



Province of Alberta

FINANCIAL CONSUMERS ACT

Revised Statutes of Alberta 2000
Chapter F-13

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Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Financial Consumers Act* that are filed as Alberta Regulations under the Regulations Act

Alta. Reg.	<i>Amendments</i>
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Financial Consumers Act

Financial Consumers	165/2002	96/2012, 129/2013
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FINANCIAL CONSUMERS ACT

Chapter F-13

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Part 1 Purpose, Application and Exemptions

Purpose statement

1(1) The purpose of this Act is

- (a) to require suppliers, agents and financial planners to disclose to consumers important information about named financial products described in section 2(i),
- (b) to inform consumers that they have responsibilities as well as rights when they invest in named financial products,
- (c) to set standards for financial planners,
- (d) to make a variety of remedies available so that disputes about named financial products can be resolved efficiently and effectively, and
- (e) to encourage the use of readily understandable language in the financial marketplace.

(2) The purpose statement is to be used to help interpret this Act and to guide those who make decisions under it.

1990 cF-9.5 s1

Definitions

2 In this Act,

- (a) "Act" includes regulations made under this Act;
- (b) "agent" means a person who sells or offers to sell to consumers named financial products not of that person's own issue;

- (c) “commission” means compensation, reward or benefit, but does not include salary;
- (d) “consumer” means an individual;
- (e) “Director” means the individual appointed under section 46.1 as the Director for this Act;
- (f) “financial planner” means a person referred to in section 21;
- (g) “financial planning” means reviewing, analyzing or organizing personal financial information for the purpose of preparing a plan to manage a consumer’s financial affairs;
- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) “named financial product” means any of the following:
 - (i) life insurance as defined by the regulations under the *Insurance Act* except life insurance contracts that do not provide for a cash surrender value;
 - (ii) an account on which interest is payable on cash balances by a treasury branch, credit union, trust company, bank or securities dealer or by any other person listed in regulations;
 - (iii) a mutual fund unit that is a security that entitles the holder to receive, on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;
 - (iv) an investment on which a specified rate of interest is paid or guaranteed, commonly known as an “investment certificate”, “guaranteed investment certificate” or “term deposit”, but does not include government bonds, corporate debt instruments, treasury bills or shares;
 - (v) an investment described in regulations;
- (j) “supplier” means a person who sells or offers to sell to consumers named financial products of that person’s own issue, and includes the employees of a supplier.

RSA 2000 cF-13 s2;RSA 2000 cl-3 s856;
2017 c22 s21

Application

3(1) This Act applies

- (a) when a supplier, agent or financial planner is a resident of Alberta regardless of the residence of the consumer,
- (b) when advice is given, or business is solicited or transacted, in Alberta relating to a named financial product, regardless of the residence of the parties to the advice, solicitation or transaction, and
- (c) to advice given and investments made on or after May 1, 1991.

(2) If a supplier, agent or financial planner acts in more than one of those capacities, the provisions of this Act relevant to each of those capacities apply to that person.

1990 cF-9.5 s3

Exemptions

4 The Lieutenant Governor in Council may, by regulation, exempt from the application of all or any provision of this Act

- (a) a supplier, agent or financial planner, or
- (b) a named financial product, any part of a named financial product or any class or type of named financial product.

1990 cF-9.5 s4

Part 2

Responsibilities of Consumers and Duties of Suppliers, Agents and Financial Planners

Division 1

Responsibilities of Consumers

Consumers' responsibilities before investing

5(1) A consumer must provide information that the consumer knows or should know is relevant to or would have a significant effect on advice provided to the consumer by a supplier, agent or financial planner about named financial products.

(2) Before investing in a named financial product, a consumer is responsible

- (a) for becoming reasonably well informed about it,
- (b) for obtaining and reviewing information about it, and

- (c) for making a sensible decision about investing in it.

1990 cF-9.5 s5

Consumers' responsibilities after investing

6 After investing in a named financial product, a consumer who becomes aware of a contravention of this Act by a supplier, agent or financial planner that causes a loss to the consumer

- (a) must try to minimize the loss, and
- (b) must promptly try to resolve the matter with the supplier, agent or financial planner who the consumer thinks is responsible for the loss.

1990 cF-9.5 s6

Effect of consumers' failure to fulfil responsibilities

7 Failure by a consumer to fulfil the responsibilities referred to in this Division can be considered in assessing or apportioning damages in claims for loss under this Act.

