

## PROFESSIONAL LIABILITY INSURANCE PROGRAM

Information provided by Alternative Risk Services, broker for the insurance program administered by the Real Estate Council of Ontario (RECO)



Frequently Asked Questions answered in this FAQ:

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- What's not covered?
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- Is unpaid commission to a Personal Real Estate Corporation (PREC) entitled to commission protection insurance?
- When should I make a Commission Protection claim?
- What are the steps involved in the claim reporting process?
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Professional Liability Insurance Program

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## What is commission protection insurance and how does it cover me?

This coverage helps protect your commissions arising out of a trade in real estate.

A successful commission protection claim will result in the insurer paying you for your loss of commissions in a real estate transaction due to an occurrence (such as a theft or series of thefts, insolvency, or bankruptcy of a brokerage). Since the implementation of the professional liability insurance program administered by RECO in 2000, in excess of \$12 million in commissions have been covered by the program. This coverage is unique in Canada, no other provincial professional liability program offers coverage like this.

The insurer will strive to make payment within a reasonable period but may only do so after investigation or when the total commission loss of an occurrence is determined. Amounts claimed do not include HST or brokerage fees.

Please note, RECO has no jurisdiction over the insurer, does not process claims and cannot make coverage decisions.

## What limits are available and what happens when these limits are exceeded?

Protection provided to registrants for loss of commissions from an occurrence (such as a theft or series of thefts, insolvency, or bankruptcy of a brokerage) is up to \$200,000 per claim and up to \$4,000,000 for all claims from the same occurrence. Note that, in the context of this coverage, a 'claim' is for the total of all your lost commissions related to the occurrence, regardless of how many transactions were involved.

This means you can receive a maximum of \$200,000 under the policy. When the total claims from an occurrence, such as a brokerage bankruptcy, exceed \$4,000,000, claims will be settled on a pro-rata, or proportional basis. These situations are illustrated in the two scenarios below. Note, there is a deductible of \$250 applied to each claim.

### Claim Scenario 1 - Maximum per claim exceeded

Let's say Aaron's brokerage has misappropriated \$225,000 of commissions owed to him. This is above the claim limit of \$200,000. Aaron can only receive a maximum of \$200,000 payment towards the loss of commissions, less a deductible of \$250.

#### Example: Claim Scenario 1

Aaron's Loss of Commissions	Claim Limit	Aaron's Payment Amount
\$225,000	\$200,000	\$199,750

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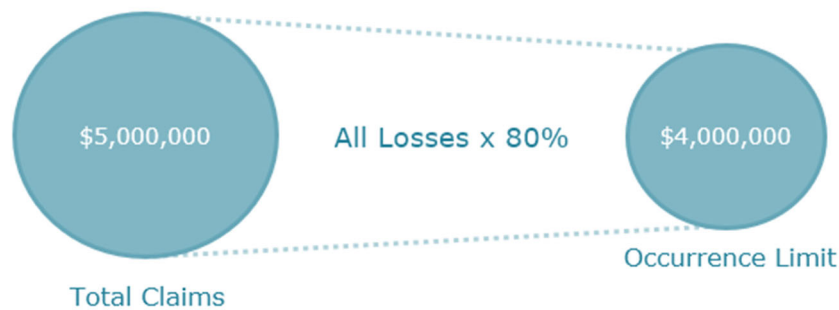
### Claim Scenario 2 - Maximum for an occurrence exceeded

Let's say a large number of registered salespersons and brokers employed by a brokerage lose their commissions due to its insolvency. The total claims are \$5,000,000, while the maximum for all claims is \$4,000,000. Claims will be settled on a pro-rata, or proportional basis.

Jake, a salesperson for the brokerage, who is owed \$20,000 in commissions, will receive a pro-rated payment of \$16,000 or 80% of his loss, less a deductible of \$250.

