracts with unlicensed insurers

441 No agent shall effect a contract of insurance with an unlicensed insurer unless he is specifically authorized by his licence to engage in the insurance brokerage business and complies with section 465.

Agents personally liable on certain contracts

442 An agent is personally liable to the insured on any contract of insurance unlawfully effected by or through him directly or indirectly with any insurer not licenced to transact insurance in Saskatchewan, in the same manner as if the agent were the insurer.

Agents hold insurance moneys in trust for insurers

443 An agent who receives any money or substitute for money as a premium for a contract of insurance, other than life insurance, with a licensed insurer shall be deemed to hold the premium in trust for the insurer, and, if he fails to pay the premium over to the insurer within 15 days after written demand has been made upon him therefor, less his commission and any deductions to which, by the written consent of the insurer, he may be entitled, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the insurer.

Payments to unlicensed agents prohibited

444 No insurer and no officer, agent or employee of an insurer and no licensed agent or salesman shall, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person for acting or attempting or assuming to act as an insurance agent in respect of insurance in Saskatchewan unless that person holds at the time a subsisting licence under this Act as an agent or a salesman.

Insurance with Unlicensed Insurers

Tax payable by insured where insurer unlicensed

463 Every person who enters into a contract of insurance with an unlicensed insurer shall pay to the superintendent a tax equivalent to 10% of the premium paid or payable or of the premium note given or of the mutual or other liability assumed under the contract, but if any part of the premium paid is refunded to him by the insurer the insured shall be entitled to a refund of the tax paid by him on the amount so refunded.

Return respecting insurance and payment of tax

464 Every person who enters into a contract of insurance with an unlicensed insurer shall, unless the contract is effected by a licensed agent, forthwith deliver to the superintendent a return thereof in such form, and verified by affidavit or in such other manner, as the superintendent may determine, and remit therewith the amount of the tax payable.

Obtaining insurance from an unlicensed insurer

464.1 A licensed agent may act on behalf of a person, or assist a person, who wishes to enter into or renew a contract of insurance with an unlicensed insurer if:

(a) one of the following circumstances exists:

- (i) sufficient insurance cannot be obtained at reasonable rates from an insurer licensed pursuant to this Act;
- (ii) sufficient insurance cannot be obtained on the terms stipulated by the person from an insurer licensed pursuant to this Act; and

(b) before the person enters into a contract of insurance, the licensed agent obtains a copy of a document that:

- (i) is dated and signed by the person;
- (ii) describes the nature and amount of the insurance required by the person;
- (iii) states that the person understands that:
 - (A) the unlicensed insurer is not subject to regulation pursuant to this Act;
 - (B) the orderly payment of claims may be more difficult than it would be if the person obtained insurance from an insurer licensed pursuant to this Act;
 - (C) the superintendent has no authority pursuant to this Act with respect to the unlicensed insurer;
 - (D) the person will not have the protection of any compensation plan operated by any compensation association designated in the regulations; and
- (iv) contains any further information the superintendent may require.

Return

465 Within 10 days after the end of each month, a licensed agent acting pursuant to section 464.1 shall submit to the superintendent:

- (a) a document that:

- (i) is prepared in accordance with the regulations; and
 - (ii) contains any information prescribed in the regulations; and
- (b) the amount of the tax payable in accordance with section 463

C. Requirements: *Licenses* must:

- 1 have a valid insurance licence of the appropriate class for the *transactions* they are handling. Of the many provisions of the *Act* which *licensees* must follow, this one requires special attention. Activities which fall within the definition of an insurance agent must be performed by a *licensee*. A *person* who does not hold a valid licence as an insurance agent must not act as an insurance agent. Similarly, a Level 1 licensee may not engage in activities beyond those allowed to a Level 1 *licensee*.
- 2 ensure that any employees who are acting as an insurance agent have a valid insurance licence of the appropriate class.
- 3 when acting as the sponsor of a *licensee*, notify *Council* within 5 days if the *licensee* ceases employment or sponsorship is withdrawn.
- 4 hold premiums received from *clients* in trust for the insurer and pay them to the *insurer* as required.
- 5 follow the rules specified in the *Act* if quoting, negotiating or placing insurance with an *insurer* who is not licensed to sell insurance in Saskatchewan.

D. Contraventions: *Licenses* must not:

- 1 remunerate an unlicensed *person* for acting as an agent, through commission sharing, bonuses, gifts or other payments.
- 2 direct or allow an unlicensed employee to act as an agent.
- 3 place insurance with an unlicensed *insurer* unless authorized to do so.
- 4 use premiums collected for their own use or any purpose other than what is agreed by the *insurer* to whom they belong.
- 5 if a Level 1 *licensee*, does Farm/Commercial insurance *transactions* without supervision.

E. Examples of Misconduct

- 1 *Licensee* had licence cancelled indefinitely for continuing to hold himself out as an agent and act as an agent when his licence was suspended and for failing to produce documents demanded in accordance with the Insurance *Act* (S 469 (4)) within the specified time.

F. Situational Guidance

1 Unlicensed insurers:

Insurers who are not licensed in Saskatchewan may be used under conditions strictly regulated in the *Act*. *Licensees* who place insurance with unlicensed *insurers* must be well informed about the special requirements and comply with the relevant *Act* provisions. It is the responsibility of the *licensee* to ensure that any *insurer* used is licensed, even if that *insurer* is represented by a Managing General Agency.

2 Finders' fees and referral fees:

Any compensation paid to non-*licensees* in connection with the sale of an insurance policy may contravene the *Act*. Specifically, the *Act* refers to the 'solicitation or negotiation' of insurance as an activity which requires an insurance licence. Compensation is a broad term and includes payment of money, goods, or services. *Licensees* should not enter into any arrangement where an unlicensed *person* is compensated for soliciting *clients* on their behalf.

"Solicitation" may be defined as "the act of entreating or petitioning, to urge, importune, to ask earnestly or persistently". Each situation must be considered on its own merit, but it is unlikely that simply handing someone a business card or giving them a name and phone number would be considered 'solicitation'. However actions such as repeated contacts or taking a *client* to a *licensee's* premises are likely solicitation.

If a *licensee* pays any referral fees or finders' fees to an unlicensed *person*, the *client* should be informed of the nature and amount of any such fee.

8. Competence

A. The Principle

Licensees must have sufficient and current knowledge and skill to handle a *client's* insurance needs in a manner consistent with industry practice. *Clients* are entitled to rely on the knowledge and recommendations of a *licensee* and to assume, if the *licensee* undertakes to provide service to the *client*, that he or she has the ability, knowledge and capability to handle the *transaction*.

Continuing Education requirements for *licensees* exist to ensure *clients* are properly insured because competence is crucial for the performance of a *licensee's* duties. *Licensees* are expected to take at least the required continuing education courses in good faith and with the objective of improving their knowledge and skills for the benefit of *clients*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (i) fails to reasonably ascertain through prudent fact gathering a consumer's insurance needs;
- (j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;
- (k) fails to reasonably carry out a consumer's lawful instructions;
- (p) fails to maintain proper records;
- (q) fails to follow sound business practices;
- (r) fails to exercise reasonable and prudent oversight and review when acting in a supervisory capacity;

BYLAW 9 – INCOMPETENCE

(1) For the purposes of the Act, the regulations and the bylaws, incompetence is a question of fact, but includes the display by a licensee of a lack of knowledge, skill or judgment of a nature or to an extent that the licensee is unfit to continue in the business of insurance or to provide one or more services ordinarily provided as part of the business of insurance.

C. Requirements: *Licensees* must:

- 1 actively work to retain and gain knowledge of the insurance business, *clients'* risks and insurance products available.

- 2 comply with Continuing Education requirements, with the understanding that these are a minimum requirement. In many situations additional courses are needed to develop sufficient knowledge and skills to ensure competence.
- 3 practice only in areas where they have sufficient expertise.
- 4 decline to act in any area where they lack the resources, knowledge or competence to provide advice and service.
- 5 consult experts where needed.
- 6 advise *clients* to consult experts, including non-insurance professionals such as lawyers, accountants or engineers, where appropriate.
- 7 when acting as *Designated Representatives*, monitor the competence of *licensees* and staff under their *supervision* and ensure that those under their *supervision* have adequate knowledge and training to perform their duties.

