

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.

Adjuster 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 the minimum standards of conduct for licensees, 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 13 and 16 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:
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- E. Examples of Misconduct

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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 adjusters, 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 Insurance 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 and *principals*, obtaining proper consent and sharing information as needed to adjust insurance claims.

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 claims which they undertake, and only adjust claims for which they are competent.

Designated Representatives

An individual designated by the *adjusting firm* 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.

Conflicts of Interest

Licensees must place the interests of *principals* and *claimants* 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 before or when they occur.

Advertising and Respect of the Public

Licensees must accurately represent themselves, their credentials, ownership, services, and prices to consumers and *principals* so that consumers know who is serving them and the *principal* for whom the licensee is acting.

Handling Claims

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

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

Dealing with Clients and Quality of Service

Licensees must make adequate inquiries into a claim situation, applicable coverage and the role of third parties in order to provide recommendations and explanation of options.

Clients and *principals* must receive fair, full and accurate information and explanations of limitations or exclusions in coverage, in order to make informed decisions.

Licensees must document claims 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, obtain and deliver documents and forward claims payments.

Dealing with Interested Third Parties

Any situation where an *interested third party* receives information or any benefit or involvement in an insurance claim must be authorized by the *client* or specified in the 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*;

- *adjusting fee* is the amount paid by the *principal* to an adjuster or adjusting firm for claims adjustment.
- *adjusting firm* is the business, whether a corporation, a partnership, or an individual sole proprietorship *licensee*, which holds an All Classes other than Life Insurance *adjusting firm* licence and meets the requirements as set out in the Act;
- *client* is a *person* who may reasonably be expected to rely on an *insurer, adjusting firm, agency* or *licensee* for advice or actions in relation to insurance and includes all claimants and insureds, prospective *clients*, current *clients*, and past *clients* where appropriate;
- *claimant* is the person claiming on an insurance policy, and may be the insured, a third party *claimant* claiming damages against an insured, or an *interested third party*;
- *Code* is this *Code* of Conduct;
- *Council* is the General Insurance Council of Saskatchewan;
- *Designated Representative* is an individual that holds a Level 3 Adjuster/Adjuster Representative All Classes other than Life Insurance licence and is responsible for the *management* and *supervision* of the *adjusting firm*;
- *insurer* is any insurance company on a *client's* insurance policy, or an employee or representative 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 adjuster/adjuster representative licence to handle claims as defined in the Act; and also includes an *adjusting firm* where the context allows the *Code* to apply to the

business as well as an individual. In quotations from the Act, 'adjuster' 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 *adjusting firm*;
- *other parties* are *persons* who have an involvement in the claims process and may include mortgage companies, leasing companies, lawyers, auto body shops, repair contractors, appraisers, engineers, competitors, third party claimants or the representatives 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. For most claims, the *principal* is the *insurer*. For public adjusters, the *principal* is the claimant;
- *supervision* means reasonable and prudent oversight of an insurance *transaction*;
- *transaction* is a situation in which a *licensee* provides an insurance service to any *person* and may include a claim report, claim adjustment, investigation, subrogation or claim settlement.

Please Note:

In this Code of Conduct, '*client*' must be interpreted as defined above, even though adjusters sometimes consider that their '*client*' is their *principal*, generally the *insurer*. '*Consumer*' is not a defined term but is intended in its common meaning as the public as a whole, anyone who may see advertising or ever become a *client*.

Where '*principal*' is intended, *principal* will be used.

Careful consideration of the words '*client, consumer, claimant, insured, insurer, principal, interested third party, and other parties*', all as defined above, is essential in reading and applying this Code.

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 fully disclose their role in the claims adjustment process and the identity and role of the *principal* for whom they are acting.
- 4 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.
- 5 be reliable, promising only what they honestly expect to provide and what is authorized by the *principal*, and taking all reasonable steps to live up to what they have promised.

