

GENERAL INSURANCE COUNCIL OF MANITOBA
GENERAL INSURANCE AGENT CODE OF CONDUCT

SECTION 1 - INTEGRITY

AGENTS OR BROKERS SHALL DISCHARGE THEIR DUTIES TO THEIR CLIENTS, MEMBERS OF THE PUBLIC, FELLOW AGENTS OR BROKERS, AND INSURERS WITH INTEGRITY.

COMMENTARY:

Basic Principles

Integrity is a fundamental quality demanded of every insurance agent & broker. If personal integrity is missing, there is little you can do to compensate for its absence or to repair the damage to your reputation. Deliberate wrongdoing and gross neglect are equally reprehensible.

Examples

Examples of conduct which have been found not to meet this requirement include:

- (a) Committing any act in the performance of your duties which reflects negatively upon your integrity. (e.g. any act of fraud or dishonesty, such as issuing an unauthorized insurance certificate)
- (b) Making untrue representations or concealing material facts from a client. (e.g. failing to advise a client that you are unable to provide totally for the client's required insurance needs)
- (c) Taking improper advantage of a client's inexperience, lack of education, youth, lack of sophistication, unbusinesslike habits or ill health.
- (d) Misappropriating or dealing dishonestly with your client's money or other monies deemed to be held in trust by you.
- (e) Failing to be absolutely frank and candid in all of your dealings with insurers, fellow agents & brokers, and other parties of interest, subject to the legal rights and confidences of your client.
- (f) Discouraging clients from making legitimate insurance claims, or delaying them from being presented, in a manner which may prejudice the client's best interest or for reasons

which may serve the interests of the agent or broker. (e.g. delaying a claim into the new year to preserve the agent's or broker's contingent earnings from the insurer)

(g) Conviction of a criminal offense which brings into question your professional integrity or competence to act as an agent or broker, even if unconnected with your work as an agent or broker.

(h) Placing yourself in a conflict of interest with your client. (See Section 4 for further information)

SECTION 2 – COMPETENCE

AGENTS OR BROKERS OWE A DUTY TO THE CLIENT TO BE COMPETENT TO PERFORM THE SERVICES WHICH THE AGENTS OR BROKERS UNDERTAKE ON THE CLIENT'S BEHALF.

COMMENTARY:

Scope of Duty

Your duty to the client is to give competent guidance based on sufficient knowledge of the specific risks entailed, adequate consideration of the relevant insurance principles and your own experience and expertise.

Knowledge and Skill

The public regards licensing as a badge of competence. Competence, however, is not limited to legal qualification as an insurance agent or broker. It encompasses the agent or broker's ability to competently provide the services needed by the client. It calls for a clear understanding of insurance principles, and it requires sound knowledge of the practice and procedures to apply them effectively in the best interest of the client.

A licensed insurance agent or broker is held out as knowledgeable, skilled and capable to perform as an insurance intermediary. The client is therefore entitled to assume that you have the ability and capacity to deal adequately with general insurance matters on the client's behalf.

It follows that you shall not undertake to arrange insurance without honestly believing yourself to be competent to handle it (or able to become competent without undue delay, risk or expense to the clients). This is an ethical question relating to just and fair dealings with the client, and is important for the reason that an incompetent agent or broker can also impair the credibility of the industry as a whole in the eyes of the public.

This section is not intended to establish a standard of perfection for the purpose of determining whether or not disciplinary action should be taken. An honest mistake might not necessarily constitute failure to adhere to the Code, even though it might result in a successful negligence claim by the client.

Evidence of gross neglect, however, or a pattern of neglect or mistakes over time may be evidence of failing to meet the standards expected under this section, regardless of whether or not the agent or broker is liable for negligence. Where both negligence and incompetence are established, damages may be awarded the client for negligence and, as well, disciplinary action may be taken by Council for incompetence.

You must be sensitive to any weakness in personal competence and realize the disservice that would be done to a client by attempting to act beyond your personal level of competence. In such circumstances, you must either decline to act, or advise the client to seek another agent or broker with competence in the required area.

You shall also recognize that competence in a given situation may call for advice from experts in a non-insurance field, such as accounting or the law. You must not hesitate to recommend that the client consult such experts as circumstances dictate, or to consult such experts yourself where the circumstance warrants.

SECTION 3 – QUALITY OF SERVICE

AGENTS OR BROKERS SHALL SERVE THEIR CLIENTS IN A CONSCIENTIOUS, DILIGENT AND EFFICIENT MANNER AND SHALL PROVIDE A QUALITY OF SERVICE AT LEAST EQUAL TO THAT WHICH AGENTS OR BROKERS WOULD GENERALLY EXPECT OF A LICENSEE IN A LIKE SITUATION.

