

CLIENT CONFIDENTIALITY GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONS (“Guidelines”)

Maintaining the privacy and confidentiality of client information is one of the cornerstones of the insurance industry. The insurance industry is built on trust and clients expect that when they provide their personal information for the purposes of an insurance transaction, the information will be properly protected and will only be used for the purpose for which the information was provided, unless the client expressly authorizes otherwise.

In 2009, Council issued Notice ICN 09-003 *Penalties for Unauthorized Access of the Insurance Corporation of British Columbia’s Database* advising licensees there would be no tolerance for intentional unauthorized access to, or use of, a person’s information. Since then, Council has identified situations where licensees failed to appreciate that even seemingly innocuous activities could result in a breach of privacy.

The purpose of the Guidelines is to assist licensees in understanding client confidentiality requirements, which involve a number of factors pertaining to the collection, use, disclosure, storage, and destruction of clients’ personal information.

Licensees should make themselves aware of these factors and ensure they are accounted for in their day-to-day operations. Ideally, licensees should have written policies and procedures governing client privacy and take reasonable steps to ensure that all staff are aware of these policies and act accordingly.

I. DEFINITION OF PERSONAL INFORMATION

A client’s personal information is defined as all information collected by a licensee about the client, excluding publicly available contact information.

II. USING CLIENT INFORMATION

In accordance with Council Rule 7(1), a licensee cannot divulge or use any information derived from a client, except for the purpose for which the information was obtained, unless expressly authorized by the client or as required by law.

III. EXPRESS CLIENT AUTHORITY

Express authority from a client must be clear and leave no dispute that the client has allowed a licensee to use or disclose his or her personal information for a specific purpose other than the purpose for which the information was given or intended.

Council acknowledges that express authority can be given either orally or in writing, but recommends that, whenever possible, it be obtained in writing from the client or, if given verbally, subsequently confirmed with the client in writing by the licensee. Without written express authority, it is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client's information.

Without express authority from the client, the following situations would be a breach of Council's confidentiality requirements:

- A client's information is used or accessed by a licensee, either directly or indirectly, for purposes other than what it was collected for.
- A licensee uses a client's information to promote the licensee's services or products.
- A licensee provides information upon request about a client to a licensee who works at a different agency.
- A licensee provides information about a client to the client's spouse, relative, or friend, regardless of the reason.
- An insurance adjuster provides information about an insured to the insured's insurance agent.
- A licensee shares a client's information with a third party so that the third party can offer another service to the client.

The above examples are not meant to be exhaustive, but are intended to demonstrate that an action, no matter how innocuous, could be a breach of client confidentiality.

IV. PROTECTING CLIENT INFORMATION

A licensee has a duty to safeguard all of a client's personal information that is in his or her possession. A licensee is responsible for determining the appropriate safeguards necessary to meet this duty. Such safeguards must address the accumulation, storage, and, when appropriate, disposal of a client's personal information.

As an example, disposal of a client's personal information in a manner that could expose the information to access by any unauthorized party, intentionally or otherwise, would constitute a breach. Disposing of personal information in a garbage or through a shredding service, where the service provider does not have appropriate confidentiality protocols in place, would be considered breaches.

V. SALE OR TRANSFER OF CLIENT INFORMATION

Section 20 of the *Personal Information Protection Act* (“PIPA”) provides direction on what is required if a licensee’s book of business is being sold to another licensee. In summary:

A licensee may disclose personal information about clients, without their consent, to a prospective purchaser (“third party”) of the clients’ information, if it is necessary for the third party to determine whether to purchase the licensee’s book of business. However, this may only occur if the licensee and the third party have entered into an agreement that limits the third party’s use or disclosure of the clients’ personal information solely for purposes related to the purchase of the book of business.

If a licensee proceeds with a sale of a book of business, the licensee may disclose, without consent, clients’ personal information contained in the book of business to a third party on the condition that the third party may only use or disclose the personal information for the same purposes for which it was collected, used, or disclosed by the licensee and is limited only to the personal information covered by the business transaction. In addition, the clients whose personal information was disclosed must be notified the business transaction has taken place and personal information about them has been provided to the third party. *In such cases Council recommends that the disclosure to the clients be timely (30 calendar days after completion of the sale) and in writing.*

If the sale does not proceed or is not completed, the licensee must ensure the clients’ information is appropriately destroyed by the third party or returned to the licensee.

Orphan Clients – Reassignment of Life Insurance Policies

When an agency (for the purposes of this section an agency means a life insurance agency or a life insurance managing general agent) knows the Agent of Record (“AOR”) for a policy is no longer available to service the client, it may assist in the reassignment of the policy to another licensed agent.

An agency may take an active role in this process by informing the client that their AOR is no longer an insurance agent or has ceased to represent the agency and by offering to assist the client in reassigning their policy to a new AOR. In such situations, the client has the option of declining the agency’s service and can elect to find their own AOR.

The appointment of a new AOR by an agency should not occur without first notifying the client and no personal information should be provided to a (potential) new AOR without first obtaining the client’s consent. The recommended process of client notification is by way of letter, advising them of the status of their AOR and what is required to obtain a new AOR.

VI. AGENCIES, FIRMS, AND NOMINEES

It is the responsibility of insurance agencies and firms and their nominees to ensure their licensees and employees understand the confidentiality requirements and that appropriate measures and safeguards are in place to protect personal information.

Such measures should include:

- Periodic reviews and testing of how clients' personal information is managed and handled.
- Appointing an appropriate person to oversee the agency's or firm's duties in this regard.
- Implementing strict procedures on the management and handling of personal information.

VII. PRIVACY LEGISLATION

Council's position and requirements on client privacy and confidentiality do not override the requirements under existing legislation. Rather, the Guidelines are intended to emphasize to licensees the importance of client privacy. Licensees are reminded that PIPA governs their activities, which includes requiring that:

- A licensee designate one or more individuals to be responsible for the licensee's compliance with PIPA.
- Policies and practices be developed to ensure compliance with PIPA.