

INSURANCE COUNCIL OF BRITISH COLUMBIA

GUIDELINES GOVERNING THE SALE OF HOME WARRANTY INSURANCE IN BRITISH COLUMBIA

The Insurance Council of British Columbia (“Council”) has encountered a number of issues regarding the sale of home warranty insurance. It is Council’s position that minimum requirements to govern the activities of general insurance licensees involved in the distribution of home warranty insurance products are necessary. This will ensure agents engaged in the solicitation and administration of home warranty insurance in British Columbia clearly understand their duties and obligations and act in the public’s best interest. These requirements cover practices that currently exist within this segment of the industry and are intended to address a number of problems and consumer complaints encountered by Council.

ISSUE 1: CLAIM ADMINISTRATION

Issues have arisen respecting claims made relating to home warranty insurance policies. Council’s principal concern is the timeliness in which homeowner claims for coverage are being addressed by agents acting on behalf of a home warranty insurance provider (“insurer”).

In reviewing homeowner complaints, a trend was noted where agents would deflect homeowner claims to the builder for handling, with little or no monitoring of the process to ensure that warrantable defects were evaluated and repaired in a timely manner and as required. It appeared agents (and insurers) were treating the home warranty insurance contract as a surety product rather than a contract of first resort, as both Council and the Homeowner Protection Office believe is intended.

It was suggested to Council that a claim only occurs when the builder is insolvent or refuses to remedy warrantable defects. It was contended that having to administer every notice of a claim or request for coverage from a homeowner would lead to cost inefficiencies and prohibit home warranty insurance from being a viable product. This position, however, contradicted the wording in at least one home warranty insurance contract that required the policyholder to contact the insurer directly if a deficiency was discovered.

Council has noted that claim handling procedures are being refined in an attempt to deal with homeowner claims in a timely manner. Notwithstanding this, Council has decided to clarify its expectations on how these claims should be addressed.

The *Homeowner Protection Act* (“HPA”) and its accompanying regulations already set out an appropriate framework for administering home warranty claims. In terms of Council’s mandate, the requirements contained in the HPA will be viewed as both the minimum requirements and the expected usual practice that an agent must meet in handling a homeowner’s warranty claim when

acting on the authority of the insurer. Therefore, agents authorized to handle home warranty claims on behalf of an insurer must meet the following:

- 1) A claim for home warranty insurance coverage commences upon receipt of a “Notice of Claim” from a homeowner. A “Notice of Claim”, as set out under section 16(1) of the Homeowner Protection Act Regulation, means written notice in reasonable detail that provides particulars of any specific defects covered by the home warranty insurance. Upon first contact from a homeowner, it will be the responsibility of an agent to ensure the homeowner understands the proper procedure for filing a “Notice of Claim”.
- 2) When administering home warranty claims, agents must adhere to the mandatory claims handling conditions set out under Schedule 2 (section 3) of the Homeowner Protection Act Regulation. This section states:

(1) A warranty provider must, on receipt of a notice of a claim under home warranty insurance, promptly make reasonable attempts to contact the owner to arrange an evaluation of the claim.

(2) The warranty provider must make all reasonable efforts to avoid delays in responding to a claim under home warranty insurance, evaluating the claim and scheduling any required repairs.

(3) If, following evaluation of a claim under home warranty insurance, the warranty provider determines that the claim is not valid or not covered under the home warranty insurance, the warranty provider must notify the owner of the decision in writing, setting out the reasons for decision.

(4) The notice under subsection (3) must also set out the rights of the parties under the third party dispute resolution process referred to in section 1 of this Schedule.

(5) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labour.

(6) On completion of any repairs, the warranty provider must deliver a copy of the repair specifications to the owner along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in section 8 of Schedule 3.

- 3) Agents must also comply with any other applicable requirements set out under the *Financial Institutions Act*, the *Insurance Act* and Council Rules.

In future, where Council receives a complaint about an agent from a homeowner regarding the handling of a claim made under home warranty insurance, the procedures set out above will be the standard by which the actions of the agent will be judged. Failure to meet these minimum standards could result in disciplinary action by Council.

ISSUE 2: LICENSING

Since home warranty insurance coverage is mandated by legislation, Council believes the greatest risk of prejudice to the homeowner is the manner in which claims for coverage are administered. In particular, with home warranty coverage, the underwriting of risk does not occur in the conventional sense. Rather, it is the residential builder who is “underwritten for insurance”, as the builder must meet requirements established by an insurer. Once these requirements are met, the builder is eligible to become a member of the insurer’s warranty program. This allows the builder to secure home warranty insurance coverage on its new homes.

