

# REGISTERED INSURANCE BROKERS OF ONTARIO

## CODE OF CONDUCT

This Code of Conduct Handbook is distributed to insurance brokers in the Province of Ontario with the approval of the Council of the Registered Insurance Brokers of Ontario. The Council of RIBO recommends that both the Handbook and Registered Insurance Brokers Act be placed in a central location or library for easy access by all brokers.

An electronic version of this Code is also available on our website at [www.ribo.com](http://www.ribo.com).

We encourage all brokers to consult this Handbook, which outlines all professional conduct requirements, on a regular basis.

# INDEX

	<u>PAGE</u>
Preface	3
Ontario Regulation 991, Sections 14 and 15	5
Paragraph 1 – Integrity	10
Paragraph 2 – Competence	12
Paragraph 3 – Quality of Service	16
Paragraph 4 – Advising Clients	18
Paragraph 5 – Confidentiality	20
Paragraph 6 – Safekeeping and Preserving Clients’ Property	23
Paragraph 7 – Duty to Client Where Broker Has Another Business or Occupation	25
Paragraph 7.1 – Disclosure of Facts Indicating Potential Conflicts of Interest Disclosure	26
Paragraph 8 – Fee Disclosure	35
Paragraph 9 – Encourage Public Respect	37
Paragraph 10 – Manner of Service	39
Paragraph 11 – Maintain Integrity of the Vocation	40
Paragraph 12 – Unauthorized Practice of the Vocation	41
Paragraph 13 – Conduct Towards Others	42

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## PREFACE

The formation of RIBO in 1981 marked the culmination of years of planning and work to enhance recognition of the practice of insurance brokers in a self-regulatory environment Ontario.

It is important for all brokers to be aware that self-regulation is a privilege. Professionals are recognized not only for their skill or experience in a particular field or activity. Their status also stems from their character and their standards. All these factors combined protect the interests of the insurance consumer.

The Code of Conduct contained in section 14 of Ontario Regulation 991 under the Registered Insurance Brokers Act provides rules that are intended to set a standard of professional conduct for registered insurance brokers in the Province of Ontario. The provisions of the Code of Conduct must be followed both in letter and in spirit. Section 15 of Ontario Regulation 991 provides a definition of “misconduct” which warrants disciplinary action by the Discipline Committee of RIBO. The text of the provisions of sections 14 and 15 of the Regulation are reproduced following this Preface.

The Code of Conduct Handbook that follows is intended to give RIBO members an interpretation of the Code of Conduct. Each provision of the Code of Conduct is set out separately, followed by a set of guidelines in the form of commentary, which will hopefully assist you in interpreting the particular provision of the Code of Conduct. Any specific questions about interpretation of the Code of Conduct or the guidelines provided in this Handbook should be referred in writing to the Professional Conduct Committee of RIBO.

While the provisions of the Code of Conduct are legal rules which must be followed, the guidelines contained in the Handbook are not necessarily intended to be self-contained rules and may make reference to a broker’s legal obligations under the *Insurance Act* or other relevant legislation. Many of the guidelines provided in this Handbook may overlap, and they may apply differently according to the circumstances of each particular case. Both the Code of Conduct and the guidelines contained in the Handbook are intended to be flexible in order to respond and adapt to ongoing changes in the insurance environment. The examples given are not intended to be a complete or exhaustive list.

It is important to understand that breaches of the Code of Conduct may give rise to disciplinary proceedings even where no harm is caused to clients. It is the broker's conduct itself that is important.

By following the standards outlined in the Code of Conduct, brokers will excel in their profession.

## **ONTARIO REGULATION 991**

### **under the Registered Insurance Brokers Act**

#### **Section 14. All members shall act as insurance brokers in accordance with the following code of conduct:**

1. A member shall discharge the member's duties to clients, members of the public, fellow members and insurers with integrity.
2. A member owes a duty to the member's client to be competent to perform the services which the member undertakes on the client's behalf.
3. A member shall serve the member's client in a conscientious, diligent and efficient manner and shall provide a quality of service at least equal to that which members would generally expect of a member in a like situation.
4. A member shall be both candid and honest when advising the member's client.
5. A member shall hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of the member's client, and the member shall not divulge any such information unless authorized by the client to do so, required by law to do so or required to do so in conducting negotiations with underwriters or insurers on behalf of the client.
6. A member shall observe all relevant rules and laws regarding the preservation and safekeeping of property of the client entrusted to the member and, when there are no such rules or laws or the member is in doubt, the member must take the same care of such property as a careful and prudent person would take of the person's own property of like description.

7. A member who engages in another business or occupation concurrently with the practice of the member's vocation shall not allow such outside interest to jeopardize the member's integrity, independence or competence.
  - 7.1 A member shall disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the member that is associated with a transaction or recommendation.
8. A member shall not stipulate, charge or accept any fee that is not fully disclosed, or the basis for which is not fully disclosed prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable.
9. A member shall encourage public respect for and try to improve the practice of the member's vocation.
10. A member shall make the member's services available to the public in an efficient and convenient manner which will command respect and confidence and which is compatible with the integrity, independence and effectiveness of the member's vocation.
11. A member shall assist in maintaining the integrity of the member's vocation and should participate in its activities.
12. A member shall assist in preventing the unauthorized practice of the member's vocation.
13. A member's conduct towards other members, members of the public, insurers and the Corporation shall be characterized by courtesy and good faith.