D. Contraventions: *Licensees* must not:

- 1 make untrue representation or conceal facts from a *client*, *insurer*, *Council*, other regulators or *other parties*.
- 2 deal dishonestly with money, property or claim payments, or commit acts involving theft or fraud.
- 3 make improper use of their knowledge or position as *licensees*.
- 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 truthful.
- 7 counsel a *client* to misrepresent information 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* counseled a claimant to misrepresent material information to an *insurer*.

- 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* misrepresented the findings of an investigation to the prejudice of an *insurer*.
- 4 A *licensee* misappropriated funds from a volunteer organization while acting in a position of trust for the organization.
- 5 A *licensee* materially misrepresented previous vehicle damage.
- 6 A *licensee* accepted and kept salvage for his or her personal use.
- 7 An applicant for a licence, while writing an insurance examination, took unauthorized material into the examination room.
- 8 A *licensee* provided intentionally misleading testimony to *Council* during an appearance before a Disciplinary Hearing Committee.
- 9 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:

In the normal course of claims adjusting, it is not acceptable to withhold information or provide misleading information which will affect a decision by a *client, insurer, or interested third party* . However, during an investigation, information may be withheld from a claimant until the investigation is complete, or during negotiation for settlement, details of the principal/s settlement instructions need not be disclosed to a claimant.

3 Estoppels or Claims 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 claim 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 *clients, insurers* 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 an estoppel or claim problem. This can be done without accepting responsibility or liability.

To avoid jeopardizing E & O coverage, situations where a denied or partially refused claim may be due to an error should be reported to licensee's E & O insurer promptly.

4 Insurer-client responsibilities:

As adjusters, *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 may be misconduct. *Licensees* must consider carefully whether the information is material and whether the second party has a fair 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, *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 verify and investigate to a reasonable level the accuracy of information on a proof of loss. 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.

6 'They told me to...':

Licensees have tried to justify misrepresentation by saying that they were told by a claims manager, a *client*, a repair firm, 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.

7 Negotiating tactics:

In attempting to settle a claim, a *licensee* may be given authority by the *principal* or *insurer* to offer up to a specific amount. In balancing the interests of the *principal* with the requirement for honesty, the *licensee* must be cautious not to misrepresent his authority or the *insurer's* offer.

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 properly adjust claims or give adequate service to the *principal* without full knowledge of the *client's* circumstances and affairs as these affect the insurance claim. *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 *adjusting firm*, and that their private information will be protected from unauthorized access. Unless *licensees* foster and maintain this trust, they will be unable to provide the service expected and needed by *clients* and *insurers*.

All contents of claim files are the property of the *principal* and are held in trust by the *licensee*. Files must be provided to the *principal* upon request.

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 written consent for the collection, use and disclosure of personal information from all *clients* and *other parties*.
- 3 protect the confidential information of every *client*, *insurer* and *other parties* indefinitely, even after a *licensee* no longer acts for the *client* or *insurer*, whether or not differences have arisen between the *licensee* and the *client* or *insurer*.
- 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 claims information as long as the information could be needed to provide claims service 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 provide at no charge to the *client*, or *other parties* who have given a statement, a copy of any statement
 - 8 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 investigate and report on the claim which you are adjusting.
- 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 provide the contents of a claim file or any other information obtained during the claim adjustment (other than the statements referred to in item C. 7: Requirements above) to anyone other than the *principal* without the express consent of the *principal*.
- 5 access confidential *client* information from an *insurer's* database or records without express authority of the *client*.
- 6 use the name of one *client* or *principal* to promote your services to another *client* or *principal* without the first party's express permission.
- 7 when leaving the employ of an *insurer* or adjusting firm, take or use any information of the *insurer's* or adjusting firm's *clients* or information of the *insurer* in order to offer or market services to others. The *client's* or *insurer's* permission for the use and collection of information was given to the initial *insurer* or adjusting firm 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 and improperly disposed of closed files.
- 3 A *licensee* accessed *insurer* computer data without authorization and provided that information to a third party.
- 4 A *licensee* accessed medical information without the consent of the *person*.

