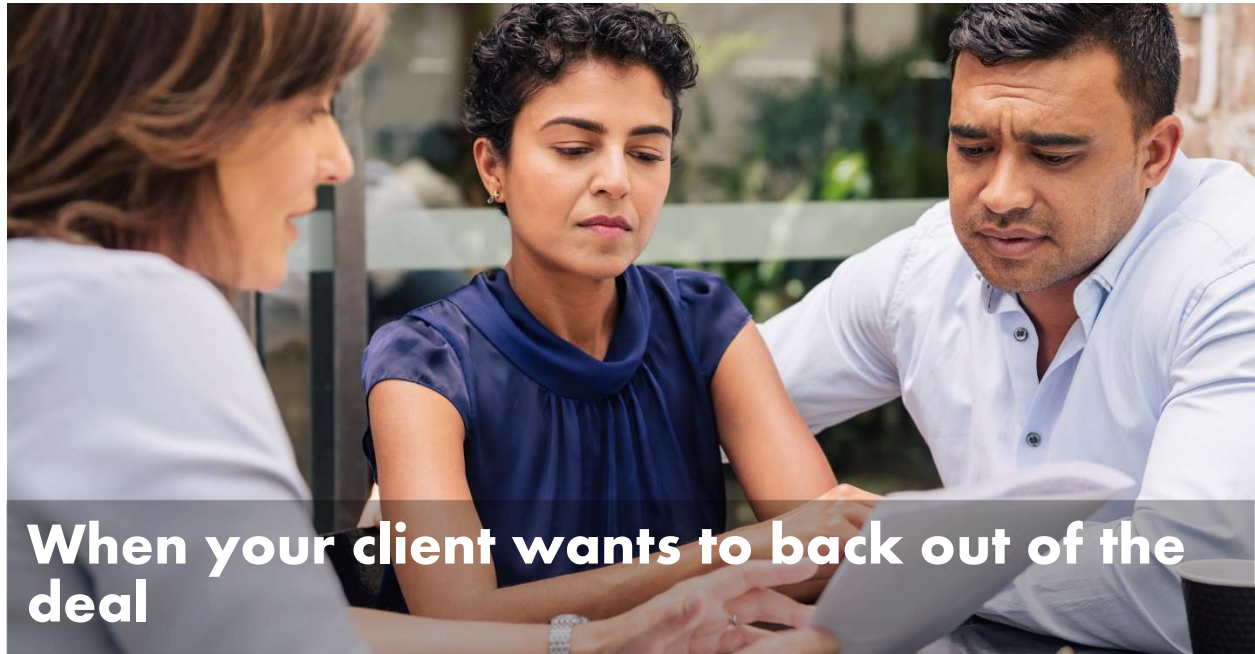


PROFESSIONAL LIABILITY INSURANCE PROGRAM

Information provided by Alternative Risk Services broker for the insurance program administered by RECO



When your client wants to back out of the deal

As the ever-shifting real estate market continues to evolve in Ontario, it is important that you, as the insured registrant remember that if a buyer wants to back out of an agreement, which is a firm and binding contract, they risk losing more than just their deposit if they do not honour it. It's crucial that you give your client accurate information in order to protect their interests, but also to ensure that you do not make yourself vulnerable to possible legal action from the parties involved, for insurance claims that might not be eligible for coverage. Here is some information you may need to be aware of if this situation occurs with your buyer:



Chances are the buyer could lose more than their deposit

The buyer might be liable for the loss in value or potential carrying costs on resale, the seller's out-of-pocket expenses, and legal costs. This can amount to hundreds of thousands of dollars. Incorrectly advising your buyer could result in multiple lawsuits affecting everyone involved in the transaction, including you.



Advise your client to immediately seek legal advice

Do not speculate with your client about what may or may not justify their withdrawal from the contract. This is a legal matter and there are very few legal reasons that justify voiding the contract.

Professional Liability Insurance Program

Underwritten by certain Lloyd's Underwriters & Trisura Guarantee Insurance Company · Administered by the Real Estate Council of Ontario · Managed and Distributed by 3303128 Canada Inc. T/A Alternative Risk Services

Failure to pay the deposit does not relieve the buyer of their obligations under the contract



Ensure that your buyer understands that failure to pay the deposit does not void the documentation. They might be liable for all damages if they fail to close, regardless of whether or not they pay the deposit.

Respect your client's privacy by not discussing the situation with the listing agent



It is frustrating to lose a deal, but this is not the time to vent or speculate about the reason the buyer is not closing. Privacy is paramount and you have an obligation to your client. Casual comments might be used against your client.

Furthermore, the legal concept of "anticipatory breach of contract" might also apply. In short, it says the party who communicates first that they are not going to close might be deemed to be in breach of contract and liable for all damages. Do not use language such as "the buyer is not going to close." Only their lawyers should be communicating such intent, after having counselled their client.

Ensure that all parties consult with their lawyers before signing a release



If the parties are going to release each other from the purchase agreement, ensure that they sign the releases only after consulting with their lawyers.

Put everything in writing to your client



Please print all communications and keep them on file so you are ready if litigation follows. Email is sufficient.

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