

INFORMATION BULLETIN CANCELLATION POLICIES

Emergencies in British Columbia such as the COVID-19 pandemic, flooding, and wildfires have resulted in higher than usual numbers of cancellation requests by members' guests. A strong cancellation policy and proper implementation of such a policy will provide members with a stronger position when dealing with cancellation requests. A failure to develop or implement strong policies may result in guests obtaining a legal right to cancel the agreement and receive a refund, or may result in disagreements, legal disputes, and dissatisfied guests.

In addition, British Columbia's *Business Practices and Consumer Protection Act* ("BPCPA") imposes various requirements on businesses. In certain circumstances, the BPCPA may provide guests with the right to cancel a booking and receive a refund, even if the member's cancellation policy does not permit it.

The purpose of this bulletin is to provide general information to members on the law on cancellation policies in British Columbia and provide guidelines on best practices for their implementation. Excerpts from the BPCPA referenced in this bulletin are included as Schedule "A" at the end of this bulletin.

Disclaimer:

This bulletin is provided for general education purposes only and is for the exclusive use of members of the British Columbia Lodging and Campgrounds Association ("BCLCA"). The BCLCA makes no representations or warranties regarding the use of this bulletin and encourages members to obtain independent legal advice regarding whether their contracts and cancellation policies comply with the law and satisfy their own personal or business needs.

EXECUTIVE SUMMARY

The following is a summary of the information in this bulletin. Further details and reasons for these suggested best practices can be found in the remaining sections.

For best practices, members should:

The Cancellation Policy

1. Ensure each guest signs a *written* contract (or clicks on a box for an online contract) containing the member's cancellation policy.
2. Ensure the cancellation policy is bolded, in large and readable letters, and not hidden in the written contract.
3. Ensure the contract contains the member's name and contact information, the guest's name, the date of the booking, all costs payable by the guest and the terms of payment, and the member's cancellation policy.¹
 - a. For electronic contracts, booking websites, and phone bookings, ensure that all information is disclosed to the guest *before* the guest enters into the contract, and that the guest has the opportunity to review and accept or decline the contract.
4. Check if their contracts contain a "force majeure" clause, whether incidents such as pandemics, floods, and wildfires are referenced in these clauses, and whether the clause permits a guest to cancel the contract.

Implementation

5. Refer guests directly to the terms of the cancellation policy and have them acknowledge the policy before the contract is signed.
 - a. Consider requiring guests to initial or sign directly next to the cancellation policy in the contract.
6. Advise their staff not to make any explanations about the member's cancellation policy outside of what is written in the policy.
7. Ensure advertisements, websites, and other public materials are consistent with the terms of the cancellation policy in the contract.
8. Immediately provide a copy of the signed contract to the guest after it is signed.
9. Ensure staff consistently follow procedures with every single booking.

Members should not:

1. Make inconsistent statements or representations about their cancellation policies to guests.
2. Unilaterally cancel guest bookings, if made electronically or over the phone, unless necessary or required by law, as this will give a guest the right to a refund, even if the cancellation policy says otherwise.

¹ The full list of required information is set out in ss. 19 and 23(2) of the *BPCPA*, or for electronic and phone contracts, in ss. 19(a)–(c), (f)–(j) and (n), 23(2), and 46–48.

GENERAL LEGAL PRINCIPLES

(A) The Importance of a Written and Signed Contract

A fundamental but often overlooked practice is to have the guest sign a written contract for every booking. The contract should contain the member's cancellation policy.

Without a signed contract, there may still be a contract, but it will be more difficult to argue that the guest is bound by the particular terms of a cancellation policy. This is because the law imposes requirements on businesses in order for detailed terms of an unsigned contract to be enforceable.²

It may not be sufficient to have a cancellation policy listed, for example, on the member's website, or available to in-person visitors on request, or even printed and provided to a guest without the guest having signed a document containing the policy.

A written contract will help ensure that these concerns do not arise. A written contract can also be read and signed electronically, over the internet. See Part (D) of this bulletin for information on electronic contracts.

(B) Making Guests Aware of the Cancellation Policy

Even if the guest signs a written contract containing the cancellation policy, the member should take certain additional precautions to ensure that the policy is enforceable. A contract likely contains many terms regarding the booking, in addition to the cancellation policy. Many guests may not read the entire contract, including the cancellation policy, before signing it. A guest who wishes to cancel a booking may argue that they were not made aware of the cancellation policy, and that it therefore should not be enforceable against them.