F. Situational Guidance

1. Claims Files:

In adjusting, the *client's* information, given to you by the *client*, is the property of the *client* and can only be disclosed to others with the *client's* consent, normally to the *insurer* and any *person* required by law such as fire and law enforcement. Other information in the file such as investigative reports and claims reports normally is the property of the *principal* and can only be disclosed with the permission of the *principal*.

2. 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 and secure backup and secure storage of data.

3. 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.

4. 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.

5. 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 2 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.

6. 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.

7. 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.

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. In many cases 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 documents to *clients*, *insurers*, or *other parties* 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 Saskatchewan Insurance Act which affect most *licensees* are provisions on who can act as an adjuster, the requirement for licensing and the requirement to inform *Council* about sponsorship withdrawal.

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) “**adjuster**” means a *person* who:

(i) on behalf of an *insurer* or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an *insurer*, or investigates, adjusts or settles any such loss or claim; or

(ii) holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of any such loss or claim;

but does not include:

(iii) a barrister or solicitor acting in the usual course of his profession;

(iv) a trustee or agent of the property insured;

(v) a salaried employee of a licensed *insurer* while acting on behalf of such *insurer* in the adjustment of losses; or

(vi) a *person* who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence;

INSURANCE ADJUSTERS LICENCES

Acting as adjuster without licence prohibited

447 No *person* shall act as an adjuster unless he is the holder of a subsisting licence under this Act as an adjuster or as a representative of a licensed adjuster.

Granting of licence

452(1) The superintendent may grant a licence if, in his opinion, the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable, but if the superintendent after investigation is for any reason of the opinion that the applicant should not be granted a licence he may refuse the application.

(2) The superintendent may refuse to grant a licence if the applicant has not paid in full any fees or costs associated with a hearing or investigation into the conduct of the applicant.

(3) The superintendent may refuse to grant a licence if the applicant has not paid in full any fines or penalties assessed pursuant to this Act or the regulations.

Representative of adjuster to act only for adjuster

457(1) The holder of a licence as representative of an adjuster may act only for the adjuster named in his licence and only within the limits of the adjuster's licence.

Duty of adjuster where representative ceases to act

(2) Where a representative ceases to act for the adjuster named in his licence the adjuster shall forthwith after the cessation give written notice thereof, with the reason therefor, to the superintendent, and the receipt of the notice by the superintendent shall operate as a suspension of the licence of the representative.

Penalty

(3) An adjuster who fails to give such notice within five days after the cessation is guilty of an offence.

C. Requirements: *Licensees* must:

- 1 have a valid insurance licence of the appropriate level 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 adjuster must be performed by a *licensee*. A *person* who does not hold a valid licence as an insurance adjuster must not act as an insurance adjuster. Similarly, a *person* who has a Level 1 licence may not engage in activities beyond those allowed to a Level 1 *licensee*.
- 2 ensure that any employees who are acting as an insurance adjuster 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 pay all fees and charges assessed by *Council* when due.

D. Contraventions: *Licensees* must not:

- 1 remunerate an unlicensed *person* for acting as an adjuster, through fee sharing, bonuses, gifts, other payments or any consideration or benefit.
- 2 direct or allow an unlicensed employee to act as an adjuster.

E. Examples of Misconduct

- 1 A *licensee* had his licence cancelled indefinitely for continuing to hold himself out as an adjuster and act as an adjuster 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.
- 2 A *licensee* allowed a newly hired employee to adjust claims for several months without being licensed.
- 3 A *licensee* entered a restricted fire zone for the purpose of adjusting a claim without authorization from the local fire department.

F. Situational Guidance

1 Finders' fees and referral fees:

Any compensation paid to non-*licensees* in connection with the solicitation of adjusting work may contravene the Act. 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 adjusting work 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 repeatedly urging that claims be assigned to an *adjusting firm* is likely solicitation.

If a *licensee* pays any referral fees or finders' fees to an unlicensed *person*, the *principal* 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 the claims they undertake in a manner consistent with industry practice. *Clients* and *insurers* are entitled to rely on the knowledge and recommendations of a *licensee* and to assume, if the *licensee* undertakes to provide service, that he or she has the ability, knowledge and capability to handle the *transaction*.

