

BC Notaries



THE SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA

**PRINCIPLES FOR ETHICAL &
PROFESSIONAL CONDUCT
GUIDELINE**

Version: April 2011

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TABLE OF CONTENTS

A. INTRODUCTION

B. PRINCIPLES

C. PRINCIPLES, GUIDELINES AND COMMENTARY

1.	Integrity	6
2.	Avoiding Questionable Conduct	7
3.	Preparation and Swearing of Documents	8
4.	Competence, Quality of Service and Relationship to Clients	9
5.	Duty to Preserve Client's Property.....	11
6.	Confidential Information.....	13
7.	Conflict of Interest	14
8.	Fees and Disbursements	16
9.	Responsibility to Other Practitioners	18
10.	Undertakings	19
11.	Duty to the Notarial Profession.....	19
12.	Practice by Unauthorized Persons.....	21
13.	Advertising and Marketing.....	21

A. Introduction

Notaries are Members of an ancient and honourable profession, the origins of which can be traced back to the early history of civilised mankind. Notaries have served the people of British Columbia since the pioneer days of the 19th century, and they have always been part of the social fabric of our communities.

Notaries have existed and continue to exist in order to fill a public need for specialised legal services. In order to maintain the profession's present standing and to evolve and progress in a changing society, Notaries must command the trust and respect of the public. This requires that Notaries maintain a reputation for integrity and for high standards of skill and care in the work that they perform. To this end, Notaries throughout the world have over the years developed and imposed upon themselves certain basic standards of practice. These standards emphasize integrity.

As a professional body Notaries in B.C. occupy a position which is unique in Canada. Notaries in B.C. are Members of a self-governing society, the Society of Notaries Public of British Columbia (the "Society"), which is entrusted with the responsibility for maintaining standards of professional conduct and for disciplining members of the Society ("Members") who have failed to meet those standards in a particular case.

The purpose of this document is to provide guidance to assist Members to understand and meet their ethical and professional standards. It does not, in and of itself, create legal obligations, although in many cases the guidance it provides reflects legal standards created elsewhere.

The guidance provided in this document is not an exhaustive list of the requirements of ethical or professional conduct. In fulfilling professional responsibilities Members must attend to many different and sometimes difficult tasks. Not every situation that may be encountered may be foreseen and addressed in a document such as this. Members are expected at all times to conduct themselves with integrity and professionalism, whether or not the situation they encounter is addressed in this Code.

Members are not relieved from the responsibility to observe appropriate standards of ethical and professional conduct by any instructions or inducements from a client, an employer or a Member of the public.

The basic ethical and professional obligations of Members are the same, regardless of the business model through which Members practice. Members have the same professional responsibilities for the actions of other Members with whom they are practising in an apparent partnership or association, as they would have if carrying on practice in an actual partnership or association.

Organization of the Code

This Code is based upon 18 Principles which reflect general standards of ethical and professional behavior. Where appropriate, each Principle is illustrated by:

- (a) one or more guidelines which provide more concrete examples of the type of conduct covered by the Principle (“Guidelines”), and
- (b) Commentary which provides explanation of or background to the Principle or Guidelines.

In some cases, the Guidelines and Commentary may be relevant to more than one Principle. In an effort to avoid unnecessary duplication, comment or advice generally only appears once in the Code, although it may apply to more than one Principle.

The Code is divided into 13 numbered chapters. Each Chapter relates to one or more Principles. The Principles are numbered with the chapter number and the letter “P” (e.g., 4P-1 is the first Principle in Chapter 4). The Guidelines are numbered with the chapter number and the letter “G” (e.g. 2-G3 is the third Guideline in Chapter 2). Paragraphs in the Commentary are numbered sequentially (e.g. 1.3 is the third paragraph of the Commentary on Chapter 1).

B. Principles

1. *Integrity*
1-P1 Every Member should discharge his or her duties to his or her clients, members of the public and fellow Members with integrity.
2. *Avoiding Questionable Conduct*
2-P1 A Member should avoid engaging in dishonourable or questionable conduct, either privately or professionally, that reflects adversely upon the Member’s professional integrity or competence or that reflects adversely on the integrity of the notarial profession.

2-P2 Members should take reasonable steps to protect against fraud, misrepresentation or unethical practices.

2-P3 Members should ensure that they are aware of and comply with all legal obligations imposed on them, including any provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act applicable to them.
3. *Preparation and Swearing of Documents*
3-P1 Members should employ great care in the preparation of documents and should be meticulous and conscientious in the swearing of them.
4. *Competence, Quality of Service and Relationship to Clients*
4-P1 Every Member should competently perform the services that the Member undertakes on a client’s behalf.

