



ALTERNATIVE
RISK SERVICES
Insurance Consultants

REAL ESTATE COUNCIL OF ONTARIO INSURANCE PROGRAM

THE IMPORTANCE OF REPORTING A CLAIM



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The RECO Insurance Policy

RECO's Insurance Policy (the Policy) provides three distinct coverages for the protection of RECO's registrants and consumers: errors and omissions, commission protection and consumer deposit. The Policy can be viewed on the web at either www.reco.on.ca or www.reco-claims.ca.

Perhaps the most important of these three coverages to you as a registrant is the errors and omissions insurance coverage. Errors and omissions coverage is intended to provide you with protection in the event of a claim which arises out of a trade in real estate. The Policy will, under most circumstances, provide you with a defence and, if necessary, make a payment on your behalf for matters involving your professional negligence.

Your coverage under the Policy is on a "claims made" basis – in other words, the Policy requires that the "claim" or "circumstance" made against you is reported to the insurer during the policy period. The current policy period runs from September 1, 2007 to September 1, 2008.

What is a Claim?

The Policy defines a claim as,

*"a **demand** or the filing of a suit or the initiation of an arbitration proceeding seeking **Damages** for an alleged error, omission, negligent act, or **Personal Injury** arising out of **Professional Services**; or an event of which the **Insured** has knowledge that may result in a demand seeking **Damages** arising out of **Professional Services**."*

A claim arises out of someone making a clear allegation against you and making a demand (directly or indirectly) for compensation. The clearest example of a claim is when a lawsuit is commenced in which you are named as a defendant, i.e. the "filing of a suit". Another clear example of a claim is when you are sent a letter which alleges conduct on your part that could result in a lawsuit, i.e. a "demand".

A claim can also be made orally. For example, a client / customer expresses in conversation with you dissatisfaction with some aspect of a transaction. If the customer makes an allegation in a conversation with you suggesting or asserting that they suffered damages (e.g. paid too much, has to conduct repairs, etc.) as a result of something you did wrong, this would also constitute a claim.

When a claim is made against you - in the form of a lawsuit, a demand letter, or an oral allegation of a claim - you must report any circumstance to the insurer as soon as practicable. It is important to report the claim to the insurer not just to protect yourself, but to give the insurer the ability to investigate the claim and, if necessary, retain defence counsel to make sure that you get the best defence possible.

What is an Event or Circumstance?

In addition to knowing what constitutes a claim, you should also be aware of the notion of an event or circumstance as the Policy also speaks to "an event of which the **Insured** has knowledge that may result in a demand seeking **Damages** arising out of **Professional Services**." While the words 'event' and 'circumstance' mean the same thing and

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can be used interchangeably, for the purpose of this bulletin we will use the word circumstance.

While a claim may often be patently obvious, a circumstance is less obvious. What exactly is a circumstance? A circumstance is an event, incident, fact, matter, act or omission which may give rise to a claim. It does not require any notice of a pending lawsuit, receiving a demand letter or someone making an oral allegation against you. A circumstance is therefore a potential claim.

A sensible distinction needs to be drawn between a circumstance and a mere complaint or a vague expression of dissatisfaction – not all complaints are circumstances. A complaint, of course, can take many shapes and forms. For example, a phone call chasing delayed information on a trade or allegations of impolite or unprofessional conduct. Those situations are not circumstances.

The critical question that you must ask yourself is this - would a reasonable person think that the complaint or expression of dissatisfaction was a groundless complaint or is it possible that I failed to exercise my duty to the client / customer and if so, at what cost to the client / customer? If there is any doubt in your mind then it is likely a circumstance. Thus, as with claims, you must report any circumstance to the insurer as soon as practicable.

Is a Complaint the same as a Claim?

Perhaps one of the most confusing situations that a registrant may be confronted with is whether or not the making of a formal complaint to RECO by a client / customer requires you to report the matter as a claim or circumstance to the insurer.

A complaint made to RECO does not require notification to the insurer as it may deal with

issues of professional conduct or ethics which is not professional negligence. Ask yourself the following – would a reasonable person consider the alleged breach of the Code of Ethics a failure to exercise my duty to the client / customer and, if so, at what cost to the client / customer? If there is any doubt in your mind then it is likely a circumstance and must be reported to the insurer.

Registrants should also be aware that some clients / customers (or their lawyers) may bring a complaint before commencing a lawsuit thinking that a successful complaint will result in an easier settlement of their claim. Registrants should be cognizant of this fact and take the precaution of reporting any situation which alleges an error or omission and/or makes an allegation of damages to the insurer.