Continuing Education requirements for *licensees* exist because competence is crucial for the performance of a *licensee's* duties and to ensure *principals* and *clients* are properly served. *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* and *insurers*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

(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;
- (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, including developments in the nature of *clients'* risks, insurance products, remediation practices, construction and repair techniques, and legal changes

- 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 *transactions* without adequate experience and knowledge.
- 2 allow staff to act in areas where they lack sufficient competence.

E. Examples of Misconduct

- 1 A *licensee* was unaware of the requirement to deliver a proof of loss form within the time specified in the Act.
- 2 A *licensee* failed to conduct adequate fact finding into the circumstances leading to the loss.
- 3 A *licensee* failed to identify opportunity for subrogation on a large claim, causing financial harm to the *principal* and *client*.
- 4 A *licensee* was unaware of a policy provision which required the *client* to replace damaged property within a specified time in order to receive replacement cost.

F. Situational Guidance

- 1 Handling Specialized Risks: In practice, for a specialized or unusual risk, a *licensee* must have the knowledge to handle the risk and involve the appropriate experts who are needed for fair claims settlement. It is up to a *licensee* to recommend to his or her *principal* the involvement of experts such as engineers, architects, accountants or lawyers and to work with such experts in the interests of the *client* and *principal*.

9. *Designated Representatives*

A. The Principle

Designated Representatives are responsible for all activities of the *adjusting firm* and must ensure an *adjusting firm* 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 *adjusting firm* must designate a Level 3 *licensee* to be responsible for the *management* and *supervision* of the adjusting firm. In the event of misconduct by a *licensee* sponsored by an adjusting firm, the adjusting firm 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

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 III

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

(2) A Level 3 *licensee* shall not:

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

Section 5. Requirements for an Adjusting Firm Licence

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

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

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

Saskatchewan Insurance Act

INSURANCE ADJUSTERS LICENCES

Representative of adjuster to act only for adjuster

457(1) The holder of a licence as representative of an adjuster may act only for the adjuster named in his licence and only within the limits of the adjuster's licence.

Duty of adjuster where representative ceases to act

(2) Where a representative ceases to act for the adjuster named in his licence the adjuster shall forthwith after the cessation give written notice thereof, with the reason therefor, to the superintendent, and the receipt of the notice by the superintendent shall operate as a suspension of the licence of the representative.

Penalty

(3) An adjuster who fails to give such notice within five days after the cessation is guilty of an offence.

C. Requirements: A *Designated Representative* must:

- 1 have adequate knowledge and experience to fulfill *management* and *supervision* duties competently.
- 2 ensure that *adjusting firm* staff are properly licensed, competent and adequately trained to fulfill their duties and adjust claims.
- 3 ensure that a Level 1 *licensee* is adequately supervised by a competent Level 2 or 3 *licensee* for activities which require *supervision* and that all reports and correspondence are signed by a Level 2 or Level 3 *licensee*.
- 4 put into place adequate staffing, policies and procedures to establish and maintain proper service to *clients* and *principals* on all insurance *transactions* and to follow this *Code*.
- 5 ensure that all *Council* requirements are met, including but not limited to Errors and Omissions Insurance, Corporate Registration, renewal of individual adjuster 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 when accepting claims assignments and determining 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 sign claims reports and correspondence to *clients* without proper *supervision* and signature of a Level 2 or 3 *licensee*.
- 2 An adjusting firm employed someone for 5 months in a licensed capacity without ensuring the person was properly licensed.
- 3 A *Designated Representative* failed to ensure, while acting in a supervisory capacity, that conflicts of interest which arose during a claim adjustment were appropriately disclosed.

F. Situational Guidance

1. Claims Overload:

In the event of staff shortage or high claims volume such as a catastrophe, it is the responsibility of the *Designated Representative* to take steps to maintain adequate service to *insurers* and *clients*. In many cases, the only way to comply with good business practices is to decline additional claims assignments or advise *principals* that service levels will not be maintained as the result of the claims overload.