5. *Duty to Preserve Client's Property*
 - 5-P1 Members should observe all relevant rules and laws regarding the preservation and safekeeping of property which others have entrusted to them. When there are no such rules or laws, Members should take the same care of such property as a careful and prudent person would take of his or her own property of like description.
 - 5-P2 Members should account to each client or other person for all money and other property received on behalf of that person.
6. *Confidential Information*
 - 6-P1 Every Member should hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of a client, and not divulge any such information unless expressly or by implication authorized by the client or required by law to do so.
 - 6-P2 Confidential information acquired by a Member in the course of a professional relationship with a client should not be used for the benefit of the Member or a third person or to the disadvantage of the client.
7. *Conflict of Interest*
 - 7-P1 Members must avoid conflicts of interest and should avoid engaging in any activity which reasonably may be expected to give rise to a conflict of interest with a client.¹
8. *Fees*
 - 8-P1 A Member should not profit or gain from a transaction or document for which the Member performs a notarial act, apart from receiving a fee from or on behalf of the Member's client.
 - 8-P2 A Member should not ask for, negotiate, charge or accept any fee that is not fully disclosed, fair, and reasonable including any justifiable disbursements.
 - 8-P3 A Member should not, by receiving or bargaining for compensation from any source except his or her client, put himself or herself in a position which might interfere with the Member's undivided loyalty to the client.
9. *Responsibilities to other Practitioners*
 - 9-P1 A Member's conduct towards fellow Members and other professionals should be characterised by professional courtesy and good faith.
10. *Undertakings*
 - 10-P1 Members should unconditionally honour any undertakings they give, any trust they accept and any trust cheque they authorize.

¹ Section 7-P1 was revised, as approved by the Board of Directors on April 8, 2011.

11. *Duty to the Notarial Profession*
11-P1 Members should protect the reputation, honour and integrity of the profession.
12. *Practice by Unauthorized Persons*
12-P1 Members should assist in preventing unauthorized notarial practice, such as the conveyancing of property for a fee, by persons who are neither notaries nor lawyers.
13. *Advertising and Marketing*
13-P1 A Member should not engage in any type of advertising or marketing that could be construed as an unreasonable or unethical effort to solicit business or which could undermine the reputation, honour or integrity of the notarial profession.

C. Principles, Guidelines and Commentary

1. *Integrity*

1-P1 Every Member should discharge his or her duties to his or her clients, members of the public and fellow Members with integrity.

Commentary

1.1 Integrity is a fundamental quality for any person who seeks to practise as a notary. It is essential that Members be and be seen to be honest and fair in their dealings with clients and others. A Member who lacks integrity undermines his or her ability to represent his or her clients effectively and the reputation of notaries generally.

1.2 Members should endeavour to conduct themselves at all times so as to reflect credit on the notarial profession and to inspire the confidence, respect and trust of both clients and the community. This requires that Members be faithful to their clients, honest, fair, candid (always with due regard for confidentiality of information), courteous, and true to themselves.

1.3 One cannot exhaustively and definitively describe conduct which lacks integrity. Many of the other provisions of this Code describe conduct which lacks integrity. In addition, the following are examples of conduct which may lack integrity:

- (a) committing a personally disgraceful or morally reprehensible offence which reflects upon the Member's integrity;
- (b) committing, whether professionally or personally, an act of fraud or dishonesty, such as knowingly falsifying a document, whether or not prosecuted or sued for so doing;
- (c) making untrue representations or concealing material facts from clients or others with dishonest or improper motives;

- (d) taking advantage of a client, including taking advantage of a client's youth, old age, inexperience, lack of education, lack of sophistication, ill health, or unbusinesslike habits;
- (e) misappropriating or dealing dishonestly with a client's money or other property;
- (f) failing, without the client's consent, to pay over for that purpose any money received from or on behalf of a client for a specific purpose;
- (g) knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly or illegally;
- (h) failing to be frank and candid in professional dealings, subject to not betraying the client's cause, abandoning the client's legal rights or disclosing the client's confidences;
- (i) when dealing with a person who is not legally represented, taking unfair advantage of that lack of representation for the benefit of the Member or his or her client;
- (j) failing to honour one's word when pledged, even though under technical rules the absence of a written document might afford a legal defence. For example, a verbal undertaking should be honoured to the same extent as an undertaking in writing.

2. *Avoiding Questionable Conduct*

2-P1 A Member should avoid engaging in dishonourable or questionable conduct, either privately or professionally, that reflects adversely upon the Member's professional integrity or competence or that reflects adversely on the integrity of the notarial profession.

2-P2 Members should take reasonable steps to protect against fraud, misrepresentation or unethical practices.

