



## Consumer Deposit Insurance Protecting your deposit

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### As a consumer, how does consumer deposit insurance protect me?

When working with a registered real estate broker or salesperson, consumer deposit insurance helps protect your deposit in a real estate transaction.

A successful claim against the consumer deposit insurance will result in the insurer paying for your lost deposit to close a real estate transaction on your behalf. The coverage responds in events such as brokerage theft, fraud, insolvency, or misappropriation of funds, subject to the terms and conditions of the policy.

This coverage is available at no cost to you. In the event that coverage is required, the insurer may work directly with your real estate lawyer to assist in the closing of the transaction for your new home or business.

While the vast majority of consumer deposits end up being used exactly as intended, problems do arise from time to time. Those occasional problems are the reason for this insurance. In the almost 20 years since the implementation of the professional liability insurance program administered by RECO, about \$5 million in consumer deposit claims has been paid.

### Does the Professional Liability Insurance Program include this coverage?

Yes. All registered brokers and salespersons are required by law to participate in the Insurance Program administered by RECO, which includes consumer deposit insurance.

You, the consumer, are the claimant under the Consumer Deposit coverage. This ensures you are protected and supports a healthy and responsive real estate industry.

### What are the limits available?

The consumer deposit coverage provides up to a maximum of \$100,000 per claim and up to a maximum of \$3 million for all claims related to a single event (e.g. insolvency of a brokerage). For events that exceed the maximum of \$3 million, claims are paid out on a pro-rated basis, meaning all claimants share in the total limit of \$3 million.

There is no deductible under this coverage.





## **What if a claim exceeds the limits available?**

### **Claim Scenario 1 – Maximum per claim exceeded**

Lets say, Macy provides a \$125,000 deposit to her broker who misleads her during the transaction and misappropriates the funds. The amount is above the maximum of \$100,000 per claim. Macy's lawyer receives \$100,000 from the insurer towards the closing of the transaction, but Macy may need to make additional arrangements to help make up the outstanding amount of \$25,000 to complete her transaction.

### **Claim Scenario 2 – Maximum for an event exceeded**

40 consumers lose their deposits due to the insolvency of a brokerage. For the sake of illustration, let's assume that all consumer deposits are \$90,000 each, that is, less than the \$100,000 per claim maximum. The total deposits amount to \$3.6 million (\$90,000 times 40 consumers), which exceeds the event limit of \$3 million.

In this case, consumers receive a share of the total limit towards their deposits. The share of the limit is determined on a pro-rated basis. The insurer will make a payment of \$75,000 on behalf of each consumer who had a \$90,000 deposit towards the close of their transaction under this coverage.

## **What is Social Engineering Fraud, and is it covered?**

Yes, Social Engineering Fraud is also covered up to a limit of \$10,000 under this insurance. It may respond in instances where an outside party to a transaction deceives you, the consumer, into directing or redirecting funds to a fraudster's bank account.

**Remember:** Last minute calls, urgent pleas, unexpected changes to deposit amounts and offshore accounts for the payment of deposit funds are all hallmarks of Social Engineering Fraud. You should always check with your broker or salespersons in person or via phone when money transfer instructions are changed from an original agreement.



## **Does this coverage respond to a dispute over who the deposit should be paid to?**

No. In cases of a failed transaction where parties simply cannot agree on the disbursement of a deposit held in a real estate statutory trust account this coverage does not respond.

In the case of a dispute over ownership of a deposit, a brokerage can only disburse the deposit in accordance with the terms of a mutual consent and or release form signed by both the buyer and seller or by following instructions in a court order.

Your lawyer will be able to advise you on next steps in your best interest.

## **What happens if my deposit is paid to the lawyer for a builder, and is subsequently lost?**

The consumer deposit coverage does not respond if the deposit is paid to a builder or if the brokerage has paid the deposit to a builder's lawyer in accordance with the terms of the agreement of purchase and sale. Tarion may provide some protection and you may wish to seek legal advice to determine what options are available.

## **What if my deposit is held in trust by RECO?**

In the event a brokerage holds onto a deposit for two years and it has not been determined who the deposit should be disbursed to, the deposit is then transferred to, and held in trust by, RECO.