D. Contraventions: *Licensees* must not:

- 1 undertake a transaction without the experience and knowledge to handle it.
- 2 allow staff to act in areas where they lack sufficient competence.

E. Examples of Misconduct

- 1 A *licensee* failed to properly place coverage as instructed.
- 2 A *licensee* failed to conduct adequate fact finding and assessment of the *client's* insurance needs.
- 3 A *licensee* sold a policy that was inappropriate given the *client's* stated objectives and circumstances and that a prudent and competent *licensee* would not have recommended.

F. Situational Guidance

- 1 Handling Specialized Risks: In practice, for a specialized or unusual risk, a *licensee* must have both the knowledge to handle the risk and access to markets who have the products, knowledge and ability to insure the risk. Even if a *licensee* can provide advice, assess risks, and evaluate coverage options, if the *insurers* represented do not have the products needed or the ability to write the business, the *licensee* may need to decline to act in the *transaction* or involve another *agency* in the *transaction*. See guidelines on Sub-brokering in Section 17, Dealing with Other *Licensees*, of this *Code*.

9. *Designated Representatives*

A. The Principle

Designated Representatives are responsible for all activities of the insurance *agency* and must ensure an *agency* and its employees are properly supervised and operate in accordance with the *Act*, Regulations, *Council* Bylaws, this *Code* of Conduct and the terms of their licences.

Every *agency* must designate a Level 3 *licensee* to be responsible for the *management* and *supervision* of the *agency*. In the event of misconduct by a *licensee* sponsored by an *agency*, the *agency* and its *Designated Representative* will be held accountable if inadequate *management* or a failing in *supervision* or procedures contributed to the misconduct.

B. Related Bylaws and *Act* Sections

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (r) fails to exercise reasonable and prudent oversight and review when acting in a supervisory capacity;

SCHEDULE A PART I

Section 1. Interpretation

(1) In this schedule:

- (h) “supervision” means reasonable and prudent oversight of insurance transactions.

SCHEDULE A PART II

Section 4. Requirements for a Level 3 All Classes other than Life Agent/ Salesperson Licence

(2) A Level 3 licensee shall not:

- (a) manage an agency unless he or she has at least two years experience as a licensed agent/salesperson within the past five years; or
- (b) manage or supervise more than three office locations.

Section 6. Requirements for an All Classes other than Life Agency Licence

(1) An agency must provide evidence that the agency is registered with the Corporate Registry of the Information Services Corporation.

(2) An agency must designate one Level 3 licensee who is employed predominately by the agency to be responsible for the overall management and supervision of the agency and its office locations.

(3) Failure to designate a Level 3 licensee who is responsible for the overall management and supervision of the agency or its office locations may result in the suspension of the agency's licence.

Saskatchewan Insurance Act

Duty of insurer where licensee ceases to be agent

432(1) When an agent ceases to be an agent of the insurer or general agent named in the agent's licence, the insurer or general agent shall immediately provide to the superintendent a written notice of the cessation setting out the reasons for the cessation.

(1.1) The licence of an agent who has ceased to be an agent of the insurer or general agent named in the agent's licence is suspended from the day on which the superintendent receives the notice mentioned in subsection (1).

Penalty

(2) An insurer or general agent who fails to give such notice within five days after the cessation is guilty of an offence.

Restrictions respecting salesmen

434(1) A person may act as a salesman only for the agent whose name is set forth in his licence and only within the limits of the agent's licence.

C. Requirements: A Designated Representative must:

- 1 have adequate knowledge and experience to fulfill *management* and *supervision* duties competently.
- 2 ensure that *agency* staff are properly licensed, competent and adequately trained to fulfill their duties and serve *clients*.
- 3 ensure that a Level 1 *licensee* is adequately supervised by a competent Level 2 or 3 *licensee* for the classes of insurance which require *supervision*.
- 4 put into place adequate staffing, policies and procedures to establish and maintain proper service to *clients* on all *transactions* and follow this *Code*.
- 5 ensure that all *Council* requirements are met, including but not limited to Errors and Omissions Insurance, Consumer Protection Bonds, Corporate Registration, renewal of Individual *Salesperson* licenses, sponsorship of licenses, Continuing Education, Ethics Training, payment of fees and responses to inquiries, investigations and complaints from *Council*.
- 6 advise *Council* within 5 business days when sponsorship of a *licensee* is withdrawn or employment of a *licensee* is terminated, including the reason for withdrawal of sponsorship.
- 7 consider how adequate *supervision* will be maintained in determining when service is offered to the public, operation of branch offices, and other business models.

- 8 ensure that provisions are made for adequate *supervision* when the *Designated Representative* is not physically present in the office.

D. Contraventions: A *Designated Representative* must not:

- 1 manage or supervise more than three office locations.

E. Examples of Misconduct

- 1 A *Designated Representative* permitted a Level 1 *licensee* to conduct farm/commercial insurance business without proper *supervision* of a Level 2 or 3 *licensee*.
- 2 An *agency* employed someone for 5 months in a licensed capacity without ensuring the person was properly licensed.
- 3 A *Designated Representative* failed to exercise reasonable and prudent oversight in allowing a person to engage in activities which required an insurance license, in contravention of the *Act*, after having been advised by *Council* that the person's suitability to hold a license was unresolved.
- 4 A *Designated Representative* failed to ensure, while acting in a supervisory capacity, that the product recommended was appropriate to the *client's* needs and that the *client's* needs had been placed before those of the *licensee* or *agency*.

F. Situational Guidance

- 1 Absence of the *Designated Representative*:

Adequate *supervision* of *transactions* requires close involvement and oversight. It is understood that *Designated Representatives* sometimes will be absent from the *agency*, either to supervise other branches or to take vacation or sick leave. *Council* will not define acceptable time frames or remote access to a *Designated Representative*. 'Adequate *supervision*' depends on the training, experience, licensing level and competence of the staff being supervised, the complexity of the business being written, the availability of other resources or staff (including *insurer* staff and product experts), and whether the *Designated Representative* can perform necessary *supervision* by telephone, email, or other communications.

- 2 Sale of an Agency:

A Level 3 *Designated Representative* is required for an *agency* to operate, so all parties involved in the sale of an *agency* must consider the availability of a *licensee* with adequate

experience and qualifications, including two years licensed experience. *Council* may consider granting a Conditional Level 3 licence for *licensees* wishing to purchase an *agency* if the *licensee* meets the following criteria:

- a. The applicant must successfully complete two CAIB courses and the bylaw exam; and
- b. Have one year of licensed experience in the insurance industry; and
- c. No other Level 3 *licensee* is sponsored by the *agency*.

3 Suspected misconduct by staff:

When *agency management* becomes aware of a situation where it is known or appears likely that misconduct has been committed by an employee, the *Designated Representative* must above all consider the protection of consumers. The seriousness of the misconduct and the likelihood of future misconduct should guide the *Designated Representative's* actions. If the misconduct is of such a minor nature that the *Designated Representative* feels the employee can continue in his or her role with that *agency*, and decides to continue the employee's employment, the *Designated Representative* thereby undertakes additional responsibility for any subsequent misconduct. If the alleged misconduct results in the termination of the employee's position in the *agency*, the *Designated Representative* must report the situation to *Council* for investigation. To do otherwise allows a *licensee* who may be unsuitable to obtain or maintain an insurance licence, either in Saskatchewan or another province, and is harmful to the protection of consumers.

4 Reasons for withdrawal of sponsorship:

In most cases, the reasons for termination of sponsorship do not raise questions of misconduct or unsuitability. *Council* does not require specific details if termination of sponsorship arises because of poor sales production, tardiness, workplace conflicts or non-insurance matters. However, where the reasons reflect a lack of suitability or potential misconduct, *Designated Representatives* must provide full details to *Council*. See Section 18 of this *Code* on Dealing with *Council* for further information.

5 Criminal Record Checks:

It is recommended that police record checks or criminal record checks be obtained for any *person* working in a *licensee* office, as staff will often have access to confidential consumer information such as financial details and identification.

