

Inspection Guide

Payday lenders



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A special note related to the COVID-19 pandemic

Due to the pandemic, Consumer Protection BC stopped doing in-person inspections of our licensed businesses in March 2020.

Since then, we have learned more about the impact of COVID-19 in the marketplace and on you, as one of our licensed businesses. We have now resumed in-person inspections.

With a few exceptions, our standard inspections policies and rules apply as outlined in this inspection guide. This also means that unless there are mitigating circumstances specific to your business practices, no advance notice of inspection will be made.

We take safety seriously.

Your safety and the safety of our staff matter to us.

Here are some of the changes we've made:

- Inspectors will continue to wear N-95 masks for the foreseeable future.
- Inspectors will have their own supply of PPE and will sanitize their hands and other surfaces.
- Inspectors may ask for licensee-employees to wear masks when communicating with or in the same room as the Inspector. Failing this, the licensee/employees may be asked to remain 2 meters distant from the Inspector at all times.
- Inspectors will allow for their credentials to be examined (from a distance). Inspectors will provide business cards at the time of inspection.
- Where possible, inspectors may ask that they be allowed to isolate themselves in a private area of the business while they perform the administrative functions of the inspection.
- Inspectors will select items to be inspected. This amends the former practice of allowing the licensee's employees assist with that process.

Inspectors may ask you about the status of the location being inspected. These questions will include:

- Have any employees at the location been diagnosed with Covid-19 within the last 2 weeks?
- Is anyone at the licensed location suffering from illness or Covid-19 symptoms?

If you have questions about our protocols and processes, the best option is to speak to the Inspector that engages with you during an inspection.

Thank you,

The Consumer Protection BC Inspections & Case Management Team



Introduction

Consumer Protection BC is responsible for the administration and enforcement of the *Business Practices and Consumer Protection Act* (BPCPA), the *Ticket Sales Act* (TSA), the *Cremation Interment and Funeral Services Act* (CIFSA), and the Payday Loans Regulation (PLR). Together, this BPCPA and PLR govern the conduct of persons and businesses engaged in the activity of payday lending in British Columbia and the licensing requirements for payday lenders in the British Columbia.

This guide has been prepared to better inform and educate you on the compliance inspection process. As one of our licensed businesses, it is your responsibility to conduct yourself and operate your business in compliance with the laws and conditions on your license. We recommend you take the time needed to read this guide fully and to make sure that your managers and staff are familiar with the information contained herein.

This guide serves as a reference, so you know what to expect and how to prepare for an inspection conducted by a Consumer Protection BC Inspector.

This is a general overview of the inspection process. This guide is not intended to provide legal advice and it is not an exhaustive review of the legislative provisions affecting you or the operation of your licensed business. We recommend that you get copies of the legislation and review it in detail. You can order from Crown Publications at <u>www.crownpub.bc.ca</u>.

For more general information, visit our corporate website at <u>www.consumerprotectionbc.ca</u>. To learn more about your licensing requirements and legal obligations, <u>visit the Get & Keep your Licence</u> section of our website. To find out how best to contact us, please <u>visit the Contact Us</u> page of our website.



Background: our responsibilities

The role of Consumer Protection BC

Consumer Protection BC licenses and inspects regulated businesses, responds to consumer inquiries, investigates alleged violations of consumer protection laws, classifies all general release and adult films, and provides information and referrals to consumers.

As part of our responsibility to ensure compliance with the law and conditions on a licence, we regularly perform risk-based inspections as well as inspections in response to consumer complaints. When an inspector identifies issues of non-compliance, the inspector may open a complaint file. When the eventual outcome of a complaint file results in voluntary compliance with the law or some form of enforcement action being taken by the Director, the outcome is published to our website. We share this information to enable consumers to make informed decisions.

The role of the licensee

You are legally responsible for compliance with the laws and licensing conditions as it relates to the operation of your business. You are also responsible for ensuring your employees and agents are acting in compliance with the laws and licensing conditions applicable to your business.