1990 cF-9.5 s7

Division 2 Duties of Suppliers, Agents and Financial Planners

Duty to provide suitable advice or product

8 When a consumer tells a supplier, agent or financial planner

- (a) why the consumer needs advice about a named financial product, or
- (b) the purpose the consumer intends to achieve by investing in a named financial product,

the supplier, agent or financial planner must give advice or provide a named financial product that is suitable, based on the information provided by the consumer under this section.

1990 cF-9.5 s8

9 Repealed 2013 cS-19.3 s3.

Duty to provide information about named financial products

10(1) Before investing in a named financial product, a consumer must be told the following information:

- (a) the supplier's name and, on request, the supplier's business address,

- (b) the names and business addresses of the agent or financial planner, or both, where the consumer is dealing with one or both of them,
 - (c) if there is an existing plan under which the consumer can be compensated for a loss relating to a named financial product, how the consumer can obtain information about the plan,
 - (d) if there is a right to cancel an agreement about an investment in a named financial product, how and when the right can be exercised,
 - (e) if the named financial product can be redeemed or surrendered before the end of its term, the cost and procedure for doing so,
 - (f) that the individual with whom the consumer is dealing receives a commission, if that individual does receive a commission,
 - (g) if the named financial product is life insurance, the premium payable,
 - (h) if the named financial product is a mutual fund, the cost of purchase, the commission and any other fees that are payable by the consumer,
 - (i) any other information that a supplier, agent or financial planner is required by regulation to tell a consumer, and
 - (j) that the consumer has the right to receive in writing any of the information disclosed according to this section.
- (2)** If the consumer requests that the information be in writing, it must be provided within a reasonable time.
- (3)** The information must be given to the consumer
- (a) by the agent if the consumer is dealing with an agent or by the financial planner if the consumer is dealing with a financial planner, or
 - (b) by the supplier if the consumer is not dealing with an agent or financial planner.

1990 cF-9.5 s10

Duty to provide information about registered plans

11(1) The Lieutenant Governor in Council may make regulations respecting information that must be given to consumers about the following plans:

- (a) a registered retirement savings plan;
- (b) a registered education savings plan;
- (c) a registered retirement income fund;
- (d) any other plan described in regulations.

(2) The regulations can describe how the information must be given and the persons who are responsible for giving the information.

1990 cF-9.5 s11

Duty to provide financial statements

12(1) If a supplier makes audited financial statements available to the public, the supplier must provide to a consumer, on request and free of charge, a copy of the most recent audited financial statement of the supplier.

(2) A credit union that receives a request for an audited financial statement may give to the consumer the most recent financial statement referred to in section 83(1)(b) of the *Credit Union Act*.

1990 cF-9.5 s12

Duty to use plain language

13(1) The following documents must be in readily understandable language and form:

- (a) application forms for consumers who wish to invest in named financial products;
- (b) agreements setting out the terms and conditions of named financial products;
- (c) any information provided to a consumer under section 10(2) or 11(1);
- (d) any other documents described in regulations.

(2) Subsection (1) does not apply to words or forms of documents that are required by law.

(3) Proof that reasonable efforts have been made to comply and maintain compliance with subsection (1) is a complete defence

- (a) in a prosecution under subsection (1), or
- (b) in a dispute about whether subsection (1) has been complied with.

1990 cF-9.5 s13

Duty to provide copies of documents

14(1) When a consumer signs a document at the request of a supplier, agent or financial planner, the consumer must be told that the consumer can receive a copy.

(2) If a consumer requests a copy, the person asking the consumer to sign the document must provide the copy.

1990 cF-9.5 s14

Terminology

15 The Lieutenant Governor in Council may make regulations

- (a) defining words that can be used by suppliers, agents and financial planners in relation to financial planning or named financial products;
- (b) placing restrictions on the use of those words when they relate to financial planning or named financial products.

1990 cF-9.5 s15

Prohibited business practices

16 Suppliers, agents and financial planners must not

- (a) put undue pressure on consumers to invest in named financial products,
- (b) take unfair advantage of consumers,
- (c) make representations or conduct themselves in a way that could mislead or deceive consumers, or
- (d) withhold information about named financial products or about a supplier, agent or financial planner if they know or should know that consumers might be misled by not having the information.

1990 cF-9.5 s16

Payment for named financial products

17(1) An agent must not accept payment from a consumer for a named financial product unless it is a cheque, money order or other negotiable instrument payable to the supplier.

(2) Subsection (1) does not apply to an agent or class of agents, or in the circumstances described in regulations.

1990 cF-9.5 s17

18 Repealed 2003 cP-6.5 s68.

Right to cancel some named financial products

19(1) The Lieutenant Governor in Council may make regulations allowing a consumer to cancel an agreement for a named financial product within a specified period after the agreement is entered into.