**Section 15.–(1) For the purposes of the Act, "misconduct" means any of the following:**

1. The use of methods of solicitation and advertising that are not compatible with the honour and dignity of the vocation including, without limiting the generality of the foregoing, the use of any illustration circular or memorandum that misrepresents, or by omission is so incomplete that it misrepresents the terms, benefits or advantages of any policy or contract of insurance issued or to be issued, and the making of any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued.
2. The use of any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract.
3. The use of any payment, allowance or gift or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure.
4. Directly or indirectly making or attempting to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or paying, allowing or giving, or offering or agreeing to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium to any person insured or applying for insurance in respect of person or property in Ontario, but nothing in this paragraph shall be construed to affect any payment in the nature of a dividend, bonus, profit or savings that is provided for in the policy.

5. Coercing or proposing, directly or indirectly, to coerce a prospective buyer of insurance through the influence of a professional or business relationship or otherwise to give a preference that would not otherwise be given on the effecting of an insurance contract or coercing, inducing or exercising undue influence in order to control, direct or secure insurance business.
6. Holding oneself out or advertising by means of advertisements, cards, circulars, letterheads, signs, or other methods, or carrying on business in any other manner than the name in which the individual or the corporation or partnership of which the individual is the designated representative is registered.
7. The use of any practice or conduct that results in unreasonable delay or resistance to the fair adjustment of claims.
8. Failure to carry on business in a manner consistent with the code of conduct.
9. Failure to comply with the provisions of the Act and this Regulation.
10. Acting as an insurance agent or holding himself, herself or itself out, advertising or conducting himself, herself or itself in such a manner as to lead a reasonable person to believe that the member is an insurance agent.
11. Being convicted, after the 1<sup>st</sup> day of October, 1981, of a criminal offence or an offence under the *Insurance Act*, whether or not the offence was committed before the 1<sup>st</sup> day of October, 1981.
12. The use or payment of any referral fees or finder's fees to any person who is not a registered insurance broker or who is not registered or licensed under the laws of any jurisdiction to act as an intermediary for insurance, other than life insurance.

13. A registered insurance broker who is a director, officer or principal broker of a corporation that is a member or who is a partner or principal broker of a partnership that is a member or who is the principal broker of a sole proprietorship that is a member has knowingly concurred in the misconduct of the sole proprietorship, partnership or corporation.
14. Providing false or misleading information to the Corporation.
15. Acting as a principal broker as described in section 7.2 when the member has failed to comply with the educational requirements established by the Council under that section.
16. Failure as a principal broker to properly supervise brokers whose registration is restricted to acting under his or her direction and supervision.

## PARAGRAPH 1 – INTEGRITY

### 14 (1) A MEMBER SHALL DISCHARGE THE MEMBER'S DUTIES TO CLIENTS, MEMBERS OF THE PUBLIC, FELLOW MEMBERS AND INSURERS WITH INTEGRITY.

#### Basic Principles

Integrity is a fundamental quality demanded of every insurance broker. If personal integrity is missing, there is little that can be done to compensate for its absence or to repair the damage to one's reputation. A broker exercising poor ethics or lack thereof, is a reflection not only on the individual broker but also the entire insurance industry. 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 and that of the industry.  
*eg. any act of fraud or dishonesty, such as issuing an unauthorized automobile liability certificate.*
- (b) Making untrue representations or concealing material facts from a client  
*eg. failing to advise a client that you are unable to provide totally for the client's required insurance needs, and failing to take steps to assist the client in finding suitable coverage even if it is through another broker.*
- (c) Taking advantage of a client's inexperience, lack of education, youth, lack of sophistication, unbusinesslike habits or ill health.
- (d) Misappropriating or dealing dishonestly with client's money or other monies held in your trust account.  
*eg. a broker taking the cash received from a insured/client and issues a personal cheque for deposit into the brokerage trust account*

- (e) Failing to be absolutely frank and candid in all dealings with insurers, fellow brokers, RIBO and other parties of interest, subject to the legal rights and confidences of your client
  - eg. withholding material underwriting information from an insurer; dishonestly arranging insurance for clients of your employer for your own personal gain which brings into question your professional integrity or competence to act as a broker.*
  
- (f) Discouraging clients from making legitimate insurance claims, or delaying them from being presented, in a manner which may prejudice the client's best interests or for reasons which may serve the interests of the broker
  - eg. delaying a claim into the new year to preserve the broker's contingent earnings from the insurer.*
  
- (g) Conviction of a criminal or quasi-criminal offence that brings into question your professional integrity or competence to act as a broker, even if not related with your work as a broker.
  - eg. being convicted of driving without valid insurance*
  
- (h) Placing oneself in a conflict of interest situation with the client.
  - eg. please refer to 7.1 for more information*
  
- (i) While the information contained in RIBO Bulletins is public, inappropriate use of this information to criticize or slander fellow brokers may be considered to be misconduct.

## PARAGRAPH 2 – COMPETENCE

### **14 (2) A MEMBER OWES A DUTY TO THE MEMBER'S CLIENT TO BE COMPETENT TO PERFORM THE SERVICES WHICH THE MEMBER UNDERTAKES ON THE CLIENT'S BEHALF.**

#### Scope of Duty

A broker's duty to the client is to provide competent guidance based on sufficient knowledge of the client's needs, specific risks entailed and adequate consideration of the relevant insurance principles in an experienced and expert manner.

#### Knowledge and Skill

The public regards a RIBO registration as an indication of competence.