Under the law of British Columbia, it is usually assumed that if a guest signs a contract, then the guest agrees to all of its terms, whether or not they read them.³ However, this is a complicated area of the law with possible exceptions due to the widespread use of standard-form contracts, especially over the internet. In some circumstances, businesses may be required by law to bring onerous terms of a contract directly to the guest's attention in order for them to be enforceable.⁴ Cancellation policies with no refunds are likely to be considered more onerous and will likely face greater scrutiny by courts if ever challenged.

As a best practice, members should ensure that their staff or booking systems bring the cancellation policy in the contract to the direct attention of the guest before the guest is asked to sign the contract. The cancellation policy should be bolded, in large and readable letters, and not hidden in the contract. The guest should be required to somehow acknowledge the cancellation policy before signing. Members should consider requiring guests to initial or sign directly next to the cancellation policy, in addition to the main signature at the end of the contract. For electronic bookings, the guest should be required to read and agree to the cancellation policy separately from other terms of the contract.

Members should ensure that their procedures are followed with every single booking. If the member adopts and consistently applies a "standard practice", the courts will more likely accept that the member followed that practice in any given dispute.

² *Apps v. Grouse Mountain Resorts Ltd.*, 2020 BCCA 78 at paras. 24–25.

³ *1001790 BC Ltd. v. 0996530 BC Ltd.*, 2021 BCCA 321 at paras. 36–37.

⁴ See e.g. *Karroll v. Silver Star Mountain Resorts*, 1988 CanLII 3094 at paras. 11–23 (B.C.S.C.); *Loychuk v. Cougar Mountain Adventures Ltd.*, 2011 BCSC 193 at paras. 27–29; *Royal Bank of Canada v. Klassen*, 2013 BCSC 631 at para. 21.

(C) Inconsistent Verbal Terms and Deceptive Practices

During the booking process, a guest may ask questions to the member's representative about the cancellation policy. The representative's response can potentially cause issues.

First, in a consumer contract such as those between members and guests, statements made by a member's representative may be considered a verbal amendment to the contract. If, for example, a representative states that a guest can cancel their booking in a way that is inconsistent with the written contract, the member may be bound by the words of the representative.

Second, the *BPCPA* prohibits "deceptive practices". There is a broad definition of deceptive practices, but any statement by a member that misleads the guest about the cancellation policy may be considered deceptive and void a cancellation policy.⁵

To avoid these issues, members should advise their booking staff to make no comments or representations about the cancellation policy, and to refer guests directly to the terms of the written contract. Members should also be careful that all advertisements or other materials are consistent with the terms of the cancellation policy in the contract.

(D) Legal Requirements for Advance Bookings

Most guest bookings will be made in advance. These bookings are likely considered "future performance contracts" under the *BPCPA* - contracts for services where the service or full payment is not completed at the time the contract is made.⁶ Members must follow certain requirements for future performance contracts. Failure to follow these requirements may give the guest the right to cancel the contract and receive a refund, regardless of what is contained

All future performance contracts *must* contain the information set out in ss. 19 and 23(2) of the *BPCPA*, including the member's name and contact information, the date of the booking, all costs payable by the guest and the terms of payment, and the member's cancellation policy. Members should carefully review each of the requirements and ensure that their contracts comply.

After the guest signs the contract, members must provide a copy of the contract to the guest within 15 days.⁷ Members should adopt a standard practice to immediately or automatically give a copy of the contract to the guest upon making a booking.

If a member does not comply with the information requirements in ss. 19 and 23(2), then the guest has the right to cancel the contract by giving notice within one year after receiving a copy of the contract.⁸ If the guest gives notice, the member has 15 days to refund to the guest, without deduction, all money received for the contract, and cancel any future payments or charges authorized by the guest.⁹

To avoid having the guest gain the right to cancel a booking under the *BPCPA*, members should ensure that the above requirements are followed.

(E) Legal Requirements for Electronic Contracts

⁵ *BPCPA*, ss. 189(2)(a), 190.

⁶ *BPCPA*, ss. 17 and 23.

⁷ *BPCPA*, s. 23(3).

