

**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT***

**R.S.B.C. 1996, c. 141, AS AMENDED**

**- AND -**

**RTO ASSET MANAGEMENT INC.**

**ORDERS UNDER SECTIONS 244(2) and 238.1, AND**

**NOTICE OF RIGHT OF HEARING OR APPEAL**

**UNDER SECTIONS 238.1 (2)**

UPON REVIEWING THE SUBMISSIONS AND EXHIBITS OF STAFF, I make the following findings and orders:

***Background***

1. This order relates to the activities of RTO Asset Management Inc. (“easyhome”) in relation to conducting insurance business in the Province of British Columbia (“B.C”) without a licence and proper business authorization.
2. In December 2019, the BC Financial Services Authority (“BCFSA”) received a request from Consumer Protection British Columbia (“CPBC”) to review products offered by easyhome (the “Products”) to determine if they were considered insurance.
3. As a result of this request, BCFSA Staff (“Staff”) reviewed the Products, including application forms and terms and conditions, and focused their review on the Liability Waiver Policy (“LWP”) and its successor, the Loss Damage Waiver (“LDW”).
4. The LWP and the LDW qualify as insurance given that they are an undertaking by easyhome to indemnify the consumer against the cost of repairing or replacing the covered furniture, appliances, and electronics (the “Goods”) if damage, destruction, or loss were to occur to the Goods.
5. easyhome was registered in B.C. on March 17, 2011 under registration number A0082807. The head office is reported as 3500, 855 – 2nd Street SW, Calgary, Alberta, T20 4J8.
6. As at December 1, 2021, a search of the BCFSA Central Registry confirmed easyhome is not authorized to conduct insurance business in B.C.
7. As at December 1, 2021, a search of the Insurance Council’s licensee database confirmed no current or historical licence has been issued to easyhome to act as an insurance agent in B.C.

### ***Referral and investigation***

8. On December 3, 2019, S.S. of the CPBC contacted Staff to inquire if easyhome was offering insurance products to consumers and whether the insurance was being offered in a compliant manner. This inquiry included an example of an easyhome lease agreement, including terms and conditions (the "Lease Agreement").
9. On September 9, 2020, Staff spoke with S.S. who stated that CPBC was reviewing easyhome's documents to determine a potential breach of the *Business Practices and Consumer Protection Act*.
10. Upon review of the Lease Agreement, Staff identified the following about the benefits under the LWP:
  - (a) The consumer is covered if the Goods are damaged, destroyed or lost through various fortuitous events;
  - (b) easyhome will visit the consumer's home annually, upon the consumer's request, to ensure the Goods are performing properly; and
  - (c) Once the consumer owns the Goods, easyhome will provide three months of free service immediately following the transfer of ownership.
11. On September 29, 2020, Staff sent S.A., Senior Vice President, Legal and Corporate Affairs with easyhome, a letter with the following information:
  - (a) Excerpts of the *Financial Institutions Act* (the "FIA") outlining the legislative requirements for conducting insurance business in B.C.;
  - (b) The outcome of Staff's review of the Products, namely that certain products may qualify as insurance; and
  - (c) Request for copies of the terms and conditions and marketing materials for the optional products.
12. On October 23, 2020, S.A. responded to Staff with the following information:
  - (a) A letter stating that:
    - i. easyhome is not carrying on insurance business because none of its activities meet the definitions under section 1(1) of the FIA; and
    - ii. easyhome does not have any marketing materials for the Products other than the information in the Lease Agreement and on their website; and
  - (b) An example of a Lease Agreement.
13. On January 20, 2021, Staff sent S.A. a letter with the following information:

- (a) Excerpts of the FIA outlining the legislative requirements for conducting insurance business in British Columbia;
  - (b) The outcome of Staff's review of the Products confirming that certain benefits provided to consumer by the Products are considered insurance; and
  - (c) Request for a plan and timeline for easyhome to become compliant with the FIA.
14. On February 10, 2021, S.A. sent Staff a letter with the following information:
- (a) easyhome consulted with their external legal counsel, P.M., and do not agree that the Products are insurance; and
  - (b) easyhome remains the true owner of the Goods and as such, the Products do not qualify as insurance.
15. On March 11, 2021, Staff sent S.A. a letter with the following information:
- (a) Whether a product qualifies as insurance is not dependent upon who the true legal owner of the object of the insurance is;
  - (b) Request for a confirmation of which legal entity operates as easyhome and ultimately holds the contract with consumers; and
  - (c) Request for a plan and timeline for easyhome to become compliant with the FIA.
16. On March 26, 2021, S.A. sent Staff a letter from P.M. (the "March Letter") with the following information:
- (a) The legal entity which easyhome operates under is RTO Asset Management Inc;
  - (b) easyhome is not conducting insurance business because the Products:
    - i. do not exhibit the critical elements of insurance;
    - ii. are analogous to collision damage waivers which are not considered insurance under Canadian law;
    - iii. do not meet a purposive and contextual interpretation of the definition of "insurance";
    - iv. do not meet the rationale for regulating insurance products applicable to the Products; and
    - v. would not be considered insurance under U.S. case law.