Competence is not limited to the legal qualification as an insurance broker. It is also the 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 registered insurance broker is regarded as being knowledgeable, skilled and capable of performing as an insurance intermediary. The client is entitled to assume that the broker has the ability and capacity to deal adequately with general insurance matters on the client's behalf.

A broker should not undertake to arrange insurance without honestly believing oneself to be competent to handle it without causing the client unnecessary delay, risk or expense. This becomes an ethical question relating to just and fair dealings with the client and is important since an incompetent broker can impair the credibility and perception of the industry.

## Consequences of Incompetence

The intention is not to establish a standard of perfection for the purpose of determining whether or not disciplinary action should be taken. An honest mistake may not necessarily constitute failure to adhere to the Code, even though it may result in a successful negligence claim by the client. Evidence of gross neglect or a pattern of neglect or mistakes over time however, may be evidence of failing to meet the standards expected regardless of whether or not the broker is liable for negligence. Where both negligence and incompetence are established, damages may be awarded through civil remedy to the client for negligence and disciplinary action may be taken by RIBO for incompetence.

A broker 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 one's personal level of competence. In such circumstances, you should either decline to act, or advise the client to seek another broker with competence in the required area.

*eg. A broker with little or no commercial lines insurance experience should not attempt to provide coverage for a large manufacturing risk.*

## Consulting Experts

Brokers should recognize that competence in a particular situation may require clients to seek advice from experts in a non-insurance field, such as accounting or law and clients should not be discouraged from consulting the appropriate experts.

## Product Suitability: A Best Practices Approach

Product suitability always has been one of the primary principles of doing business as a broker in Ontario. The RIBO Code of Conduct has always required that brokers maintain the competence to provide guidance based on sufficient knowledge of the specific risks involved and adequate consideration of the relevant insurance principles so that product recommendations are suitable for addressing the needs of the client.

The recommended product or service must be appropriate for the needs of the client, as determined by a needs-based assessment done by the broker and/or as directly articulated by the client. While the information provided may vary in each transaction, it should be brief and relevant to the purchase decision.

Where a client is seeking advice on product recommendations, product suitability requires the collection of sufficient information from the client to enable the broker to properly assess their needs and make appropriate recommendations. If a broker can demonstrate that the recommended product is suitable for his or her client, then any conflict of interest from compensation, ownership of financial links is likely to have been adequately managed.

Suitability depends on the needs, facts and expectations of the client. The following best practices will enhance your compliance with this principle:

1. Know your client — the facts and assumptions that support your recommendations require you to first gather appropriate information from the client.
2. Undertake a thorough client needs assessment before making your recommendations. Such an assessment should reflect factors such as the underlying risk, the client's objectives and the complexity of the product being sold. By way of example, a large commercial risk would typically require a more in-depth assessment than simple automobile coverage. A higher risk automobile client, however, may make a more fulsome assessment advisable.
3. Confirm the goals of your client. This will help you avoid any miscommunication that could lead to unsuitable recommendations. If so, document that you are working with information provided by the client, or that the client has requested a specific product or service.
4. Discuss with your client any product comparisons that were carried out and why a particular product is recommended.
5. Ensure the client file reflects the collection of information from your client, your analysis of their needs, available products and the reason for your recommendations. A broker should be able to explain how the recommended product or service addresses the client's needs.
6. Document your reasons for recommending a product. There should be enough information in the file to show why a particular recommendation was made.
7. Particularly for commercial accounts, consider the value of a survey or a checklist of important coverages that a client might reasonably expect in a like situation.
8. In situations where the product is offered without advice, brokers should inform the client that no advice is being offered.
9. Competence is paramount. A broker owes a duty to his or her clients to be competent to perform the services undertaken on their behalf. Where you do not have the expertise to adequately service your client's particular risk, refer the client, or consider engaging the services of a broker who possesses the necessary expertise.

Principal Brokers should ensure that procedures are in place within the brokerage to follow these practices.

During spot-check visits, RIBO reviews a random selection of client files and will be looking for evidence of product suitability assessments.

## PARAGRAPH 3 – QUALITY OF SERVICE

- 14 (3) A MEMBER SHALL SERVE THE MEMBER'S CLIENT IN A CONSCIENTIOUS, DILIGENT AND EFFICIENT MANNER AND SHALL PROVIDE A QUALITY OF SERVICE AT LEAST EQUAL TO THAT WHICH MEMBERS WOULD GENERALLY EXPECT OF A MEMBER IN A LIKE SITUATION.**

### Promptness

Conscientious, diligent and efficient service means that every effort is made to provide a service. The client should be informed on an ongoing basis of any delays or other impediments in providing such service.

### Standard of Service

The standard of service to clients must be at least equal to the standard of service that an ordinarily prudent and competent 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 and failing to inform a client of the status of an overdue policy renewal.
- (b) Failing to provide sufficient notice of non-renewal or renewal on varied terms of any policy. The *Insurance Act* and industry-approved procedures have been laid down and serve as a standard by which this conduct is measured.
- (c) Failing to inform a client of alterations to the coverage, such as changes in policy conditions or premium amounts, or any matter or fact that may materially affect the policy or prejudice the client's interests, including the impending insolvency of the insurer.

- (d) Failing to inform a client prior to renewal of a change of insurer and the reason for such change.
- (e) Failing to return telephone calls, letters and other communications promptly and in sufficient detail and failure to respond to enquiries without undue delay.
- (f) 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 favour of coverage from another broker.
- (g) Failing to advise clients as to appropriate insurance, thereby leaving unreasonable gaps in the client's coverage.
- (h) 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.
- (i) Failing to provide point of sale commission disclosure (see Point of Sale Commission Protocol).

