

## **HOW TO PREPARE FOR JULY 1, 2012:**

### **I. Review your policies**

- Familiarize yourselves with the General Provisions in the New Act since they now apply to both property and liability policies.
- Do not include any exclusion in a contract that covers loss or damage by fire or another peril unless that exclusion is prescribed by regulation. Arson *can* be a fire coverage exclusion but it is subject to the “innocent co-insured” provision. Fire coverage is mandatory for any fire loss occurring while the insured property is vacant for up to thirty (30) days. However, exclusions for fire following earthquakes are not permitted.
- Be aware that there is a new provision concerning “unjust or unreasonable” clauses that may impact on whether an exclusion can be invoked in any given case.
- Include the Statutory Conditions in all policies except aircraft insurance, boiler and machinery insurance, credit insurance, credit protection insurance, hail insurance, mortgage insurance, product warranty insurance, title insurance and travel insurance or vehicle warranty insurance. Note that Statutory Conditions 1 and 6 through 13 apply only property contacts. No variation, omission or addition of a Statutory Condition is binding on the insured.
- Seek agreement from an insured to deliver documents to them electronically for efficiency. However, note that a notice of termination of a contract pursuant to a statutory condition or for non-payment of premium cannot be delivered electronically.

### **II. Take note of the limitation periods and notice requirements**

- Note the new limitation periods. For property and liability policies it is two (2) years from the date the insured “knew or ought to have known the loss or damage occurred” and two years from the date “the cause of action against the insurer arose.”
- Notify the claimant of the limitation periods:
  - Provide written notification to a claimant of the limitation period applicable to any coverage enforcement action within five (5) business days of any claim denial.
  - Provide written notification to a claimant of the limitation period applicable to any coverage enforcement action within ten (10) business days after the first anniversary of the date the insured received notice of the denial unless the insurer already adjusted the loss.
  - Failure to comply with such notice provisions operate to suspend that limitation period. If the insurer fails to provide the requisite notice, the limitation period is suspended from between the date the notice was required to be given and the

earlier of the date the notice is given or the date that would cause the limitation period to exceed six (6) years after the date the cause of action against the insurer arose.

- Insurers must provide the insured with written notice of the dispute resolution process under the Act within ten (10) days after a dispute has arisen or within seventy (70) days after submission of a Proof of Loss if no coverage/payment determination has been made.

### **III. Revise your claims handling procedures**

- Note that the Statutory Conditions most likely apply.
- Waiver by conduct has been codified so insurers must be careful to not forego any possible defences from the outset of a claim.
- Get acquainted with the new dispute resolution procedures.
- If there is a situation with an innocent co-insured, make use of the provisions in the Act requiring that insured to cooperate with the loss investigation, submit to examinations under oath and provide requested documents.
- Subrogation provisions have been expanded to clarify who has conduct of the defence and is responsible for the cost of the litigation.

### **IV. Transitional Provisions**

The following provisions are not retroactive and thus do not apply to contracts in effect on July 1, 2012. However, they *will take effect once the contract is renewed or replaced*:

- the new limitation periods;
- the application of the statutory conditions;
- limitation of liability clause;
- exclusions from coverage; and
- fire perils insured against.

While insurers need not redraft all policies in existence as of July 1, 2012, all new policies and policies that are renewed or replaced after that date are required to conform to the New Act. However, contracts in existence as of July 1, 2012 are still subject to the new provision concerning “unjust or unreasonable” clauses.

The dispute resolution provisions will not apply if the insurer has given notice to the insured of the availability of the appraisal process before July 1, 2012. However, if that was not done, insurers should immediately notify their insureds of the dispute resolution process as provided under s. 9 of the New Act.

The following new provisions will not apply if the loss or damage occurred prior to July 1, 2012:

- application of the limitation act;
- limitation period; and
- recovery by innocent persons.

Thus, where a loss occurred prior to July 1, 2012, the limitation period started running from the date of that loss. Note that new requirements to notify an insured of the applicable statutory limitation period within prescribed time periods does not apply to a loss that occurred prior to the coming into force of the new legislation. Also, innocent co-insureds are unable to rely on the recovery provisions of the New Act if the loss occurred before July 1, 2012.

There are other transitional issues with respect to life insurance [Part 3] and accident and sickness insurance [Part 4].