10. Financial Integrity and Management

A. The Principle

Financial integrity requires honesty and competence in dealing with the financial aspects of the insurance business. *Licensees* must have adequate record keeping and business knowledge to ensure that *clients* and *insurers* are protected from financial *mismangement*. *Licensees* must safeguard the funds and property of *clients* and *insurers*, including premiums collected, account for them properly, and pay or deliver them to the rightful owner when due. *Licensees* must not apply inappropriate financial pressure on *clients* or charge *fees* other than those allowed by the *Act* and Bylaws.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (e) rebates or offers to rebate all or any portion of an insurance premium;
- (f) gives or offers to give anything of value for the purposes of inducing a consumer to make an insurance decision;
- (g) violates any provision of the Act, the regulations or the bylaws;
- (k) fails to reasonably carry out a consumer's lawful instructions;
- (n) fails to disclose to a consumer in writing any fees charged, the amount of the fees, and the reasons for the fees over and above the premium set in the policy by an insurer;
- (q) fails to follow sound business practices;

C. Requirements: *Licensees* must:

- 1 pay to the *insurer* all funds collected or received less any deductions authorized by the *insurer*, such as commission.
- 2 pay or offer to pay to *clients* all funds due to them, promptly and in full. This includes the refund of premiums for policy endorsements or cancellation. Delaying refunds to issue cheques monthly or at other infrequent intervals is contrary to the consumer's interest. If a *client* specifically permits money due to her or him be kept on account and applied to a future billing, that may be done instead of issuing refunds, provided the credit is clearly shown on the future billing or invoice.
- 3 use any funds held in trust for *insurers* only as allowed in a written agreement with the *insurer*.
- 4 prior to the completion of an insurance *transaction*, disclose in writing the amount and reason for any *fees* proposed to be charged to the *client*, over and above the policy premium. Excessive *fees*, even if disclosed, may be considered as 'failing to

place the interests of the consumer before those of the *licensee* and thus constitute misconduct.

- 5 when collecting money from *clients* by cheque or automatic bank withdrawal, disclose any *fees* which will be charged for 'Not Sufficient Funds' or other items refused by the *clients'* bank.
- 6 maintain records of all payments received and monies due to *clients* and *insurers*.
- 7 establish reasonable and consistent procedures for the collection of money from *clients* and communicate these procedures to *clients*.
- 8 handle their personal and business finances appropriately to avoid outstanding judgments, defaults, legal proceedings or bankruptcy.

D. Contraventions: *Licensees* must not:

- 1 encumber money held in trust for *insurers* or *clients*, or use them as security or collateral for a loan, without the prior written consent of the *insurer*.
- 2 use any payment or gift, or offer any payment, gift, or thing of value, to induce, bribe or pressure a prospective *client* to make an insurance decision.
- 3 give or rebate to the *client* any part of the premium payment, change the payment from the premium specified by the *insurer*, or offer to do so.
- 4 request that a policy be cancelled for non-payment of premium unless that specific policy is unpaid and reasonable efforts to collect the premium have been made.
- 5 apply a credit or return premium from cancellation or endorsement of one policy against another policy without the consent of the insured to whom the credit is due.
- 6 charge a fee for changes to a policy or for certificates or confirmation of insurance, or services such as adding additional insureds or loss payees, unless the fee is disclosed to the *client* prior to the policy purchase in accordance with the Bylaws.

E. Examples of Misconduct

- 1 A *licensee* added *fees* to premiums due from 18 *clients* without disclosing the amount and reason for the fee.
- 2 A *licensee* failed to properly manage the business and finances of an *agency*, including failure to remit premiums to *insurers*.
- 3 A *licensee* collected premiums from *clients* and kept the funds, failing to place the policies or forward the premium to the *insurer*.
- 4 A *licensee* had large personal debts and engaged in questionable financial activity soliciting clients to become investors in risky offshore investments.

- 5 A *licensee* requested cancellation of a policy for non-payment even though the premium had been paid, in order to apply the unearned premium to a debt owed by the *client* for another policy.
- 6 A *licensee* failed to refund all the money due to a *client* on a policy cancellation.

F. Situational Guidance

1 Small balances owing or refunds due:

Refunds of any amount are due to the *client*. On *client* request, they may be applied to a future invoice for that policy or another policy in the same name. When the client owes a small balance due to an error or difference in the premium quoted or an endorsement, if the balance is negligible by comparison to the premium, a *licensee* may waive or write off the balance without it being considered rebating. In this context a 'small balance' will normally be the lessor of \$10 or 1% of the premium.

Any situation where there is a promise at the time of purchase to refund or not charge any portion of the premium, regardless of the amount, is rebating and is not allowed. Similarly, any consistent or intentional practice of under-quoting will be considered rebating.

2 Inducements:

It is common practice for *licensees* to give small promotional items to *clients*, or in a community to provide prizes for community events, fundraisers and sports teams. To determine which cases are acceptable 'common practice' and which are an inappropriate inducement it is necessary to look at the value of the item, the value or cost of the policy, the timing of the 'gift' and whether the 'gift' influenced or was intended to influence the *client's* purchase of a policy. Calendars, pens, and other items which are freely available to anyone who enters an *agency* are not inducements.

Other situations must be considered on their own merits. An average reasonable *person* would not consider a \$20 ball cap as an inducement which would affect whether to buy a \$3,000 farm policy. However, the same ball cap may be an inducement to someone buying a \$80 auto policy. A gift given after the purchase of a policy, as long as it was not promised during the solicitation or negotiation of the policy, is less likely to be an inducement than one given before a decision is made by the *client* or at the time the policy is being negotiated.

11. Conflicts of Interest

A. The Principle

A conflict of interest occurs when the best thing for one party is not the best for the other. In insurance, conflicts commonly arise when what is best, easiest, or most profitable for the *licensee* is not what is best for the *client*.

Licensees must place *clients* first, and consider what is best for themselves only as a secondary factor. Similarly, *licensees* must fairly protect the interests of *insurers* even when those conflict with their own interests. A conflict of interest may also exist when a *Licensees'* duty to one *client* or to a third party conflicts with the duty to another *client*.

A conflict may be real, potential, or apparent. A real conflict is present when the best interest of each party actually differs. A potential conflict exists when it is foreseeable that the best interest of each party may differ in the future, depending on circumstances or changes. An apparent conflict is when a reasonable *person* is likely to believe that the situation presents or will present a conflict, even if the *licensee's* actions and responsibilities to the *client* have not been negatively influenced by the situation.

Should there be a real, potential or apparent conflict of interest, *licensees* must disclose all relevant information to *clients* or *insurers* so *clients* or *insurers* can make informed decisions about whether they wish to have the *licensees* act on their behalf. If full disclosure is not possible because of confidentiality or privacy issues for some other *client*, the *licensee* must decline to handle the *transaction*.

Following full disclosure, a *client* may be asked if he or she consents to the conflict and wishes to deal with the *licensee*. Such consent must include details of the conflict of interest, be in writing and be signed by the *client*. Only if the *licensee* fully believes she or he can represent the *client* without the conflict having a negative effect on the *client's* interests should the *licensee* act in the *transaction*.

Full disclosure and consent, in itself, does not remove a conflict of interest. If the conflict is real and will significantly affect a *client's* access to proper coverage or advice, *licensees* must eliminate the conflict, suggest that the *client* seek independent advice, or decline to serve the *client*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licensees or insurance companies; or
- (b) may harm the standing of licensees in the insurance industry.

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (a) engages in any practice that is coercive or has the intended effect of inducing a consumer to making a decision that is not in the best interests of the consumer;
- (f) gives or offers to give anything of value for the purposes of inducing a consumer to make an insurance decision;
- (h) fails to place the interests of the consumer before those of the licensee or others;
- (l) fails to disclose to a consumer or insurer any conflict of interest that may exist;
- (o) fails to deal with consumer complaints or disputes or refer the consumer to the appropriate person or authority or process in a timely and forthright manner;

C. Requirements: *Licensees* must:

- 1 examine the potential for a conflict of interest when entering into a relationship with a *client* or *insurer* and re-examine that potential as circumstances change or new information becomes known.
- 2 avoid involvement in other businesses or professions if through that involvement frequent conflicts of interest may arise.
- 3 inform *Council* about any other occupation or business, providing full details.
- 4 be aware of the potential for any conflict of interest and actively bring the issue to the other party's attention, not waiting until the other party expresses concern.
- 5 provide a full explanation of why there may be a conflict of interest to *clients* and *insurers* whenever there is an actual or potential conflict associated with a *transaction* or a recommendation.
- 6 ensure the *client* fully understands the situation and how a conflict of interest may arise before he or she makes a decision about the insurance.
- 7 ignore differences in commission, compensation, bonuses, contests, prizes or other personal or business benefits in deciding which *insurer* and which coverage is recommended to *clients*.
- 8 deal with any formal or informal allegations of a conflict of interest in good faith, quickly and honestly.