## PARAGRAPH 4 – ADVISING CLIENTS

### **14 (4) A MEMBER SHALL BE BOTH CANDID AND HONEST WHEN ADVISING THE MEMBER'S CLIENT.**

#### Scope of Advice

Recommendations to clients should be complete, open and clear.

You should indicate in detail, the facts and assumptions upon which your recommendations are based. You should 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 placing any business on his/her behalf.

Similarly, an obligation exists to be open and honest with your client where you are able to place insurance with only a single insurer or with a limited number of insurers that may not be representative of the entire market. Since these facts may influence the judgment of a prospective client, disclosure is required.

Section 230 of the *Insurance Act*, as amended, provides that a broker must provide to an applicant for insurance, the names of all the insurers with whom the broker has a broker contract relating to automobile insurance and all the information obtained by the broker relating to quotations on automobile insurance for the applicant. Compliance with this section is monitored by RIBO in conjunction with the "spot check" or broker review conducted by RIBO financial investigation staff.

#### 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, all relevant laws relating to public protection and disclosure of information to clients must be observed. You must comply strictly with those provisions of the RIBO

regulations which require disclosure to clients of information and risks relating to the use of unlicensed insurers. (See Ontario Regulation 991, Section 10)

### Tied Selling

Under the *Insurance Act*, it is an unfair or deceptive act or practice for a broker to assist in or engage in the practice of "tied selling", with respect to automobile insurance; i.e. making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy.

### Examples

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

- (a) Giving bold or sweeping general assurances to clients that everything is covered when this is not the case.
- (b) After having a broker contract with an insurer cancelled, misleading clients about the true reason for re-marketing their coverages on expiry, particularly when it results in a material difference in the premium to the client.
- (c) Adding a warranty, amending or reducing policy coverages, limits of insurance or changing deductibles without first informing the client of the changes.  
*eg. a fire extinguisher warranty, alarm warranty.*
- (d) Having a prospective client sign an Exclusive Brokers Letter of Authorization without explaining the full implications and, in particular, the consequences to the client's present broker. 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 broker for any other purpose.

## PARAGRAPH 5 – CONFIDENTIALITY

- 14 (5) A MEMBER SHALL HOLD IN STRICT CONFIDENCE ALL INFORMATION ACQUIRED IN THE COURSE OF THE PROFESSIONAL RELATIONSHIP CONCERNING THE BUSINESS AND AFFAIRS OF THE MEMBER'S CLIENT, AND THE MEMBER SHALL NOT DIVULGE ANY SUCH INFORMATION UNLESS AUTHORIZED BY THE CLIENT TO DO SO, REQUIRED BY LAW TO DO SO OR REQUIRED TO DO SO IN CONDUCTING NEGOTIATIONS WITH UNDERWRITERS OR INSURERS ON BEHALF OF THE CLIENT.**

### Guiding Principles

It is impossible for a broker 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 will be treated with the utmost confidentiality. Unless you develop 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 with underwriters 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.

*eg. 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 disclose information places you under a parallel obligation to impress upon those concerned. The importance of confidentiality and non-disclosure (both during their employment and afterwards) requires you to take reasonable care (including proper staff training and supervision) to prevent others from disclosing or using any information which must be kept confidential.

When disclosure is required by law or by order of a court (i.e. subpoena, search warrant, government order to produce documents to Revenue Canada), you should be careful not to divulge more information than is required. Verification of the existence or validity of an automobile liability certificate produced by a client would be deemed permissible to disclose, however, requests for further or additional information will require client authorization or a subpoena. It is important that all such requests be properly documented in the client files.

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

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

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

You should avoid indiscreet conversations, even with your family, about a client's affairs and should shun any gossip about such things. Likewise, you should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to you. Apart from ethical considerations or questions of good taste, indiscreet shop-talk between brokers, if overheard by others able to identify the matter being discussed, could be prejudicial to the client's interest. Moreover, the respect of the

listener for brokers and all insurance intermediaries will likely be lessened in such situations.

Any questions which arise surrounding the issue of confidentiality if there is uncertainty regarding confidentiality and your duty should be referred to RIBO.

Example

An example of conduct which has been found not to meet this requirement include:

- (a) Old client files not properly disposed of, resulting in confidential client information becoming public.

## **PARAGRAPH 6 – SAFEKEEPING AND PRESERVING CLIENT'S PROPERTY**

- 14 (6) A MEMBER SHALL OBSERVE ALL RELEVANT RULES AND LAWS REGARDING THE PRESERVATION AND SAFEKEEPING OF PROPERTY OF THE CLIENT ENTRUSTED TO THE MEMBER AND, WHEN THERE ARE NO SUCH RULES OR LAWS OR THE MEMBER IS IN DOUBT, THE MEMBER MUST TAKE THE SAME CARE OF SUCH PROPERTY AS A CAREFUL AND PRUDENT PERSON WOULD TAKE OF THE PERSON'S OWN PROPERTY OF LIKE DESCRIPTION.**

### General Obligations

This deals with a broker's general obligations regarding the holding of client's property and safekeeping of records.

While the law of bailment may impose a legal duty of care for the property of your clients entrusted to you, there is also a duty of professional responsibility.

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

Financial statements are the property of the client and should be treated in a confidential manner. Access to these statements in the broker's office should be restricted. Credit reports of a client and other documents which also contain confidential information or opinions should be treated similarly.

