

## Life and/or Accident & Sickness Errors and Omissions Lapses: Sanctions

The Life Insurance Council of Saskatchewan ("Council") has consistently communicated the importance of the mandatory requirement that licensees hold a valid policy of errors and omissions insurance ("E&O"). However, Council staff continues to deal with licensees who allow their E&O policies to lapse.

Individuals and businesses that allow their mandatory E&O policies to lapse will be subject to a minimum base fine of \$1,000 for each lapse.

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

*The Insurance Act* (the "Act"), *The Insurance Regulations* (the "Regulations"), and the Council Bylaws are all specific respecting the requirement of licensees to hold E&O in their personal name and in the name of any licensed agency they operate;

### **Section 5-26 of the Act**

(1) Every business and individual that applies for or holds an insurance intermediary's license shall meet and maintain the prescribed financial security requirements.

(2) This section does not apply with respect to:

- (a) a licence issued to an employee of a licensed insurer; or
- (b) a licence for a prescribed class of insurance or for a prescribed category of licence holder.

and

### **Section 5-10 of the Regulations**

(1) For the purposes of subsections 5-26 (1) and 5-47(1) of the Act:

(a) every business that applies for or holds an insurance agent's licence for life, accident and sickness, or life and accident and sickness insurance shall maintain and provide annually proof of a valid policy of errors and omissions insurance that:

(i) provides a minimum of:

(A) \$1,000,000 coverage with respect to any one occurrence and a minimum aggregate limit of \$1,000,000 with respect to all occurrences within a year; and

(B) \$1,000,000 extended coverage for loss resulting from fraudulent or dishonest acts;

(ii) covers the insurance activities of the licensee; and

(iii) is underwritten by an insurance company licensed to do business in Canada.

The Bylaws of the Life Insurance Council of Saskatchewan are specific with respect to the requirement of licensees to hold E&O in their personal name and in the name of any licensed agency they operate.

**Bylaw 3-1(4)(c)**

(4) A licence imposes on the licensee, and if a business, the designated representative, obligations including but not limited to, the following:

(c) to immediately notify LICs of:

- (i) the failure to maintain the prescribed financial security requirements (errors and omissions insurance or the bond), pursuant to sections 5-10 and 5-23 of the regulations;
- (ii) any name change, personal or business;
- (iii) any corporate change, such as:
  - (A) amalgamation of the business;
  - (B) sale of the business; or
  - (C) dissolution of the business;
- (iv) for a partnership, any change in the membership of the partnership or the general partners of a limited partnership;
- (v) any withdrawal of a licence recommendation;
- (vi) any change in designated representative;
- (vii) any change in other employment;
- (viii) any change in address or contact information; and
- (ix) any proceeding in bankruptcy, including a Consumer Proposal.

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

Licensee should bear in mind that an E & O policy generally provides coverage for professional services, of a licensed Life, Accident & Sickness Agent, a Mutual Fund and/or Securities Salesperson/Representative. Other professional services a Licensee may offer **May Not** be covered under this policy.

*What if the licensee switches E&O carriers?*

- As long as E&O is continuously maintained, (i.e. with no lapses), the current insurer should cover any claims that arise, even if the event triggering the claim happened when the licensee was insured through a different carrier. If a licensee changes carrier the licensee must ensure that the new carrier includes continuous coverage within the new policy.
- If the E&O policy is allowed to lapse, no insurer is responsible for any claim that arose before and during the E&O lapse, leaving the licensee uninsured for any such claim(s).

- Some E&O insurers will provide “past acts” coverage, but this does not change the fact that the licensee still has a lapse in coverage which is in violation of Council's bylaws.

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

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

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