- 9 refer *clients* with whom there is a conflict to *licensees* or *insurers* who can serve them without a conflict of interest.
- 10 unless not a direct-writing *licensee* acting exclusively for one *insurer*, inform *clients* when *licensees* have a relationship with an *insurer* beyond the usual *insurer-agent* contractual relationship or when *licensees* receive any incentive or bonus for placing business with the particular *insurer* whose product is recommended to the *clients* beyond what is received for business placed with other *insurers*.
- 11 if a direct-writing *licensee* acting exclusively for one *insurer*, inform *clients* when *licensees* receive any incentive or bonus for selling a recommended product beyond what is received for other products.
- 12 inform *clients* of any fee or compensation paid to a third party for a referral prior to arranging insurance with a *client* who has been referred by said third party.

D. Contraventions: *Licensees* must not:

- 1 engage in any other occupation or business which will make conflicts of interest likely or common or undermine the *licensees'* independence, integrity, or ability to properly serve *clients*.
- 2 assume that *clients* are aware of business situations which may lead to a conflict and therefore not provide proper disclosure.
- 3 misrepresent the ownership structure and shareholders of their *agency* to *insurers* or *clients*.
- 4 misrepresent any substantial financial involvement by others in the *agency* or by the *agency* in other businesses, which may influence the recommendations, service or information given to *clients*, *insurers* or *other parties*.
- 5 borrow money from *clients*, loan money to *clients*, suggest that *clients* invest in any business or property of the *licensee*, or invest in any business or property of a *client*.
- 6 sacrifice the interests of one *client* to another, regardless of the amount of business with each *client* or other considerations.
- 7 take advantage of a *client's* inexperience, lack of sophistication, lack of education, language barrier or ill health.

E. Examples of Misconduct:

- 1 A *licensee* failed to fully assess a *client's* needs and neglected to advise the *client* of details of the insurance plan because the *licensee* was busy and had other commitments.

- 2 A *licensee* recommended that a *client* accept a total loss settlement on her vehicle rather than have the vehicle repaired because the *licensee's* brother was looking for a similar vehicle to buy and restore.
- 3 While under pressure to meet a volume commitment from an *insurer* or potentially lose that *insurer* as a market, a *licensee* remarketed a number of policies to that *insurer*, to the detriment of some *clients* due to coverage shortfalls and higher premiums.
- 4 A *licensee* insured a homeowner and a large contractor who were engaged in a dispute which could have led to a liability loss for the contractor. When consulted by the homeowner for advice, the *licensee* discouraged the homeowner from further action and did not disclose the conflict of interest between the two *clients*. The *licensee* did not suggest that the homeowner seek legal advice.
- 5 *Licensees* recommended a specific *insurer* to new automobile *clients* and failed to quote other *insurers* because that *insurer* allowed an entry into a contest to win an electronic device with every new auto policy written.
- 6 An *insurer* had a substantial financial interest in an *agency*. The *agency* frequently recommended that *insurer* to *clients* to the detriment of other *insurers* and in some cases when that *insurer* was not the best option for the *client*, without disclosing the *insurer's* financial interest and the resulting conflict of interest.

F. Situational Guidance

1 Disclosure:

Disclosure of a potential conflict of interest should be in writing or confirmed in writing after a verbal disclosure.

2 Agency ownership:

Clients are entitled to know who owns an *agency*. Ownership changes may create a conflict of interest or perception of a conflict of interest in the *client's* mind.

3 Markets:

Adequate disclosure of information about markets represented helps manage and reduce potential conflicts of interest. Information which should be disclosed to *clients* includes:

- a. *Insurers* represented and the name of any *insurer(s)* with which a significant volume of business is placed;
- b. Extent of the search by the *licensee* for a competitive price and suitable product within the markets available to that *licensee*;
- c. Methods of compensation (salary, commission and other arrangements such as contingent profit commission or bonus);

- d. Relationships with *insurers* including ownership, loans and other financial links and non-monetary benefits; and
- e. Situations where the product has been created or is promoted by a *licensee* who also acts as administrator or *insurer* representative of a program.

4 Cancellation of *Insurer* Contracts:

If the reason for changing a *client's* insurance from one *insurer* to another is that the *licensee* no longer represents the original *insurer*, the *licensee* must advise the *client* that this is the case.

5 Business Relationships:

Licensees who are engaged in a business outside their insurance *agency* encounter more frequent conflicts of interest. For example:

- a. a *licensee* who also owns part of an auto body shop will be in a conflict position when a *client* asks for advice about where to get a car fixed or whether their damaged auto should be repaired or written off.
- b. a *licensee* who also operates a travel *agency* will be in a conflict position when a *client* seeks advice about cancelling a trip due to a sudden medical situation. The profitable action for the travel *agency* is to maintain a booking and later claim on Trip Cancellation coverage, whereas the *client* and *insurer* may be better served by immediate cancellation of the trip in question.
- c. a *licensee* who rents space in the *agency* building to another business and also insures that business will be in a conflict position if building damage occurs which may or may not be the fault of the other business.

6 Other occupations:

Clients may feel pressured to buy insurance from a *licensee* if the *licensee* also has another occupation in which he or she may have influence over the *client* or where the *client* may need help, services, favours, or consideration from that *licensee*. Examples of professions falling into this category are teachers, priests, pastors, and other religious professionals, police officers, immigration consultants or officers, elevator agents and grain buyers, doctors or health care workers, and politicians at the federal, provincial, or municipal level. Any occupation other than insurance must be disclosed to *Council* whenever it is undertaken, or ideally before it is undertaken. Where a second occupation creates a risk that *clients* may be subject to undue pressure or coercion, the *licensee* may have to choose between that occupation and being an insurance *licensee*.

7 Personal and Family Relationships:

Clients are often friends or relatives of *licensees*. Personal or family conflicts can lead to situations where the *licensee's* ability to serve the *client* is impaired, or the *client* may have

a perception that the *licensee* may be biased or unfair. Even if there is no financial conflict, an emotional conflict may be a serious matter which *licensees* must deal with professionally and honestly. As with all conflict of interest situations, the first step is open and forthright disclosure and discussion of the situation. *Clients* should be offered the option of dealing with another *licensee* within the *agency* or if that is not satisfactory, with another *agency*. In most cases, the *licensee* can facilitate the transfer of the *client's* insurance to another *licensee* or *agency* without undermining the *client's* protection or causing any extra cost or difficulty for the *client*.

8 Conflicts between Clients:

In any situation where *clients* are in opposition to each other, such as liability claims, *licensees* may find themselves in a conflict of interest simply because they handle insurance for both parties. Examples are auto accidents where fault may be disputed, claims involving a condominium corporation and individual unit owners, disputes between a retailer and their suppliers or a contractor and the building owner or the simple arranging of insurance between a tenant and landlord.

If either party seeks advice from the *licensee* in the matter in conflict, the *licensee* must inform the *client* that they are in a conflict of interest and offer to refer the *client* to another *licensee*, an *insurer* representative such as an adjuster, or suggest the *client* obtain legal advice. In these cases, each *client's* privacy rights must be upheld even though the *licensee* has an obligation to disclose a potential conflict of interest. Personal information, including the simple existence of a coverage or policy, must not be disclosed. Refer to Privacy, Section 6 of this *Code* for more information.

9 A Practical Guideline:

In most cases, **if *licensees* wonder whether a situation should be disclosed as a potential conflict, it should be.** In practice, *licensees* should ask themselves "If the other *person* found out later about this, is there **a chance they might be upset or wonder** if I was being fair to them and giving them my very best advice and service?" If the answer is yes, there is a potential conflict which must be disclosed.

