

# ONTARIO REGULATION 347/04

made under the  
INSURANCE ACT

## AGENTS

### DEFINITIONS

#### Definitions

1. (1) In this Regulation,

“accident and sickness insurance licence” means a licence referred to in clause 393 (2) (b) of the Act; (“permis d’assurance contre les accidents et la maladie”)

“general insurance licence” means a licence referred to in clause 393 (2) (c) of the Act; (“permis d’assurance de dommages”)

“Level II life insurance examination” means an examination set by the Superintendent for agents who held a life insurance licence before July 1, 2003 and who have held a life insurance licence for at least two years; (“examen d’assurance-vie de niveau II”)

“life insurance licence” means a licence referred to in clause 393 (2) (a) of the Act; (“permis d’assurance-vie”)

“Life Licence Qualification Program” means a program approved by the Superintendent for applicants for accident and sickness insurance licences and life insurance licences. (“programme de qualification du permis d’assurance-vie”)

(2) For the purposes of this Regulation, a determination of the length of time that a person has held a life insurance licence may include time that the person held a licence in another province or territory of Canada or in a state of the United States of America, if the Superintendent is satisfied that the licence is equivalent to an Ontario life insurance licence.

### LICENCES

#### Requirement for licence

2. (1) No individual, partnership or corporation shall act as an agent unless the individual, partnership or corporation is licensed under this Regulation.

(2) Subsection (1) applies to an individual, corporation or partnership who acts as an agent even if they are an employee, director, officer, shareholder or partner of an agent licensed under this Regulation.

#### Application for licence

3. (1) An application for an agent’s licence shall be accompanied by,

(a) the certificate of a sponsoring insurer certifying that the applicant is appointed to act as the insurer’s agent; and

(b) a statement by the sponsoring insurer indicating that it has taken steps to screen the applicant and is satisfied that the applicant is suitable to carry on business as an agent.

(2) Subsection (1) does not apply to an application by a corporation or partnership for a life insurance licence.

(3) An application for an agent’s licence shall be in a form obtained from the Superintendent.

#### Qualifications for licence

4. (1) An applicant for a licence shall be granted a licence if the Superintendent is satisfied that the applicant,

- (a) is of good character and reputation;
  - (b) is possessed of a reasonable educational background, if the applicant is an individual;
  - (c) if previously employed or engaged in business, has a satisfactory record in the employment or business;
  - (d) has completed a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent for the Program, if the applicant is an individual and is applying for a life insurance licence;
  - (e) has completed the accident and sickness component of a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent that relates to that component of the Program, if the applicant is an individual and is applying for an accident and sickness insurance licence;
  - (f) has passed a qualifying examination approved by the Superintendent for the purpose, if the applicant is an individual and is applying for a general insurance licence;
  - (g) continues to have the qualifications tested by the examination referred to in clause (d), the examination referred to in clause (e) or the examination referred to in clause (f), as the case may be, if the applicant is an individual who previously held a licence of the class he or she is applying for but does not currently hold a licence of that class;
  - (h) is not engaged in any business or occupation that would jeopardize the applicant's integrity, independence or competence as an agent;
  - (i) is otherwise a suitable person to receive a licence;
  - (j) intends to hold himself, herself or itself out publicly and carry on business in good faith as an agent;
  - (k) has not made the application for the purpose of obtaining a licence to act as an agent in respect of any particular risk or risks or directly or indirectly to obtain an agent's commission for insurance on the applicant's own life or property or on the lives or property of the applicant's family, employer or fellow employees; and
  - (l) has a mailing address in Ontario that is known to the Superintendent, that is not a post office box and that is suitable to permit service by registered mail.
- (2) An individual may be granted a licence even if he or she does not meet the qualifications described in clause (1) (d), (e) or (f) if the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (1) (d), (e) or (f), as the case may be.
- (3) An individual may be granted a licence even if he or she does not meet the qualifications described in clause (1) (d), (e) or (f) if,
- (a) the individual is a resident of another province or territory of Canada or of a state of the United States of America; and
  - (b) the individual produces a certificate from the authority that licences or regulates insurance agents in the province, territory or state in which the individual resides that certifies that the individual is licensed for the class of insurance for which the application is made.

**Name**

5. (1) A licence shall not be issued to an applicant who is not a corporation and who carries on business alone in a name other than the applicant's own.
- (2) Despite subsection (1), a licence may be issued to an applicant described in that

subsection if the applicant has purchased the business and uses the name of the seller together with the applicant's own for a period not exceeding three years.

#### **Expiration of licence**

**6.** A licence expires on the date specified in the licence or, if no date is specified, on the second anniversary of the date the licence was last issued or renewed.

#### **Application for renewal of licence**

**7.** (1) An application for renewal of a licence shall be made in the same manner as for a licence in the first instance.