Today, many insurers destroy their copy of policies one or two years after expiry. Especially in the case of liability insurance policies written on an "Accident or Occurrence" basis, you may be rendering your clients an invaluable service by retaining copies of expired policies.

### Compliance With Regulations

Money received from insurers for clients as return premiums or claim payments should be delivered promptly and without the necessity for clients to ask for them. Monies due to clients must be held in trust by the firm in accordance with the regulations regarding the handling of trust funds.

## **PARAGRAPH 7 – DUTY TO CLIENT WHERE BROKER HAS ANOTHER BUSINESS OR OCCUPATION**

- 14 (7) A MEMBER WHO ENGAGES IN ANOTHER BUSINESS OR OCCUPATION CONCURRENTLY WITH THE PRACTICE OF THE MEMBER'S VOCATION SHALL NOT ALLOW SUCH OUTSIDE INTEREST TO JEOPARDIZE THE MEMBER'S INTEGRITY, INDEPENDENCE OR COMPETENCE.**

### Application of Duty

This applies to those registrants who have obtained an exemption under RIBO Regulations to permit them to carry on a secondary business or employment concurrently with acting as insurance brokers, and to brokers engaging in secondary business or employment who have been grandfathered into RIBO.

### Scope and Concerns

This applies in any case where it would appear that participation in an additional occupation would detract from a broker's ability to comply with the Code of Conduct.

Failure to live up to the obligations imposed may be caused by a limited amount of time being made available by you to keep informed in matters concerning the operation of the insurance brokerage. Similarly, the distraction of trying to operate two businesses may impair your ability to focus on the insurance brokerage with the attention and direction required of a competent and diligent broker.

### Conflict of Interest and Undue Influence

The obligations imposed also require that one avoid situations which would result in a conflict of interest situation or in which undue influence can be exercised upon a client.

*eg. potential conflicts of interest may arise where a broker sits on the board of an insurance company (or holds shares of an insurance company), holds public office or becomes involved in disputes between the insurer and insured.*

## **PARAGRAPH 7.1 – DISCLOSURE OF FACTS INDICATING POTENTIAL CONFLICTS OF INTEREST**

**14 (7.1) A MEMBER SHALL DISCLOSE IN WRITING TO A CLIENT OR PROSPECTIVE CLIENT ANY CONFLICT OF INTEREST OR POTENTIAL CONFLICT OF INTEREST OF THE MEMBER THAT IS ASSOCIATED WITH A TRANSACTION OR RECOMMENDATION.**

### Background

The disclosure requirements in this paragraph replace both the majority share ownership restrictions and the related party disclosure requirements (>10%), both of which provisions were revoked at the same time this paragraph was enacted.

### Application of Duty

The fundamental premise is that a client is entitled to any information about a broker's business relationships that pertain to a transaction or recommendation.

A business relationship means any direct or indirect interest or benefit that is relevant to the transaction or arises from placing, or the recommendation to place, a contract of insurance with a particular insurer (over another).

The interest must be sufficient to raise the perception of "influence" over the broker's "independent" decision making process, in the mind of a reasonable person, in possession of all the facts. In other words, the influence must be "material" enough that a reasonable person would believe that a consumer could not make an "informed" decision without that knowledge.

In all cases, we include "individual" conflicts of interest, as well as those of the registered "firm", as the case may be. In all cases as well, the guidelines are intended to deal with situations where non-disclosure would be detrimental to consumers.

## Guidelines

This provision as drafted is very broad in scope. Accordingly, to provide guidance to brokers in understanding what this provision means in order to comply, the following Guidelines set out RIBO's interpretation of what this disclosure requirement means for brokers, and sets out a number of factors that may give rise to "influence" sufficient to require disclosure.

### **1. Any direct or indirect ownership interest or any kind in a brokerage by an insurer, or in an insurer by a brokerage**

This disclosure required under section 11 of O. Reg. 991 was revoked when the ownership provisions were revoked to make way for the new disclosure requirement. There is no longer a 10% share ownership threshold before disclosure is required. This threshold has disappeared so that **any** "ownership" interest would now require disclosure, including those situations whereby shareholder's agreements provide for direction and control over the brokerage, regardless of voting rights or number of shares held.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of an "ownership" relationship between that broker and that insurer, that relationship must be disclosed to the client.*

### **2. Common ownership of a brokerage and an insurer by a financial conglomerate or other holding company or group of companies**

This relationship was also required to be disclosed by section 11 of the Regulations. Now, however, the requirement to disclose related party situations is much clearer.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because both entities are owned or controlled by another common company or group of companies, that relationship must be disclosed to the client.*

### **3. A loan, credit facility or other financial relationship, direct or indirect**

Influence can be exerted on a broker by other means than having a direct, indirect or common “ownership” relationship with an insurer. There are numerous historical examples of insurers either lending capital to brokerages for acquisitions or other reasons, or extending credit facilities for various reasons. These financial relationships, however provided, exert influence or control over the decision making process in the same way as an “ownership” relationship and ought therefore, to be disclosed.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of a financial relationship, that relationship must be disclosed to the client.*

### **4. A financial or non-financial network affiliation**

Influence may affect a broker by means other than an ownership or an actual financial relationship with an insurer. The existence of, or membership in a “network” of companies making products or services available to consumers by reason of being a member of the network, may exert influence on a broker in deciding to place insurance with an insurer that is also a member of the network. The same influence may be exerted whether the “network” access applies to financial or non-financial products.

