

## LIFE INSURANCE COUNCIL OF SASKATCHEWAN

### Guidance Note #2

#### Entering into a Business Transaction with a Client

##### Purpose of Guidance Notes

Council's Bylaws (the bylaws) set out principles of practice that licensees must adhere to. The bylaws are very broad and may be applied in ways that licensees may not fully appreciate. For this reason Council publishes guidance notes to assist licensees in applying the broad principles identified in the bylaws and also to recommend to licensees industry best practices.

Guidance notes are not bylaws and are intended only to assist licensees in identifying best practices.

The guidance notes that follow illustrate what Council considers to be examples of best industry practices but are not necessarily the only acceptable practice that may apply in a specific situation.

##### Objectives of the Guidance Note

The following notes illustrate what Council considers to be examples of best industry practices in the application of each of the bylaws. The guidance illustrated may not be appropriate for every client in every situation.

The application of each of the principles and the actual practices used are the responsibility of the licensee and are dependent upon the circumstances and needs of each client.

The Bylaw section(s) are reproduced for reference when considering the guidance notes that follow each section.

**Bylaw 8, Section 1, (a) says "misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable that is contrary to the best interests of the consumer or licensees or insurance companies".**

Courts have consistently held a licensee to be a professional that has a fiduciary duty when dealing with a consumer. This is a high standard that obligates a licensee to act for the benefit of the consumer and to avoid conflicts of interest.

Licensees are in a privileged position in that they have knowledge of client's financial information and personal circumstances that can easily be manipulated to the licensee's advantage.

Council therefore, will apply the principle that it is not appropriate to enter into a business transaction with a client.

Council will use the following description of business transaction(s) when determining if there are grounds for a complaint against a licensee.

***"Business transaction" includes lending or borrowing money, buying or selling property, accepting a gift or bequest, giving or acquiring an ownership, security or other pecuniary interest in a company or other venture, recommending an investment and entering into a common business venture.***

Council recognizes that it may not be reasonable to treat a specific business transaction as prima facie evidence of misconduct by a licensee.

Council may however, where one or more of the following circumstances exist consider it to be prima facie evidence of misconduct by a licensee:

1. There is not a family relationship between the licensee and the client.
2. There is not an established close personal relationship outside of the client agent relationship.
3. The financial circumstances or risk profile of the client are such that the business transaction was not suitable for the client.
4. There is not a written record that the client had been advised to and did obtain independent legal advice and what that advice was, or in the alternative written evidence that the client declined to obtain independent legal advice.
5. The business transaction was not mutually advantageous to both the licensee and the client.
6. The client was not mentally competent to judge the nature of the business transaction.
7. The client was emotionally dependent and vulnerable.
8. There is a formal complaint made by the client to Council.

### **What other Regulators Say**

*The Law Societies in many provinces have rules governing a lawyer's ability to obtain financial assistance from a client or enter into business transactions with a client.*

*The Alberta Law Society has Rule 9 that states:*

*"A lawyer must not engage in a business transaction with a client of the lawyer who does not have independent legal representation unless the client consents and the transaction is fair and reasonable to the client in all respects."*

*Securities Regulators such as:*

1. *The Mutual Fund Dealers Association; and*
2. *The Independent Investment Regulatory Organization of Canada*

*Both have an absolute rule that their registrants must not borrow money from clients.*