(2) Despite subsection (1), subsection 3 (1) of this Regulation and subsections 393 (3) and

(4) of the Act do not apply in respect of an application for the renewal of a life insurance licence if the applicant has held a life insurance licence for at least two years.

(3) The Superintendent may require an applicant for renewal of licence to file,

(a) a return, verified by a statutory declaration, showing the applicant's accounts payable and accounts receivable, together with the time when each account receivable first became due;

(b) a financial statement of the applicant's insurance agency operations, verified by a public accountant, chartered accountant or similarly qualified person;

(c) statements from persons who deliver continuing education courses, certifying which courses have been completed by the applicant;

(d) a statement certifying that the applicant maintains errors and omissions insurance or another form of financial guarantee in accordance with section 13, or a copy of the policy or certificate of the insurance or evidence of the financial guarantee; and

(e) such other information as the Superintendent may require.

(4) An application for renewal of a licence may be refused on any grounds on which the Superintendent is authorized to suspend or revoke the licence.

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Suspension or revocation of licence

**8. The Superintendent may suspend or revoke a licence on any grounds on which an application for a licence may be refused or if, after due investigation and hearing, it appears to the Superintendent that the licensee,**

**(a) has violated any provision of the licence in the licensee's operations as an agent;**

**(b) has made a material misstatement or omission in the application for the licence;**

**(c) has been guilty of a fraudulent act or practice; or**

**(d) has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.**

#### **Exemptions from licensing**

**9.** (1) Subsection 393 (23) of the Act and section 2 of this Regulation do not apply to the following persons in the following circumstances:

1. A collector of insurance premiums who does not solicit applications for or the renewal or continuance of insurance contracts or act or aid in negotiating insurance contracts or the renewal of insurance contracts, if the collector's collection fee does not exceed 5 per cent of any amount collected.

2. An officer or a salaried employee of the head office of a fraternal society who solicits insurance contracts on behalf of the society and does not receive any commission.

3. A member of a fraternal society who solicits insurance contracts on behalf of the

society and who is not an officer or salaried employee described in paragraph 2, unless the member devotes or intends to devote more than half of his or her time to soliciting those contracts or has in the previous 12 months solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

4. An officer or salaried employee of the head office of an insurer who solicits contracts of life insurance and accident and sickness insurance on behalf of the insurer and who does not receive any commission.

5. A transportation company or an officer or employee of a transportation company, when acting as an agent for an insurer with respect to travel, accident and baggage insurance.

(2) Paragraph 4 of subsection (1) does not apply without the written approval of the Superintendent to an officer or employee whose application for a licence as an agent has been refused or whose licence as an agent has been revoked or suspended.

## **APPOINTMENT AND TERMINATION OF AGENTS**

### **Appointment of agent**

**10.** (1) A sponsoring insurer that appoints an agent, by written contract or otherwise, shall forthwith notify the Superintendent in writing of the appointment, giving the full name, address and licence number of the agent.

(2) Subsection (1) and subsection 393 (6) of the Act do not apply in respect of an agent who holds a life insurance licence if,

(a) the agent is a corporation or partnership; or

(b) the agent has held a life insurance licence for at least two years.

### **Return of licence**

**11.** (1) If a sponsoring insurer that has certified its appointment of an agent to the Superintendent terminates the appointment, the agent shall forthwith notify the Superintendent in writing of that fact and shall return the agent's licence to the Superintendent.

(2) Subsection (1) does not apply in respect of an agent who has held a life insurance licence for at least two years.

## **INSURER'S COMPLIANCE SYSTEM**

### **Insurer's compliance system**

**12.** (1) Every insurer that authorizes one or more agents to act on behalf of the insurer shall establish and maintain a system that is reasonably designed to ensure that each agent complies with the Act, the regulations and the agent's licence.

(2) The system referred to in subsection (1) must screen each agent for suitability to carry on business as an agent.

(3) An insurer shall report to the Superintendent if it has reasonable grounds to believe that an agent who acts on behalf of the insurer is not suitable to carry on business as an agent.

## **DUTIES OF LIFE INSURANCE AGENTS**

### **Errors and omissions insurance**

**13.** An agent who holds a life insurance licence shall maintain,

(a) errors and omissions insurance in a form approved by the Superintendent in an amount of at least \$1,000,000 in respect of any one occurrence with extended coverage for loss resulting from fraudulent acts; or

(b) another form of financial guarantee in a form approved by the Superintendent in an amount of at least \$1,000,000 in respect of any one occurrence.

#### **Continuing education**

**14.** An individual who holds a life insurance licence shall complete at least 30 hours every two years of continuing education acceptable to the Superintendent in respect of life insurance.