12. Advertising and Respect of the Public

A. The Principle

It is the duty of every *licensee* to enhance the respect of the public for the insurance industry. *Licensees* must conduct themselves professionally, with courtesy and fairness to consumers, to *clients*, to *insurers*, to other *licensees* and to *Council*.

Licensees must represent themselves, their services and their products accurately and honestly at all times. *Clients* are entitled to know with whom they are dealing. Advertising claims must be supported by evidence. Advertising and service delivery methods must always be consistent with integrity, professionalism, and good advice to *clients*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licensees or insurance companies; or
- (b) may harm the standing of licensees in the insurance industry.

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (c) in the course of promoting, selling or servicing insurance business, provides in any advertising or other communications information that is false or misleading;
- (o) fails to deal with consumer complaints or disputes or refer the consumer to the appropriate person or authority or process in a timely and forthright manner;

C. Requirements: *Licensees* must:

- 1 represent themselves or hold themselves out in the name shown on their licence.
- 2 ensure sales materials and advertising are clear and honest.
- 3 encourage public respect for and confidence in the profession of insurance and try to improve the practice of that profession.
- 4 report to *Council* any instance of misconduct under the *Act* or Bylaws in good faith and without malice or ulterior motive.
- 5 attempt to persuade consumers to report potential situations of misconduct to *Council*.
- 6 inform themselves as to the insurance dispute resolution options available to consumers, including appraisal, arbitration, ombudservices, *Council*, and the Superintendent of Insurance. *Licensees* must advise *clients* and other members of

the public of these options when this advice may assist to resolve a consumer complaint or dispute.

D. Contraventions: *Licensees must not:*

- 1 represent themselves or their *agency* as having expertise in a given area or having certain qualifications unless such statements are fully supported by fact.
- 2 advertise products, services, or prices which cannot be provided or are subject to any qualifications which are not clearly disclosed in the advertising.
- 3 misrepresent the size of their firm, access to markets, ability to 'shop the markets', or the *insurers* available to them.
- 4 defame or discredit the industry, *insurers* or other *licensees*.
- 5 make false or misleading statements in the solicitation or negotiation of insurance.
- 6 communicate in an abusive, offensive, or unprofessional way in the course of business.
- 7 engage in harassment or unlawful discriminatory practices.
- 8 engage in any other activity, occupation or business which may bring the insurance industry into disrepute or undermine the faith of *clients, insurers* or *other parties*.

E. Examples of Misconduct

- 1 A *licensee* advertised that he or she had a branch in a city where there was no actual branch.
- 2 A *licensee* published printed material which, taken at face value, was liable to damage the reputation of *persons* engaged in the insurance business, alleging that insurance companies practiced sneaky price increases and robbed *clients* with high premiums.
- 3 Conviction for a criminal offense, unrelated to work in the insurance business, brought into question professional integrity and suitability to act as a *licensee*.
- 4 A *licensee* used an incomplete and misleading comparison of a potential *client's* policy with a policy from another *insurer* in order to induce a *client* to cancel a policy.

F. Situational Guidance

- 1 Contests, Raffles, Incentives and Gifts: Contests or raffles are allowed provided that they do not contravene the prohibition against an 'inducement'. Entry must be allowed to any adult member of the public who comes to the office or website and wishes to enter. Entry cannot be contingent on purchase of a policy or on negotiation or obtaining a quote for an insurance policy. For further guidelines on incentives and gifts, see Financial Integrity and Management in this *Code*.

- 2 Business Names and Operating Names: *Licensees* must operate in the name shown on their licence and the name shown must not be misleading to consumers. For example, if a *licensee* uses the name 'Jane Smith and Associates', consumers can reasonably expect that Jane Smith has associates working with her. Similarly, if a *client* sees a sign or advertising from a *licensee*, that *client* should be able to identify the *licensee* under the same name in a *Licensee Search* on *Council's* website. Corporate names, partnerships, subsidiaries or other operating names, such as those used on websites or for branch offices, must be properly registered to the legal entity and must be reflected in the business' insurance licence. There should be no doubt in the *client's* mind about the nature or identity of an entity involved in the *transaction*.

13. Handling Claims

A. The Principle

Just as a *licensee* must always act in the best interest of the *client* in selling insurance, a *licensee* must also act in the *client's* best interest in claims situations.

At the same time, *licensees* must fully disclose all relevant information to *insurers* in reporting claims. It is in the best interest of consumers and the insurance industry to ensure that fraudulent and inflated claims are not paid, and *licensees* are obligated to cooperate in reducing claims fraud.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (h) fails to place the interests of the consumer before those of the licensee or others;
- (j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;
- (k) fails to reasonably carry out a consumer's lawful instructions;
- (l) fails to disclose to a consumer or insurer any conflict of interest that may exist;
- (o) fails to deal with consumer complaints or disputes or refer the consumer to the appropriate person or authority or process in a timely and forthright manner;

C. Requirements: *Licensees* must:

- 1 report claims promptly.
- 2 provide all relevant information to the *insurer* when reporting a claim.
- 3 when a claim is made, give *clients* advice on the immediate protection of *persons* and property, on the claims process and, if relevant, on the impact the claim may have on future premiums.
- 4 follow the instructions of the *client* in reporting a claim, even when the opinion of the *licensee* is that a claim may not be covered or may adversely affect the *client's* insurability or premium.
- 5 when a *client* requests information about his or her claims history, promptly and accurately provide the information which is available to the *licensee*, even if the *client* needs the information to place his or her insurance elsewhere.
- 6 be aware of and deal appropriately with any conflicts of interest in providing claims service, giving advice on repair, replacement or valuation, or in situations where two *clients* may be involved in a claim.

- 7 provide reasonable assistance to *clients* to facilitate fair settlement of claims, including referring *clients* to all appropriate dispute resolution options.

D. Contraventions: *Licensees* must not:

- 1 use any practice or conduct that results in delays or problems with the fair adjustment of claims.
- 2 counsel a *client* to misrepresent any aspect of a claim report or proof of loss.
- 3 withhold information relevant to a claim from the *insurer* or *insurer's* representative.
- 4 provide legal advice or discourage *clients* from seeking legal advice when a claim is in dispute.
- 5 undermine or malign the reputation of adjusters or *insurers*.

E. Examples of Misconduct

- 1 *Licensee* advised a *client* to fraudulently falsify a date of loss to bring a claim into the coverage period on a new auto insurance policy.
- 2 A *licensee* discouraged *clients* from making legitimate insurance claims, or delayed them from being reported, to preserve a contingent profit commission offered by the *insurer*, thereby prejudicing the *client's* interests.
- 3 A *licensee* failed to report a claim within the statutory limit, prejudicing the *client*.

F. Situational Guidance

1 Assisting with Claims:

Although *agencies* and salespeople may not act as adjusters and are not expected to take on adjusting duties, information available to the *licensee*, their files and their knowledge of the *client's* situation, coverage and policy may be essential for fair resolution of a claim. It is appropriate and expected that *licensees* will

- advocate for *clients* to ensure that the coverage purchased by a *client* is fulfilled at the time of a loss
- assist adjusters by providing file information as permitted by the client and/or privacy constraints.

14. Dealing with *Clients* (including Prospects) and Quality of Service

A. The Principle

Licensees must make sufficient inquiry into *clients'* insurance needs to provide appropriate advice and recommend suitable products. *Licensees* must give *clients* fair, accurate and complete information about the insurance products available to them in order for the *clients* to make informed decisions about their insurance.

Licensees must document needs assessment, sales process, and subsequent service. Service should be provided promptly and efficiently and in a manner which assures integrity and effectiveness. The interests of the *client* must be paramount at all times.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (a) engages in any practice that is coercive or has the intended effect of inducing a consumer to making a decision that is not in the best interests of the consumer;
- (h) fails to place the interests of the consumer before those of the licensee or others;
- (i) fails to reasonably ascertain through prudent fact gathering a consumer's insurance needs;
- (j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;
- (k) fails to reasonably carry out a consumer's lawful instructions;
- (p) fails to maintain proper records;
- (q) fails to follow sound business practices;

C. Requirements: *Licensees* must:

- 1 conduct fact finding appropriate to the circumstances and adequate for an assessment of the *client's* insurance needs.
- 2 recommend suitable product options which fulfill the *client's* needs.
- 3 advise *clients* of all quotes obtained which would reasonably meet their needs.

