

STATUTORY CONDITIONS (Manitoba)

The statutory conditions set out in this section are deemed to be part of every contract in force in Manitoba and must be printed with every policy with the heading "Statutory Conditions". A variation or omission of, or addition to, a statutory condition is not binding on the insured.

Misrepresentation

- 1 If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

Property of others

- 2 The insurer is not liable for loss or damage to property owned by a person other than the insured unless
 - (a) otherwise specifically stated in the contract, or
 - (b) the interest of the insured in that property is stated in the contract.

Change of interest

- 3 The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

Material change in risk

- 4 (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is
 - (a) material to the risk, and
 - (b) within the control and knowledge of the insured.(2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.
(3) If an insurer or its agent is promptly notified of a change under subparagraph (1) of this condition, the insurer may
 - (a) terminate the contract in accordance with Statutory Condition 5, or
 - (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.(4) If the insured fails to pay an additional premium when required to do so under subparagraph (3)(b) of this condition, the contract is terminated at that time, and Statutory Condition 5(2)(a) applies in respect of the unearned portion of the premium.

Termination of contract

- 5 (1) The contract may be terminated,
 - (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
 - (b) by the insured at any time on request.(2) If the contract is terminated by the insurer,
 - (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and
 - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.(3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.
(4) The 15-day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

Requirements after loss

- 6 (1) On the happening of any loss or damage to insured property, the insured must, if the loss or damage is covered by the contract, in addition to observing the requirements of Statutory Condition 9,
- (a) immediately give notice in writing to the insurer,
 - (b) deliver as soon as practicable to the insurer a proof of loss in respect of the loss or damage to the insured property verified by statutory declaration
 - (i) giving a complete inventory of that property and showing in detail quantities and costs of that property and particulars of the amount of loss claimed,
 - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
 - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
 - (iv) stating the amount of other insurances and the names of other insurers,
 - (v) stating the interest of the insured and of all others in that property with particulars of all liens, encumbrances and other charges on that property,
 - (vi) stating any changes in title, use, occupation, location, possession or exposure of the property since the contract was issued, and
 - (vii) stating the place where the insured property was at the time of loss,
 - (c) if required by the insurer, give a complete inventory of undamaged property showing in detail quantities and cost of that property, and
 - (d) if required by the insurer and if practicable,
 - (i) produce books of account and inventory lists,
 - (ii) furnish invoices and other vouchers verified by statutory declaration, and
 - (iii) furnish a copy of the written portion of any other relevant contract.
- (2) The evidence given, produced or furnished under subparagraph (1)(c) and (d) of this condition must not be considered proofs of loss within the meaning of Statutory Conditions 12 and 13.

Fraud

- 7 Any fraud or wilfully false statement in a statutory declaration in relation to the particulars required under Statutory Condition 6 invalidates the claim of the person who made the declaration.

Who may give notice and proof

- 8 Notice of loss under Statutory Condition 6(1)(a) may be given and the proof of loss under of Statutory Condition 6(1)(b) may be made
- (a) by the agent of the insured if
 - (i) the insured is absent or unable to give the notice or make the proof, and
 - (ii) the absence or inability is satisfactorily accounted for, or
 - (b) by a person to whom any part of the insurance money is payable, if the insured refuses to do so, or in the circumstances described in clause (a) of this condition.

Salvage

- 9 (1) In the event of loss or damage to insured property, the insured must take all reasonable steps to prevent further loss or damage to that property and to prevent loss or damage to other property insured under the contract, including, if necessary, removing the property to prevent loss or damage or further loss or damage to the property.
- (2) The insurer must contribute on a prorated basis towards any reasonable and proper expenses in connection with steps taken by the insured under subparagraph (1) of this condition.

Entry, control, abandonment

- 10 After loss or damage to insured property, the insurer has
- (a) an immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and

- (b) after the insured has secured the property, a further right of access and entry by accredited representatives sufficient to enable them to appraise or estimate the loss or damage, but
 - (i) without the insured's consent, the insurer is not entitled to the control or possession of the insured property, and
 - (ii) without the insurer's consent, there can be no abandonment to it of the insured property.

In case of disagreement

- 11 (1) In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process set out in the *Insurance Act* whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.
- (2) There is no right to a dispute resolution process under this condition until
 - (a) a specific demand is made for it in writing, and
 - (b) the proof of loss has been delivered to the insurer.

When loss payable

- 12 Unless the contract provides for a shorter period, the loss is payable within 60 days after the proof of loss is completed in accordance with Statutory Condition 6 and delivered to the insurer.

Replacement

- 13 (1) Unless a dispute resolution process has been initiated, the insurer, instead of making payment, may repair, rebuild or replace the insured property lost or damaged, on giving written notice of its intention to do so within 30 days after receiving the proof of loss.
- (2) If the insurer gives notice under subparagraph (1) of this condition, the insurer must begin to repair, rebuild or replace the property within 45 days after receiving the proof of loss and must proceed with all due diligence to complete the work within a reasonable time.

Notice

- 14 (1) Written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to the insured's last known address as provided to the insurer by the insured.