

INSURANCE COUNCIL OF BRITISH COLUMBIA

GUIDELINES GOVERNING THE SALE OF HOME WARRANTY INSURANCE IN BRITISH COLUMBIA

In 2006, the Insurance Council of British Columbia (“Council”) published Notice ICN# 06-001, which addressed proposed recommendations regarding the distribution of home warranty insurance products.

Council received feedback from interested parties within the insurance industry regarding its proposed requirements. For the most part, the recommendations were supported by the insurance industry and related stakeholders. After considering the feedback, Council determined it would proceed with the implementation of the recommendations as they were originally published.

Set out below are Council’s requirements governing the sale and administration of home warranty insurance in British Columbia, which have been designed to ensure licensees engaged in the solicitation and administration of home warranty insurance understand their duties and obligations and act in the public’s best interest. Failure to adhere to these requirements may be viewed as a breach of the usual practice of the business of insurance and could result in disciplinary action.

ISSUE 1: CLAIM ADMINISTRATION

The principal concern with home warranty insurance claims is the timeliness in which claims are addressed by agents acting on behalf of a home warranty insurance provider (“insurer”).

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. In some instances, it appeared agents (and insurers) were treating the home warranty insurance contract as a surety product rather than a contract of first resort. Claim handling procedures have improved since Council began to address this issue, with agents and insurers attempting to deal with homeowner claims in a timely manner.

The *Homeowner Protection Act* (“HPA”) and its accompanying regulations 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 an insurance agent must meet in handling a homeowner’s warranty claim when acting on the authority of the insurer.

In the future, insurance 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 the agent to ensure the homeowner understands the proper procedure for filing a “Notice of Claim”.
- 2) When administrating 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.

Where Council receives a complaint about an insurance 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 insurance agent will be judged.

ISSUE 2: LICENSING

As home warranty insurance coverage is mandated by legislation, the greatest risk of prejudice to the homeowner is the manner in which claims for coverage are administered. In particular, 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 insurance agent or insurance salesperson.

In terms of claims handling and administration, a person who undertakes more than a clerical role in claims handling must be licensed as a Level 2 or Level 3 general insurance agent. Otherwise, home warranty claims must be adjusted by the insurer or a licensed insurance adjuster.

ISSUE 3: HOLDING OUT AND FEE DISCLOSURE

Council is taking this opportunity to remind insurance 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 home warranty insurance program, a builder typically enters into an indemnification contract with the insurer, 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 (i.e., letter of credit, bond, cash), which can be exercised in the event a builder does not remedy an insurable defect as required. Where a builder has met its liabilities under this contract, the security is released to the builder.

Although no security requirements exist under the HPA or its accompanying regulations, Council believes this practice should be under regulatory purview. From now on, one of the following three requirements will apply to insurance agents where security is collected from a builder. It will be the insurance agent's option as to which 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 insurance agent:

- the insurer must confirm in writing that it will indemnify the builder if the security cannot be recovered in full from the insurance agent for any reason; or
- the insurance 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), prepared by an independent external auditor, who meets Council's approval, demonstrating that the security is being properly administered.

ISSUE 5: CANCELLATION OF COVERAGE

As part of its review of home warranty insurance business, Council found that some insurance agents have de-enrolled specific construction projects on behalf of the insurer. Council's position is that 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 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 where delegated by an insurer.

Council acknowledges 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

These requirements, as set out above, are now viewed as part of the usual practice of the business of insurance for insurance agents engaged in the sale of home warranty insurance products. Effective immediately, insurance agents who engage in the sale of home warranty insurance products are expected to conduct their insurance activities in accordance with these requirements.

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