Insurance Council
BRITISH COLUMBIA

NOTICE

ICN 20-003 | Requirements for Strata Insurance Business

November 23, 2020

In September 2020, the provincial government approved new legislative changes regarding strata property insurance business. These changes introduce requirements related to referral fees, notification periods, and compensation disclosure.

Background

In recent months British Columbia has seen significant insurance rate increases in the strata insurance market. At the request of the provincial government, the BC Financial Services Authority (BCFSA) undertook a review of the strata insurance market to identify the cause of the increases. In June 2020, BCFSA released an interim report[1] highlighting a number of contributing factors.

In response, the provincial government introduced legislative changes to increase the clarity and transparency of strata insurance business through amendments to the Marketing of Financial Products Regulation, now renamed the Financial Products Disclosure Regulation.

On September 4, 2020, the Insurance Council of BC published an urgent practice advisory advising of the changes and what they mean for licensees. This was followed by a Q&A document on October 5, 2020, to provide further clarity. This notice consolidates the guidance provided in these earlier documents.

Requirements for Strata Insurance Business

The new requirements include changes to referral fee payments, disclosure of compensation, and notification periods. These requirements apply to all strata property insurance business regardless of the size of the strata and include commercial strata properties.

Referral Fees Prohibited

Effective September 4, 2020, referral fees for strata property insurance can no longer be paid to a property manager or any other party, nor can a commission be paid to any unlicensed person, even if an agreement was entered into prior to this date.

Disclosure of Compensation

Effective November 1, 2020, the total dollar amount of commission or other compensation received by an agency for a strata property insurance policy must be disclosed in writing to the strata corporation. If that information is not available, an estimate of that amount and how it will be calculated must be provided. Licensees must ensure they provide disclosure within the required notification period: a minimum of 30 days prior to the expiry of the existing strata contract. Taking into consideration the additional 5 days required by the *Strata Property Act* and *Interpretation Act*, this makes the actual requirement 35 days.

Where an estimate has initially been provided, licensees must follow up with another disclosure of the actual compensation amount once known.

Disclosure of Material Changes or Non-Renewal

Effective November 1, 2020, in instances where a client's strata property insurance will not be renewed at the same terms and conditions or where there is a material change to the strata insurance contract, insurers are required to provide clients with notification of the insurer's intention and proposed terms a minimum of 30 days in advance of the existing policy's expiration date.

Alternatively, insurers may provide notice and terms to the licensee instead but must do so a minimum of 45 days prior to the policy expiration. The licensee is then required to provide the terms and notification of non-renewal to the client a minimum of 30 days in advance of policy expiry. Similar to disclosure of compensation, the requirements of the *Strata Property Act* and *Interpretation Act* mean that an additional 5 days must be added for notice to have been deemed given, making the actual requirement 35 days.

Where the proposed terms are not known within the notification period, licensees must disclose to the client what they do know about the status of the policy to keep them informed.

Notification Period

Beyond the disclosure requirements specified by the Financial Products Disclosure Regulation, the Insurance Council Code of Conduct already requires agents to provide 60 days notice to their clients regarding non-renewal or changes to terms. This means that licensees should initiate communication with clients no less than 60 days in advance of policy expiry.

As the insurer's requirement will be to provide information to the licensee 45 days in advance, licensees should use this lead time to start the process of communicating with clients and insurers, even if they do not have all the information at this stage. This could include providing the client with information regarding the current strata insurance market, requesting risk update information, and communicating next steps for renewing their insurance policy.

As the new notification period requirement is effective on November 1, 2020, any policies that expire December 15, 2020, or later are subject to the new requirements.

Disclosure Method

Disclosures must be provided in writing directly to the strata council in accordance with Section 63 or 64 of the *Strata Property Act*, although the strata council may delegate communication to a strata property manager or other legal representative. Licensees may use their own disclosure format, but it should be clear and easily understood by the client.

Additional Resources

Information on this matter previously published by the Insurance Council of BC is appended to this notice:

- Urgent Practice Advisory – Changes to Strata Insurance Laws
- Q&A – Changes to Strata Insurance Laws

Additionally, ICN 20-001 Brokering Best Practices includes information about licensees' obligations under the Code of Conduct, including the 60 days advance notification.

If you have any questions about this Notice, please contact our Practice and Quality Assurance Team at 604-695-2008 or toll-free at 1-877-688-0321 ext. 3 or email practice@insurancecouncilofbc.com.