You must fully cooperate with an inspector. Providing false or misleading information to an inspector or obstructing or hindering an inspection are serious contraventions of the laws we administer. A person who obstructs, hinders, or makes misleading statements to an inspector is subject to prosecution under *the Offence Act*.

Inspection process

Scheduling and notification

Inspectors attend businesses located throughout the Province, sometimes arriving unannounced. The BPCPA, CIFSA and MPA allows for an inspector to enter a business at any reasonable time to determine compliance with the law, conditions on a licence, the suitability of a licensee or an applicant for a licence.

Authority to inspect

It is your responsibility to cooperate fully during an inspection. In most instances, an inspector will provide their official identification on arrival, or a request can be made for them to produce it. You must not do anything to obstruct, hinder, or interfere with an inspector's entry and inspection of a business.

The BPCPA gives the inspector the authority to:

- Inquire into any business, affairs or conduct of a person.
- Inspect, audit or examine any record, goods or other things or the provision of services in the premises.
- Inspect a vehicle or vessel that is being used for business purposes.



- Require a person who has possession or control of any records, goods, or other things in the premises, vehicle or vessel to produce the records, goods or things.
- Make a record, including a record on film, audio tape, video tape or otherwise, of the premises, vehicle or vessel or any other things in the premises, vehicle or vessel.
- Remove any record from the premise, vehicle or vessel for purpose of making copies.
- Remove and retain any record, good or other thing that may be required as evidence from the premises, vehicle or vessel.

Conclusion of inspection

Once the inspection is complete, the inspector will review the results with you or the manager on duty at the time of the inspection. The inspector may discuss any non-compliance identified during the inspection at this time. A Certification of Inspection will be prepared by the inspector and a digital copy will be emailed to you at the email address identified in your My Account set up with Consumer Protection BC.

In order to receive the digital copy of the Certificate of Inspection, you must have your My Account set up. If your email is not entered into the My Account, you will not receive the Certificate of Inspection and other pertinent documents related to the inspection. To setup your My Account, please go to www.consumerprotectionbc.ca and select "MyAccount Login" or contact operations@consumerprotectionbc.ca for assistance.

Post Inspection Report and follow up

After returning to the office, the inspector will document the inspection, update your file and, if required, inform other departments within Consumer Protection BC of the inspection results.

The inspector will update the Inspection Checklist¹ and email you a report with the results of the inspection to the email address you provided in My Account. The report will identify any alleged violations that you must correct and/or any alleged violations for which the inspector recommends that enforcement action be taken by the Director. Any further instruction(s) will be noted in the inspector's notes in the report.

For more information on the enforcement process, please see the section below entitled "Enforcement."

We may conduct a follow up inspection to ensure that non-compliance found at the previous inspection is corrected.

Enforcement

If an inspector detects violations that they believe should proceed to enforcement hearing, they will notify you of these alleged contraventions in the report issued after the inspection. The inspector will also prepare a Report to the Director (RD) document for the Director of Inspections & Case Management. A copy of the RD will also be sent to you. The RD will identify the allegation(s) proceeding

¹ See Appendix – Inspection Checklist



to enforcement hearing and the evidence the inspector is relying on to support the allegation(s). You will be given an opportunity to respond to the allegations made in the RD. A decision-maker will then decide whether the allegation took place, and whether statutory action such as an administrative penalty, licensing action or other remedial order is appropriate. Note: the decision to impose an administrative penalty is at the discretion of the Director or the delegated decision maker.

Before deciding to impose an Administrative Monetary Penalty ("AMP") and calculating the amount of the AMP, the decision-maker will consider the factors set out in section 164(2) of the BPCPA. To calculate the amount of the AMP the decision-maker will normally apply the policy of Consumer Protection BC, "Calculating Administrative Monetary Penalties Policy and Procedures.", including its AMP Penalty Matrix. This policy is available on the website of Consumer Protection BC at www.consumerprotectionbc.ca. You can access the policy electronically by clicking the following link: Admin Penalty Policy and Procedure.

If you are dissatisfied with the decision, you may apply for a reconsideration of the decision.

Further information on the policies and procedures relating to the calculation of administrative monetary penalties and the reconsideration process can be found by visiting the About us (Our policies) section of our website at www.consumerprotectionbc.ca.