When should I report / Why should I report?

The Policy requires a registrant to report all claims and/or circumstances as soon as practicable. Timely reporting of claims and/or circumstances is a policy condition, i.e. it is something that you must do in order to have coverage. The Policy requires the registrant *“as a condition precedent to the availability of the rights provided under this POLICY, (to) give written notice to the **Insurer** as soon as practicable of any **Claim** made against the **Insured** or any circumstance likely to give rise to a **Claim** under this POLICY.”*

Reporting a claim or a circumstance does not mean that you are responsible or liable for negligence, or that you have done anything wrong. By reporting a claim or circumstance you are complying with the reporting condition of the Policy which ensures that the insurer can investigate the claim and determine the best way to proceed to protect your interests.

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If you are satisfied that a situation has arisen which constitutes a claim or a circumstance which may give rise to a claim you should notify the insurer “as soon as practicable”.

Late Reporting can result in denial of coverage

Problems with notification may arise with claims that are made near the end of the policy period. Remember that the Policy is a ‘claims made’ cover and that it only covers claims made against the insured and notified during the period of insurance. It is certainly understandable that if a claim is made during the last week of the policy but the insured is unable to notify the insurer before the policy period expires (perhaps due to the policy ending on a weekend). This problem is often addressed by allowing claims to be notified to the insurer for a short period of time after the policy expires. The test of what is “as soon as practicable” applies to notification. An insurer may be prepared to allow for a short extension or “grace” period to allow an insured to report a claim which arose within the policy period but not reported until after the policy expires. The extension will usually apply only to claims received very close to the expiry date of the policy. Nevertheless this should provide some comfort to registrants who become aware of last minute claims or circumstances.

Never admit liability no matter how badly you feel for the client’s / customer’s situation.

It is understandable that it is a normal reaction to try to make amends when you think you’ve done something wrong. However, no matter how badly you feel about a client / customer’s situation, it is not up to you to decide whether the claim or circumstance has any merit or value. Indeed,

if you admit that you’ve made a mistake to the client / customer or if you offer to pay the client / customer out of your own pocket for an expense the client / customer has incurred you run the risk of jeopardizing your insurance coverage. Why? The Policy contains a clause which requires that you cooperate with the insurer. Specifically, the condition states that a registrant shall not “voluntarily make any payment, assume any obligation, make any admission to any claimant or incur any expense without the consent of the **Insurer**.” Don’t admit any responsibility – report the claim or circumstance to the insurer.

How to report a claim

Each insurance coverage under the RECO Insurance Program has its own specific Claim Reporting Form. Forms can be downloaded from either www.reco.on.ca or www.reco-claims.ca or by calling the adjuster who can email or fax one to you. You must complete all of the information requested. Once completed, you can mail, fax or email the form and documentation (if any) to the Program Adjuster, McLarens Canada at the following address:

Attention: Jan Perkins
McLarens Canada
94 Chapman Court
Aurora, ON L4G 0E2
Tel: 905-740-1913
Toll Free: 1-877-740-1913
Toll Free Fax: 1-866-735-1033
Email: claims@reco-claims.ca

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Better to be safe than to be sorry

In order to benefit from your insurance policy you should make sure that you involve the insurer as soon as you become aware of a problem that is a claim or circumstance which may give rise to a claim. It is your professional reputation at stake so make sure you have your insurer's expertise and its team of professionals (adjusters, defence counsel, experts) working for you at the outset by reporting to the insurer. If you are unsure whether a matter is a claim or circumstance as opposed to a mere complaint it is always best to talk it through with your insurer's representative (the adjuster or the broker) first. Remember, the insurer would prefer to have a cautious notification by a registrant rather than have to deal with a claim at the last minute or, worse yet, have to tell you that there is no coverage under the policy because of a late report of the claim. It is far better to report and be safe rather than to delay and be sorry.

Coming up in our next Insurance Pamphlet

What to expect if you report a claim.

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Notice to Reader

The information contained in this bulletin is for the intended use of RECO registrants. Any dissemination, distribution or copying of this communication is strictly prohibited. This pamphlet is an overview of certain features of the RECO Insurance Policy which focuses on a particular issue as it relates to you - the registrant.

The contents of the pamphlet are not intended to be an exhaustive review of the Policy nor is it to be relied upon as such. Please read your Policy carefully. For greater detail or if you have any questions about your insurance coverage please contact the insurance broker, Alternative Risk Services Inc. at 1-866-426-1666 or by e-mail at info@reco-claims.ca

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