⁸ *BPCPA*, s. 23(5).

⁹ *BPCPA*, ss. 27, 56.

The use of online websites or forms to enter into agreements with guests is increasingly common. Electronic contracts have mostly the same legal effect and enforceability as non-electronic contracts, and a guest can “sign” an electronic contract by clicking an appropriate box.¹⁰

However, the *BPCPA* imposes special requirements on electronic contracts for services, which members must follow. This is because an electronic contract is a “distance sales contract” under the *BPCPA*. Members should note that these requirements also apply to bookings made over the phone or by email.

Before the guest enters into the contract, the member must disclose various things to the guest. The requirements are set out in ss. 19(a)–(c), (f)–(j) and (n), 23(2), 46, and 48 of the *BPCPA*, and include the member’s name and contact information (including email address), the guest’s name, the date of the contract and the booking, all costs payable by the guest and the terms of payment (including the currency), and the member’s cancellation policy.

The member also must ensure that, before the guest can agree to the contract, the guest must first access all of the required information, has the opportunity to retain and print the information, and has the opportunity to correct any errors in the contract and accept or decline the contract.¹¹ Members should ensure that their websites or online booking forms are designed so that guests must encounter these steps before a booking can be made.

After the guest enters into the contract, the member must send a copy of the contract to the guest within 15 days.¹² Note that a copy sent to a guest is deemed to be received by the guest on the third day after it is sent.¹³ Members should ensure a copy is sent automatically to avoid any timing issues. It can be sent by email.

If the member does not follow the requirements above, then the guest is entitled to cancel the booking within 7 days of receiving a copy of the contract.¹⁴ Or, if the guest does not receive the contract within 15 days, then the guest can cancel the booking within another 15 days.¹⁵ If the guest obtains the right to cancel through any of these means, they can give the member notice, and the member then has 15 days to refund to the guest, without deduction, all money received for the contract, and cancel any future payments or charges authorized by the guest.¹⁶

To avoid the guest gaining the right to cancel the booking through the *BPCPA*, members should carefully ensure that their websites or online booking forms meet the above requirements.

Distance sales contracts, including electronic contracts, also require a refund if the business cancels the contract. This is discussed in the next section.

(F) Cancellations and Refunds Due to Disasters or Other Reasons

Assuming the member’s cancellation policy and implementation are strong and do not allow for cancellations or refunds, a guest may still be entitled to a refund under the *BPCPA* in certain circumstances that may arise as a result of emergencies such as the COVID-19 pandemic. There are two key questions.

¹⁰ *Electronic Transactions Act*, S.B.C. 2001, c. 10, ss. 3, 15(1)(b).

¹¹ *BPCPA*, s. 47.

¹² *BPCPA*, s. 49(1)(b).

¹³ *BPCPA*, s. 48(4).

¹⁴ *BPCPA*, s. 49(1)(a).

¹⁵ *BPCPA*, s. 49(1)(b).

¹⁶ *BPCPA*, ss. 50, 56.

First: Was the booking made in person? If yes, then the guest is *not* entitled to a refund. However, if the booking was made online, via email, or over the phone, then the contract is a “distance sales contract”, as described above, and the second question must be asked.

Second, if the booking was not made in person: Who cancelled the booking? If it is the *guest* who cancels a booking, then the guest is *not* entitled to a refund (unless a refund is allowed in the cancellation policy or the cancellation was for one of the other reasons stated under the *BPCPA* described in this bulletin). This is true even if the guest is unable to travel because of a COVID-19 travel restriction or border closure. If the booking was still available to the guest and the guest cancelled the booking because they personally could not or would not attend the booking, then they have no right to a refund.

If, however, it is the *member* who cancels the booking, then the guest *will* be entitled to a refund. This is true even if, by government order, the member is required to cancel a booking (e.g. of a guest living outside the member’s health authority). This is because if a business does not supply the contracted service in a distance sales contract within 30 days of the service date, then the guest has the right to cancel the contract.¹⁷ Again, once a guest obtains the right to cancel, they can give notice to the member, and the member must provide a refund within 15 days and cancel any future payments or charges.¹⁸

Therefore, for contracts made electronically or over the phone, members should not cancel guests’ bookings unless necessary or required by government order, in which case the member will be required to provide a refund.