2-P3 Members should ensure that they are aware of and comply with all legal obligations imposed on them, including any provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act applicable to them.

Guidelines

2-G1 *Suspicious Documents and Transactions*– A Member should not execute a false or incomplete document, nor be involved with any document or transaction which the Member knows or suspects is false, deceptive, fraudulent, or illegal.

2-G2 *Demanding Payment to avoid Action* - A Member should not demand or appear to demand on behalf of a client, a payment of money or any other consideration from any person to avoid an action being launched against that person or to avoid the person being reported to police or a regulatory authority.

2-G3 *Meeting Financial Obligations* – Members should meet all financial obligations incurred in their practice such as agency accounts, taxes and obligations to other Members.

2-G3.1 When a Member incurs obligations on behalf of a client, which the Member is not prepared to pay personally, the Member should make his or her

position clear in writing to the client and the service provider at the time that the obligation is incurred.

2-G4 *Discrimination* – Members should respect the requirements of human rights and constitutional laws in force in British Columbia.

2-G5 *Unprofessional Communications* - A Member should not engage in oral or written communications in the course of his or her practice which are abusive, offensive or otherwise unprofessional.

2-G6 *Unrepresented Persons* – A Member should not advise an unrepresented person in a transaction, but should urge such a person to obtain independent advice and, if the unrepresented person does not do so, the Member should take care to see that such person is not proceeding under the impression that his or her interests will be protected by the Member.

2-G6.1 *Rule 11.02 of the Rules of the Society* (the “Rules”) addresses the situation where a party to a real estate conveyance is unrepresented.

Commentary

2.1 Every Notary when installed into the profession takes the following ancient Oath of Office:

"I DO SWEAR THAT I WILL NOT MAKE OR ATTEST ANY ACT, CONTRACT OR INSTRUMENT IN WHICH I KNOW THERE IS VIOLENCE OR FRAUD, AND IN ALL THINGS I WILL ACT UPRIGHTLY AND JUSTLY IN THE OFFICE OF A NOTARY PUBLIC."

Members are expected to honour this Oath in all of their professional activities.

3. *Preparation and Swearing of Documents*

3-P1 Members should employ great care in the preparation of documents and should be meticulous and conscientious in the attesting of them.

Guidelines

3-G1 *Signatories* – Members should carefully screen the identity and voluntariness of each signatory and oath taker, and to observe that each appears to be aware of the significance of the transaction requiring a notarial act.

3-G2 *Legal Requirements* – Members should ensure that, before notarizing a document, they are aware of any legal requirements relating to the attestation of the document, such as those contained in the Land Title Act, RSBC 1996, c. 250 or those relating to documents from foreign jurisdictions.

3-G3 *Notarizing own signature* - A Member should not notarize his or her own signature.

Commentary

3.1 The most fundamental and material function of a Notary is the proper attestation and drafting of documents. Many legal documents require the seal of a

Notary. It is essential to the proper functioning of our commercial and legal system that documents prepared by and attested by Notaries are acceptable without question to the appropriate registries and public offices in BC and elsewhere. This requires that Members be aware of and observe strictly the formal requirements for the drafting, attestation and signing of documents.

3.2 Absent a specific statutory requirement, the usual and generally accepted methods of identifying a deponent or grantor are:

- (a) the deponent is personally known to the member;
- (b) the deponent is properly identified by another person who is known to the member or produces acceptable identification;
- (c) the deponent produces a valid passport, citizenship card with photo, or other government issued photographic identification.

3.3 Where there is more than one grantor, each of them should be properly identified.

3.4 In all instances, when notarizing foreign documents, Members should complete a Form 10, International Notarial Certificate of Identity.

3.5 Members should distinguish between situations where notarial services are being sought and situations where a party merely requires that a person witness a signature. A Member should be cautious, in their capacity of as a Notary, when witnessing documents where no notarial services are being sought or appear to be required.

4. *Competence, Quality of Service and Relationship to Clients*

4-P1 Every Member should competently perform the services that the Member undertakes on the clients' behalf.

Guidelines

4-G1 *Standard of Service* - Every Member should serve clients in a conscientious, diligent and efficient manner, and should provide a quality of service at least equal to that which Members generally would expect of a competent Notary in a like situation.

4-G2 *Scope of Service* - A Member should not offer advice or service to a client whose requirements are such that they exceed the Member's competence. Instead, where possible, the Member should endeavour to direct the client to those from whom the client may obtain advice or service.

4-G2.1 A Member should not attempt to give a client advice on any matter other than those that come directly within the jurisdiction of a Notary Public as set out in the *Notaries Act* and should not, when acting as a notary, provide services other than those which a notary is authorized to perform under the *Notaries Act*.