(2) Regulations under subsection (1) can

- (a) list named financial products that can be cancelled;
- (b) state the particular circumstances that would allow a named financial product to be cancelled;
- (c) describe the conditions under which a named financial product can be cancelled.

1990 cF-9.5 s19

Effect of failure by supplier, agent or financial planner to carry out duties

20 Failure by a supplier, agent or financial planner to carry out the duties described in this Act

- (a) is to be taken into account in assessing or apportioning damages in claims for loss under this Act, and
- (b) may be the subject of proceedings under Parts 4 and 5.

1990 cF-9.5 s20

21 Repealed 2013 cS-19.3 s3.

Part 4 Dispute Resolution

Division 1 Dispute Resolution, Arbitration and Court Proceedings

Resolution by the parties

22 If a dispute arises about whether a loss has resulted because this Act was not complied with, the parties to the dispute must first attempt to resolve the dispute themselves.

1990 cF-9.5 s22

23 to 25 Repealed 2013 cS-19.3 s3.

Starting court proceedings

26(1) After a dispute arises about a loss resulting because this Act was not complied with, the consumer may decide to start court proceedings instead of arbitration proceedings.

(2) If court proceedings are started,

- (a) a civil claim can be filed in The Provincial Court of Alberta if the amount claimed does not exceed the limit prescribed for civil claims under the *Provincial Court Act*, or
- (b) a statement of claim can be filed in the Court of Queen's Bench.

(3) A copy of the civil claim or statement of claim must be served on the Director before any further step is taken.

RSA 2000 cF-13 s26;RSA 2000 c16(Supp) s26

Matters that the courts and arbitrators must consider

27(1) A court or an arbitrator must consider

- (a) whether each party to the dispute has complied with this Act and, if not, why not,
- (b) the degree to which each party has failed to comply with this Act,
- (c) the opportunity of each party to eliminate or minimize the loss, and
- (d) any other factors that the court or the arbitrator considers appropriate.

(2) Based on the factors described in subsection (1), the court or an arbitrator can make a decision and can, if appropriate, apportion the damages and any costs awarded.

1990 cF-9.5 s27

Court proceedings by a consumer organization

28(1) In this section, “consumer organization” means a corporation that has as its primary objective the protection or advancement of the interests of consumers and that is not incorporated for the purpose of acquiring financial gain for its members.

(2) A consumer organization can start proceedings in the Court of Queen’s Bench against a supplier, agent or financial planner in respect of an activity that the consumer organization alleges contravenes this Act.

(3) A consumer organization does not need to have an interest in or be affected by the subject-matter of the proceedings in order to start proceedings under subsection (2).

(4) When proceedings are started under this section, the court may order a consumer organization to give security for the costs of the proceedings in an amount the court considers proper.

(5) If a consumer organization is successful in its claim, the court may do any or all of the following:

- (a) declare that the supplier, agent or financial planner has contravened this Act;
- (b) grant an injunction restraining the supplier, agent or financial planner from engaging in the activity or a similar activity that would or could contravene this Act;
- (c) award costs.

1990 cF-9.5 s28

Division 2 Proceedings Initiated by the Director

Investigative powers of the Director

29(1) If the Director has reason to believe that this Act is not being complied with, the Director must carry out an inquiry or investigation to determine whether this Act has been contravened.

(2) In the course of an inquiry or investigation, the Director can require a person

- (a) to give written replies to questions, and

- (b) to give the Director any information that the Director considers necessary for the inquiry or investigation.

1990 cF-9.5 s29

Order to enter and search

30(1) If the Director has reason to believe that this Act is not being complied with, the Director can apply to the Provincial Court for an order authorizing the Director to enter and search anywhere for evidence that this Act has been contravened or of the extent of the contravention.

(2) The application can be made without notice to any person.

(3) The court may make any order it considers appropriate, with or without conditions.

1990 cF-9.5 s30

Effect of an entry and search order

31(1) If an entry and search order is made, the Director can look at, take away, take extracts from or copy anything relevant to the search.

(2) The Director must give to the person who is in control of the premises that have been entered and searched a receipt for anything taken away after a search and must return the original as soon as possible after it is removed.

(3) If the Director keeps the original of anything, the Director must allow the owner of the thing to have reasonable access to it.

1990 cF-9.5 s31

Appeal of entry and search order

32(1) A person can apply to the Court of Queen's Bench

- (a) to have the order changed or cancelled, or
- (b) for an order declaring that the entry and search order was improperly made.

(2) The court may make any order it considers appropriate, with or without conditions.

1990 cF-9.5 s32

Undertakings

33(1) In this section, "undertaking" means a binding written commitment to the Director by a supplier, agent or financial planner.

