

Restricted Insurance Agents Errors and Omissions Lapses: Sanctions

The General Insurance Council of Saskatchewan ("Council") has oversight of Restricted Insurance Agents ("RIA"). Council has consistently communicated the importance of the mandatory requirement that RIA licensees hold a valid policy of errors and omissions insurance ("E&O"). However, on occasion Council staff deals with licensees who allow their E&O policies to lapse.

A Restricted Insurance Agent, that allow their mandatory E&O policies to lapse will be subject to a minimum base fine of \$2,000 for each lapse.

E & O renewals must be received by the Council no later than the renewal date of the policy. If an in-force policy is not received on or before renewal date, the Licensee may have their licence suspended.

The Insurance Act (the "Act"), *The Insurance Regulations* (the "Regulations"), and the Council Bylaws are specific with respect to the requirement that a Restricted Licensee must continuously maintain an in-force E&O policy.

Section 5-26 of the Act

- (1) Every business and individual that applies for or holds an insurance intermediary's license shall meet and maintain the prescribed financial security requirements.
- (2) This section does not apply with respect to:
- (a) a licence issued to an employee of a licensed insurer; or
 - (b) a licence for a prescribed class of insurance or for a prescribed category of licence holder.

and

Section 5-23(1) of the Regulation

Subject to subsection (2), every business that applies for or holds a restricted insurance agent's licence shall maintain and provide annually proof of a valid policy of errors and omissions insurance that:

- (a) provides a minimum of \$1,000,000 coverage with respect to any one occurrence and a minimum aggregate limit of \$2,000,000 with respect to all occurrences within a year;
- (b) covers the insurance activities of the licensee; and
- (c) is underwritten by an insurance company licensed to do business in Canada.

The Bylaws of Council are specific with respect to the requirement that a RIA must continuously maintain an in-force E&O policy.

8-1(1)(c) of the Bylaw, speaks to the fact that all licensees are to maintain and provide annually, proof of a valid policy of errors and omissions insurance that meets the following requirements:

- (1) A licensee shall provide to GICS, on or before the annual reporting date shown on the

licence:

(g) if the licensee is a Restricted Insurance Agent, copies of all agency contracts entered into since the licensee's last annual report, pursuant to clause 5-70(2)(b) of the Act.

(2) A licensee who has not met all the requirements of section 8-1 within 30 days of the annual reporting date shall have his, her or its licence cancelled

The risks associated with not maintaining an E&O policy are significant. E&O Policies are claims-made policies, and cover claims that are made during the policy term. The loss may have occurred in the past, but as long as it is reported during the current policy term, it can trigger coverage. In order to maintain coverage, the policy must stay in force. If the policy is not kept in force and there is a lapse, the licensee may find that they may not have coverage for losses which occurred prior to the lapse.

What if a licensee switches E&O carriers?

- As long as E&O is continuously maintained, (i.e. with no lapses), the current insurer should cover any claims that arise, even if the event triggering the claim happened when the RIA licensee was insured through a different carrier. If a licensee changes carrier the licensee must ensure that the new carrier includes continuous coverage within the new policy.
- If the E&O policy is allowed to lapse, no insurer is responsible for any claim that arose before and during the E&O lapse, leaving the RIA licensee uninsured for any such claim(s).
- Some E&O insurers will provide "past acts" coverage but this does not change the fact that the RIA licensee still has a lapse in coverage and is in violation of Council's bylaws.

With respect to switching E&O carriers, a licensee should ensure that they are familiar with the coverage provided through their new carrier. This includes ensuring that the new coverage is equal to or greater than the previous coverage.

Questions regarding E&O and sanctions for lapse of E & O coverage should be directed to:

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