- 4 explain to the *client* and document the reasons for recommending a particular product, including the facts and assumptions upon which the recommendation is based.
- 5 explain the coverage, exclusions, limitations and conditions of the product recommended and, where a comparison is made with other products, explain differences in coverage, exclusions, limitations and conditions between products.
- 6 maintain adequate records of relevant information about the *client*, the *client's* needs, and the sales process, including (but not limited to) documentation of all conversations and telephone calls with the *client* and with *insurers*, documentation of all quotations requested or received, all emails and correspondence, and all application forms and policy documents.
- 7 check all policies for accuracy and consistency with the application.
- 8 inform *clients* of any situation where the policy differs from the application or quote and of changes in a policy which occur during a policy term or upon renewal.
- 9 deliver insurance policies or evidence of insurance coverage within a reasonable time and in accordance with any requirements of the *licensee's* agreements with *insurers*.
- 10 respond to *client* inquiries or messages promptly and inform the *client* if an undue delay or impediment in providing prompt service is foreseen.
- 11 provide evidence of insurance upon *clients'* requests.
- 12 conduct a reasonable review on renewal to identify and act upon any changes in the *clients'* needs.
- 13 inform *clients* immediately if the *licensee* is unable to renew the *client's* insurance on the same or very similar terms and conditions. This notification must allow the *client* adequate time to investigate other coverage or quotes and should be at least 30 days prior to the policy expiry date.
- 14 inform *clients* if a policy renewal will be late.
- 15 inform *clients* prior to renewal of any change in *insurer* upon renewal and the reason for such change, including specifically if the *licensee's* contract with the *insurer* is cancelled.
- 16 give *clients* details of which *insurers* have been approached and which *insurers* quoted and, if only one *insurer's* product is offered, inform *clients* that this is the case.
- 17 inform *clients* of any other *licensee*, intermediary, or third party involved in the placement of the *clients'* insurance and the nature of their involvement.
- 18 maintain *client* records and files so information is complete, accessible and organized.

D. Contraventions: *Licensees* must not:

- 1 promise results or services which the *licensee* cannot fulfill.
- 2 assume that the coverage on *clients'* prior policies is adequate or suitable to the *clients'* needs. Evidence of prior coverage does not constitute adequate fact finding to ascertain the *clients'* needs.
- 3 coerce a *client* to make an insurance decision by any means, including 'tied selling' (where the insurance product is contingent on another purchase or action or another product or benefit is contingent on the insurance purchase) or coercion through any professional or business relationship.
- 4 ask *clients* to sign applications for insurance which are not completely filled out. If information is not available, those sections of the application form must be noted as 'To Be Advised' or 'information to follow' prior to the *client* signing the application.

E. Examples of Misconduct

- 1 A *licensee* used the term 'guaranteed' without qualification when there was no evidence to support the statement.
- 2 A *licensee* failed to meet deadlines to the prejudice of a *client*, failing to effect insurance on time and to communicate recommendations from inspection reports.
- 3 A *licensee* handling a builder's risk policy failed to inform new home purchasers of the details of coverage or that they could reject the policy in favor of coverage from another source.
- 4 A *licensee* failed to inform *clients* that a policy warranty was a condition of coverage.
- 5 A *licensee* and the business where the *licensee* was employed offered inducements to a *client* which caused the *client* to make decisions not in his best interest and to invest in a business owned by the *licensees*.

F. Situational Guidance

1 Withdrawing services:

Licensees are entitled to decide whether they will look after a *client's* insurance requirements provided there is no unlawful discrimination involved. If a *licensee* chooses to terminate a business relationship with a *client*, the *licensee* must do so in a manner that does not prejudice the interests of the *client* and allows for an orderly transfer of the *client's* insurance elsewhere.

Licensees must notify the *insurer* or *insurers* that renewal through the *licensees' agency* is not required before renewals are processed or issued by the *insurer*. In most cases it is not appropriate to give reasons for withdrawal of services.

Licensees must give *clients* adequate notice of the intention to withdraw services and provide to the *client* his or her personal information as requested, including claims histories, policy copies, or schedules of vehicles, equipment or other property. *Council* recommends 60 days notice be given and that the notice be by Registered Mail.

2 Portfolio transfers:

When many policies are being transferred from one *insurer* to another, *licensees* must ensure that each *client's* needs are considered individually. As noted above, *clients* must be informed in advance of a change of *insurer* on renewal. *Council* recognizes that in some cases changing a portfolio of business prevents any gap in coverage and provides *clients* with better prices or coverage than might otherwise be available. However, differences in coverage, exclusions, limitations or conditions between the two *insurers* must be explained to each *client*. *Council* recommends that consent be obtained from each *client* and each *client's* needs considered prior to changing *insurers* on renewal. Where *clients* pay by bank withdrawal, changes must be made well in advance to avoid payment duplication or problems.

3 Cancellations:

The Statutory Conditions for general insurance policies as laid out in the *Act* specify that policies, once issued, can be cancelled by the insured with a written request or by the *insurer* with notice *personally* delivered or by registered mail. If a policy renewal has been issued, that document is normally a binding policy and follows the same rules. *Licensees* should note that there is no option for an agent to cancel a policy, even if the policy document is returned to the *insurer*.

In many cases, *insurers* will agree to issue a registered letter cancellation notice upon the request of a *licensee* if the policy has not been paid, and to backdate the premium credit granted to the *agency*. This type of cancellation, regardless of the timing of the request, is a cancellation by the *insurer* and must follow the Statutory Conditions for such a cancellation, which usually means a registered letter with 15 days notice. The return of policy documents to the *insurer* does not change the Statutory Condition requirements. While *licensees* are not responsible for situations where *insurers* do not comply with the Statutory Conditions, *licensees* must be sure their own conduct complies with the *Act*.

Where cancellation is requested by the insured, *Council* highly recommends for the protection of *licensees* that signatures of all insureds and loss payees are obtained in compliance with the *Act*. If this is not possible, a request for a registered letter cancellation notice to any parties who have not signed a cancellation request should be made to the *insurer*.

4 File retention:

The time period for which inactive and cancelled files should be kept depends on the situation, whether files are paper or electronic. The basic principle is that **files must be kept as long as the file may be needed to resolve a consumer's problem.**

The following additional information may be helpful for licensees:

- The *Act* allows prosecution or disciplinary action for up to 3 years from the date the facts of a misconduct situation came to the knowledge of the Superintendent or Council.
- The *Act* specifies that the time allowed under the *Limitations Act* for an action against an *insurer* starts once the final determination of a liability claim has occurred.
- All insurance policies must comply with the *Limitations Act* of the Province of Saskatchewan.
- Under the *Limitations Act*, most actions must be commenced within 2 years from when the claimant knew or ought to have known about the occurrence, the causes of the occurrence, and who might be held responsible.
- Because the claimant may not know enough to file a lawsuit for many years, the *Limitations Act* provides an ultimate limitation of 15 years from the date of the act or omission.
- For minors, persons incompetent to manage their affairs, and in the case of domestic assault or sexual assault, the limitation period does not apply, so effectively a lawsuit may begin decades after an occurrence.

As an ordinary example of the legislative provisions summarized above, let's assume that George's steps are unsafe and while visiting Melanie is injured. Melanie has 2 years from the date of an accident to sue George. If after a year's investigation, George's *insurer* denies coverage for misrepresentation on the application for home insurance, George has 2 years from the date of denial to sue the *insurer* and, depending on the situation, perhaps the agent or broker. In this case, it could 2+1+2=5 years from the accident before the agent/broker knew a lawsuit was being filed. If Melanie was 6 years old at the

time of the accident, she will be a minor until the age of 18, the time delay could be $12+2+1+2=17$ years. Council suggests that the prudent course for licensees is to scan paper documents and maintain electronic files for as long as possible.

Licensees may wish to obtain legal advice for their particular situation or for any complex files. *Licensees* must follow all requirements for privacy and protection of personal information both in keeping and in discarding *client* files.