What will be inspected

Remember that while inspectors attend businesses to test for compliance with the laws we administer and any conditions we have imposed on a licence, they are also there to educate and answer questions. Please feel free to approach them about any business issues or problems related to the laws we administer.

Typically, you can expect that an inspector will do some of the following:

- Review the legislation and the conditions on a licence for any issues that are identified;
- Inspect the physical layout of the business;
- Inspect legal, financial and other business records;
- Observe and record your business practices, identify deficiencies or problem areas that may lead to non-compliance;
- Identify any contraventions;
- Answer your questions and help you understand your obligations.

To find out what an inspector will examine during the inspection, please read a sample inspection checklist (Appendix-Inspection Checklist). Note: the items on the checklist are not an exhaustive list of the items an inspector may examine.

Documents and records

You must produce all business records and documents requested by the inspector. Since business records are not always kept on the premises, an inspector may schedule an inspection in advance so you can make sure the records are at the business for the inspection. Sometimes, the inspector may require that you provide additional records at a later date. Refusing to provide records or providing false or misleading information is a serious contravention of the law.



Appendix A - Inspection Checklist

The following are the types of types of things that the inspector is checking during an inspection of your business. This is not a comprehensive list and not all items on this list are inspected during each inspection.

		Licence # : _		
	CONSUMER PROTECTION BC Date of inspection:			
Question	PAYDAY LENDER INSPECTION REPORT	Y	Ν	N/A
	LICENSED LOCATION			
1	BPCPA 143 Was the business properly licensed to engage in the designated activity of Payday Lender when it issued each payday loan?			
2	How does the payday lender advance funds to borrowers? List all:			
3	Does the payday lender complete payday loans online? on the phone, in person? List all:			
4	How much does the payday lender charge for payday loans? List Percentage or Posted Fees:			
5	PLR 8 Was the payday lender carrying on business only in the name or DBA on its licence?			
6	PLR 7(1) Was the payday lender licence prominently displayed at the location for which the licence was issued?			
7	PLR 7(2) If conducting business (completing loans) via the internet, was the payday lender displaying its payday lender licence number at or near the top of the introductory page for BC borrowers?			
8	PLR 13(5) If conducting business via the internet, was the payday lender displaying the information described in PLR 13(1) to 13(4) at or near the top of the introductory page for BC borrowers?			
9	PLR 7(3) Was the payday lender ensuring all representations and visual advertisements had the payday lenders licence number included?			
10	Does the payday lender conduct business (complete payday lending transactions) on the internet? If so, list website URL:			
11	PLR 13(6) If offering or arranging or providing payday loans by telephone, was the payday lender disclosing the information listed in PLR 13(4) ?			



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A
12	PLR 13(1)(a) Was there a sign visible to borrowers immediately on entering the payday lender business, in the correct form, size and color required by PLR 13(2)?			
13	PLR 13(1)(b) Was there a sign a visible to borrowers at each place where payday loans were negotiated that met the requirements of PLR 13(3) and 13(4)?			
	RECORDS			
14	PLR 11 Has the payday lender retained all payday loan agreements, receipts and other documents used to negotiate payday loans for a minimum of 2 years?			
15	BPCPA 112.06(2)(d) Has the payday lender ensured the borrowers name on all payday loan agreements?			
16	BPCPA 112.06(1) Were all payday loan agreements signed and dated by the borrower?			
17	BPCPA 112.06(2)(e) Were the date(s) of each advance(s) made to the borrower listed in each payday loan agreement?			
18	BPCPA 112.06(2)(k) Did the payday lender ensure the correct cost of credit and APR was included on each payday loan agreement it executed?			
19	BPCPA 112.06(4)(a) Did the payday lender review the cost of credit, APR and cancellation rights with the borrower prior to the payday loan agreement being signed?			
20	BPCPA 112.06(4)(b) Did the payday lender require that the borrower initial the APR, Cost of Credit and Cancellation rights disclosures made in each payday loan agreement?			
21	PLR 14 Did the payday lender ensure that the notice required by PLR 14 about the Business Practices and Consumer Protection Authority was included in all payday loan agreements it executed?			
22	PLR 23 (2)(a)(b) Did the payday lender ensure that payday loan agreements with borrowers who entered a third or subsequent loan in a 62 days had the required borrower income periods in the term?			
23	PLR 23(3)(a)(b) Did the payday lender ensure that it did not require a payment under a payday loan agreement where PLR 23(2) applied, that exceeded 35% or 50% of the amount owed under the agreement?			