17. Upon review of the March Letter, Staff were of the opinion the arguments presented did not demonstrate that easyhome is not conducting insurance business under the FIA through the sale of the LWP.
18. On May 19, 2021, Staff sent S.A. a letter with the following information:
  - (a) The outcome of Staff's review of the March Letter confirming that the benefits under the LWP are still considered insurance; and
  - (b) Request for a plan and timeline for easyhome to become compliant with the FIA, or if compliance cannot be achieved, confirmation that easyhome has ceased offering the LWP to British Columbians.
19. On June 2, 2021, S.A. sent a letter to Staff with the following information:
  - (a) easyhome disagrees with BCFSAs position that the LWP is insurance;
  - (b) easyhome has amended their terms and conditions for the LWP to be more similar to collision damage waiver products offered by car rental companies and renamed the product to the LDW; and
  - (c) The LDW will be implemented on September 1, 2021.
20. On August 17, 2021, Staff sent S.A a letter requesting the following information:
  - (a) Further details regarding the coverage under section 1 of the LDW terms and conditions;
  - (b) Explanation about whether easyhome will repair or replace the insured goods so that the customer may continue with the lease under section 1 of the terms and conditions; and
  - (c) Confirmation the LDW will launch on September 1, 2021 and, consequently, that the LWP has been removed from the B.C. marketplace.
21. On September 3, 2021, S.A. sent a letter to Staff with the following information:
  - (a) easyhome will repair or replace the Goods, depending on which is more appropriate, under section 1 of the LDW terms and conditions; and
  - (b) The LDW launch has been delayed to November 1, 2021.
22. Staff's review of the LDW product confirmed the coverage is comparable to the LWP. Staff remain of the opinion the LDW is insurance under the FIA and that the arguments presented do not demonstrate that easyhome is not conducting insurance business under the FIA.

## **Relevant Legislation**

23. Section 1(1) of the FIA defines “business authorization” as follows:

“**business authorization**” means an authorization to carry on

- (a) trust business,
- (b) deposit business,
- (c) insurance business, or
- (d) both trust business and deposit business,

issued under Division 1 of Part 3 to a financial institution, under Division 1 of Part 6 to an extra provincial corporation or under Division 5 of Part 6 to a society described in section 191;

24. Section 1(1) of the FIA sets out the definition of “insurance business”:

“**insurance business**” means

- (a) undertaking or offering to undertake to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed,
- (b) soliciting or accepting any risk,
- (c) soliciting an application for a contract of insurance,
- (d) issuing or delivering a
  - i. receipt for any contract of insurance, or
  - ii. contract of insurance,
- (e) in consideration of any premium or payment, granting an annuity on a life or lives,
- (f) collecting or receiving any premium for a contract of insurance,
- (g) adjusting any loss covered by a contract of insurance, or
- (h) advertising for any business described in paragraphs (a) to (g),

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (h) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution;

25. Section 1(1) of the FIA defines “insurance company” as follows:

“**insurance company**” means

- (a) a company incorporated under the Business Corporations Act for the purpose of carrying on insurance business,
- (b) an insurer incorporated by or under another Act, or
- (c) a pre-existing insurance company,

and includes

- (d) a special Act insurance company that has been converted into a company under section 266 of the Business Corporations Act for the purpose of carrying on insurance business,
- (e) an extraprovincial insurance corporation that has been continued into British Columbia as a company under section 303 of the Business Corporations Act,
- (f) a company that results from an amalgamation referred to in section 20 (2), and

- (g) a society that is named in an order of the superintendent made under section 193 (2) of this Act to which society section 59 applies because of section 193 (3), but does not include
  - (h) a corporation continued under the laws of another jurisdiction,
  - (i) a society deemed under section 191 to have a business authorization issued under Division 5 of Part 6,
  - (j) a mutual fire insurance company as defined in section 188 or a grandparented insurance society as defined in section 200,
  - (k) a corporation that
    - i. is licensed under Division 2 of Part 6 as an insurance agent or insurance adjuster, and
    - ii. carries on insurance business only in the corporation's capacity as an insurance agent or insurance adjuster, or
  - (l) a corporation that is registered as a captive insurance company under the Insurance (Captive Company) Act;

...

"insurer" means an individual, corporation or other entity carrying on insurance business;

...

(5) An activity referred to in paragraph (a) of the definition of "insurance business" in subsection (1), whether or not the activity is conducted in British Columbia, is conclusively deemed for the purposes of this Act to constitute the carrying on of insurance business in British Columbia if the risk or peril is located in British Columbia.

