

Issue No. 13 – February, 2018

Bulletin

TO ALL FUNERAL HOMES IN NEWFOUNDLAND AND LABRADOR

The purpose of this Bulletin is to remind funeral homes of their legislative requirements under the Act regarding insurance, transfer of funds from a trust account and payments from Long Term Care Facilities.

Please ensure you are following these policies.

Licence Required to Sell Insurance

Individuals in the Province cannot sell insurance unless they:

- have obtained a license from the Superintendent of Insurance; or
- are a member of a fraternal or sororal society or mutual benefit society which has an insurance fund and they are only selling the society's insurance to other members and their families on a part time basis. This means that an individual must be a member of the society before insurance is purchased. It is not permitted to solicit the general public for insurance.

Activities which require an insurance licence include:

- Soliciting a person to purchase insurance;
- Dealing with an insurance application for a person other than one for yourself;
- Dealing with the delivery or return of an insurance policy for a person other than yourself;
- Negotiating or offering to negotiate for a person other than yourself the purchase of insurance or its continuation or renewal;

- Holding out as an insurance consultant or a person who examines, appraises, reviews, or evaluates an insurance policy, plan or program.
- Making recommendations or giving advice on an insurance policy, plan or program;
- Receiving commissions, compensation or allowance for the sale of an insurance policy;
- Acting or helping in soliciting, negotiating or procuring insurance for another person.

Insurance legislation states an individual who acts, represents or holds itself out to be an insurance representative while not holding an insurance licence is guilty of an offence and be subject to the penalties outlined below.

Also, a partnership or corporation that acts as or represents or holds itself out to be an insurance agent or broker while not holding an insurance licence is guilty of an offence. In addition, every director, or officer or a person acting in a similar position in an unincorporated association and every partner in a partnership, who contributed to the unlicensed activity or failed to take reasonable care to prevent the unlicensed activity is personally guilty of an offence.

The penalty for a first conviction is a fine of up to \$100,000. For a second and each subsequent conviction the penalty increases to a fine of up to \$200,000.

Therefore, no funeral home operators should be providing any services regarding insurance unless they are licenced to sell insurance.

Transfer of Trust Funds

Funeral home operators are reminded that under the Prepaid Funeral Services Act, only the buyer of the prepaid funeral contract can transfer or cancel a trust account established at a financial institution. Any changes in the contract or trust funds must be authorized in writing by the buyer i.e. the funeral home cannot transfer the trust without written consent of the buyer.

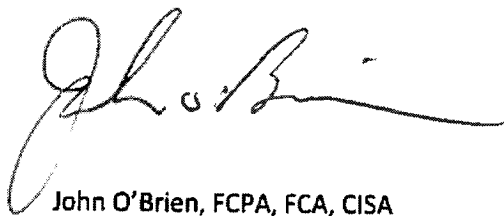
A funeral home cannot transfer an amount held in trust to an insurance policy without the direct written consent of the buyer. Further, the funeral home operator should not in any way be involved in the soliciting and/or selling of insurance to individuals without a licence to sell insurance.

Amounts Received from Long Term Care Facilities

Funeral homes are reminded that any monthly payments received should be deposited into the prepaid funeral trust accounts and accounted for in the trust financial statements. These payments are monies received in advance of providing funeral services; therefore, funeral homes should be holding these funds in trust. If there is no prepaid funeral contract in place, the funeral home must still treat these monies as trust funds. Funeral homes should also be obtaining signed prepaid contracts for these monies from the family or the regional health authorities.

Further, funeral homes should not forward any payments to insurance companies. If there is an insurance policy in place, the monies should be forwarded directly to the insurance company by the family or the regional health authority.

If you have any questions please call (709) 729-7667.



John O'Brien, FCPA, FCA, CISA

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