(2) When the Director is of the opinion that a supplier, agent or financial planner is not complying with this Act, the supplier, agent

or financial planner, as the case may be, can enter into an undertaking with the Director.

(3) An undertaking can include any of the following agreements:

- (a) to stop engaging in the practice described in the undertaking or to change the practice;
- (b) to provide compensation to consumers who have incurred a loss;
- (c) to publicize the undertaking or the action being taken to stop or change a former practice;
- (d) to pay the costs of the Director's investigation and any costs associated with the undertaking,

or any other provision that the Director and the supplier, agent or financial planner, as the case may be, agree on.

(4) The content and form of an undertaking must be satisfactory to the Director.

(5) The Director must keep a public record of undertakings given under this section.

1990 cF-9.5 s33

Director's order

34(1) If the Director has reason to believe that this Act is not being complied with, the Director can make an order directing a supplier, agent or financial planner to stop engaging in the practice described in the order or to change the practice.

(2) Information about the right to appeal a Director's order must be included in the order.

(3) The Director must serve a copy of an order made under this section on the person who is the subject of the order.

1990 cF-9.5 s34

Appeal of Director's order

35(1) A person who is affected by an order of the Director made under section 34 can appeal the order to the Court of Queen's Bench within 30 days after service of the order on that person.

(2) The court may confirm, change or cancel the order on any terms or conditions it considers appropriate.

(3) The court may, on application, suspend all or part of the operation of the order on any condition it considers appropriate, pending the outcome of an appeal under this section.

1990 cF-9.5 s35

Court proceedings started by the Director

36(1) The Director can start legal proceedings in the Court of Queen's Bench against a supplier, agent or financial planner if the Director has reason to believe that the supplier, agent or financial planner has not complied with this Act, an undertaking given under section 33 or a Director's order made under section 34.

(2) In proceedings under this section, the court may make any order it considers appropriate taking into consideration

- (a) the purposes of this Act,
- (b) the responsibilities and rights of persons under this Act,
- (c) the need to protect the public against unfair business practices, and
- (d) when appropriate, the need to award punitive damages.

1990 cF-9.5 s36

Court order protecting funds

37(1) If a supplier or agent has been paid money by a consumer for a named financial product or if a financial planner has been paid money by a consumer for financial planning and

- (a) the supplier, agent or financial planner has absconded from Alberta, or
- (b) the Director has reason to believe that the supplier, agent or financial planner
 - (i) is about to abscond from Alberta,
 - (ii) has attempted to remove any property from Alberta in order to avoid legal liabilities,
 - (iii) has attempted to sell or dispose of property in order to avoid legal liabilities, or
 - (iv) is misusing money or other assets paid or delivered by a consumer,

the Director can, whether or not any other action has been taken under this Act, apply to the Court of Queen's Bench for an order

under subsection (2), without notice to the person affected by the order.

(2) The court may make one or more of the following orders:

- (a) an order prohibiting any person who has on deposit or under control or for safekeeping any money, property or other assets on behalf of the supplier, agent or financial planner from dispersing or otherwise dealing with the money, property or other assets, except as approved by the court;
- (b) an order appointing a trustee or receiver, or both, to hold or take possession of the money, property or other assets of the supplier, agent or financial planner on any terms and conditions the court approves;
- (c) an order directing the supplier, agent or financial planner not to disperse any money or deal with any property or assets, except as approved by the court or as directed by the trustee or receiver.

(3) The court may make an order under this section on any terms and conditions the court considers appropriate.

(4) Any person who is affected by an order made under this section can, on notice to the Director, apply to the court to have the order changed or cancelled.

(5) The court may refuse the application or may change or cancel the order on any terms and conditions it considers appropriate.

(6) In this section, “supplier” does not include

- (a) a trust corporation as defined in the *Loan and Trust Corporations Act*,
- (b) a credit union as defined in the *Credit Union Act*,
- (c) an insurer as defined in the *Insurance Act*, other than a fraternal society as defined in the *Insurance Act*,
- (d) a treasury branch, or
- (e) a bank as defined in the *Bank Act (Canada)*.

RSA 2000 cF-13 s37;RSA 2000 cI-3 s856

Part 5 Preventing Avoidance and Offences and Penalties

Division 1 Preventing Avoidance

Avoiding this Act

38(1) No person can release or waive a right, benefit or requirement of this Act.

(2) Any attempt to release or waive a right, benefit or requirement of this Act is invalid.

1990 cF-9.5 s38

Failure does not permit avoidance

39 The failure of one person to comply with this Act does not relieve any other person from complying with this Act.

1990 cF-9.5 s39

Effect of this Act

40(1) This Act does not affect other legal rights or obligations.

