



Thursday, December 9, 2021

RE: LEGISLATED PARAMETERS SURROUNDING DIGITAL DOCUMENTS

Over the past year, IBAS has been engaged with the Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”) on several policy files stemming from — what IBAS has suggested are — *gaps* in current insurance legislation and regulation. One of the issues that has arisen centers on the provision of digital documents.

It is our understanding that some carriers operating in Saskatchewan have ceased offering paper copies of insurance applications and/or policies. As a result, brokerages have been printing and/or mailing these documents at the insured’s request.

While IBAS remains highly supportive of digitization from a process efficiency and environmental sustainability standpoint, elements of the existing practices are not in compliance with *The Insurance Act* (the “Act”), putting both insurance companies and intermediaries (or “brokers”) at risk.

1.0 Interpretation

On December 7, 2021, IBAS received from FCAA the following interpretation of the rules and requirements presently in force:

- 1.1 In Saskatchewan, it is the responsibility of the *insurer* — not the intermediary — to provide the first copy of an insurance application and/or policy free of charge either in paper format or, upon consent of the insured, digitally. Consent to deliver digital insurance documents must be obtained from the insured through an *opt-in* process (opposed to consent by default). There are other insurance documents that must be sent by registered mail (or otherwise served upon the individual) as per provincial legislation.
- 1.2 By way of signed agreement, an intermediary may agree to print and/or mail paper copies of insurance applications and/or policies on behalf of the insurer in exchange for compensation or reimbursement. Any such agreement, however, does not absolve or defer the insurer’s responsibilities under the Act to ensure the distribution of these documents is completed. As with any legal contract, intermediaries may be exposed to action for failure to perform agreed upon services.

- 1.3 Separate, documented consent must be obtained for each insurance company in which an insured is opting to receive a digital copy of an insurance application and/or policy from. Consent does *not* necessarily need to be obtained for each policy or upon renewal, so long as the terms of consent are clearly articulated at the time of obtaining consent.
- 1.4 Insurance companies and, where appropriate, intermediaries must retain proof of documented consent to receive a digital copy of an insurance application and/or policy in lieu of a paper copy.

2.0 Further Clarification

Although it was not part of the written interpretation received from FCAA, it is IBAS's understanding that consent may be obtained in a variety of ways, similar to that required for the application of any fees charged by an intermediary over and above premiums — including, but not limited to, signed form, e-mail, digital 'checkbox', or written disclosure on an invoice brought into force by a completed payment.

3.0 Next Steps

In response to FCAA's interpretation, IBAS is advancing three separate priorities to address this file.

- 3.1 Immediate compliance: Work with insurance companies to understand the responsibilities of carriers, and liaise between insurers, regulators, and IBAS members to ensure appropriate processes and protocols are put in place to obtain and manage consent to receive digital insurance documents.
- 3.2 Consumer advocacy: Support brokers in communicating to consumers the advantages of agreeing to receive digital insurance documents — with a dual lens on ensuring those consumers who are unable to receive digital documents are not unfairly impacted.
- 3.3 Long-term process standardization: Through IBAS's sister associations across the country, the Centre for Study of Insurance Operations, and the Insurance Bureau of Canada, explore the potential to streamline processes to reduce unnecessary administrative burden on brokers and carriers.

4.0 Contact

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