An example might be a broker making an arrangement with a retail organization for a kiosk or place of business in their premises, when that retailer also has a relationship, direct or indirect with an insurer.

This factor deals with the “independence” of a broker from an insurer, when both are members of a group or are affiliated with the same group, in other than at “ownership” or “financial” relationship.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of a network affiliation, that relationship must be disclosed to the client.*

## **5. Exclusive contract or one market exceptions**

The public generally considers brokers to have access to the insurance market and that a broker will shop around to obtain “the best product with the best insurer and the best service to the customer at the best price”.

Some brokers, for their own business reasons, have entered into contracts with one insurer to provide all or a substantial portion of a line or lines of business to that insurer exclusively. Other brokers have innovated a particular targeted market program that is written exclusively with one insurer, for example, an “over 50” auto insurance program.

In each of these examples, while still “acting as an insurance broker” for RIBO purposes, the client is not provided a choice of insurer. The client is placed with the one insurer with which the broker has entered into an “exclusive” contract, or through whom the broker has placed the target market program. To the public, such brokers may appear as “virtual agents” of that insurer. In these cases, just as agents are required to disclose that they represent one insurer, these brokers ought to disclose this fact as well.

Some brokers might also find themselves in a limited market capacity position by reason of market conditions from time to time, such as market cancellation or withdrawal, or in some cases notwithstanding the number of contracts held. The absence of “choice” in the placement of insurance contracts is a factor that the public has a right to know prior to the placement of coverage.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placement of an insurance product, that fact must be disclosed to the client. This applies regardless of whether the broker is in this position by contract, by specific program or by reason of finding himself or herself in a limited market situation in the ordinary course of business.*

## **6. Volume or mix of business requirements**

At times, when an insurer is reviewing a broker's contract, that insurer may impose a stringent volume or mix of business requirement on that broker, such as a requirement to submit one property application for every auto application submitted.

This factor does not apply to a broker's normal or ordinary course of business, for example, when a broker obtains a new contracted market and places risks in support of that market. This factor is intended to apply to the rare occasion when an extraordinary restriction may be placed upon him by an insurer for contractual or rehabilitation reasons. In those instances, such requirements may lead to an absence of "choice" problem that may be to the detriment of the client. If so in those cases, that absence of "choice" ought to be disclosed.

*This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is not offering a choice of insurers in the placement of an insurance product as a result of restrictive requirements placed on him or her by an insurer, to the detriment of a client, that fact must be disclosed to the client.*

## **7. Receipt of contingent commission**

There is a perception that brokers may steer insurance business to one company over another based on contractual arrangements that provide a broker with an opportunity to receive contingent commission. While payment of contingent commission from an insurance company may depend on profitability (loss ratio) of that broker's total book of business with that insurer (and not on individual policies), or volume or growth targets in other cases, and the receipt of this commission by the broker is not guaranteed, the possibility that the broker may receive this commission in future ought to be disclosed, in order to achieve full and overt transparency in the transaction.

*This factor means that if a broker's contractual relationship with an insurer provides for a contingent commission structure, that fact must be disclosed to the client.*

The following is some sample wording for use in this disclosure:

“In order for us to maintain strong relationships with quality insurers we work with each to provide the type of business they desire. The insurers noted above (from list of markets) with an asterisk recognize our efforts through a Contingent Commission contract. Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio), volume, retention and increased services that we provide on behalf of the Insurer. It is based on our entire portfolio of business with that insurer and not on individual policies. Contingent Commission is not guaranteed”.

## **8. Sales Incentives**

There is a perception that brokers may steer business to one company over another based on the fact that some companies offer trips or other incentives to brokers that meet certain sales targets, usually expressed in volume, growth or profit criteria.

Similar to the possibility that a broker may receive contingent commission, the possibility that a broker may receive sales incentives ought to be disclosed, in order to achieve full and overt transparency in the transaction.

*This factor means that if a broker’s relationship with an insurer provides for sales incentives, such as trips, that fact must be disclosed to the client.*

## **9. Premium Financing Companies**

There is a perception that brokers may steer business to one premium finance company over another based on the fact that some finance companies offer referral fees to brokers. Indeed, a number of brokers have ownership or related party interests, directly or indirectly, with premium financing companies.

While RIBO Guidelines on Marketing Practices already provide for disclosure to the client if a broker receives a referral fee, in advance of arranging the financing, the fact that a broker may receive referral fees to have an ownership or related party interest in a financing company ought to be disclosed from a conflict of interest perspective, in order to achieve full and overt transparency in the transaction.

*This factor means that if a broker’s relationship with a premium financing company provides for referral fees, or involves an ownership or related*

*party interest, directly or indirectly, that fact or both those fact, as the case may be, must be disclosed to the client.*

### Clarity of Disclosure

A client is entitled to full and overt transparency in the disclosure of information.

Accordingly, RIBO will consider that a broker has not complied with this requirement if disclosure is provided in a manner that is unclear or obscure, for example, disclosure of relevant information that is intentionally buried in a twenty page document that no one will read.

### Examples of Disclosure

The following represent common examples of disclosure of ownership or financial relationships, some of which were taken from actual documents where this information was being disclosed prior to the current requirement coming into force.

- The policyholder and insured(s) are hereby notified and advised that the producing broker name of brokerage is owned by name of insurer, the underwriter of this policy of insurance.
- The name of insurer has an ownership interest in name of brokerage.
- Name of brokerage and the name of insurer have common ownership, or are both members of the same group of companies, as the case may be.
- Name of brokerage currently has a loan guaranteed by name of insurer that was used to expand our business.
- Name of brokerage has a financial relationship with name of insurer.