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A
24	PLR 10(2) Did the payday lender submit changes to the sample loan agreement, collection letter, cancellation notice and acknowledgement notice referenced in PLR 4(2)(a)(i) to (vi) within 14 days?			
25	PLR 10(1) Did the payday lender submit changes of address of its head office, location from where it conducts business or a change in beneficial ownership of shares or senior officers within 14 days?			
	PROHIBITIONS AND PROHIBITED PRACTICES			
26	BPCPA 112.04(1)(a) Does the payday lender comply with the requirement not to charge more than the 15% of the principal amount as a fee for payday lending?			
27	BPCPA 112.04(b) to (f) Does the payday lender not charge, accept or require amounts not disclosed in payday loan agreements, for cancellation of a loan, for making a payment or, for a cash card?			
28	PLR 17(2) Was the payday lender complying with the requirement to only charge a one-time \$20 dishonored PAD/Cheque fee and no more than default interest at a rate of 30% APR?			
29	PLR 21(1) Was the payday lender complying with the requirement to not make payday loans due before borrower's next income date?			
30	PLR 21(3) Were all Pre-Authorized Debits held by the payday lender specific to individual payday loans?			
31	PLR 21(4) Was the payday lender complying with the requirement to not include inducements, contests or enticements to enter into payday loans for prizes or rewards in visual advertisements?			
32	BPCPA 112.08(f) and (g) Are all post-dated cheques held by the payday lender completed with dates and correct amounts?			
33	PLR 22 Are all post-dated cheques held by the payday lender payable to the payday lender?			
34	BPCPA 112.08(1)(d) and PLR 18 Were all payday loans issued by the payday lender issued for no more than 50% of the borrowers net pay or income received during the term of the payday loan?			
35	BPCPA 112.08(1)(k) Has the payday lender complied with the requirement to not request real or personal property as security for payday loans?			



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A	
36	PLR 19(1) Is the the supply of other goods or services optional when receiving a loan from the payday lender?				
37	BPCPA 112.08(1)(a) has the payday lender complied with the requirement to not grant rollovers?				
38	BPCPA 112.08(1)(b) Has the payday lender complied with the requirement to only issue one payday loan at a time to a borrower?				
	DEBT COLLECTION				
39	Is the payday lender advancing funds "on balance sheet" or is it acting as broker for another unrelated corporate entity?				
40	BPCPA 143 If applicable, is payday lender a properly licensed debt collection business?				
41	BPCPA 143 If applicable, are the persons employed by the debt collector who collects on delinquent payday loans properly licensed?				
	PART 7 BPCPA (Subject to limited exemptions, collection practices applicable to all collectors)				
42	BPCPA 116(1)(a)-(c) and 116(2) Was any attempt or communication with debtors at their place of employment permissible and done with the frequency and for permissible purposes?				
43	BPCPA 116(3) Were the verbal disclosures of the name of the creditor, the amount of the debt and any required itemization of the debt amount being made by the collectors on first contact?				
44	BPCPA 116(4)(a)-(c) Was the collector complying with any requests for communication in writing, only counsel or, no communication at all (in the event of disputed debt)?				
45	BPCPA 114(1) Is there compliance with the requirement that the manner and/or frequency of debt collection by the business or staff/agents is non-harassing?				
46	BPCPA 117(1)(b) Are any collectors only discussing debts with debtor's relatives, friends or others when authorized or, they believe the debtor's contact information is no longer current?				
47	BPCPA 117(2) Are collectors only communicating with debtor's employers after the proper notices about legal action have been made or, if otherwise permitted?				