Where a file is involved in a disciplinary investigation, no material from that file can be destroyed, discarded or removed without the approval of *Council*.

2 Binding Coverage:

In addition the usual documentation of all conversations with clients and insurers, written confirmation of any situation in which coverage has been bound should be sent promptly to the client and the insurer, including the coverage details and any conditions under which the binder has been agreed.

15. Dealing with *Insurers*

A. The Principle

Licensees must fully and accurately disclose all material information to *insurers*, represent the *insurers'* products fairly, follow the *insurers'* procedures and any authority granted to them by *insurers*, and promptly pay premiums, deliver documents and report claims.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

(a) contrary to the best interests of the consumer or licensees or insurance companies;

(b) may harm the standing of licensees in the insurance industry.

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

(j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;

(l) fails to disclose to a consumer or insurer any conflict of interest that may exist;

C. Requirements: *Licensees* must:

- 1 make reasonable enquiries into a risk to provide adequate information to *insurers* for underwriting decision-making.
- 2 fully and accurately disclose all material information to *insurers*.
- 3 fully and accurately complete forms and applications required by *insurers*.
- 4 if an irreconcilable conflict of interest develops between a *licensee's* duty to an *insurer* and the *licensee's* other duties, the *licensee* should decline to act in the *transaction*.
- 5 provide consistent information to all *insurers* asked to quotes on a specific risk.
- 6 observe the underwriting rules and requirements of the *insurer*.
- 7 inform *insurers* about sub-brokering arrangements as outlined in Section 17 of this *Code*.

D. Contraventions: *Licensees* must not:

- 1 withhold material information from the *insurer*, even if the *insurer's* application form does not specifically request that information.
- 2 defame or discredit *insurers*. *Licensees* may provide accurate and supported information to *clients* to enable *clients* to make informed decisions about their insurance, but where such information includes disadvantages of an *insurer* or their products, the information must be supported by facts and provided in a fair and professional manner.
- 3 interfere with or undermine the *insurer's* lawful authority to select risks, set rates, and settle claims.
- 4 exceed binding authority or bind risks with *insurers* who have not specifically granted binding authority to the *licensee*.
- 5 bind risks without promptly submitting full information to *insurers*.

E. Examples of Misconduct

- 1 A *licensee* failed to remit to the *insurer* all premiums collected or received in accordance with the terms of the *agency's* agreement with the *insurer*.
- 2 A *licensee* offered and bound terms which were not authorized by the *insurer*.
- 3 A *licensee* altered inspection dates on livestock mortality applications.
- 4 A *licensee* backdated an insurance application.
- 5 A *licensee* failed to inform the *insurer* when the occupancy of a home changed.

F. Situational Guidance

1 Trust Accounts:

Although trust accounts are not required under the Saskatchewan Insurance Act, Council recommends that premiums collected be kept in a bank account separate from the Licensee's operating account. Commissions due to the Licensee should then be transferred monthly to the operating account after insurer statements are reconciled and paid. This provides assurance to the Licensee and to Council that premiums collected remain the property of the insurer.

16. Dealing with Interested Third Parties

A. The Principle

Clients must authorize any situation where an *interested third party* receives information or is given any benefit or involvement in the insurance policy. Interested third parties are due the same duty of honesty and competence as *clients*. When the interests of a third party are in conflict with the interests of a *client*, the *client's* interest is paramount. In those situations, *licensees* must inform the *client* about the conflict and explain the *client's* interests and options and take direction from the *client*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (c) in the course of promoting, selling or servicing insurance business, provides in any advertising or other communications information that is false or misleading;
- (h) fails to place the interests of the consumer before those of the licensee
- (j) fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision;
- (k) fails to reasonably carry out a consumer's lawful instructions;
- (l) fails to disclose to a consumer or insurer any conflict of interest that may exist;
- (m) fails to protect a consumer's personal information or divulges personal information about a consumer unless authorized to do so by the consumer or as required by law;

C. Requirements: *Licensees* must:

- 1 ensure that any request for information on a *client's* policy or addition of an *interested third party* to a policy is authorized by the *client*.
- 2 honestly and promptly respond to authorized requests for confirmation of insurance, addition of loss payees or other service required by *clients*.
- 3 forward copies of policy documents provided by the *insurer* to *interested third parties*.
- 4 promptly advise any *interested third party* who is shown on the policy, whether in the capacity of a loss payee or an additional insured, when a policy is being cancelled, and where appropriate, seek signatures from the *interested third party*.

- 5 in situations where the *interested third party's* request is not in the best interest of the *client*, provide an explanation of the situation to the *client* and seek specific instructions from the *client* prior to acting.
- 6 confirm the continuing involvement of *interested third parties* in a policy on renewal.

D. Contraventions: Licensees must not:

- 1 reveal any personal or confidential information to an *interested third party* beyond what is authorized by the *client*. In most cases the only information *interested third parties* are entitled to receive is a copy of the policy or summary of the relevant coverage on the policy.
- 2 discuss with an *interested third party* any problems with the policy including payment delays.
- 3 amend policy coverage at the request of an *interested third party* without a full discussion and express consent of the *client*.

E. Examples of Misconduct

- 1 A Licensee added farm equipment to a farm policy at the request of the equipment dealer without specific consent or instruction from the client. The coverage added was sufficient to cover the financed amount but left the client seriously underinsured and with co-insurance penalties.

F. Situational Guidance

1 Additional Insureds:

Interested third parties may request rights or provisions under a *client's* policy which are not in the best interest of the *client*. For example, a landlord may ask to be added as an additional insured to a tenant's policy with the provision that the tenant's insurance will be primary and cover the landlord even if the tenant is not negligent, or a contractor may request a waiver of subrogation from a building owner. In these cases the *client's* limit of coverage may be exhausted to protect the third party, leaving the *client* without liability protection. *Licensees* must inform the *client* when an *interested third party's* request is contrary to the *client's* interest, and where appropriate suggest that the *client* seek legal advice to negotiate a more equitable contract or take other steps to protect his or her interest such as increasing coverage limits.

2 Lenders, Lessors and Mortgage Companies:

In all cases the client's interest must be the primary concern of Licensees and instructions directly from the client are essential in order to change, add, or delete coverage.

17. Dealing with Other *Licenses*

A. The Principle

Licenses as a group represent the insurance industry to consumers. *Licenses* must treat fellow *licenses* with honesty, courtesy, and respect, promoting the integrity of and public respect for the insurance profession. If a *licensee* is aware of misconduct by a fellow *licensee*, in the interest of consumer protection the *licensee* has a duty to report the misconduct to *Council*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licenses or insurance companies; or
- (b) may harm the standing of licenses in the insurance industry.

C. Requirements: *Licenses* must:

- 1 use professionalism and respect in all communications with other *licenses*, including competitors.
- 2 maintain as the primary concern what is best for *clients* in all dealings with other *licenses*.
- 3 disclose to *clients* and *insurers* any arrangements to involve a *licensee* from another *agency* in an insurance *transaction*.
- 4 ensure that any other *licensee* involved in an insurance *transaction* is properly licensed and competent to handle the *transaction*. If the other *licensee* is not licensed in Saskatchewan, a *licensee* must verify whether the other *licensee* requires Saskatchewan licensing given the location of the risk and the *client* involved.
- 5 maintain the integrity of the insurance profession in treatment of other *licenses*.

D. Contraventions: *Licenses* must not:

- 1 defame or discredit other *licenses*. Fair and accurate information offered solely for the purpose of assisting a *client* to make an informed decision about his or her insurance is not necessarily considered defamatory or discrediting.
- 2 use disciplinary information from Council to discredit a *licensee*.

- 3 reserve or block markets without the *client's* consent or unfairly and with no reasonable intent to obtain or use a quotation from that market, to prevent other *licensees* from obtaining quotations on behalf of a *client*.

E. Examples of Misconduct

- 1 A *licensee* used Discipline information in a *Council* Bulletin to discredit another *licensee*.
- 2 A *licensee* failed to inform an *insurer* that a *transaction* was being handled through a sub-brokering arrangement.