COMMENTARY:

Promptness

The requirement of conscience, diligent and efficient service means that you must make every effort to provide such service. If you can foresee undue delay or other impediments in providing such service, you shall so inform the client.

Standard of Services

This guideline is not intended to require a standard of perfection. You are required to provide service to clients of a standard at least equal to the service that a prudent and competent agent or broker would provide in the same situation.

Examples

Examples of conduct which have been found not to meet this requirement include:

- (a) Failing to provide evidence of insurance when needed, particularly failing to inform a client of the status of an overdue policy renewal.
- (b) Failing to inform a client of alterations to his coverage, such as changes in policy conditions or premium amounts, or any matter or fact which may materially affect the policy or prejudice the client's interests.
- (c) Failing to inform a client prior to renewal of a change of insurer and the reason for such change.
- (d) Failing to return telephone calls, letter and other communications promptly and in sufficient detail and failure to respond to enquiries without undue delay.
- (e) Failing to provide proper service to new house purchasers who may assume an insurance policy from the builder, including failing to provide an explanation and review of the coverages being provided and advising that the policy can be rejected by the purchaser in favor of coverage from another agent or broker.
- (f) Failing to advise clients as to appropriate insurance, thereby leaving unreasonable gaps in the client's coverage.
- (g) Failing to meet deadlines to the prejudice of a client, including missing deadlines for insurance to be effected, recommendations to be implemented and similar important transactions to be completed.

SECTION 4 – ADVISING CLIENTS

AGENTS OR BROKERS SHALL BE BOTH CANDID AND HONEST WHEN ADVISING CLIENTS.

COMMENTARY:

Scope of Advice

Recommendations to clients shall be complete, open and clear.

You must indicate in detail, the facts and assumptions upon which your recommendations are based. You must study the risk in sufficient detail to provide the client with sufficient information with which to make an informed decision.

Disclosure of Markets

If you can offer only one company's quote to a prospective client, there is a duty upon you to make this limitation known before accepting and before placing any business on the clients behalf.

Product Disclosure

You have an obligation to inform your clients at all times about all aspects of the insurance products they have purchased including any changes affecting a policy which occur during the policy term. In addition, you must observe all relevant laws relating to public protection and disclosure of information to clients. Anyone dealing with unlicensed insurers must hold a "Special Brokers Licence" to deal with unlicensed insurers pursuant to the Insurance Act.

Conflict of Interest

In addition, you must not place yourself in a conflict of interest with your client unless your client approves of your intended conduct after you have openly, honestly and fully disclosed the existence of a conflict of interest. Where you receive any form of incentive or bonus for placing business with an insurer, this must be disclosed to your client if it is a factor in recommending that insurer over another at the client's expense or detriment.

This requirement does not apply to direct writing agents who act exclusively for one company.

Tied Selling

Under the Federal Competition Act, it is an unfair or deceptive act or practice for an agent or broker to assist in or engage in the practice of "tied selling".

Examples

Examples of conduct which have been found not to meet the requirement to be candid and honest include:

(a) Giving bold or sweeping general assurances to clients that everything is covered when this is not the case.

(b) After having an agent or broker contract with an insurer cancelled, misleading clients about the true reason for remarketing their coverages on expiry, particularly when it results in a material difference in the premium to the client.

(c) Failing to advise a client of a warranty on a policy without informing the client that this is a condition of the coverage being provided. (e.g. an automatic protective device warranty)

(d) Having a prospective client sign a Letter of Brokerage without explaining the full implications and, in particular, the consequences to the client's present agent or broker.

(e) If a letter of authorization is needed from a prospective client in order to provide quotations for insurance, the letter should be worded clearly and specifically regarding this purpose and should not be used unfairly against the present agent or broker for any other purpose.

SECTION 5 – CONFIDENTIALITY

AGENTS OR BROKERS SHALL HOLD IN STRICT CONFIDENCE ALL INFORMATION ACQUIRED IN THE COURSE OF THE PROFESSIONAL RELATIONSHIP CONCERNING THE BUSINESS AND AFFAIRS OF A CLIENT, AND SHALL NOT DIVULGE ANY SUCH INFORMATION UNLESS AUTHORIZED BY THE CLIENT TO DO SO, OR REQUIRED BY LAW TO DO SO OR WHERE THE AGENT MUST DO SO IN CONDUCTING NEGOTIATIONS ON BEHALF OF THE CLIENT.

COMMENTARY:

Guiding Principles

It is impossible for you to advise a client properly without full knowledge of the client's circumstances and affairs, insofar as they affect the exposures being considered. Clients therefore must feel absolutely certain that the information they disclose to you will be treated with the utmost confidentiality. Unless you foster and maintain this trust, your ability to provide the service expected by your clients will be severely impaired.