2. Absence of the *Designated Representative*:

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

3 Suspected misconduct by staff:

When *adjusting firm 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 consider the protection of consumers and the reputation of the industry. 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 *adjusting firm* 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 *adjusting firm*, 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 inefficiency, 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 mismanagement. *Licensees* must safeguard the funds and property of *clients* and *insurers*, 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 *principals* or charge any fee other than the *adjusting fee* authorized by the *principal*.

B. Related Bylaws

BYLAW 8 – MISCONDUCT

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

- (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;
- (q) fails to follow sound business practices;

C. Requirements: *Licensees* must:

- 1 pay to the *insurer* all funds collected or received on behalf of the *insurer*, less any deductions authorized by the *insurer*.
- 2 forward payments, pay or offer to pay to *clients* and *other parties* all funds due to them, promptly and in full and in accordance with the *principal's* instructions.
- 3 always be able to justify a fee when requested, including details of the time and effort spent on a claim, the difficulty and importance of the matter, and any special skill or service provided.
- 4 maintain records of all payments and property received and due to *clients* and *insurers*.
- 5 where salvage is sold, properly collect, account for, and remit any applicable taxes.
- 6 establish reasonable and consistent procedures for safeguarding of payments and property received from *clients* or *insurers*.
- 7 handle their personal and business finances appropriately to avoid outstanding judgments, defaults, legal proceedings or bankruptcy.

D. Contraventions: *Licensees* must not:

- 1 encumber money or property held in trust for *insurers* or *clients*, or use them as security or collateral for a loan.
- 2 use a gift or payment, other than the claim settlement from the *insurer*, or offer any payment, gift, or thing of value, to induce, bribe or pressure a *client* or *insurer* to make an insurance decision.
- 3 seek or make any profit beyond *adjusting fees* in any matter entrusted to him or her.
- 4 acquire any financial interest in any matter entrusted to him or her.
- 5 charge a fee to the *client* for any claims adjustment service, unless the *client* is the *principal* or such charges are specified in the policy.
- 6 charge or accept any fee which is so disproportionate to the service provided as to be unconscionable.

E. Examples of Misconduct

- 1 A *licensee* acted together with other adjusting firms to increase adjusting *fees* in a catastrophe situation
- 2 A *licensee* failed to properly manage the business and finances of an adjusting firm, including not giving claims settlement cheques to *claimants* and third parties.
- 3 A *licensee* utilized salvage goods while under his or her care and control.
- 4 A *licensee* had large personal debts and engaged in questionable financial involvement with a number of companies soliciting investors for offshore investments.

F. Situational Guidance

1. Claim Payment Trust Funds:

Any money paid to a *licensee* in trust must be maintained in a separate trust account, and not mingled into operating funds. If a *principal* provides money in trust to an *adjusting firm*, those funds may be paid out only as authorized by the *principal* and only when all required proofs of loss and forms are complete.

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* or *insurer*.

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

Involvement in a business or occupation other than the insurance activities for which a *licensee* is licensed may make conflicts of interest likely or create apparent conflicts, thereby making a *licensee* unsuitable to hold an insurance licence.

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 *principal* or *client* may be asked if he or she consents to the conflict and wishes to involve the *licensee* in the claim. 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* or *principal* without the conflict having a negative effect on the *client's* or *principal'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 claims settlement and advice, *licensees* must eliminate the conflict, suggest that the *client* seek independent advice, or decline to handle the transaction.

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 accepting a claims assignment or 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 attention of the other party, not waiting until the other party raises the question.
- 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* or *insurer* fully understands the situation and how a conflict of interest may arise before he or she makes a decision about the transaction.
- 7 ignore differences in fees, compensation, bonuses, contests, prizes or other personal or business benefits in making any recommendations with respect to claims settlement.
- 8 deal with any formal or informal allegations of a conflict of interest in good faith, quickly and honestly.
- 9 refer *clients* or *insurers* with whom there is a conflict to other *licensees* who can serve them without a conflict of interest.
- 10 when asked to act under separate policies for more than one *principal* in the same matter, notify and gain approval from each *principal* before undertaking the claim.
- 11 if different *licensees* in the same adjusting firm are asked to act for opposing interests in the same matter, notify and gain approval from each *principal* before undertaking the claim.
- 12 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*.

