

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

**REMINDER OF LICENSEE RESPONSIBILITIES RELATED TO
DISCLOSURE OR TRANSFER OF CLIENT INFORMATION**

In May 2015, Council published Notice ICN 15-003 *Client Confidentiality Guidelines* to assist individual licensees, agencies, and adjusting firms ("Licensees") to understand confidentiality requirements as they relate to the collection, use, disclosure, storage, and destruction of clients' personal information.

Recently, Council has found that some Licensees have disclosed or transferred client information to both licensed and unlicensed third parties without the required client consent. While the intentions of the Licensees appeared to have been genuine and intended to service the insurance needs of the clients, their failure to obtain the required consent from their clients before the disclosure or transfer of client information was, nonetheless, contrary to Council's confidentiality requirements.

In light of these situations, Council reminds all Licensees of their responsibilities in relation to the disclosure or transfer of client information.

Disclosing/Transferring Client Information to Other Licensees

Insurance Agencies and Individual Life and/or Accident and Sickness Insurance Agents

In some situations, it may be beneficial for a client if the client's servicing Licensee works with one or more other Licensees to secure insurance coverage for the client.

If this occurs, all Licensees involved in servicing the client must ensure that the client's express authority to disclose or transfer the client's information between Licensees is properly obtained and that the client clearly understands why this information sharing will occur.

This duty applies regardless of whether or not a relationship exists between the Licensees, such as in the case of multiple insurance agencies that are related or affiliated with each other through common ownership.

Individual General Insurance Licensees

Since it is a general insurance agency, and not a Level 2 or Level 3 general insurance agent representing the agency, that is the agent of record on a client's general insurance policy, the agency ultimately holds responsibility for the proper handling of the client's information.

As such, if a Level 2 or Level 3 general insurance agent leaves one agency to represent another, the Level 2 or Level 3 general insurance agent must not have client information, including records or documentation, in his or her possession, and must also not disclose or transfer client information from the former agency to the new agency without the consent of both agencies and the express authority from the client(s) to do so.

NOTICE

As it is Council's understanding that the letter of brokerage process is intended to authorize an insurance company to change the agent of record on a client's insurance policy, Council does not believe this process should be relied upon to obtain a client's express authority for the disclosure or transfer of the client's information between Licensees.

All general insurance licensees are reminded that a Level 1 general insurance salesperson is, by definition, an employee of an insurance agency and therefore should not treat a consumer as his or her own client.

Orphan Clients – Life and Accident and Sickness Insurance Agent (“life agent”)

When an agency, including a managing general agent, knows that the individual life agent of record for an insurance policy is no longer available to service the client, it may assist in the reassignment of the policy to another life agent.

An agency may take an active role in this process by informing the client that their life agent of record 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 life agent of record. In such situations, the client has the option to decline the agency's service and can elect to find his or her own life agent of record.

The appointment of a new life agent of record by an agency should not occur until the client has been notified and has consented to the appointment. No personal information of a client can be provided to any new, or potential new, agent of record without first obtaining the client's express authority to disclose the client's information. The recommended process of client notification is by way of letter, advising them of the status of their agent of record and what is required to obtain a new one.

Selling or Acquiring a Book of Business

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”), if that information 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 use or disclosure of any personal information of the clients by the third party except solely for purposes related to the purchase of the book of business.

If a Licensee proceeds with the sale of a book of business, the Licensee may disclose, without consent, the personal information of the clients 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 that 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 occur before the sale but no later than 30 calendar days after completion of the sale, and such disclosure should be in writing.*

If the sale does not proceed or is not completed, the Licensee must ensure that the client information is appropriately destroyed by the third party or returned to the Licensee.

Receiving Client Information from Another Licensee

Before a Licensee receives client information from another Licensee, it is expected that the Licensee ensure that express authority has been obtained from the client for the disclosure or transfer of the client's information. Where express authority is not obtained from the client, both the Licensee who improperly disclosed or transferred the client information and the Licensee who received the information will be held accountable for the confidentiality breach.

Safeguarding Client Information

The level of care and security required to ensure the protection of client information is unique to each situation.

Licensees are expected to have robust procedures, training, and oversight of client information to the extent necessary to ensure that client information is not accessed by anyone without the required authorization. This is particularly critical when handling client information, either physically or electronically, outside of an insurance office or in a situation where a Licensee shares an office environment with another Licensee or non-licensed third party.

Where a breach of confidentiality occurs involving an individual licensee who represents an agency or adjusting firm, they, along with the agency's or the adjusting firm's nominee, will be required to demonstrate what measures were in place to safeguard the client information. Ultimately an agency or adjusting firm, and associated nominee(s), are responsible for the proper collection, use, disclosure, and handling of client information collected by the agency, adjusting firm, or any individual authorized to represent the agency or adjusting firm.

Breaches of Client Confidentiality

Council's stated position remains that, when it identifies a breach of confidentiality, it will consider a suspension of a Licensee's licence and, if no mitigating factors exist, the suspension will usually be for no less than one year. Council also has the authority to issue fines of up to \$10,000 in the case of an individual licensee and \$20,000 for an agency or adjusting firm, where it identifies a breach.

Client Confidentiality Guidelines

For more information on confidentiality requirements and Council's definition of client express authority, please refer to Council's Client Confidentiality Guidelines in the Code of Conduct, as well as PIPA.

If you have any questions regarding this Notice, please contact Regulatory Services by emailing info@insurancecouncilofbc.com or calling Council's main number, and at the prompt press "2".

June 29, 2017
ICN 17-004