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A
48	BPCPA 118(2) Unless authorized by the person contacted, is communication limited to debtors or others on Stat Holidays, Sunday 1 to 5 pm and other days from 7am to 9pm local time?			
49	BPCPA 119(1) Are collectors ensuring that the costs of collection communication are not being borne by the debtors?			
50	BPCPA 120 Are collectors not attempting to collect funds that exceed the sum amount of permissible charges and principal owing for payday loans issued by the payday lender?			
51	BPCPA 120(b)&(c) Are collectors not attempting to collect from people not liable for debts and, if informed of such, not communicate with them until the collector has verified their identity?			
52	BPCPA 121(1) & (2) and (4) Are collectors only bringing or threatening to bring, legal action after proper notices are given and if written permission and/or lawful authority exist to do so?			
53	BPCPA 123 (a) to (d) Do collectors refrain from misrepresentation and supplying misleading information to debtors and others?			
	PAYDAY LOAN AGREEMENT			
54	PLR 19(3) Did all payday loan agreements have a statement that the supply of other goods or services is separate and optional?			
55	PLR 20 Are all payday loan agreements free for a provision that allows the payday lender to collect from a borrowers employer?			
56	PLR 19(2) Were all payday loan agreements free of any term or condition relating to the supply of other goods or services?			
57	BPCPA 112.06(2)(q) Did each payday loan agreement have a statement about the borrowers cancellation rights under BPCPA 112.05?			
58	BPCPA 112.06(3) Was all the disclosure and other information included in the payday loan agreements written in a clear and comprehensible manner?			
59	BPCPA 112.06(2)(r) Did each payday loan agreement include a statement about remedies available to borrowers under BPCPA 112.10?			
60	BPCPA 112.06(2)(a) Did all payday loan agreements list the payday lenders name, business address and if different, mailing address?			



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A
61	BPCPA 112.06(2)(c) Did all payday loan agreements list the payday lenders' license number, phone number, fax number and email address?			
62	BPCPA 112.06(2)(f) Did all payday loan agreements list the principal of the payday loan?			
63	BPCPA 112.06(2)(g) Did all payday loan agreements list the payday loan term?			
64	BPCPA 112.06(2)(h) Did all payday loan agreements list the amount of cash advanced/transferred to the borrower?			
65	BPCPA 112.06(2)(i) If applicable, did all payday loan agreements list the amount credit available to borrower on cash card used to facilitate payday lending?			
66	BPCPA 112.06(2)(i) If applicable, did all payday loan agreements list any expiry date for cash cards via which funds were advanced to borrowers?			
67	BPCPA 112.06(2)(s) If applicable, did all payday loan agreements have a statement that third-party service charges may apply for use of a cash card?			
68	BPCPA 112.06(2)(I) Did all payday loan agreements include a statement that interest applies only to the principal of a loan?			
69	BPCPA 112.06(2)(n) Did all payday loan agreements list the permissible charges that apply to the loan?			
70	BPCPA 112.06(2)(o) Did all payday loan agreements list the repayment dates and amounts?			
71	BPCPA 112.06(2)(p) Did all payday loan agreements list the statement that the payday loan is a "high-cost loan"?			
72	BPCPA 112.06(5) Was the payday lender giving borrowers a copy of the signed loan agreement and the cancellation notice at the time the agreement was signed by the borrower?			



Question	PAYDAY LENDER INSPECTION REPORT	Y	N	N/A
	GOV'T CHEQUE CASHING			
73	PLR 20.1(2) Is the Payday Lender not requesting or requiring the borrower to consent to disclosure or use of the borrower's personal information other than for arranging payday loans?			
74	Does the business cash any of the three types of Government of BC cheques prescribed in the Government Cheque Cashing Fees Regulation?			
75	Name and address of financial institution used for deposits of cheques:			
76	Bank account # where prescribed government cheques are deposited:			
77	BPCPA 112.13 Are amounts charged for cashing gov't cheques limited to the lesser of: [1% of the cheque face value + \$2.00] or, [\$10.00]?			

For more information about your obligations as a licensed business, our processes and our organization, please visit <u>www.consumerprotectionbc.ca</u>.