#### **Disclosure of insurers, etc.**

**15.** (1) An individual who holds a life insurance licence shall disclose in writing the names of all the insurers that the individual represents to every prospective insured and to every insured who makes an application to renew or replace a policy of life insurance.

(2) An individual who holds a life insurance licence shall disclose in writing the names of all the providers of financial products or services that the individual represents to every prospective purchaser of a financial product or service other than insurance.

#### **Conflicts of interest**

**16.** An agent who holds a life insurance licence shall disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the agent that is associated with a transaction or recommendation.

#### **Prohibited conduct**

**17.** An agent who holds a life insurance licence shall not,

(a) offer inducement or use coercion or undue influence in order to control, direct or secure insurance business;

(b) for the purpose of encouraging the insured under an existing contract of life insurance to enter into another contract of life insurance, directly or indirectly induce or attempt to induce the insured to,

(i) allow the existing contract to lapse, contrary to the insured's interests,

(ii) surrender the existing contract for cash, paid up or extended insurance, or other valuable consideration, contrary to the insured's interests, or

(iii) borrow a substantial amount against the existing contract, whether in a single loan or over a period of time, contrary to the insured's interests;

(c) make a false or misleading statement or representation in the solicitation or registration of insurance;

(d) make or deliver an incomplete comparison of any policy or contract of insurance with that of another insurer in the solicitation or registration of insurance;

(e) coerce or propose, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract; or

(f) hold himself, herself or itself out, directly or indirectly, by representation or omission, in a way that is misleading in respect of the insurers on whose behalf the agent acts.

## **TRANSITION**

### **Level II life insurance licences**

**18.** The following applicants for a life insurance licence shall be deemed, for the purpose of clause 4 (1) (d) only, to meet the qualifications described in that clause:

1. An applicant who passed the Level II life insurance examination before January 1, 2003 and who held a life insurance licence on January 1, 2003.
2. An applicant who passed the Level II life insurance examination before January 1, 2003 and did not hold a life insurance licence on January 1, 2003, if the Superintendent is satisfied that the applicant continues to have the qualifications tested by that examination.
3. An applicant who held a life insurance licence on January 1, 2003 and who, before that date, was determined by the Superintendent to have the qualifications tested by the Level II life insurance examination.
4. An applicant who did not hold a life insurance licence on January 1, 2003 and who, before that date, was determined by the Superintendent to have the qualifications tested by the Level II life insurance examination, if the Superintendent is satisfied that the applicant continues to have the qualifications tested by that examination.
5. An applicant who, on or after January 1, 2003 and before January 1, 2007, passed the Level II life insurance examination or was determined by the Superintendent to have the qualifications tested by that examination.

**Level I life insurance licences**

**19.** (1) Subject to subsection 22 (1), an applicant for a life insurance licence who held a life insurance licence before July 1, 2003 and who did not pass the Level II life insurance examination before making the application shall be deemed, for the purpose of clause 4 (1) (d)

only, to meet the qualifications described in that clause if the application is made before January 1, 2007.

(2) Subject to subsection 22 (1), if an applicant relies on subsection (1) to obtain a life insurance licence and, before January 1, 2007, he or she applies for the renewal of the licence or

for another life insurance licence, he or she shall be deemed, for the purpose of clause 4 (1) (d)

only, to meet the qualifications described in that clause.

**Transitional restricted life insurance licences**

**20.** (1) An applicant for a life insurance licence who makes his or her application before January 1, 2007 shall be deemed, for the purpose of clause 4 (1) (d) only, to meet the qualifications described in that clause if he or she has completed the restricted licence component of a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent that relates to that component of the Program.

(2) If an applicant relied on subsection (1) to obtain a life insurance licence, the following conditions apply to the licence:

1. The licence expires on the 180th day after it is issued, unless, by that time, the licensee is enrolled in the remainder of the Life Licence Qualification Program.
2. The licence expires on the earlier of the second anniversary of the day the licence was issued and January 1, 2007, unless, by that time, the licensee has completed all of a course acceptable to the Superintendent for the Life Licence Qualification Program and passed all of the examination approved by the Superintendent for the Program.

3. The licensee shall not submit an application for life insurance to an insurer unless the licensee has completed a written analysis of the insurance needs of the applicant for insurance.

4. The licensee shall not submit an application for life insurance to an insurer unless the application and the analysis referred to in paragraph 3 are co-signed by another agent who holds a life insurance licence, has held a life insurance licence for at least two years, and who satisfies at least one of the following criteria:

i. The other agent has completed a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent for the Program.

ii. The Superintendent is satisfied that the other agent has qualifications equivalent to the qualifications described in subparagraph i.

iii. The other agent has passed the Level II life insurance examination.

iv. The Superintendent is satisfied that the other agent has qualifications equivalent to the qualifications described in subparagraph iii.