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* or *insurers*.
- 2 assume that *clients* or *insurers* 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 adjusting firm to *insurers* or *clients*. *Licensees* who choose not to disclose this information when asked must withdraw from handling the claim.
- 4 misrepresent any substantial financial involvement by others in the adjusting firm or by the adjusting firm in other businesses, which may influence recommendations, service or information given to *clients*, *insurers* or *other parties*. *Licensees* who choose not to disclose this information must withdraw from handling the claim.
- 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* or *insurer* to another, regardless of the amount of business with a *client* or *insurer* or other considerations.

- 7 take advantage of a *client's* inexperience, lack of sophistication, lack of education, language barrier or ill health.
- 8 seek to influence for the benefit of the *licensee* or his or her *principal* the conduct of any *person* through a financial inducement, gratuity or gift.
- 9 accept any financial inducement or gift in exchange for recommending the services of a third party such as a contractor or auto body shop.
- 10 offer or give any financial inducement to agents, *insurers*, or their staff for using or recommending the *licensee's* services.

E. Examples of Misconduct:

- 1 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.
- 2 A restoration contractor invited a number of adjusters for an all-expenses paid trip to a northern fishing camp. Those adjusters who accepted the trip were in a conflict of interest position when the contractor quoted on construction work for claims handled by the adjusters.
- 3 A *licensee* contacted a contractor who was a friend prior to the closing time for bids on an insurance construction contract to advise the contractor that their bid needed to be \$8,000 lower.
- 4 An *insurer* had a substantial financial interest in an adjusting firm. The adjusting firm frequently recommended that *insurer* to *clients* to the detriment of other *insurers* when *clients* were dissatisfied with a claims settlement, without disclosing the *insurer's* financial interest and the resulting conflict of interest.
- 5 A *licensee* advised a *client* that the *client* must use a service provider chosen by the *licensee*.

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 Adjusting firm ownership:

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

3 Business Relationships:

Licensees who are engaged in business outside their insurance adjusting firm encounter more frequent potential conflicts of interest. In these situations, *Council* may determine that the *licensee* is unsuitable by virtue of other business activities. 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. In addition, there will be a real conflict of interest between the *licensee* and the *principal* if the *licensee's* auto body shop repairs any vehicle or equipment damaged in a claim being adjusted by the *licensee*.
- b. a *licensee* who also operates a construction or restoration firm will be in a conflict position whenever a property damage claim requires construction or restoration services. Even if the adjuster's construction firm does not quote job for claims handled by that adjuster, the confidential information received by the adjuster in reviewing bids for various jobs from other contractors creates an unfair advantage to the adjuster's construction firm and a public perception of wrongdoing.
- c. a *licensee* who rents space in the adjusting firm's building to another business and also is assigned a claim for that business will be in a conflict position if there is a dispute about the cause, severity or repair of building damage.

4 Other occupations:

Clients may feel pressured to make poor decisions on an insurance claim 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*.

5 Personal and Family Relationships:

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 is 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. In most cases the *principal* will decline to assign a claim to an adjuster who has a personal relationship with a *claimant* once the relationship is revealed.

6 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 situation simply because they handle claims 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 common situation of a claim which involves both a tenant and landlord.

Any such situation must be disclosed to both the *principal* and the *claimant* and in most cases the *licensee* should decline to act in one matter or the other.

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.

7. Gifts and Benefits:

In all situations, *licensees* are expected to approach and recommend the best providers for any service required by *clients* or *principals*, treating all service providers fairly, providing full and complete disclosure of all relevant information to service providers, providing all acceptable options to *clients* and *principals*, and allowing and encouraging *clients* to choose the service provider. Whenever business is 'steered' to specific service providers, or alternately specific service providers are eliminated from fair competition for business, *licensees* are not acting in the best interest of the *client* or *insurer*. In that case, any gifts, prizes, trips or benefits accepted by the *licensee* are considered an improper inducement.