26. Section 75 of the FIA prohibits unauthorized insurance business:

- A person must not carry on insurance business in British Columbia unless the person is
- (a) an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,
  - (b) a company registered under the Insurance (Captive Company) Act,
  - (c) a member of a reciprocal exchange as defined in section 186 for which a permit under section 187 has been issued and is in effect,
  - (d) licensed under Division 2 of Part 6 as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity,
  - (e) the deposit insurance corporation, the Canada Deposit Insurance Corporation or the Insurance Corporation of British Columbia,
  - (f) an insurer
    - i. [Repealed 2004-48-48.]
    - ii. that administers an insurance compensation plan designated by regulation for the purpose of section 66 (2),
  - (g) a society described in section 193 (1) (a) to (g) that, immediately before September 15, 1990, was carrying on the business of insurance,
  - (h) a credit union that is carrying on insurance business only by making or participating in contracts of insurance as permitted by section 82 of the Credit Union Incorporation Act, or

- (i) a central credit union that is carrying on insurance business only by providing or arranging insurance as permitted by section 90 (2) of the Credit Union Incorporation Act.

27. Section 168 of the FIA defines “insurance agent” and “insurance salesperson” as follows:

In this Division, unless the context otherwise requires,

...

**"insurance agent"** means a person, other than an insurance company or an extraprovincial insurance corporation, who solicits, obtains or takes an application for insurance, or negotiates for or procures insurance, or signs or delivers a policy, or collects or receives a premium;

...

**"insurance salesperson"** means an individual who is employed by an insurance agent or by an insurer to solicit, obtain or take an application for general insurance, or to negotiate for or procure general insurance, or to collect or receive a premium for general insurance;

28. Section 171 of the FIA prohibits unlicensed insurance agents and salespersons:

(1) [Repealed 2004-48-79.]

(2) A person must not act in British Columbia as an insurance agent or insurance salesperson unless the person is licensed as an insurance agent or insurance salesperson, as the case may be.

(3) Subsection (2) does not apply to a person or class of persons exempted by the regulations.

29. Section 244 of the FIA provides for the superintendent to order a person to cease doing an act or engaging in a course of conduct that does not comply with the FIA:

(1) In this section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.

(2) If, in the opinion of the superintendent, a person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act, the regulations or the rules made by the Authority,

...

(b) does not comply with a condition of

i. a business authorization, consent or order under this Act,

ii. a licence issued under Division 2 of Part 6, or

iii. a permit issued under section 187,

(c) might reasonably be expected to result in a state of affairs not in compliance with

i. this Act, the regulations or the rules made by the Authority,

...

(d) does not comply with a written undertaking given under this Act, or

- (e) might reasonably be expected to harm
  - i. in the case of a trust company or credit union, the interests of depositors or persons for whom the trust company or credit union acts in a fiduciary capacity, or
  - ii. in the case of an insurance company, the interests of insureds, then, the superintendent may
- (f) order the person to
  - i. cease doing the act,
  - ii. cease pursuing the course of conduct, or
  - iii. do anything that the superintendent considers to be necessary to remedy the situation, or
- (g) if the person is a financial institution and the superintendent considers it appropriate to do so, give the financial institution an opportunity to make a written voluntary compliance agreement with the superintendent, by which the financial institution undertakes to rectify the act or course of conduct.

(3) Despite a voluntary compliance agreement, the superintendent may make an order under subsection (2) (f) in respect of the financial institution or another person that is the subject of an order under subsection (2)

- (a) on matters not covered by the agreement,
- (b) if the agreement is not complied with, on matters covered in the agreement,
- (c) if in the opinion of the superintendent there has been a deterioration in the financial condition of the financial institution, or
- (d) on matters provided for in the agreement if all the facts related to the matter provided for in the agreement were not known by the superintendent at the time of the agreement.

(4) On the application of a financial institution that has made a voluntary compliance agreement with the superintendent, the superintendent may approve the alteration of the agreement.

(5) If a person has been

- (a) convicted of an offence in Canada or another jurisdiction arising from a transaction, business or course of conduct related to financial services, or
- (b) found by a regulator or a court in Canada or another jurisdiction to have contravened the laws of that jurisdiction respecting financial services, the superintendent may order the person to
- (c) cease doing any act or pursuing any course of conduct that is the same or similar to the act or course of conduct that resulted in the conviction or finding described in paragraph (a) or (b), or
- (d) carry out specified actions that the superintendent considers necessary to remedy the situation.

