

## PROFESSIONAL LIABILITY INSURANCE PROGRAM

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



At some stage in your real estate career, you might find yourself with a personal interest while providing professional services. This means gaining a benefit from a transaction, whether directly or indirectly, beyond fees or commissions, and might include being the buyer or seller representing your own property. Some other examples could be if a relative wants to use your services, if you or a relative is a shareholder of a company that is buying or selling, or you have another role in the transaction that is not evident. These are all instances of personal interest. See RECO's bulletin on this matter for further information: [Disclosure: personal interest and knowledge](#).

The Code of Ethics under the *Real Estate and Business Brokers Act, 2002* (REBBA) requires disclosure of this interest in writing to all parties involved in the transaction and before any offer is made. As long as you have made the necessary disclosures, the professional liability program administered by RECO will provide coverage for your professional services related to the transaction.

It is important to clarify that even when disclosure is made, you are covered only when acting as a real estate agent. Coverage does not extend to your personal liability as a buyer or seller, which might be covered by your homeowner's insurance. However, if you're the real estate agent and the buyer or seller at the same time, things can get complicated. The best thing to do from a liability perspective is to retain impartial representation from a brokerage. It is important to avoid mixing personal and professional roles. As mentioned, disclosure in writing to all parties is required as outlined in REBBA.

### 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

**Example of a claim involving personal interest**

A real estate agent, Jane, listed a home (owned by her and her husband) for sale. She didn't see any reason to hire a brokerage since she knew the property well and could avoid paying commission.

Jane sold the home to a young couple expecting their first child. The couple made an unconditional offer with a 30-day closing so it would be ready in time for the baby's arrival.

Three months after closing, Jane was served with a Statement of Claim – a legal court document outlining the allegations of a lawsuit. It listed her and her husband as sellers, alleging major undisclosed termite damage that was found during renovations. The buyers also sued their own real estate agent. An engineering company recommended that the house be demolished because of structural issues resulting from termite damage. Jane and her husband had previously treated the house for termites but didn't mention it to the buyers as they thought the problem had been remediated.

As it turns out, in the rush of the excitement to sell, Jane failed to disclose her personal interest in the home. Further, since it was in her husband's name, she didn't think she had to.

<b>Question</b>	Was Jane negligent as a real estate agent for not disclosing the termite issue, or was this an omission as a seller? In this case, she's one and the same, which makes it a complicated case. If this claim goes to court, Jane will have a difficult time convincing the judge that she simply forgot or that she didn't think she had to since, after all, she's a real estate agent.
<b>Assessment</b>	Jane may not qualify for insurance coverage under the professional liability policy due to her failure to disclose her personal interest in the property, as required. In addition, because she was acting as a professional in the transaction, her homeowners' insurer, which could potentially provide coverage for her personal liability as the seller, might also refuse coverage.
<b>Takeaway</b>	If Jane had hired a brokerage to represent her, there would be clarity about her role, and it would be much easier to argue that it was simply an oversight.
<b>More Info</b>	If you have questions related to administration of REBBA, the Code of Ethics, or the professional liability program administered by RECO, please visit their <a href="#">website</a> .

**NOTICE TO READER**

The information contained in this bulletin is written by AR Services and is intended for the use of RECO registrants. Any dissemination, distribution or copying of this communication is strictly prohibited. Please visit [www.reco-claims.ca](http://www.reco-claims.ca) if you are a RECO registrant and have any questions about your professional liability insurance coverage.