4-G3 *Lack of Capacity* – Members should be cautious about accepting instructions from or on behalf of clients whose capacity appears to be limited, whether because of age, mental disability or for some other reason.

Commentary

4.1 As Members of the notarial profession, Members hold themselves out as knowledgeable, skilled and capable in notarial practice. Accordingly, clients are entitled to assume that Members have the ability and capacity to deal adequately with matters that they undertake on the client's behalf.

4.2 A Member who is incompetent does his or her clients a disservice, and brings discredit on the profession. In addition, an incompetent member damages his or her own reputations and practice and may injure those who are associated with or dependent upon him or her.

4.3 It follows that Members should not undertake a matter unless they are competent to handle it or they can become competent without undue delay, risk, or expense to their client. If Members proceed on any other basis, they are not being honest with their clients. This is an ethical consideration and is to be distinguished from the standard of care that a court would invoke for purposes of determining negligence.

4.4 In the context of this Principle, “competence” goes beyond the formal qualification of the Notary to practise. It encompasses the sufficiency of the Notary's ability to deal with the matter in question. It includes knowledge, experience, and skill and the ability to use them efficiently in the interest of the client.

4.5 Competence in a particular matter involves more than an understanding of the relevant legal principles; it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied.

4.6 The standards of care and competence being demanded by the public of all professional bodies are continually rising. Members should be aware that the Society has an obligation to prepare for the future by working to increase knowledge and to raise professional standards. Members should keep abreast of developments in the areas in which they practice.

4.7 Notaries should be alert to situations or areas in which they have either not become competent, or have not maintained their competency to perform a particular task, and the disservice they would do their client in undertaking that task. When consulted in such circumstances, they should either decline to act or obtain their client's instructions to retain, consult, or collaborate with another Notary or lawyer competent in that field. Members should also recognize that competence for a particular task might require that they seek advice from or collaborate with experts in accounting or other fields, and they should seek their client's instructions to consult experts in such a situation.

4.8 Concerns about quality of service tend to focus on areas such as the following:

- a) failure to keep the client reasonably informed;
- b) failure to answer reasonable requests from the client for information;
- c) failure to respond to the client's telephone calls or to keep appointments with clients without explanation or apology;
- d) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;
- e) failure to answer within a reasonable time a communication that requires a reply;
- f) doing work in hand but doing it so belatedly that its value to the client is diminished or lost;
- g) mistakes or omissions in statements or documents prepared on behalf of the client;
- h) failure to maintain office staff and facilities adequate to the Member's practice;
- i) allowing staff members to perform functions, including providing advice, which should only be done by a Notary;
- j) failure to make a prompt and complete report when the work is finished or, where a final report cannot be made, failure to make an interim report where one might reasonably be expected; and
- k) Any disability (e.g. substance abuse, etc.), which interferes with or compromises a Member's services to the client.²

Otherwise, competent notaries may experience service problems such as those described above when they take on too much work, with the result that they cannot provide adequate service in each case.

5. *Duty to Preserve Client's Property*

5-P1 Members should observe all relevant rules and laws regarding the preservation and safekeeping of property which others have entrusted to them. When there are no such rules or laws, Members should take the same care of such property as a careful and prudent person would take of his or her own property of like description.

5-P2 Members should account to each client or other person for all money and other property received on behalf of that person.

² Section 4.8 was revised by adding k), as approved by the Board of Directors on April 8, 2011.

Commentary

5.1 From time to time, members may come into possession of valuable property belonging to clients or other people (referred to as “clients” for the purpose of this Principle). This property could include:

- (a) money;
- (b) securities such as mortgages, negotiable instruments;
- (c) stocks, bonds, etc.;
- (d) original documents such as wills, powers of attorney, title deeds, minute books, licences, certificates, etc.;
- (e) other papers such as a client's correspondence files, reports, and invoices; and
- (f) other items of value such as jewellery or precious metals.

5.2 It is recommended that Members who come into possession of such property:

- (a) promptly notify the client of the receipt of any property of or relating to the client unless satisfied that the client is aware that it has come into the Member's custody or control;
- (b) maintain adequate records of the client's property in their custody so that they may promptly account for or deliver it to or to the order of the client or other person upon request; and
- (c) ensure that the property is delivered to the right person.

5.3 In the case of a dispute as to the person entitled to property held by the Member, a Member may have recourse to the courts.

5.4 Members should be familiar with the provisions of the *Notaries Act* and of the Rules regarding trust accounts when dealing with a client's money.