You cannot render meaningful service to clients unless you enjoy full and unreserved communication with them. At the same time, clients must feel completely secure that, without any express stipulation or request, matters disclosed to you will be held completely confidential by you and your staff, and that any such information will only be revealed to others without the client's consent if it is legally necessary, or in the course of negotiating insurance on behalf of the client.

Authorized and Justified Disclosure

Confidential information may be divulged with the express permission of the client concerned, and in some situations, the authority of the client to divulge such information

may be implied by the client's instructions. For example, disclosure of matters material to the risk is necessary to arrange suitable insurance for the client.

Unless the client otherwise directs, for the purpose of providing services to the client, you may disclose the client's affairs to partners, associates and those staff who handle the client's files. This implied authority to disclosure, however, places you under a parallel obligation to impress upon those concerned the importance of confidentiality and non-disclosure (both during their employment and afterwards) and requires you to take reasonable care (including proper staff training and supervision) to prevent them from disclosing or using any information which must be kept confidential.

When disclosure is required by law or by order of a court, you must be careful not to divulge more information than is required. Disclosure may also be justified in order to defend yourself or your staff against any allegation of incompetence or misconduct, or in legal proceedings to collect earned premiums or fees, but only to the extent necessary for such purposes.

Scope of Duty

The agent or broker owes the duty of confidentiality to every client without exception. The duty survives the professional relationship and continues indefinitely after you have ceased to act for the client, whether or not differences may have arisen between you and the client.

You shall take care to avoid disclosure to one client of confidential information concerning or received from another client.

This paragraph may not apply to facts which are public knowledge, but nonetheless, you should guard against participating in or commenting upon speculation concerning the client's affairs or business.

SECTION 6 – ENCOURAGE PUBLIC RESPECT

AGENTS OR BROKERS SHALL ENCOURAGE PUBLIC RESPECT FOR AND TRY TO IMPROVE THE PRACTICE OF THEIR PROFESSION.

COMMENTARY:

Scope and Application

Active support of this section is expected of you in your day to day deadlines as an agent or broker, even though failure to do so may not necessarily result in disciplinary action.

However, in doing so, you may have fallen short of the highest standards expected of you as an agent or broker.

However, it may be deemed an offence under the Code and be grounds for disciplinary action to conduct yourself in a manner which causes disrespect for the profession.

The obligation outlined in this paragraph is not restricted to your professional activities but is a general responsibility from your position in the community. You must take care not to weaken or destroy public confidence in the insurance industry most especially the unique position of the licensed insurance agent or broker. Nevertheless, you must not hesitate to act constructively to remedy inequities or unfairness which come to light.

Public Respect

Practicing as an insurance intermediary implies that you have made a basic commitment to the system of the distribution of insurance to the public by agents or brokers. However, the system will only function effectively if it commands the respect of the public. The ever-changing economic and social environment in which society evolves demands constant efforts be made to adapt the system to respond to such changes and thereby maintain public respect for it.

Seeking Improvement and Change

Largely through opportunity and experience, the agent or broker is in a most favorable position in the insurance industry to observe its workings and discover its strengths and weaknesses and public reaction to them. You must therefore lead in seeking improvements to the system through constructive criticism and reasoned proposals.

If you seek legislative or administrative changes, you must be clear and honest about whose interest is being advanced, whether it is your own or that of the public. When you purport to act in the public interest, you shall promote only those changes which you conscientiously believe to be in the public interest.

Community Activity

You may assist in making access to insurance knowledge available by taking an active role in programs of public information, education or advice concerning insurance matters.

SECTION 7 – MANNER OF SERVICE

AGENTS OR BROKERS SHALL MAKE SERVICES AVAILABLE TO THE PUBLIC IN AN EFFICIENT AND CONVENIENT MANNER WHICH WILL COMMAND RESPECT AND

CONFIDENCE AND BY MEANS OF WHICH IS COMPATIBLE WITH INTEGRITY AND EFFECTIVENESS.

COMMENTARY:

Basic Principles

The means by which insurance is made available to the public must not detract from the integrity or effectiveness of the insurance agents or brokers. This obligation must be kept in mind when the broker is determining particular methods of operation, marketing or advertising.

SECTION 8 – MAINTAIN INTEGRITY OF THE PROFESSION

AGENTS OR BROKERS SHALL ASSIST IN MAINTAINING THE INTEGRITY OF THE PROFESSION AND SHOULD PARTICIPATE IN ITS ACTIVITIES.

COMMENTARY:

Duty to Report Misconduct and Incompetence

Where an agent or broker who tends toward professional misconduct is not checked at an early stage, loss or damage to clients or others may ensue.