8. 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 their *principals*, 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 disclose their role as an adjuster and the identity of their *principal* to *clients* prior to conducting any adjusting activities.
- 4 encourage public respect for and confidence in the profession of insurance and try to improve the practice of that profession.
- 5 report to *Council* any instance of misconduct under the Act or Bylaws, in good faith and without malice or ulterior motive.

- 6 attempt to persuade consumers to report potential situations of misconduct to *Council*.
- 7 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 adjusting firm 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.
- 4 advertise the names of *insurers* for whom they have undertaken claims without the express consent of such *insurers*.
- 5 encourage any *person* other than a representative of the *principal* to advise the *licensee* of any claim occurrence.
- 6 defame or discredit the industry, *insurers* or other *licensees*.
- 7 make false or misleading statements in the solicitation of adjusting assignments.
- 8 communicate in an abusive, offensive, or unprofessional way in the course of business.
- 9 engage in harassment or unlawful discriminatory practices.
- 10 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* induced an individual to provide a statement for a claim investigation prior to identifying on whose behalf he or she was acting.
- 5 A *licensee* disclosed confidential file information in promotional material, including testimonials from claim files with identifying information, settlement amounts and liability decisions.

F. Situational Guidance

- 1 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 *Councils* 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 providing adjusting services.

13. Handling Claims, Clients and Insurers

A. The Principle

An adjuster must act in the best interest of the *principal* within the constraints of proper conduct in any claims matter. *Licensees* must make sufficient inquiry into the circumstances of the claim and fully and accurately disclose all material information to *insurers*, represent *insurers* fairly, follow the *insurers'* procedures and any authority granted to them by *insurers*, and promptly deliver documents and claims payments.

This includes a duty to fully disclose to a *principal* all material information which is discovered in the course of adjusting a claim, even if that information is not directly related to the specific claim being adjusted. It is in the best interest of consumers and the insurance industry to ensure that risks are properly revealed to *insurers*, unsafe conditions are corrected, and fraudulent and inflated claims are not paid. *Licensees* are obligated to cooperate in reducing insurance fraud.

At the same time, adjusters must act for the good of consumers and take all steps within their power to ensure that *clients* are fairly compensated for valid claims.

Licensees must document all discussions and correspondence in adjusting a claim and maintain organized and accurate files.

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*:

- (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;
- (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;
- (p) fails to maintain proper records;
- (q) fails to follow sound business practices;

C. Requirements: *Licensees* must:

- 1 handle claims promptly, responding to inquiries without undue delay, with courtesy and fairness.
- 2 provide full disclosure to the *client* of all relevant areas in which the policy provides coverage.
- 3 diligently follow the instructions of the *principal* in adjusting a claim, unless those instructions are contrary to provisions of this *Code*.
- 4 act within the authority of the *principal*.
- 5 as soon as possible when a claim is reported, provide information to *clients* about immediate protection of *persons* and property and the claims process.
- 6 inform *principals* and *clients* of any matter which may materially affect the claim or prejudice their interests, including coverage limitations, settlement options, exclusions, conditions, and other policy provisions.
- 7 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.
- 8 ensure that *clients* are aware of all deadlines and prescription periods which may affect their claim.
- 9 take reasonable steps to keep *clients* informed of the status of their claims.
- 10 give clear information to *clients* confirming the *client* is responsible for hiring service providers such as contractors or body shops.
- 11 where coverage is denied, advise the *client* promptly in writing of the denial. It is good practice in this situation to contact the *client's* agent or *agency* if possible and explain the reasons for the denial.
- 12 when dealing with a claim by a third party, if the insured has or may have an interest in the settlement, including situations where there is a retention by the insured or where the claim may exceed policy limits, keep the insured as well as the *principal* informed.
- 13 where a potential claim by a third party is not considered valid under a policy, upon instruction of the *principal*, notify the third party promptly in writing.