The elements of solicitation, negotiation and procurement, as set out in the definitions for insurance agent and insurance salesperson, pursuant to the *Financial Institutions Act*, surface in this “membership acceptance” stage. Therefore, it is Council’s view that any person involved in this membership process must be licensed as either an agent or salesperson.

In terms of claims handling and administration, Council will require that any agency representative who is not otherwise exempt and undertakes more than a clerical role in claims handling be licensed as a Level 2 general insurance agent, at a minimum. Otherwise, home warranty claims will have to be adjusted by the insurer or a licensed insurance adjuster.

ISSUE 3: HOLDING OUT AND FEE DISCLOSURE

A bi-product of insurers delegating administrative responsibilities respecting this business to their agents is the perception that the agents are, in fact, the insurer. We have seen instances where it is not clear to homeowners that they have recourse following a claim dispute through any party other than the agent.

It is also our understanding that agents play an integral role in establishing premiums for home warranty coverage and incorporate additional fees assessed to the builder into the policy premium, without any disclosure of such fees.

Accordingly, Council is taking this opportunity to remind agents of their obligation to make the following disclosures when dealing with home warranty insurance:

- 1) Any fee over and above the home warranty insurance premium, as determined by the insurer, must be disclosed by the agent to the builder in writing before evidence of home warranty insurance coverage is provided to the builder. This fee must be disclosed in a manner that clearly indicates it is not part of the premium charged by the insurer and is an additional amount being charged by the agent.
- 2) Requirements incumbent upon agents under the Marketing of Financial Products Regulation must be adhered to, and include:
 - disclosing to the customer the name of the insurance company whose service or product is being provided;
 - the relationship between the insurance company and the agent; and
 - disclosing that the licensee is an insurance agent.

ISSUE 4: BUILDER SECURITY

As part of the membership into a warranty insurance program, a builder typically enters into an indemnification contract with the agent, which purports to hold the builder legally liable for the cost of defect repairs over a certain period of time. Builders are generally required to provide some form of security to the agent (i.e., letter of credit, bond, cash), which can be exercised by the agent in the event a builder does not remedy an insurable defect as required. Where a builder has met its liabilities under this contract, the agent releases the security to the builder.

Although no security requirements exist under the HPA or its accompanying regulations, Council believes some form of action is necessary to bring this matter under regulatory purview. To this end, Council will be imposing one of the following three requirements where security is collected from a builder. It will be at the agent's discretion, which one of the three requirements will be imposed:

- The insurer for the home warranty insurance contract will be responsible for collecting and holding the security.

OR

Where the insurer delegates responsibility for collecting and holding the security to an agent:

- the insurer must confirm in writing that it will indemnify the builder if the security cannot be recovered in full from the agent for any reason; or
- the agent will be required to hold the security in a formal trust account on behalf of the builder and must provide Council with an annual report on the trust account(s) by an independent external auditor, who meets Council's approval, demonstrating that the security is being properly administered.

ISSUE 5: CANCELLATION OF COVERAGE

It has come to Council's attention that some agents engaged in the sale of home warranty insurance have de-enrolled specific construction projects on behalf of the insurer. A determination to cancel coverage on a completed home or on a home under construction (known as de-enrolment), is the sole responsibility of the insurer. If an insurer decides it intends to cancel coverage, it is the insurer's responsibility to notify the appropriate parties, including the insured.

Under no circumstance should an insurance agent de-enrol insurance on a home under construction or otherwise cancel home warranty insurance. A decision of this nature must be made by the insurer and it is the insurer's job to communicate the cancellation. An insurance agent cannot undertake this responsibility, even if it is delegated to them by an insurer.

Council does acknowledge that while an insurance agent cannot de-enrol a specific home construction project, it can refuse to provide warranty insurance coverage to a builder for the purposes of any future project.

CONCLUSION

It is Council's intention that the recommendations outlined in this Notice become mandatory licence conditions for licensees who engage in the sale of home warranty insurance products. Council welcomes industry feedback on this matter before it proceeds with implementing specific licence conditions for insurance agents engaged in the sale of home warranty insurance. Feedback must be submitted in writing no later than March 31, 2006 to the attention of:

Gerald Matier
Executive Director
Insurance Council of British Columbia
P.O. Box 7
Suite 300, 1040 West Georgia Street
Vancouver, B.C. V6E 4H1

ICN #06-001
February 22, 2006