Evidence of minor breaches may, upon investigation, disclose a more serious situation or may indicate the beginning of a course of conduct which could lead to serious breaches in the future. It is therefore proper for you to report to the Insurance Council of Manitoba (the "Council") any instance involving a breach of the Insurance Act, its regulations, this Code of Conduct or the General Insurance Agents Licensing Rules by any agent or broker. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a result of an apparent breach of the Insurance Act, its regulations, this Code of Conduct or the General Insurance Agents Licensing Rules, you have an obligation to report the matter to Council.

In all cases, such a report must be made in good faith, without malice or ulterior motive.

You shall attempt to persuade and assist any member of the public to report any facts to the Council which may constitute an act of misconduct.

You have a duty to reply promptly to any communication from the Council.

Professional Communication

You shall not, in the course of business, write letters, whether to a client, another agent or broker or any other person, which are abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from an agent or broker.

SECTION 9 – UNAUTHORIZED PRACTICE OF THE PROFESSION

AGENTS OR BROKERS SHALL ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF THE PROFESSION.

COMMENTARY:

Reasons for Prohibition

Unauthorized persons may have technical or personal ability, but they are not subjected to the necessary control, regulation and discipline by the Council.

Supervision of Employees / Assistants

You must assume complete professional responsibility for all business entrusted to you. Designated Representatives are responsible for supervision over staff and assistants to whom they delegate particular tasks and functions.

Use of Unlicensed Individuals

Any activities falling within the definition of “insurance agent or broker” contained in section (1) of the Insurance Act must be performed by a person who is a licensed insurance agent or broker. You must ensure that all matters which by law shall be performed by a licensed agent or broker are, indeed, so performed.

SECTION 10 – CONDUCT TOWARDS OTHERS

AGENTS OR BROKERS CONDUCT TOWARDS OTHER LICENSEES, MEMBERS OF THE PUBLIC, INSURERS AND THE COUNCIL SHALL BE CHARACTERIZED BY COURTESY AND GOOD FAITH.

COMMENTARY:

Principles

Public interest, industry practice and legal requirements demand that matters entrusted to you be dealt with effectively and expeditiously. Fair and courteous dealings on the part of

each licensee will contribute materially to this end. By behaving otherwise, you do a disservice to yourself, your client and to the industry as a whole.

Withdrawal of Services

When terminating your relationship with a client you must comply with all applicable laws and professional obligations, including your obligation to give the client adequate notice so as not to prejudice the client's interests.

Promptness

You shall answer with reasonable promptness all professional letters and communications from other agents and brokers which require an answer, and shall be punctual in fulfilling all your commitments. The same courtesy and good faith shall characterize your conduct towards members of the public.

You shall not give any undertaking that cannot be fulfilled. Undertakings should be written or confirmed in writing and shall be unambiguous in their terms.

Other Agents and Brokers

You shall avoid ill-considered, uniformed or unnecessary criticism of the competence, conduct, advice or charges of other agents and brokers, but must be prepared, when requested, to properly advise a client in the complaint procedure and to cooperate with the Council and other regulatory authorities in the investigation of complaints and enforcement of the law.

SECTION 11 – SAFEKEEPING AND PRESERVING OF PROPERTY AND FILE RECORDS

AN AGENT SHALL OBSERVE ALL RELEVANT RULES AND LAWS REGARDING THE PRESERVATION AND SAFEKEEPING OF PROPERTY OF A POLICY OWNER OR A PROSPECTIVE PURCHASER ENTRUSTED TO SUCH AGENT, AND WHEN THERE ARE NO SUCH RULES OR LAWS OR THE AGENT IS IN DOUBT, THE AGENT MUST TAKE THE SAME CARE OF SUCH PROPERTY AS A CAREFUL AND PRUDENT PERSON WOULD TAKE OF HIS/HER OWN PROPERTY OF LIKE DESCRIPTION.

AN AGENT SHALL MAINTAIN FILE RECORDS OF ALL MATERIAL INFORMATION WHICH HAS BEEN UTILIZED IN THE NEGOTIATION, CONTINUANCE OR MAINTENANCE OF AN INSURANCE CONTRACT.

This paragraph deals with an agent's general obligations regarding the holding of a policy holder or prospective purchaser's property and the maintenance and safekeeping of their

records. While the law of bailment may impose a legal duty of care for any such property entrusted to an agent, this paragraph expresses this duty as a matter of professional responsibility quite apart from the position in law.

The agent shall at all times maintain adequate file records of relevant and material information concerning policy owners or prospective purchasers. Examples of such information include documentation of telephone calls and follow-up written confirmation of all client requests to add or delete properties subject to an insurance contract.

Arrangements and procedures for the storage and eventual destruction of client's files and records must reflect these responsibilities and particularly the continuing obligation as to confidentiality. Further, the operation of limitation laws (statutory time periods) which pertain to each client may preclude the destruction of particular papers.