- 14 make full and prompt disclosure to the *principal* of all policy violations and any evidence of fraud, misrepresentation, non-disclosure, falsification of facts or records, or attempts to improperly influence the claims process.
- 15 facilitate fair settlement of claims and deal with all formal and informal complaints in good faith and in a timely and honest manner. This includes referring *claimants* to all appropriate dispute mechanisms.
- 16 inform the *principal* about the involvement of any other *licensee* or anyone who is assisting in the claim investigation and is retained by the *licensee* to whom the claim is assigned.

D. Contraventions: Licensees must not:

- 1 enter upon any investigation without specific authorization from the *principal*.
- 2 discourage a *client* from making a legitimate insurance claim or in any manner delay a claim from being presented, thereby prejudicing the *client's* best interests.
- 3 give legal advice or discourage a *client* from seeking legal advice.
- 4 deal directly with a *client* where the *client* has retained a lawyer and the lawyer confirms he or she is representing the *client*.
- 5 deny a claim which the *licensee* believes to be valid without expressing his or her views clearly and in writing to the *principal*.
- 6 use any practice or conduct that delays claims settlement or undermines the fair adjustment of claims.
- 7 counsel a *client* to misrepresent any aspect of a claim report or proof of loss.
- 8 withhold information relevant to the claim from the *insurer* or the *insurer's* representative.
- 9 undermine or malign the reputation of adjusters, agents, or *insurers*.
- 10 act in the solicitation, placement or negotiation of insurance unless also licensed as an agent.
- 11 ask *clients* to sign statements, proofs of loss or other documents which are incomplete. If information is not available, those sections of the forms must be noted as 'To Be Advised' or 'information to follow' prior to the *client* signing the document.
- 12 promise results or services which the *licensee* cannot fulfill.

E. Examples of Misconduct

- 1 A *licensee* failed to advise a *claimant* about the statutory limit on a claim, thereby prejudicing the *claimant's* interests.

- 2 A *licensee* acted outside the authority given by the *principal*.
- 3 A *licensee* was instructed by the *principal* to delay claims settlement and followed those instructions.
- 4 A *licensee* failed to notify the *insurer* or agent that he or she had discovered an undeclared occupancy in a building where a claim had occurred.

F. Situational Guidance

1 File retention:

The time period for which closed claim 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**. In some cases claims files are sent to the *principal* when closed. If files are retained by *licensee*, all documentation should be retained as long as a future dispute or related claim could materialize.

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 him, 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 adjuster or broker. In this case, it could $2+1+2=5$ years from the accident before the adjuster 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*.

14. **Not Applicable for Adjusters**

15. **Not Applicable for Adjusters**

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. In many cases this authorization will have occurred when an *interested third party* was added to a policy prior to a claim. Interested third parties are due the same duty of honesty and competence as *clients*.

In the case of a third party claim against the *insured*, *licensees* must ensure the *insured* is fully informed of the claim. 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* and *principal* about the conflict and explain the *client's* interests and options and take direction from the *client* and *principal*.

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 claim is authorized by the *client* or *principal* and is in the *client's* or *principals* best interest.
- 2 keep any *interested third party* informed about the claim progress and any deadlines, conditions, provisions or statutory limitation dates which may affect their interests.

D. Contraventions: *Licensees* must not:

1. reveal any information to a third party beyond what is authorized by the *client* or *principal*

E. Examples of Misconduct

F. Situational Guidance

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*. See Section 18 of this *Code* for details of this duty.

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* and *principals* in all dealings with other *licenses*.
- 3 disclose to *clients* and *insurers* any arrangements to involve a *licensee* from another adjusting firm 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 activities 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*.
- 2 use disciplinary information from *Council* to discredit a *licensee*.

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 an arrangement to sub-contract work to another *licensee*.

F. Situational Guidance

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.
 - 10 provide full information about all other occupations and business ownership to *Council* to allow for a proper assessment of Conflict of Interest risks and suitability.

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 adjusting firm or *insurer*, 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.