## **SAMPLE BROKER POINT OF SALE COMMISSION PROTOCOL**

Items that must be included:

1. Statement on Services Provided  
e.g. "Our role is to provide you with the best insurance value that combines coverage, service and price. We Also provide personalized, quality service that includes professional insurance advice, ongoing policy maintenance and claims support. When any issue arises regarding your insurance coverage, we are your advocate, using our professional experience to best represent your individual interest."
2. Personal Lines Automobile and Property  
Statement on broker compensation showing insurers by class and range of commissions provided along with a statement advising that should commissions be increased, the consumer will be notified, e.g. Brokerage compensation is part of your insurance premium. For your benefit, we have listed below Automobile insurers that we represent and have included the range of compensation each provides as a percentage of your overall premium that appears on your invoice.
  - x AXA Canada\* - X% to Y%
  - x Aviva\* - X% to Y%
  - x Dominion of Canada\* - X% to Y%
  - x Economical Mutual\* - X% to Y%
  - x Facility\*\* (Royal) – X% to Y%
  - x ING\* - X% to Y%

\*\* commission is capped at \$250.00

This commission percentage is paid annually for both new business and renewals. Should there be an increase in the commission schedule we receive from your insurer, or, any other material change that affects compensation arrangements, we will notify you.
3. Commercial Lines  
A Point of Sale document for commercial insurance will include commission schedules for those companies writing the class of business being offered similar to a personal lines document.
4. Contingent (Profit) Commission  
Statement will include bases for contingent commission and how they're dependent primarily on entire book of business profit (loss ratio).

5. In order for us to maintain strong relationships with quality insurers, we work with each to provide the type of business they desire. The insurers with an asterisk (\*) noted above recognize our efforts through a Contingent Commission contract. Payment of this Contingent Commission depends on a combination of growth, profitability (loss ratio), volume, retention and increased services that we provide on behalf of the Insurer. Contingent Commission is not guaranteed. For detailed information on Contingent Commission, please go to the individual company's website.
  
6. Information on Ownership and Other Financial Links  
Brokers will declare to their customer should they have any other financial links that could be considered a conflict of interest such as:
  - x Any direct or indirect ownership interest by an insurer or financial conglomerate
  - x Any loan, credit facility or other financial relationship direct or indirect
  
7. Working with Insurance Companies  
Our disclosure commitments are made in the best interest of consumers. We encourage you to also consult the commitments made by the insurance industry and individual companies by consulting their websites or other available information.

## PARAGRAPH 8 – FEE DISCLOSURE

- 14 (8) A MEMBER SHALL NOT STIPULATE, CHARGE OR ACCEPT ANY FEE THAT IS NOT FULLY DISCLOSED, OR THE BASIS FOR WHICH IS NOT FULLY DISCLOSED PRIOR TO THE SERVICE BEING RENDERED, OR WHICH IS SO DISPROPORTIONATE TO THE SERVICE PROVIDED AS TO BE UNCONSCIONABLE.**

There may be instances in which traditional remuneration by commission from the insurer does not yield a fair return to the broker for services rendered to the client or prospective client, or which may be an inappropriate method of determining compensation.

### Relevant Factors

Factors which may influence the amount of a fair and reasonable fee may include but are not limited to the following:

- (a) The time and effort required to be spent.
- (b) The difficulty and importance of the matter.
- (c) Whether special skill or service will be required or provided.
- (d) The amount involved or the value of the subject matter.
- (e) Whether or not any remuneration will be received from another source in connection with the same transaction and, if so, its amount.
- (f) Any special circumstances such as urgency or uncertainty of reward.

You must always be able to justify a fee when requested. A fee may be unconscionable if it cannot be justified in the light of all pertinent circumstances, including those factors mentioned above.

Here is an example of full disclosure to a client:

Premium Quoted	\$10,000.00
Commission	\$2,000.00
Broker's Fee	<u>1,000.00</u>
Total Broker Remuneration	\$3,000.00

## **PARAGRAPH 9 – ENCOURAGE PUBLIC RESPECT**

### **14 (9) A MEMBER SHALL ENCOURAGE PUBLIC RESPECT FOR AND TRY TO IMPROVE THE PRACTICE OF THE MEMBER'S VOCATION.**

#### Scope and Application

Active support of this Rule is expected of the broker in the day to day dealings. Failure to do so may not necessarily result in disciplinary action, however, you may have fallen short of the highest standards expected of you as a broker.

It may also 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 is not restricted to your professional activities but is a general responsibility resulting from your position in the community. You should take care not to weaken or destroy public confidence in the insurance industry, most especially the unique position of the registered insurance broker as an independent intermediary. Nevertheless, you should not hesitate to act constructively to remedy inequities or unfairness that come to light.

#### Public Respect

Practising as an insurance broker implies that you have made a basic commitment to the system of the distribution of insurance to the public by independent 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

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

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

### Avoiding Criticism

Although proceedings and decisions of regulatory bodies are properly subject to scrutiny and criticism by all members of the public, including brokers, members of such bodies are often prohibited by law or custom from defending themselves. Their inability to do so imposes social responsibilities upon brokers.

You should avoid criticism which is petty, intemperate, or unsupported by a good faith belief in its real merit. If you have been involved in the proceedings, there is risk that any criticism may be, or may appear to be, partisan rather than objective. When an insurance body is the object of unjust criticism, you are, by virtue of your position, uniquely able to support that body, and should do so, whether or not its members can defend themselves, because you are thereby contributing to greater public understanding of the insurance industry and therefore its credibility.