RECO can only disburse the deposit in accordance with the terms of a mutual consent or release form or by following instructions in a court order. Deposits cannot be disbursed until there is agreement between all parties in the transaction.

Consumer Deposit Insurance does not apply in these instances because the funds are not missing or misappropriated. They are in dispute.

## **When should I make a Consumer Deposit claim?**

If you are aware of a situation where you believe that a broker, salesperson or brokerage may be engaged in an insolvency, theft, fraud, or misappropriation of funds, which may



put your transaction in jeopardy, please report this situation to the RECO Insurance Department immediately at 416-207-4800 or [insurance@reco.on.ca](mailto:insurance@reco.on.ca).

## **What are the steps involved in the claim reporting process?**

### **Step 1**

You can download a Consumer Deposit Claim Reporting Form at [www.reco.on.ca](http://www.reco.on.ca) or contact RECO and request that a claim reporting form be emailed to you.

### **Step 2**

Complete and submit the signed Claim Reporting Form to the Insurance Department at [insurance@reco.on.ca](mailto:insurance@reco.on.ca).

### **Step 3**

RECO will forward your Claim Reporting Form to a third-party loss adjuster. In the public interest, RECO may also investigate if the brokerage has complied with Ontario real estate rules and regulations.

### **Step 4**

The loss adjuster will review your claim and determine how they can assist you with the next steps or work with you or your lawyer in the closing of your real estate transaction.

## **How long do I have to make a claim?**

The claim should be reported as soon as you become aware of a problem with the disbursement of the deposit.

## **What's not covered?**

Claims arising as a result of a registered broker or salesperson acting as an executor, administrator, trustee, guardian, conservator, or in any fiduciary capacity other than as a broker or salesperson are not covered under the policy.

## **Who should I contact for more information about how to make a claim?**

Please contact RECO at 416-207-4800 and ask for an Insurance Department representative or email [insurance@reco.on.ca](mailto:insurance@reco.on.ca).



## **Does Consumer Deposit coverage respond to a claim as a result of a mistake, error or omission made by a real estate broker or salesperson?**

No. Claims for damages against brokers or salespersons as a result of a mistake or potential negligent act during a real estate transaction are a civil matter governed by the legal process in Ontario, meaning they may evolve into a lawsuit. This type of situation is unrelated to the Consumer Deposit coverage and beyond RECO's jurisdiction under the *Real Estate and Business Brokers Act, 2002* (REBBA 2002). However, real estate salespersons and brokers are required to be covered by errors and omissions insurance.

You may send a letter or have your lawyer send a letter supporting your claim and outlining your damages to the parties you feel are responsible for your damages. The real estate representatives may respond to you directly, retain their own lawyer, or report the request for damages to their insurer.

RECO cannot provide legal advice and does not have the authority to award compensation or damages to complainants. RECO has no jurisdiction over the salesperson's or broker's independent insurance company's claim process.

## **As a Consumer, what do I do if I want to make a complaint against a registrant and I want to recover damages?**

There are two separate processes involved in this type of situation.

First, you may make a complaint against a registrant through the regulatory complaints process at RECO.

The RECO complaints process addresses inquiries, concerns and complaints about the conduct of real estate professionals, or those holding themselves out as such, involved in any real estate transaction. RECO enforces the *Real Estate and Business Brokers Act, 2002* (REBBA 2002), which promotes, among other things, transparency, honesty, integrity and fairness in real estate transactions. Under REBBA 2002, RECO does not have the authority to award compensation or damages to complainants.

For more information on the complaints process or if you would like to file a complaint, contact RECO or visit our website at [reco.on.ca](http://reco.on.ca).

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You may send a letter or have your lawyer send a letter supporting your claim and outlining your damages to the parties you feel are responsible for your damages. The real



estate representatives may respond to you directly, retain their own lawyer, or report the request for damages to their insurer.

RECO cannot provide legal advice and does not have the authority to award compensation or damages to claimants. RECO has no jurisdiction over the civil process nor the independent insurance company's claim process.

## **Disclaimer**

The foregoing is an overview of some of the terms of the Consumer Deposit extension. The coverage applicable in any given situation will depend on the specific circumstances of the claim or potential claim and the terms, conditions and exclusions of the policy in effect when the notice is provided.