5.5 In dealing with property other than money, Members should comply with any rules or laws governing the safeguarding of the property. Subject to those rules or laws, it is prudent for members to take the following steps to safeguard the client's property:

- (a) clearly label and identify the client's property;
- (b) place valuables in a secure place apart from the Member's own property;
- (c) maintain with the Member's accounting records a complete listing of clients' property in the Member's custody;

5.6 A Member should keep clients' papers and other property out of sight as well as out of reach of those not entitled to see them and should, subject to any rights of lien, promptly return them to the client upon request or on the conclusion of the work in hand.

6. *Confidential Information*

6-P1 Every Member should hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of a client, and not divulge any such information unless expressly or by implication authorized by the client or required by law to do so.

6-P2 Confidential information acquired by a Member in the course of a professional relationship with a client should not be used for the benefit of the Member or a third person or to the disadvantage of the client.

Commentary

6.1 For the purposes of this Principle, “client” includes a person who discusses with the Member the possibility of retaining the Member.

6.2 A Member cannot render effective professional services to the client unless the client feels free to be completely candid with the Member. This requires that the client be assured that matters disclosed to the Member will be treated as confidential. This duty of confidence applies to all clients and continues once the relationship with the client ceases.

6.3 The Member should avoid indiscreet conversations, even with the Member’s family or friends, about a client’s business or affairs and should shun gossip about such things, even if the client cannot be identified. The Member should refrain from participating in or commenting on speculation concerning the client’s affairs or business.

6.4 The Member should take care to avoid disclosure to one client of confidential information concerning or received from another and should decline employment which might require him or her to disclose such information. A Member who discusses with one client business relating to other clients, even in a general way, may call into question the Member's ability to respect the confidential nature of his or her clients’ affairs.

6.5 Disclosure may be justified in order to establish or collect a fee, or to defend a Member or the Member’s employees against allegations of impropriety, negligence, or errors; but only to the extent necessary for this purpose.

6.6 Members should be familiar with applicable laws regarding privacy and ensure that appropriate privacy policies are prominently displayed their offices.

7. *Conflict of Interest*

7-P1 Members should avoid conflicts of interest and should avoid engaging in any activity which reasonably may be expected to give rise to a conflict of interest with a client.

Guidelines

7-G1 Conflict of Interests between Clients - A Member should not ordinarily advise or represent both sides of a transaction. Where not otherwise prohibited by law, the Society recommends that a Member advise or represent both sides of a transaction only if:

- (a) the Member reasonably determines that the matter is not likely to give rise to a conflict of interests between the two parties;
- (b) the Member makes adequate disclosure to both sides that the Member intends to act for both sides and that no information received from one side in connection with the transaction can be withheld from the other side; and
- (c) the Member obtains the consent of both clients or prospective clients to acting for both sides and their agreement that, if a conflict develops which cannot be resolved, then the Member will not continue to act for either of them. This consent should be provided by the clients in writing or confirmed in writing by the Member in a separate letter to each client;

7-G2 *Acting for Both Sides of a Conveyance* – Members should avoid acting for both sides in a conveyance of an interest in real property. This is addressed in Section 11.04 of the Rules.³

7-G3 *Member's Personal Interest* - A Member should refrain from acting in any matter in which the Member's personal interests, including those of the Member's associates, may reasonably be expected to come into conflict with the interests of a client of the Member.

7-G3.1 A Member must disclose in writing any personal interest held in any transaction in which a client's funds are or may be invested, whether or not the interest is direct or indirect (such as through a corporation, trust, estate or syndicate in which the Member has an interest or through a relative, including the spouse of the Member).⁴

7-G3.2 A Member must not prepare or participate in the signing of an instrument giving the Member or an associate of the Member a substantial gift from the client, including a testamentary gift, without ensuring that the client is independently advised.⁵

³ Section 7-G2 was revised, as approved by the Board of Directors on April 8, 2011.

⁴ Section 7-G3.1 was revised, as approved by the Board of Directors on April 8, 2011.

⁵ Section 7-G3.2 was revised replacing auxiliary verb "should" with "must", as approved by the Board of Directors on April 8, 2011.

7-G4 *Outside Activities* - Members should not carry on any business or other activity in a way that makes it difficult for a client to distinguish in which capacity the Member is acting in a particular instance or which could reasonably give rise to a conflict of interest or duty to a client.

7-G4.1 A Member should not allow any outside interests to jeopardize the Member's professional integrity, independence or competence.

7-G4.2 A Member should not feature any outside interests on the Member's notarial letterhead, or use notarial letterhead for other than notarial business.

7-G5 *Avoiding Debtor - Creditor Relationships* - A Member should avoid entering into a debtor - creditor relationship with a client. The Member should not borrow money from a client (other than a client who is in the business of lending money, such as a bank or trust company). A Member should not lend money to a client except by way of advancing necessary expenses in a matter that the notary is handling for the client.

