

The Law - Duty of Disclosure

The information provided when a proposal for insurance is completed, becomes the basis of the contract of insurance. The insurer relies on the information provided by you, or on your behalf, in making its decision about whether to accept the risk and, if so, on what terms.

It is a fundamental principle of insurance law that the parties to a contract of insurance act with the "utmost good faith" in their dealings with each other. This means that you and the insurer are obliged to clearly and accurately inform each other about all of the important information relating to the proposed insurance.

In the case of a consumer, the principle of utmost good faith means that he/she must inform the insurer about any facts, which may be material to the insurance cover sought, such as criminal or traffic convictions, previous claims history, or bankruptcy, in fire and general policies; and medical advice, treatment, medication and any pre-existing health conditions, in life and disability policies. This is referred to as the "***duty of disclosure***". Information is "***material***" and must be disclosed, if it would influence the mind of a prudent insurer in deciding whether or not to accept an application for insurance and, if so, on what terms.

Materiality is often more difficult to determine for health and disability policies, because the information consumers fail to disclose commonly relates to their medical history.

Most insurers ask a range of questions in a proposal, in order to obtain sufficient information. However, you cannot rely on the questions asked to provide limits on the information required by the insurer. ***The law says that any information which may be material to a prudent insurer must be disclosed.*** However, you cannot disclose information about which you do not know, or could not reasonably be aware; and you do not have to disclose information about which the insurer should reasonably be aware.

When should material information be disclosed?

While the duty of disclosure exists when the proposal is completed, the duty also applies in fire and general insurance on renewal of the contract, which is usually on an annual basis. This means you must disclose any material information, which has not been previously disclosed, about anything which has occurred since the last renewal date e.g. traffic convictions, criminal convictions, house renovations. It applies equally to material information, which should have been disclosed in the original proposal.

In life and disability cases, where contracts are not renewed annually, the duty continues from when the proposal is completed until the time the contract is established. This means you must disclose any material information which has not

previously been disclosed and which comes to your notice after the proposal is completed, but before the contract is established, e.g. visits to the doctor, specialist referral, diagnosis, prescriptions.

What are the implications of not disclosing material information?

If you fail to disclose material information, you have breached your obligation under the contract, whether the non-disclosure was intentional or not. The current law does not distinguish between innocent and blameworthy non-disclosure.

Any non-disclosure of material information gives the insurer the right to avoid the contract from the date of its commencement (void ab initio) or from a subsequent renewal date (depending on when the non-disclosure of material information took place). This means that, from its commencement or renewal, the policy is treated as though it never existed.

At law, the insurer is entitled to rely on its legal rights and, unfortunately, when considering complaints, the ISO cannot make a decision which ignores those legal rights, even if it does not seem fair, or has harsh results, in all the circumstances.

Tips

1. When completing any application for insurance, you must disclose everything. In respect of fire and general insurance, all criminal and traffic offences, previous claims history and bankruptcy must be disclosed. In respect of life and disability insurance, all medical advice, treatment, medication and pre-existing health conditions must be disclosed.
2. Generally, insurers do not check your medical records when you apply for life and disability insurance, or any other insurance where health is an issue. Insurers rely on you to provide the information.
3. The questions about disclosing information do not give you the opportunity to decide what could be relevant – information is material if an insurer would decide not to accept the proposal, or apply different terms.



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