(3) A sponsoring insurer who appoints an agent who relied on subsection (1) to obtain a life insurance licence shall,

(a) take such steps and maintain such records as are necessary to document whether the agent's licence expires under paragraph 1 or 2 of subsection (2) and whether the agent complies with paragraphs 3 and 4 of subsection (2); and

(b) on request, provide the Superintendent with copies of the records maintained under clause (a).

(4) If an applicant relied on subsection (1) to obtain a life insurance licence, he or she may not rely on subsection (1) to renew the licence or obtain a new life insurance licence.

#### **Previous life insurance licensees**

**21.** An applicant for a life insurance licence shall be deemed, for the purpose of clause 4 (1)(g) only, to continue to have the qualifications tested by the examination referred to in clause 4

(1) (d), if,

(a) the applicant is an individual who previously held a life insurance licence but does not currently hold a life insurance licence;

(b) the application is made before January 1, 2007 or, if the application is made on or after that date, the applicant,

(i) held a life insurance licence at some time between January 1, 2003 and December 31, 2006, and

(ii) before January 1, 2007, passed the Level II life insurance examination or was determined by the Superintendent to have the qualifications tested by the Level II life insurance examination;

(c) pursuant to section 18 or 19, the applicant is deemed, for the purpose of clause 4 (1) (d), to meet the qualifications described in that clause; and

(d) the Superintendent is satisfied that the applicant continues to have the qualifications tested by,

(i) the Level II life insurance examination, if the applicant previously passed that examination or was previously determined by the Superintendent to have the qualifications tested by that examination, or

(ii) the qualifying examination that was approved by the Superintendent for

individuals who applied before January 1, 2003 to write the examination for life insurance licences, if the applicant did not previously pass the Level II life insurance examination and was not previously determined by the Superintendent to have the qualifications tested by the Level II life insurance examination.

**Completion of Life Licence Qualification Program or Level II life insurance examination**

**22.** (1) An application by an individual for a life insurance licence or for the renewal of a life insurance licence shall be refused if the applicant has held a life insurance licence for four years or more, unless,

(a) the individual has completed a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent for the Program;

(b) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (a);

(c) the individual has passed the Level II life insurance examination; or

(d) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (c).

(2) Despite subsections 7 (2), 10 (2) and 11 (2) of this Regulation, subsections 3 (1), 10 (1) and 11 (1) of this Regulation and subsections 393 (3), (4) and (6) of the Act apply to an individual who has held a life insurance licence for two years or more, unless,

(a) the individual has completed a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent for the Program;

(b) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (a);

(c) the individual has passed the Level II life insurance examination; or

(d) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (c).

(3) A life insurance licence held by an individual terminates on January 1, 2007, unless,

(a) the individual has completed a course acceptable to the Superintendent for the Life Licence Qualification Program and passed the examination approved by the Superintendent for the Program;

(b) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (a);

(c) the individual has passed the Level II life insurance examination; or

(d) the Superintendent is satisfied that the individual has qualifications equivalent to the qualifications described in clause (c).

**Accident and sickness insurance licences**

**23.** (1) The following applicants for an accident and sickness insurance licence shall be deemed, for the purpose of clause 4 (1) (e) only, to meet the qualifications described in that clause:

1. An applicant who held an accident and sickness insurance licence on January 1, 2003.

2. An applicant who did not hold an accident and sickness insurance licence on January 1, 2003 and who, before that date, passed the qualifying examination that was approved by the Superintendent for individuals who applied before that date for

accident and sickness insurance licences, or was determined by the Superintendent to have the qualifications tested by that examination, if the Superintendent is satisfied that the applicant continues to have the qualifications tested by that examination.

(2) An applicant for an accident and sickness insurance licence shall be deemed, for the purpose of clause 4 (1) (g) only, to continue to have the qualifications tested by the examination referred to in clause 4 (1) (e), if,

(a) the applicant is an individual who previously held an accident and sickness insurance licence but does not currently hold an accident and sickness insurance licence;

(b) the application is made before January 1, 2007 or, if the application is made on or after that date, the applicant held an accident and sickness insurance licence at some time between January 1, 2003 and December 31, 2006;

(c) pursuant to subsection (1), the applicant is deemed, for the purpose of clause 4 (1) (e), to meet the qualifications described in that clause; and

(d) the Superintendent is satisfied that the applicant continues to have the qualifications tested by the qualifying examination that was approved by the Superintendent for individuals who applied before January 1, 2003 to write the examination for accident and sickness insurance licences.

## **REVOCATIONS**

### **Revocations**

#### **24. Regulation 663 of the Revised Regulations of Ontario, 1990 and Ontario Regulation**

**760/94 are revoked.**

47/04