7-G6 *Acting as an Executor* - When acting as an executor or administrator of an estate, a Member must be vigilant in avoiding conflicts of interest and, if the Member is charging fees for services as a Notary, the Member must document with precision those things for which notarial fees are being charged to ensure there is no duplication of duties for which the Member is, as executor, already responsible.⁶

Commentary

7.1 It is essential that a Member's judgment and freedom to act on the client's behalf be as free as possible from compromising influences. Compromising influences can result from a Member's own interests, the interests of a person close to the Member or the interests of another client.

7.2 Rule 11.03 states that:
Except as otherwise provided in this Rule, no Member shall act or continue to act for more than one party where there is or might reasonably be a conflict of interest between any of the parties for whom the Member acts.⁷

7.3 Where a Member proposes to act for more than one client in a matter or to act in a matter in which the Member has a personal interest, the Member should make full disclosure so that the client may make an informed decision as to whether to have the Member act despite the presence or possibility of the conflicting interest.

7.4 A conflict of interest between a Member and a client exists where the Member or an associate of the Member gives property to or acquires property from the client by way of purchase, gift, testamentary disposition or otherwise.

⁶ New section added, as approved by the Board of Directors on April 8, 2011.

⁷ Wording revised, as approved by the Board of Directors on April 8, 2011.

Such transactions should be avoided. When they are contemplated, it is prudent to insist that the client be independently represented.

7.5 Members should be aware of and ensure that they comply with the disclosure requirements relating to specific activities they may engage in, such as the requirements of s. 17.3 and 17.4 of the Mortgage Brokers Act.

7.6 Associates of the Member in this chapter include anyone whose interests could reasonably be expected to affect the Member's professional judgment, such as:

- (a) a relative of the Member,
- (b) a partner or employee of the Member,
- (c) a business associate of the Member,
- (d) a friend of the Member,
- (e) a trust or estate in which the Member has a beneficial interest, and
- (f) an agency, corporation or other entity in which the Member has a significant interest.

7.7 Outside interests in this context include the widest possible range of activities, including those which may overlap with or be connected with the Member's notarial practice. Examples of outside interests include engaging in the insurance, real estate or mortgage business, acting as an immigration consultant, acting as a surveyor or participating as an investor in investments.

8. *Fees and Disbursements*

8-P1 A Member should not profit or gain from a transaction or document for which the Member performs a notarial act, apart from receiving a fee from or on behalf of the Member's client.

8-P2 A Member should not ask for, negotiate, charge or accept any fee that is not fully disclosed, fair, and reasonable including any justifiable disbursements.⁸

8-P3 A Member should not, by receiving or bargaining for compensation from any source except his or her client, put himself or herself in a position which might interfere with the Member's undivided loyalty to the client.

Guidelines

8-G1 *Undisclosed Remuneration* - A Member should fully disclose to the client or to any person who is paying part or all of the client's fees, any fee that is being charged or accepted.

8-G1.1

A Member should not take any fee from anyone other than the client without full disclosure to and the consent of the client and, where the Member's fees are being paid by someone other than the client, such as a borrower, a relative or an agent, the consent of that other person.

⁸ Section 8-P2 was revised to add "*including any justifiable disbursements*" (*recommended by the Bylaws Committee and approved by the Board in September 2010*).

8-G2 ⁹ *Finders Fees* –The attention of Members is directed to Section 11.08 of the Rules, dealing with Finders' Fees:

- (a) No Member acting as a Notary shall, when acting for a person introduced by the Member to any financial institution or any investor, accept from such institution or any investor a finder's fee or similar remuneration unless the Member:
 - (i) makes full disclosure in writing to the client, or
 - (ii) pays the fee received over to the client or credits the finder's fee received against the Member's own account to the client.
- (b) No Member shall, by receiving or bargaining for compensation from any sources except the Member's client, compromise the Member's undivided loyalty to the client.

8-G3 *Steering* – A Member should not pay or agree to pay any remuneration or provide any other consideration, directly or indirectly, to another person in exchange for that person referring a client to the Member.

8-G4 *Splitting Fees* - A Member should not share, split, or divide fees with persons or corporations who bring or refer business to the Members' office.

Commentary

8.1 A Member is entitled to reasonable compensation for services. The Member should, however, avoid charges which either over-estimate or under-value services rendered. The client's ability to pay cannot justify a charge in excess of the value of the service, though circumstances may suggest that a lesser charge or even none at all is warranted.

8.2 A Member should avoid controversies with clients regarding compensation. Fees should always be readily justifiable as fair and reasonable for services rendered. A Member should take care to ensure that no client suffers any financial loss or is put to any trouble or inconvenience as a result of careless or incompetent work on the part of the Member.

