

Use of Unauthorized Insurers

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As part of its Strata Insurance Report, BC Financial Services Authority (“BCFSA”) undertook discussions with insurance intermediaries (i.e., insurance brokers and agents) who have identified capacity issues in the market and are seeking to explore the option of placing insurance risks in the unauthorized market to fill capacity gaps. As a result of this consultation, BCFSA has determined that a temporary forbearance with the aim to ease these capacity issues is appropriate.

The regulatory system is designed to protect insureds in B.C. by requiring that insurance companies be authorized and subject to regulation by BCFSA. However, under certain circumstances, the regulation can be relaxed to permit insurance agents to use an unauthorized insurer.

Currently, while an insurance agent may place an insurance risk with an unauthorized insurer, the insurance agent **must not** solicit a B.C. resident to enter into such a contract. This means the request to seek out alternative unauthorized insurance cannot be initiated by the insurance intermediary but must come from a B.C. resident who is looking to obtain the policy. This stipulation, in the current environment, hinders insurance intermediaries from trying to find strata insurance coverage if the strata property council is unable to find capacity from authorized insurers.

BCFSA recognizes that strata property councils are not generally familiar with insurance regulation in the province and therefore are unlikely to make a request that the insurance risk be placed in the unauthorized insurance market when all other options are exhausted. For this reason, BCFSA is now prepared to provide forbearance to the no-solicitation prohibition under Section 9(a) of the *Insurer Exemption Regulation* (“IER”) to the *Financial Institutions Act* if the market situation warrants it and all reasonable efforts have been made to find authorized insurers have been unsuccessful.

The forbearance will be a temporary measure, time-bound and will apply only if additional risk-mitigation measures are undertaken through a written agreement with the Superintendent of Financial Institutions. While the agreement is in place, BCFSA will not enforce the non-solicitation provision in the IER. The risk-mitigation measures are to ensure that:

- Proper disclosure regarding the risks in placing insurance with an unauthorized insurer will be provided to the strata property council so that they understand their legal rights (or lack of) under B.C. laws;
- The regulatory system and standard of the jurisdiction in which the unauthorized insurer is domiciled are similar to those in Canada;

- The unauthorized insurer has the financial strength to underwrite the risks;
- The unauthorized insurer only underwrites the portion of the coverage that the insurance agent has failed to place in the authorized market after reasonable attempts and,
- The unauthorized insurer may not determine the premium or the deductible for the entire coverage under an insurance policy.

In addition, agents are also reminded that they must comply with the requirements of the Insurance Council of BC, including Council Rule 7 (11.1), when contemplating or doing business with an unauthorized insurer.

Furthermore, the reporting requirement under section 9(b) of the IER remains in effect. BCFSa expects the [Placement of Insurance with Unauthorized Insurers Return](#) form (“the form”) to be completed and filed according to the legislation for each policy placed with unauthorized insurers. Please be advised that the form cannot be replaced by the premium tax form FIN521. Agents must ensure that the proper forms are submitted within the timeframe set out in the legislation.

Any insurance agencies/brokerage firms in British Columbia who are considering placing insurance risks in the unauthorized insurance market to assist with strata insurance capacity challenges are encouraged to contact BCFSa at stratapprovals@bcfsa.ca (attention - Vincent Chow) [or the Insurance Council of BC at practice@insurancecouncilofbc.com](#) (attention - Michael Wright).