Members should note that, if a guest pays by credit card, they may still seek a chargeback with their credit card provider, even if the guest does not have the right to cancel under the *BPCPA*.

(G) Cancellations for “Force Majeure”

Members should check if their contracts and cancellation policies contain what is sometimes known as a “force majeure” or “act of God” clause. These clauses may be worded in various ways, but are usually similar to the following:

1. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, tsunami, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; and (h) strikes, labour stoppages or slowdowns, or other industrial disturbances.

These clauses may provide guests with the ability to cancel their bookings due to disasters such as the COVID-19 pandemic, flooding, or wildfires, even if the member’s cancellation policy does not allow for cancellations. Newer contracts may even refer to the COVID-19 pandemic specifically. Other clauses may not mention pandemics, flooding, or fires specifically but include “other” unexpected disasters. Still others may provide an exhaustive list that excludes these

¹⁷ *BPCPA*, s. 49(1)(c)

¹⁸ *BPCPA*, ss. 50, 56.

events. Whether the clause applies, and the effect of the clause on cancellations and refunds for previously paid amounts or deposits, will depend on the specific wording of each clause.

In addition, different contracts may provide that only one of the parties to the contract can “benefit” from a force majeure event. The example clause above provides that “no party” will be responsible in the event of a force majeure event. A member’s contract might instead state that, in the event of a force majeure event, the member has the right to cancel the booking and provide a refund, but the guest may not have the right to cancel and receive a refund.

Members should carefully review their guest contracts to determine if:

1. They contain a force majeure clause;
2. If so, whether incidents such as pandemics, floods, and wildfires are included; and
3. If so, whether the clause states that it is only for the benefit of the member, or if it is for the benefit of both parties to the contract.

Members should be aware that if a force majeure clause is only for the benefit of the member, a court may find that this is an unreasonable or “unconscionable” agreement and refuse to enforce it. Alternatively, this may be the type of onerous clause that a member must specifically bring to the attention of the guest before the guest signs the contract in order for it to be enforceable. Even if there is no force majeure clause in a contract, a court may conclude that an unexpected event, such as a pandemic, relieves both parties of responsibility under a contract.

Members may wish to consider changing their force majeure clauses for future guests’ contracts pursuant to the information above. However, members should not rely too heavily on such clauses and should ensure that the other steps outlined in this bulletin are followed.

SCHEDULE "A"

Excerpts from the *Business Practices and Consumer Protection Act*

Definitions

17 In this Part:

"distance sales contract" means a contract for the supply of goods or services between a supplier and a consumer that is not entered into in person and, with respect to goods, for which the consumer does not have the opportunity to inspect the goods that are the subject of the contract before the contract is entered into, but does not include a prepaid purchase card ...

"future performance contract" means a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed ...

Required contents

19 A direct sales contract, future performance contract or time share contract must contain the following information:

- (a) the supplier's name and, if different, the name under which the supplier carries on business;
- (b) the supplier's business address and, if different, the supplier's mailing address;
- (c) the supplier's telephone number and, if available, facsimile number;
- (d) the date on which the contract is entered into;
- (e) a detailed description of the goods or services to be supplied under the contract;
- (f) an itemized purchase price for the goods or services to be supplied under the contract;
- (g) other costs payable by the consumer, including taxes and shipping charges;
- (h) if any customs duties, brokerage fees or other additional charges that may apply to the contract cannot reasonably be determined by the supplier, a description of those charges;
- (i) a detailed statement of the terms of payment;
- (j) the total price under the contract, including the total cost of credit;
- (k) if applicable, a description and dollar value of any trade-in;
- (l) if credit is extended or arranged by the supplier, a description of the subject matter of any security interest in accordance with Part 5 [*Disclosure of the Cost of Consumer Credit*];
- (m) a notice of the consumer's rights of cancellation, in the prescribed form and manner, if any;
- (n) any other restrictions, limitations or other terms or conditions that may apply to the supply of the goods or services;
- (o) any other prescribed information.

Future performance contract

23 (1) This section does not apply to a future performance contract that is a preneed cemetery or funeral services contract.

(2) In addition to the information required under section 19 [*required contents of contract*], a future performance contract must contain the following information:

- (a) the supply date;
- (b) the date on which the supply of the goods or services will be complete;
- (c) if there are periodic payments under the contract, the amount of each of the periodic payments.

