

## PROFESSIONAL LIABILITY INSURANCE POLICY ADMINISTERED BY RECO

### The Importance of Reporting a Claim

RECO's Professional Liability 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 <https://myweb.reco.on.ca> or [www.reco-claims.ca](http://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 the provision of professional services to a client or customer. The Policy will, under most circumstances, provide you with a defence and, if necessary, make a payment or settlement for damages on your behalf for matters involving your actual or alleged 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.

#### 1. What is a Claim?

The Policy defines a claim as:

*"an oral or written 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 a circumstance 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 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, their dissatisfaction with some aspect of the services provided. 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, demand letter, or oral allegation - 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 and your insurance coverage, but to give the insurer the ability to assist you in mitigating damages, investigate the claim and, if necessary, retain defence counsel to represent you.

#### 2. What is a Circumstance?

In addition to knowing what constitutes a claim, you should also be aware of the notion of a circumstance as the Policy also speaks to *"a circumstance of which the **Insured** has knowledge that may result in a demand seeking **Damages** arising out of **Professional Services**."*

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

A sensible distinction needs to be drawn between a circumstance, 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 transaction or allegations of impolite or unprofessional conduct. Those situations are not circumstances under the insurance program.

When determining whether a situation or expression of dissatisfaction can ultimately result in a claim, the critical question that you must ask yourself is this – whether a reasonable person would think that the complaint or expression of dissatisfaction may result in a demand for compensation? If there is any doubt in your mind, then it is likely a circumstance. Thus, as with claims, you must report it to the insurer “as soon as practicable”.

### 3. Is a Complaint the same as a Claim?

You may wonder whether or not a formal complaint made 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 necessarily require notification to the insurer as it may be limited to issues of professional conduct or ethics, not professional negligence. A breach of the Code of Ethics does not essentially mean that you failed to exercise your duty to the client/customer to their financial detriment. However, if there is any doubt in your mind, then it is likely a circumstance and should be reported to the insurer.

Registrants should be aware that some clients/customers (or their lawyers) may bring a complaint to RECO 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 complaints which allege an error or omission and/or makes an allegation of damages to the insurer.

### 4. When should I report / Why should I report?

The Policy requires Registrants to report all claims and/or circumstances “as soon as practicable”. Timely reporting is a policy condition, i.e. it is something that you must do in order to be covered by the policy. The Policy requires the Registrant, *“as a condition precedent to the availability of the rights provided under this POLICY, 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 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 circumstance which may give rise to a claim you should notify the insurer “as soon as practicable”. There is no cost to you for doing so – deductibles only apply when the insurer pays damages on your behalf and your annual premium will not be affected.

#### **5. Late reporting can result in denial of coverage**

If you do not report your claim “as soon as practicable”, your claim may be denied. If, for example, you choose to ignore the matter and as a result the situation gets worse - you will have compromised the insurer’s ability to defend you (prejudiced the insurer). This is cause for the denial of a claim.

As long as claims and circumstances are reported as soon as you become aware and able to do so, you will have met the claim notice condition required by the Policy.

#### **6. Do not admit liability**

It is an understandable and normal reaction to try to make amends when you think you have done something wrong. However, doing so may compromise your insurance coverage, which could ultimately be worse for both you and your client.

If you admit that you’ve made a mistake to the client/customer or offer to pay them out of your own pocket for their loss, you run the risk of jeopardizing your insurance coverage. Why? The Policy contains a clause which 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.*”

Before responding to a client/customer regarding a perceived error, omission or negligent act in the rendering of your professional services, speak to the Program Adjuster for guidance.

#### **7. How to report a claim**

Each insurance coverage under the RECO Professional Liability Program has its own specific Claim Reporting Form. Forms can be downloaded from either [www.reco.on.ca](http://www.reco.on.ca) or [www.reco-claims.ca](http://www.reco-claims.ca). Once completed, you can mail, fax or email the form and any documentation to the Program Adjuster.

#### **8. Better safe than sorry**

To benefit from your insurance policy, you should make sure to involve the insurer as soon as you become aware of a claim or circumstance. It is in everyone’s best interest that you engage your insurer’s expertise and its team of professionals (adjusters, defence counsel, experts) at the outset of any claim or circumstance. 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). 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 it was reported too late. It is far better to report and be safe, than to delay and be sorry.

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### **Insurance Broker and Program Manager**

Alternative Risk Services  
250 The Esplanade, Suite 302  
Toronto, Ontario, M5A 1J2  
Toll Free: 1 866 426 1666  
Fax: 1 855 529 9462  
Email: [info@ar-services.ca](mailto:info@ar-services.ca)

### **Program Adjuster**

ClaimsPro LP  
175 Commerce Valley Drive West, Suite 600  
Markham, Ontario, L3T 7P6  
Toll Free: 1 877 740 1913  
Toll Free Fax: 1 866 735 1033  
Email: [claims@reco-claims.ca](mailto:claims@reco-claims.ca)

### **Notice to Reader**

The information contained in this guide is intended for the use of RECO Registrants. Any dissemination, distribution or copying of this communication is strictly prohibited.

This guide is an overview of certain features of the RECO Professional Liability policy which focuses on a particular issue as it relates to you – the Registrant. The contents of the guide 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 at 1-866-426-1666 or by email at [info@ar-services.ca](mailto:info@ar-services.ca)

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