### Community Activity

Your active participation in public information, education or guidance programmes concerning insurance assists in the accessibility of general insurance knowledge.

## **PARAGRAPH 10 – MANNER OF SERVICE**

- 14 (10) A MEMBER SHALL MAKE THE MEMBER'S SERVICES AVAILABLE TO THE PUBLIC IN AN EFFICIENT AND CONVENIENT MANNER WHICH WILL COMMAND RESPECT AND CONFIDENCE AND WHICH IS COMPATIBLE WITH THE INTEGRITY, INDEPENDENCE AND EFFECTIVENESS OF THE MEMBER'S VOCATION.**

### Basic Principles

It is essential that a person requiring insurance be able to find a broker qualified to arrange it with a minimum of difficulty or delay. In a relatively small community, where brokers are well known, the person will usually be able to make an informed choice of a qualified broker in whom to have confidence.

In larger centres, these conditions may often not exist. As insurance becomes increasingly complex and the practice of many individual brokers becomes more specialized, the reputation of brokers and their competence or qualifications in particular fields may not be sufficiently well known to enable a person to make an informed choice.

When approached by a prospective client in such circumstances, you should be prepared to assist in finding the right broker to deal with the situation. If you are unable to act, for example, due to lack of qualifications in a particular area, you should assist the client to find another broker who is more qualified and able to act. Such assistance should be given willingly and without charge.

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

## PARAGRAPH 11 – MAINTAIN INTEGRITY OF THE VOCATION

- 14 (11) A MEMBER SHALL ASSIST IN MAINTAINING THE INTEGRITY OF THE MEMBER'S VOCATION AND SHOULD PARTICIPATE IN ITS ACTIVITIES.**

### Principles of Self-Regulation

A self-regulatory system inherently depends on brokers regulating brokers. Where there is a reasonable likelihood that someone will suffer serious damage as a result of an apparent breach of the regulations, for example, where a shortage of trust funds is involved, you have an obligation to report the matter to RIBO.

### Duty To Report Misconduct and Incompetence

Where a 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 disclose a more serious situation upon investigation or may indicate the beginning of a course of conduct that could lead to serious breaches in the future. **It is therefore proper (unless it be unlawful) for you to report to RIBO any instance involving a breach of the regulations by you or another broker. You shall also attempt to persuade and assist any member of the public to report any facts to RIBO that may constitute an act of misconduct.** In all cases, such a report must be made in good faith, without malice or ulterior motive. You have a duty to reply promptly to any communication from RIBO.

### Professional Communication

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

### Non-Discrimination

You should not discriminate on any grounds in your dealings with members of the public or with other brokers, except where discrimination is warranted by the existence of material differences between risks.

## **PARAGRAPH 12 – UNAUTHORIZED PRACTICE OF THE VOCATION**

### **14 (12) A MEMBER SHALL ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF THE MEMBER'S VOCATION.**

#### Reasons For Prohibition

Statutory provisions prohibiting the practice of independent general insurance intermediary by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are not subjected to the necessary control, regulation and discipline by RIBO or by the Financial Services Commission of Ontario (FSCO). A client of a registrant has the benefit and protection of safeguards such as professional liability insurance, fidelity bonds and rules respecting the handling of trust monies and requirements respecting a firm's trust and equity positions.

#### Supervision of Employees/Assistants

You must assume complete professional responsibility for all business entrusted to you. Principal Brokers must maintain direct supervision over staff and assistants to whom they delegate particular tasks and functions.

#### Use of Unregistered Individuals

Any activities falling within the definition of "insurance broker" contained in section 1 of the *Registered Insurance Brokers Act* must be performed by a person who is a registered insurance broker. You should note that this definition includes "dealing with the public". You should ensure that all matters which by regulation must be performed by a registered broker are, indeed, so performed.

Also, it is the responsibility of the principal broker to ensure that any broker whose registration has been suspended, but who is still in that brokerage's employ, does not hold himself or herself out as a broker, or deal with the public in insurance matters, until that period of suspension has expired, and the broker is reinstated.

## **PARAGRAPH 13 - CONDUCT TOWARDS OTHERS**

### **14 (13) A MEMBER'S CONDUCT TOWARDS OTHER MEMBERS, MEMBERS OF THE PUBLIC, INSURERS AND THE CORPORATION SHALL BE CHARACTERIZED BY COURTESY AND GOOD FAITH.**

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

#### Withdrawal of Services

You should only refuse to continue to provide services to a client where you have a good faith reason in support of terminating your relationship with the client and you are able to 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. You are obligated to use your best efforts to ensure that the client's brokerage needs are adequately looked after notwithstanding your withdrawal of services. This obligation can be fulfilled in some circumstances by finding another broker to look after the client or at least referring the client to other brokers who can appropriately service the client.

#### Promptness

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

You should give no undertaking that cannot be fulfilled and you should fulfill every undertaking given by you. Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms.

## Other Brokers

You should avoid ill-considered, uninformed or unnecessary criticism of the competence, conduct, advice or charges of other brokers, but should be prepared, when requested, to properly advise a client in a complaint involving another broker and to cooperate with RIBO and other regulatory authorities in the investigation of complaints and enforcement of the law.

Note again that the use of published material in the RIBO Bulletin to criticize or slander a fellow member may be considered to be an act of misconduct.