30. Section 238.1 of the FIA provides a summary procedure for issuing immediate orders:

(1) If the superintendent, or the Authority, depending on which of them has the power to make the order,



(a) intends to make an order under section 48 (2), 93 (1) or (2), 99 (2), 144 (3), 244 (2) or (5), 245 (1), 275 or 277 (1) (d) or (2) (a) or (c), and

(b) considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act,

then, despite section 237, the superintendent or Authority, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or Authority, as soon as practicable after making the order, must deliver to that person

(c) a copy of the order and written reasons for it, and

(d) written notice of the person's rights under subsection (2).

(2) The person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,

(a) require a hearing before the superintendent or Authority, as applicable, by delivering written notice to the superintendent or Authority, or

(b) appeal the order to the Supreme Court, and, for this purpose, section 242.4 (2) to (4) applies.

(3) Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or Authority, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.

31. Section 1 of the *Insurance Act* defines "insurance" as follows:

"**insurance**" means the undertaking by one person to indemnify another person against loss or liability in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event

***Application of legislative scheme to the LWP and the LDW***

32. Based on the relevant legislation, the terms of the Lease Agreement, a review of the benefits offered under the LWP and the LDW, and other exhibits and submissions of Staff, I find that easyhome is carrying on unauthorized insurance business in B.C. for the following reasons:

(a) The coverage provided by the LWP and the LDW is an undertaking by easyhome to indemnify the consumer against the cost of repairing or replacing the Goods if damage, destruction, or loss were to occur to the Goods;

(b) Through the provision of the LWP and the LDW, easyhome is soliciting and accepting risk;

(c) By accepting payment of money in consideration for the LWP and LDW, easyhome is collecting and receiving premiums for contract of insurance;

(d) By advertising the LWP and the LDW on the easyhome website and in the Lease Agreement, easyhome is advertising for insurance business;

- (e) As per the BCFS Central Registry, neither RTO Asset Management Inc. nor easyhome are authorized to conduct insurance business in B.C; and
  - (f) As per the Insurance Council's licensee database, neither RTO Asset Management Inc. nor easyhome are licensed as an insurance agent in B.C.
33. With respect to the nature of the LWP and LDW products, I find that they are in the nature of insurance and that easyhome is carrying on insurance business such that regulation is appropriate in the circumstances for the following reasons:
- (a) The LWP and the LDW exhibit the critical elements of insurance and the provision of these products constitutes unauthorized insurance business under the FIA;
  - (b) The LWP and the LDW are not analogous to other products, such as collision damage waivers, which are not considered insurance under Canadian law; and
  - (c) When applying a purposive and contextual interpretation of the definition of "insurance", the LWP and the LDW constitute insurance and call for supervision in the interest of consumer protection.
34. Given that easyhome is not authorized to carry out insurance business nor to act as an insurance agent in British Columbia, in offering and providing the LWP and LDW, easyhome is conducting unauthorized insurance business in breach of section 75(a) and 171(2) of the FIA.
35. Pursuant to section 244 of the FIA, a breach of the FIA provides the superintendant the authority to order a person to cease doing an act or engaging in a course of conduct that does not comply with the FIA.
36. The FIA is designed to protect the public by imposing authorization, prudential oversight and consumer protection requirements on entities engaged in insurance business. Having the regulator ensure the solvency and financial stability of easyhome is important for protection of customers.
37. easyhome carrying out unauthorized insurance business is recent and ongoing. Its insurance activities are non-compliant with the FIA and pose a risk to the public.
38. I agree with Staff's estimate that approximately seven witnesses would be required for a hearing and that the ability to schedule witnesses, including some who may be from out of province, counsel and the hearing officer would likely mean that a full oral hearing would take approximately 5-7 days and likely not take place until more than six months from the date a hearing is requested. I find that the length of time that would be required to hold a hearing would be detrimental to the due administration of the FIA.

WHEREAS the superintendent has certain powers and duties under section 244 and section 238.1 of the FIA;

NOW THEREFORE I order pursuant to section 238 .1(1), 244 (2) (a), 244 (2) (f) (i) and 244 (2) (f) (iii) of the FIA that:

1. easyhome immediately cease sales of the LWP in B.C. until authorized or licensed to do so.
2. easyhome immediately cease sales of the LDW in B.C. until authorized or licensed to do so.
3. easyhome shall, on or before January 31, 2022, reserve sufficient funds to pay all claims under existing LWP and LDW products and shall honour and pay all legitimate and covered claims under those products as they may be made.

TAKE NOTICE that RTO Asset Management Inc. may request a hearing before the superintendent under section 238.1 (2) (a) of the FIA or appeal the Order to the Supreme Court under section 238.1 (2) (b) of the FIA.

The Order is made on January 13, 2022 at Vancouver, British Columbia.

BC FINANCIAL SERVICES AUTHORITY

"BLAIR MORRISON"

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Blair Morrison  
Superintendent of Financial Institutions  
Chief Executive Officer