[1] BC Financial Services Authority. *BC Strata Property Insurance Market – Interim Findings*. Vancouver, BC. 2020. *https://www.bcfsa.ca/pdf/publications/StrataInsuranceFindingsReport.pdf*

Insurance Council
BRITISH COLUMBIA

The following information was circulated to general insurance licenses via email, September 4, 2020, under the Subject Line: URGENT PRACTICE ADVISORY – New Changes to Strata Insurance Laws

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BC Government Approves New Regulatory Requirements for Strata Insurance Business:

What This Means for Licensees

On Friday, September 4, 2020, the provincial government approved new legislative changes regarding strata property insurance business. These changes introduce requirements related to the payment of referral fees, notification periods for changes to or non-renewal of strata property insurance, and compensation disclosure.

Payment of Referral Fees For Strata Insurance Prohibited

An amendment to the *Financial Institutions Act* has been introduced which prohibits the payment of referral fees or any other kind of compensation to property managers or anyone else who is not an insurance licensee for the sale or renewal of strata property insurance.

This requirement **takes effect immediately**, meaning that this practice is no longer permitted as of September 4, 2020.

Notification Period for Change/Non-renewal of Existing Insurance Policy

In instances where a client's strata property insurance will not be renewed at the same terms and conditions, changes to the Marketing of Financial Products Regulations will require that insurers provide clients with proposed terms a minimum of 30 days prior to the expiration of their existing insurance. If the insurer provides notice and terms to the agent instead, they must do so a minimum of 45 days prior to the expiry of the existing insurance; the agent is then responsible to provide the terms or notification of non-renewal to the client a minimum of 30 days in advance of insurance expiry. Licensees should note that due to additional requirements under the *Strata Property Act* and *Interpretation Act*, an additional five days must be added to the notification period from agent to strata corporation for notice to have been deemed given, making the requirement 35 days in actual fact.

This requirement will come into effect **November 1, 2020**.

Disclosure of Broker Compensation

The amount of compensation involved in strata property insurance sales and renewals will now need to be disclosed to the strata corporation under the amended Marketing of Financial Products Regulations. Agents will now be required to disclose in writing the actual dollar amount of

compensation they receive or, if that information is not available, an estimate of that amount and how it will be calculated. Where there is a material change to the policy terms, disclosure must be provided a minimum of 30 days prior to the expiry of the existing strata contract. Taking into consideration the additional 5 days required by the *Strata Property Act* and *Interpretation Act*, this makes the actual requirement 35 days.

This requirement will come into effect **November 1, 2020**.

Requirements

Licensees are required to comply with the requirements of the amended legislation and regulations as they take effect. Non-compliance with these requirements will constitute a breach of the Insurance Council's Rules and Code of Conduct.

Next steps

The Insurance Council's Code of Conduct will be updated to align with the new regulatory requirements shortly, and additional guidance will be made available to licensees.

Should you have any questions, please contact our Practice and Quality Assurance Team at practice@insurancecouncilofbc.com or 604-695-2008, toll-free 1-877-688-0321.

Insurance Council
BRITISH COLUMBIA

Q&A | Changes to Strata Insurance Laws

V.1.2 Updated November 17, 2020

In September 2020, the provincial government approved new legislative changes regarding strata property insurance business. These changes introduce requirements related to referral fees, notification periods, and compensation disclosure. Following up on the Insurance Council's September 4 practice advisory "BC Government Approves New Regulatory Requirements for Strata Insurance Business: What This Means for Licensees," this Q&A addresses common questions related to the requirements.

GENERAL

Q: Do the new strata insurance laws apply to commercial strata properties?

A: Yes. The new requirements apply to all strata insurance business regardless of the size of the strata, including commercial strata properties.

Q: What happens if I'm not in compliance with the regulations?

A: Insurance Council licensees found to be in breach of the regulations would be subject to investigation and potential disciplinary action. Insurers found to be in breach may be subject to enforcement action by the BC Financial Services Authority, with administrative penalties of up to $50,000.

REFERRAL FEES

Q: I understand that I cannot pay a referral fee to a property manager or anyone else, but can I pay a contingent profit commission or guaranteed supplemental commissions and/or any other type of compensation?

A: No. Commission cannot be paid to unlicensed parties.

Q: I entered into an agreement to pay referral fees to a property manager before September 4, 2020. Can I pay the referral fee as agreed?

A: No, effective September 4, 2020, referral fees cannot be paid to property managers, or anyone else for strata insurance.

DISCLOSURE OF COMMISSION

Q: How should I disclose the commission?