8.3 A fair and reasonable fee will depend upon and reflect such factors as:

- (a) the time and effort required and spent;
- (b) the difficulty and importance of the matter;
- (c) whether special skill or service has been required and provided.
- (d) the customary charges of other Members of equal standing in the locality in like matters and circumstance;
- (e) the amount involved or the value of the subject matter;
- (f) other special circumstances such as loss of other employment and urgency;
- (g) any relevant agreement between the Member and the client.

⁹ Section revised, as approved by the Board of Directors on April 8, 2011.

8.4 **RESCINDED**¹⁰

8.5 The relationship between a Member and client requires full disclosure of all financial matters between them and prohibits the acceptance by the Member of any hidden financial benefit. In the context of this Chapter, “fee” includes any reward, costs, commission, interest, rebate, agency, forwarding allowance or other compensation whatsoever related to professional employment.

9. Responsibilities to other Practitioners

9-P1 A Member’s conduct towards fellow Members and other professionals should be characterised by professional courtesy and good faith.

Guidelines

9-G1 *Communications* with a Person represented by another Member or another Professional - In representing a client, a Member should refrain from communicating with a person the Member knows to be represented by another Member or a lawyer, without the consent of that other Member or lawyer.

9-G2 *Promptness* – Members should be punctual in fulfilling all commitments to other practitioners, including answering with reasonable promptness all professional communications from other practitioners which require an answer.

9-G3 *Avoiding Sharp Practice* - Members should avoid sharp practice. Sharp practice includes taking advantage of another practitioner who has overlooked some technical matter or imposing additional or "escalating" undertakings upon another practitioner at a critical point in the course of a transaction. For example, Members should avoid imposing an onerous or unreasonable condition or time limit, not previously agreed to, at or near the closing date.

9-G4 *Avoiding Unwarranted Criticism* - Members should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other practitioners.

Commentary

9.1 The public interest is best served when matters entrusted to a Notary are dealt with effectively and expeditiously. Fair and courteous dealing on the part of each Member engaged in a matter will contribute materially to this end. Members who conduct themselves otherwise do a disservice to their clients.

9.2 The same courtesy and good faith should characterise the Member's conduct towards lay persons lawfully representing others or themselves.

¹⁰ The following commentary was rescinded, as approved by the Board of Directors on September 16, 2010:

A fee should not be divided with another Member who is not a partner or associate unless (a) the client consents, either expressly or by implication to the employment of the other Member, and (b) the fees are divided in proportion to the work done and responsibilities assumed.

10. *Undertakings*

10-P1 Members should unconditionally honour any undertakings they give, any trust they accept and any trust cheque they authorize.

10-P2 Undertakings should be written or confirmed in writing, signed by the Member personally, and be absolutely unambiguous in their terms.

10-P3 A Member should not impose impossible, impractical or manifestly unfair undertakings or conditions of trust.

Commentary

10.1 Section 10 of the Rules addresses undertakings in more detail.

10.2 Members should give no undertaking they cannot fulfil personally and should fulfil every undertaking they give. If a Member gives an undertaking which is conditional on something else happening or in respect of which the Member does not intend to accept personal responsibility, this should clearly be stated in the undertaking itself.

10.3 Members should avoid giving undertakings on behalf of clients since clients may change instructions. The use of such words as 'on behalf of my client' or 'on behalf of the vendor' do not relieve the Member giving the undertaking of personal responsibility.

10.4 An undertaking given by a Member can be released or altered only by the recipient of the undertaking and not by the client.

10.5 Rule 10.03 provides that the giving of a trust cheque is an undertaking that the cheque will be paid.

11. *Duty to the Notarial Profession*

11-P1 Members should protect the reputation, honour and integrity of the profession.

Guidelines

11-G1 *Powers and Authority* - Members should know, understand and observe the extent of the powers and authority conferred upon them by the *Notaries Act*, R.S.B.C. 1996, c. 334.

11-G2 *Reporting to Society* – The Rules contain specific provisions relating to Members reporting facts to Society. In addition, Members should report situations which have a reasonable likelihood of causing serious damage to clients or the notarial profession, such as:

- a) a shortage of trust funds (as described by the Rules);
- b) a breach of an undertaking;
- c) a misappropriation of trust property;
- d) the abandonment of a notarial practice;
- e) unauthorized notarial practice;
- f) participation in criminal activity by a Member or criminal charges against a Member, or
- g) significant developments in a Member's own practice, such as:

- i. changes in contact information (as described in Rule 2.12);
- ii. actions by the police or regulatory authorities involving the Member, such as searches of a Member's office, seizures of files or charges against Members; and
- iii. bankruptcy events and judgments against a Member (as described by Rule 5)

unless it is unlawful to do so.