F. Situational Guidance

1 Replacement on Renewal:

When a *client* decides to change insurance coverage on renewal from one *insurer* or *agency* to another, the *licensee* handling the new policy must take reasonable steps to ensure that the previous policy is cancelled and the *client* is not subject to ongoing premium charges on the previous policy. This should include informing the *licensee* who previously handled the policy that the *client* is changing *licensees*, with either a signed cancellation release, the renewal policy signed for cancellation, or confirmation that one of those two documents has been sent to the previous *insurer*. Failure to do so is contrary to the *client's* best interests and discourteous to the previous *insurer* or *licensee*.

2 Broker Appointment Letters:

Brokerage Appointment Letters or Broker of Record Letters are used to inform existing *insurers* or *insurers* who have quoted a risk through one *licensee* (called the original *licensee*) that the *client* wishes the *insurer* to quote or place the policy with another *licensee* (called the new *licensee*). The letter authorizes an *insurer* to deal only with the new *licensee* on behalf of that *client* and risk or type of policy. Broker Appointment Letters must be clear, must reference the specific *insurer* and risk or policies involved, and must specifically state that the original *licensee* will no longer be allowed to negotiate or act on behalf of the *client*. *Licensees* must accurately represent and explain to the *client* the nature and implications of a Broker Appointment Letter.

3 Sub-brokering:

In a sub-brokered *transaction*, both *licensees* have responsibilities to the *client* and the *insurer* and both must ensure all aspects of the insurance *transaction* are conducted properly. While both *licensees* share this responsibility, each has primary responsibilities. Both *agencies* must be licensed and satisfy themselves that the other is properly licensed.

All *licensees* must satisfy themselves that the other *licensee* is capable of fulfilling his or her obligations. Should one party fail in its obligations, the other is obligated to step in and do what is necessary for the protection of the *client*.

Producing *licensees* deal with *clients* and are primarily responsible to:

- conduct fact-finding appropriate to the circumstances
- assess *clients'* needs and provide advice and recommendations
- complete all application forms
- provide all material information to contracting *licensees*
- check and deliver insurance documents to *clients*
- collect premiums and forward them to contracting *licensees*
- return unearned premiums on endorsement or cancellation to *clients*
- sign a declaration of sub-brokering and provide a copy to *clients*
- provide service and advice on a claim

Contracting *licensees* deal with *insurers* and are primarily responsible to:

- satisfy themselves that the risk information is accurate and complete
- provide all risk information to *insurers*
- bind coverage with *insurers*
- issue covernotes, certificates of insurance or coverage confirmation as needed
- check and deliver policy documents to producing *licensees*
- collect premiums from producing *licensees* and pay to *insurers*
- prepare and sign declarations of sub-brokering, provide copies to producing *licensees*, and forward signed copies to *insurers*
- cooperate in providing claims service and where necessary advocate with the *insurer* on behalf of the *client*

Declarations of Sub-brokering must include the following information:

- date, insured name and address, description of the risk and type of coverage;
- name, address, telephone and other contact information of producing and contracting *licensees*, and *insurer(s)*, signatures of producing and contracting *licensees* and dates signed
- confirmation that the *insurer* and insured are aware of the sub-brokering arrangement and will receive a copy of the declaration.

18. Dealing with *Council*

A. The Principle

The Government of Saskatchewan has entrusted *Council* to set and enforce standards of professional conduct in the insurance industry for the protection of consumers. *Licensees* benefit from a degree of self-regulation under the *Act* and Bylaws. Successful protection of consumers requires the co-operation and support of all *licensees*.

Licensees and former *licensees* must respond promptly, fully, and honestly to inquiries from *Council*. *Licensees* must comply fully and in good faith with licensing regulations.

Information about licensing is open to the public.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licensees or insurance companies; or
- (b) may harm the standing of licensees in the insurance industry.

(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (d) makes a material misstatement in an application for licence or report to continue a licence;
- (s) fails to reasonably respond to inquiries from council.

C. Requirements: *Licensees* must:

- 1 respond promptly and honestly to inquiries from *Council*.
- 2 complete all licensing applications and other forms fully and accurately.
- 3 maintain Errors and Omissions insurance in accordance with the Bylaws and provide evidence of insurance to *Council* immediately upon request.
- 4 advise *Council* of any delay or difficulty in meeting E & O insurance requirements.
- 5 advise *Council* of any change in personal situation or the status of a question on a licensing application, including address, initiation or settlement of bankruptcy procedures, commencement of civil actions against the *licensee*, criminal charges, other licensing investigations or discipline, or entering a business or employment outside the insurance industry.

- 6 maintain certificates and records of Continuing Education and provide these on request.
- 7 comply with any conditions or requirements placed on their licence.
- 8 assist in providing information during the course of an investigation into misconduct by another *licensee* if requested by *Council*.
- 9 if asked to serve on an Investigation Committee, Complaint Review Committee, or Discipline Hearing Committee, disclose any conflict of interest, prejudice or prior involvement with the parties which might influence the proceedings or findings of the Committee.

D. Contraventions: *Licensees* must not:

- 1 mislead or attempt to mislead *Council*.
- 2 make material misstatements in any licence application or other licensing form or in response to any request for information from *Council*.
- 3 delay an investigation through deliberate, unwarranted or excessive delays in responding to inquiries or providing access to files.
- 4 divulge any information to any party other than *Council* during the course of a *Council* investigation up to and including a Complaint Review.
- 5 discourage any consumer from complaining to *Council* about a *licensee*.

E. Examples of Misconduct

- 1 A *licensee* failed to maintain errors and omissions insurance.
- 2 A *licensee* falsely reported completion of courses to meet Continuing Education requirements.
- 3 A *licensee* failed to notify *Council* when a civil action relating to breach of contract in insurance employment was commenced against him or her.
- 4 A *licensee* failed to notify *Council* when the insurance regulator in another province commenced proceedings against him or her.

F. Situational Guidance

1 Client Privacy Concerns:

In order to investigate potential misconduct and consumer complaints, *Council* has the right to examine *client* files, a *licensee's* accounting records, and all other information gathered, produced or used by *licensees* in the course of their insurance operations. Requests from *Council* constitute a lawful request for information and personal information of *clients*, *licensees* or employees must be provided to *Council*. *Council* will inform *clients* if necessary about the use of their personal information for regulatory purposes and protect *client* information from unauthorized use.

2 Public Information:

According to the *Act*, a register of *licensees* must be available to the public. This includes

1. The *licensee's* name and address for service and the class of licence held.
2. The name and address for service of the sponsoring agent, *insurer* or adjuster, where sponsorship is a requirement of licensing.
3. Terms and/or conditions that have been applied to the licence.
4. The status of a licence (i.e., active, suspended, cancelled or expired).
5. Any formal disciplinary action, recorded on a *licensee's* record, such as letters of warning, licence suspensions, cancellations or other orders of a Disciplinary Hearing Committee confirmed by *Council* (except Cautionary Letters of Warning).

During the course of a disciplinary process, information received up to and during a Complaint Review is confidential. If the Complaints and Investigation Committee directs a letter of warning and the appeal period for that decision expires, the letter of warning becomes public information.

If a complaint is referred to a Disciplinary Hearing Committee, the time and place of the hearing and nature of the complaint is public information. Hearings are open to the public and hearing decisions are public information. Similarly, Consensual Agreements are public.

3 Reports of potential misconduct or unsuitability:

It is understood that in many cases, misconduct has not been proven, but the situation is such that it looks like the most likely explanation. Those who discover a situation where misconduct seems likely should remember that it is *Council's* responsibility, not the responsibility of another *licensee*, to investigate and determine whether misconduct has occurred, and also to determine the severity of the misconduct. *Licensees* are encouraged to report to *Council* as soon as a situation arises rather than seeking more evidence on their own. This avoids possible allegations that information was withheld from *Council* or that a *licensee* caused a delay which affected *Council's* ability to gather evidence or witness statements and placed more consumers at risk. In reporting possible situations of misconduct or unsuitability, whether by fellow *licensees* or staff, a *licensee* should give *Council* the facts as they are known or understood by the *licensee* and avoid personal opinions or conjecture.

4 Licensees' access to own information from Council:

Licensees have the right to access information about themselves held by *Council*, with the exception of limited circumstances where such access may be harmful to a consumer.