A: Beginning November 1, 2020, the dollar amount of commission or compensation received for a strata insurance policy must be disclosed in writing to the client. The disclosure amount should be the total amount of commission paid for placing the client's policy, which is the amount paid to the agency, not to the agent.

If the amount of commission is not known, agents must disclose the estimated amount and how it is calculated. Where there is a material change to the terms of the policy, commission must be disclosed at least 35 days in advance of the policy renewal date. If this is not known 35 days in advance, the agency should provide an estimate of the commission and disclose the final commission amount once it is known.

Q: Is there a template document for commission disclosure?

A: A template form has not been provided. Agencies can create their own disclosure format, but should ensure that it is obvious and easy for the client to understand the commission amount.

Q: If I only place a portion of the coverage by the disclosure deadline, do I have to estimate the total amount of commission?

A: Yes, you must estimate the total amount of commission to be paid to the agency and how the commission is calculated. Once the commission amount is finalized, you must disclose the final amount.

Q: If I provided the client with an estimated amount of commission, do I need to provide another disclosure later?

A: Yes.

Q: Do I need to disclose the amount paid to each agent? Or should I disclose the total amount of commission paid to the agency?

A: The disclosure amount should be the total amount of commission paid for placing the client's policy, which is the amount paid to the agency, not to the agent.

Q: Does an MGA have the same commission disclosure requirements as an agency?

A: Yes.

Q: Do I need to disclose commission on endorsements to insurance policies?

A: The legislation refers to the disclosure of commission ahead of or at the time of the purchase or renewal of insurance but does not appear to refer to mid-term changes to insurance contracts. However, where there is a material change to the level of compensation at some point during the insurance contract, such as at endorsement, it is expected that the agent disclose the change in the interest of fair treatment of the customer and aligned with the spirit of the regulations.

NOTIFICATION PERIOD

Q: When does the new notification period requirement come into effect?

A: November 1, 2020. This means that any policies that expire December 15, 2020, or later are subject to the new notification period requirements. Agents must still communicate with their clients as early as possible and at least 60 days in advance of the policy expiring, even if the insurer has not provided terms yet. Note, disclosure of commission is required for all strata insurance policies beginning November 1, 2020, regardless of the policy renewal date.

Q: The notification period is required where there is a "material change" in the strata insurance contract. What information is considered material?

A: The definition for what constitutes a material change is currently under review. Until otherwise stated, licensees should continue to adhere to the guidance provided in the Insurance Council's Code of Conduct: what information is material and should be provided to a client depends on the circumstances of the transaction; you should disclose any information relevant to the client's insurance needs that a reasonable and prudent licensee would disclose in the same circumstance.

Q: The Insurance Council's Code of Conduct requires that the agency provide 60 days notice, but the new legislation only requires 35. Does that mean I only have to provide 35 days notice?

A: Agents should initiate communication with clients regarding changes in terms or notification of non-renewal at least 60 days in advance of renewal. As the insurer's requirement will be to provide this information to the agent 45 days in advance, agents should use the time to start the process of communicating with clients and insurers, even if they don't have all the information. For example, agents could start communicating with the client 60 days prior to renewal to provide them with information regarding the current strata insurance market, request risk update information and communicate next steps for renewing their insurance policy. If the agent does not receive terms from the insurer(s) prior to 35 days from the renewal date, the agent should communicate what they do know and next steps so the client is informed throughout the process.

Q: Does an MGA have the same notification period requirements as an agency?

A: Ultimately, disclosure must be provided to the client no less than 30 days before the policy expires. If an MGA is disclosing revised terms or notice of non-renewal to the agency, they must do so at least 45 days in advance of the policy expiring. If the MGA is dealing directly with the client, they must provide their disclosure at least 35 days in advance.

Q: Do all participating insurers on a policy have to provide disclosure 45 days in advance to the agency? Does this apply only to the lead insurer?

A: All insurers have the same disclosure requirements.

Q: Is it sufficient to provide the notice to the property manager? Or must I provide disclosures directly to the strata council?

A: You must provide the disclosure to the strata council. If the strata council elects to delegate communication to the property manager they can do so.

Q: If the lead insurer or any subscriber decides not to participate and new insurers are added to the policy, what are my disclosure requirements then?

A: The agent should tell the client what they know, including information about the current strata insurance market and communicate next steps.

Should you have any further questions, please contact our Practice and Quality Assurance Team at practice@insurancecouncilofbc.com or 604-695-2008, toll-free 1-877-688-0321.