(2) A failure to comply with this Act does not, by itself, invalidate an agreement about a named financial product.

1990 cF-9.5 s40

Division 2 Offences and Penalties

Offences

41(1) A person is guilty of an offence who

- (a) contravenes section 9, 10, 12, 13, 17 or 18,
- (b) contravenes a regulation made under section 11 or 15(b),
- (c) interferes with an inquiry or investigation under section 29,
- (d) fails to comply with an undertaking given under section 33, or
- (e) fails to comply with a Director's order made under section 34.

(2) A prosecution under subsection (1) can be commenced not more than 2 years after the commission of the offence.

1990 cF-9.5 s41

Penalty for individuals

42 An individual who is guilty of an offence is liable to a fine not exceeding

- (a) \$10 000, or
- (b) 3 times the loss incurred by a consumer as a result of the contravention,

whichever is greater, and in default of payment to imprisonment for not more than 12 months.

1990 cF-9.5 s42

Penalty for corporations

43(1) A corporation that is guilty of an offence is liable to a fine not exceeding

- (a) \$100 000, or
- (b) 3 times the loss incurred by a consumer as a result of the contravention,

whichever is greater.

(2) If a corporation has failed to comply with this Act, every officer, director, employee or other person who directed, authorized, assented to, knowingly acquiesced in or knowingly participated in the failure is also guilty of an offence and is liable to a fine not exceeding

- (a) \$10 000, or
- (b) 3 times the loss incurred by a consumer as a result of the contravention,

whichever is greater, whether or not the corporation has been prosecuted or convicted for the failure.

1990 cF-9.5 s43

Part 6 Regulatory Boards

Regulatory boards

44(1) The Lieutenant Governor in Council may establish regulatory boards consisting of the members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may provide for the number of members of a regulatory board, the method of

appointment of the members, the terms of office of the members and the filling of vacancies.

(3) A regulatory board established under this section is a corporation.

(4) A regulatory board must exercise the powers and perform the duties and functions delegated to it under section 47.

1990 cF-9.5 s44

Bylaws of regulatory board

45(1) A regulatory board can make bylaws respecting

- (a) the conduct of the business and affairs of the board;
- (b) the calling of meetings of the members and conduct of business at those meetings;
- (c) the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;
- (d) the delegation to officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make bylaws;
- (e) the establishment, membership, duties and functions of special, standing and other committees.

(2) A bylaw made by a regulatory board is not effective until it is approved by the Director.

(3) The *Regulations Act* does not apply to a bylaw of a board.

1990 cF-9.5 s45

Report

46 A regulatory board must provide the Minister with any reports required by regulation.

1990 cF-9.5 s46

Part 7 Administrative Matters

Appointment of Director

46.1 The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

2017 c22 s21

Delegation of Director's duties

47(1) The Minister may, in writing and with or without conditions,

- (a) delegate to an individual or a regulatory board under this Act or any other Act or regulation any power, duty or function of the Director under this Act, and
 - (b) amend or revoke a delegation under this subsection.
- (2)** With the approval of the Minister, the Director can, in writing and with or without conditions,
- (a) delegate to a regulatory board under this Act or any other Act or regulation any or all of the Director's powers, duties or functions under this Act, and
 - (b) amend or revoke a delegation under this subsection.

1990 cF-9.5 s47

Evidence

48 Copies of anything taken under an entry and search order under this Act that are certified by the Director as true copies can be admitted in any court or arbitration proceedings as sufficient proof of the original without proof of the signature or appointment of the Director.

1990 cF-9.5 s48

Regulations

- 49** The Lieutenant Governor in Council may make regulations
- (a) listing persons who issue accounts on which interest is payable for the purpose of section 2(i)(ii);
 - (b) describing investments that are named financial products;
 - (c) respecting information that a financial planner must tell a consumer under section 9;
 - (d) respecting information that a supplier, agent or financial planner must tell a consumer under section 10(1);
 - (e) describing documents that must be in readily understandable language and form;
 - (f) describing “readily understandable language and form”;
 - (g) describing an agent or class of agents for the purpose of section 17(2) or describing the circumstances under which section 17(1) does not apply;
 - (h) respecting the reports that a regulatory board must provide;

- (i) defining any word or phrase used in this Act that is not defined in this Act;
- (j) amending the Schedule.

1990 cF-9.5 s49

Coming into force

50 Sections 9, 21, 23, 24 and 25 and the Schedule come into force on Proclamation.

1990 cF-9.5 s50

Schedule Repealed 2013 cS-19.3 s3.



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