(3) A supplier must give a copy of the future performance contract to the consumer within 15 days after the contract is entered into.

(4) A future performance contract is not binding on the consumer if

- (a) the supplier gives, or offers to give, a rebate, discount or other value to the consumer in consideration of the consumer giving to the supplier the names of prospective consumers, or otherwise aiding the supplier in making a sale to another person, and
- (b) the earning of the rebate, discount or other value is contingent on the occurrence of an event after the time the consumer agrees to buy.

(5) A consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the information required under subsection (2) and section 19 [*required contents of contract*].

Refunds by supplier on cancellation

27 Despite section 15 (2) [*assignee's obligations*], if a contract is cancelled under this Division, the supplier must refund to the consumer,

- (a) within 15 days after the notice of cancellation has been given, and
- (b) without deduction except as provided for in this Division or in the regulations,

all money received in respect of the contract, whether received from the consumer or any other person.

Disclosure of information

46 (1) A supplier must disclose the following information to a consumer before the consumer enters into a distance sales contract:

- (a) the information referred to in sections 19 (a) to (c), (f) to (j) and (n) [*required contents of contract*] and 23 (2) [*required contents of future performance contract*];
- (b) if available, the supplier's electronic mail address;
- (c) a detailed description of the goods or services to be supplied under the contract, including any relevant technical or system specifications;
- (d) the currency in which amounts owing under the contract are payable;
- (e) the supplier's delivery arrangements, including the identity of the shipper, the mode of transportation and the place of delivery to the consumer;
- (f) the supplier's cancellation, return, exchange and refund policies, if any;

(g) any other prescribed information.

(2) The supplier must disclose the information required under subsection (1) in a clear and comprehensible manner.

Distance sales contract in electronic form

47 (1) In this section, "**electronic**" has the same meaning as in the *Electronic Transactions Act*.

(2) Before a consumer enters into a distance sales contract that is in electronic form, a supplier must

(a) make the information required under section 46 available in a manner that

(i) requires the consumer to access the information, and

(ii) allows the consumer to retain and print the information, and

(b) provide a consumer with an express opportunity

(i) to correct errors in the contract, and

(ii) to accept or decline the contract.

Copy of distance sales contract

48 (1) A supplier must give a consumer who enters into a distance sales contract a copy of the contract within 15 days after the contract is entered into.

(2) The copy of the distance sales contract given under subsection (1) must contain

(a) the information described in section 46 [*disclosure of information*],

(b) the consumer's name, and

(c) the date the contract was entered into.

(3) In addition to section 183 (2) [*how to give or serve documents generally*], the supplier may give a copy of the distance sales contract to the consumer

(a) by sending the copy by electronic mail to the electronic mail address provided by the consumer to the supplier for the provision of information related to the contract, or

(b) by giving the copy by any other manner that enables the supplier to prove that the consumer has received and retained the copy.

(4) A copy of the distance sales contract given in accordance with subsection (3) (a) is deemed to be received on the third day after it is sent.

Cancellation of distance sales contract

49 (1) A consumer may cancel a distance sales contract by giving notice of cancellation to the supplier

(a) not later than 7 days after the date that the consumer receives a copy of the contract if

(i) the supplier does not comply with section 47 [*distance sales contract in electronic form*], or

(ii) the contract does not comply with section 48 (2) [*required contents of contract*],

(b) not later than 30 days after the date that the contract is entered into if the supplier does not provide the consumer with a copy of the contract in accordance with section 48 (1),

(c) at any time before the goods or services are delivered if the goods or services to be delivered under the contract are not delivered to the consumer within 30 days of the supply date, or

(d) at any time before the goods or services are delivered if the supply date is not specified in the contract and the supplier does not deliver the goods or services within 30 days from the date the contract is entered into.

...

Refunds by supplier on cancellation

50 If a distance sales contract is cancelled under section 49, the supplier, within 15 days after the notice of cancellation has been given, must refund to the consumer, without deduction, all money received in respect of the contract and in respect of any related consumer transaction, whether received from the consumer or any other person.

Cancellation of preauthorized payments

56 If a contract is cancelled under this Part, the supplier must cancel any future payments or charges that have been authorized by the consumer.