11-G3 *Avoiding Controversy* – Members should conduct their practices in a manner which avoids unnecessary controversy.

11-G3.1

Members should not express an opinion on the work of a fellow professional unless requested to do so by a client. Such opinion should then be rendered in accordance with strict professional courtesy and integrity.

11-G4 *Activities of Profession* - Members are encouraged to participate in the activities of the notarial profession.

11-G5 *Use of Membership* - Members should refrain from using or permitting the use of their Membership granted by the Society in a manner that will adversely affect the objectives or purposes of the Society. Members should protect their notarial seals from being used by anyone else.

11-G6 *Rules of Society* – Members should abide by the Rules, Rulings and other pronouncements of the Society.

11-G7 *Obligation to Reply to Society* - Members should reply with reasonable promptness to any communications from the Society.

Commentary

11.1 In order to enable the Society to discharge its public responsibility to provide independent and competent notarial services, the individual Member should assist the Society to function properly and effectively. The guidelines set out in this section are aimed at achieving this goal.

11.2 The Guidelines set out certain situations in which, as a general matter, Members should report conduct to the Society. It is also proper for a Member to report any matter which appears to involve a breach of this Code. Unless a Member who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may on investigation disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future.

11.3 In all cases, however, reports to the Society should be made bona fides and without an ulterior motive.

11.4 Participation by Members in activities such as continuing education, tutorials, community service, liaison with other professions, and other activities of the Society is essential to the maintenance of a strong, independent and useful organisation.

12. *Practice by Unauthorized Persons*

12-P1 Members should assist in preventing unauthorized notarial practice, such as the conveyancing of property or preparation of wills for a fee, by persons who are neither notaries nor lawyers.

Guidelines

12-G1 *Former Members* - Members should not, without the approval of the Society, employ in any capacity having to do with their practice (a) a Notary or lawyer who is under suspension as a result of disciplinary proceedings, or (b) a person whose Membership in the Society, the Law Society of BC or similar organizations in other jurisdictions has been terminated, or who has been permitted to resign while facing disciplinary proceedings and who has not been reinstated.

12-G2 *Supervision of Staff* - Members should assume complete professional responsibility for all business entrusted to them and maintain direct supervision over the staff to which they delegate particular tasks and functions.

Commentary

12.1 Statutory prohibitions against practice by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal abilities, but they are immune from control, regulation and, in the case of misconduct, from discipline by any governing body, and their competence and integrity have not been vouched for by an independent body. Moreover, the client of a Member or lawyer has the protection and benefit of the professional standards of care which the courts impose on Notaries and lawyers, and of other safeguards, such as professional liability insurance and bonding, rules respecting trust monies, and requirements as to the maintenance of a Special Fund to compensate the public in case of fraud.

13. *Advertising and Marketing*

13-P1 A Member should not engage in any type of advertising or marketing that could be construed as an unreasonable or unethical effort to solicit business or which could undermine the reputation, honour or integrity of the notarial profession.

Guidelines

13-G1 *Advertisements should be factual and in good taste* - The content of any advertisement should be factual, verifiable, informational and not misleading.

13-G1.1

Any advertisement by a Member should be in good taste, dignified and not unduly promotional.

13-G2 Rules regarding Advertising - Members should be familiar with and comply with the provisions of the Rules regarding advertising.

Commentary

13.1 A Member may announce by way of business card, letterhead or by way of advertisement in print:

- (a) The name of the Member, partners and associates;
- (b) Degrees of or graduate status from recognized universities and Membership in governing or licensing societies of other professions;
- (c) Street address and telephone numbers;
- (d) Office hours;
- (e) Languages spoke by the Member;
- (f) Date of Membership (by year) in the Society;
- (g) Preferred areas of practice, including listing of services provided by the Member.

13.2 Members should refrain from undertaking or authorizing any advertisement or marketing activity, which is:

- (a) based on false, misleading or inaccurate representations or representations which are unverifiable;
- (b) intended to influence a person who has retained another Member to change that person's representation, unless the change is initiated by the person or the other Member;
- (c) contrary to the best interests of the public or the maintenance of high standards of professionalism;
- (d) prejudicial to the dignity and reputation of an honourable profession.

13.3 Members are cautioned that the powers of notaries in other jurisdictions may be different from the powers of Notaries in BC and that foreign terms similar to the English term "notary" may have different meanings. When Members offer their services to clients or potential clients who may be unfamiliar with the powers of Notaries in BC, they are expected to ensure that their clients and potential clients understand the nature of a Notary's powers in BC. Members who advertise their services in languages other than English should be careful to use language which is not likely to mislead foreign language speaking clients or potential clients about the powers of a Notary in BC.