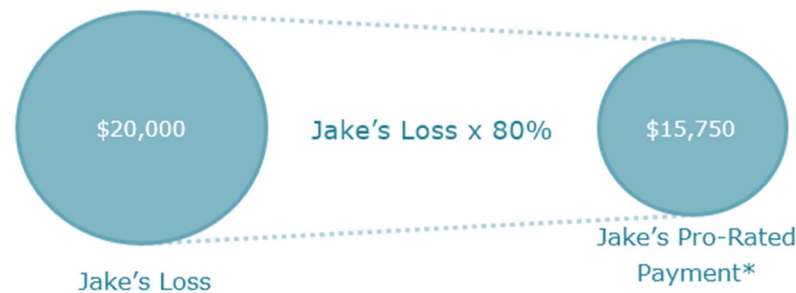
#### Example: Claim Scenario 2

##### Step 1



Pro-rata calculation: The occurrence limit represents 80% of the total claims received. This % will be used to calculate Jake's payment, see step 2.

##### Step 2



\* \$250 deductible has been applied.

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

In cases where parties simply cannot agree on the disbursement of a commission or contractual matters, this coverage does not apply. You may need to contact your lawyer for next steps in your best interests.

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

### **What happens if my commissions are owed by a builder?**

If your commissions are owed by a builder when a loss or theft has occurred at a brokerage, please contact the Insurance Department at RECO. Dependent on the situation, you may need to reach out to an appointed receiver or contact your lawyer for next steps in your best interest.

Commissions owed by a builder are not covered by commission protection insurance.

### **Does a brokerage have to maintain a commission trust account?**

TRESA does not require brokerages to operate a trust account for brokerage commissions, but it does not prevent the operation of such accounts. The insurer recommends the operation of commission trust accounts as a best practice measure.

Some real estate boards and associations also require them for member brokerages. You may wish to contact your local real estate board to determine its requirements.

Regardless of whether or not a brokerage operates a commission trust account, 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, you are requested to contact RECO immediately.

### **How can you minimize your loss and protect your pending or future commissions before a loss or theft?**

Steps to minimize your loss and protect your pending or future commissions include:

- Collecting your commissions as soon as they are payable to minimize your exposure in the event of a loss.
- Understanding how your brokerage's commission account works. You may ask your broker of record, your personal accountant and/or lawyer: these are the best professionals to consult on this issue.
- Reviewing your contract(s) with your brokerage (e.g. employment agreement) and learn how commissions flow through the brokerage's bank accounts. If your contract doesn't state that commissions will be held in trust separate from other brokerage assets, or if you have any questions, your lawyer can help you review your documentation and educate you on your situation.
- You or your brokerage may inquire if the local real estate board requires the operation of a commission trust account.

Finally, even if your commissions are held in trust, you should be alert to any issues that might signal a problem with the brokerage's financial wellbeing, such as delayed commission payments or bounced cheques. Quick reporting to the insurer benefits all registrants involved in an occurrence.

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

Yes, social engineering fraud is also covered up to a limit of \$25,000 under this insurance. It may cover you in instances where an outside party to a transaction deceives a salesperson, broker, or a brokerage into directing or redirecting commission funds to a fraudster's bank account.

**Remember:** Last minute calls, urgent pleas, unexpected changes to deposit funds, and offshore bank accounts are all hallmarks of social engineering fraud. You should always confirm set up of, or changes to, money transfer instructions either in person or by calling the party requesting the payment using a known phone number, such as the published phone number on their website. Ensure to verify the authenticity of the instructions received directly from brokerages also, including commission payments.

### **Is unpaid commission to a Personal Real Estate Corporation (PREC) entitled to commission protection insurance?**

A PREC is not a registrant and therefore is not insured under the insurance program, although this does not affect the coverage otherwise afforded to the registrant. Failure to pay commission owed to a PREC for the services of a registrant that is the controlling shareholder of the PREC could give rise to a claim, under this coverage, by the registrant.

### **When should I make a Commission Protection claim?**

In the event you experience difficulties receiving your commission payments from a brokerage, please report this situation to the RECO Insurance Department immediately at 416-207-4800 or [insurance@reco.on.ca](mailto:insurance@reco.on.ca) and ClaimsPro LP (the claims adjuster). Quick reporting to the insurer benefits all registrants involved in an occurrence.

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

#### *Step 1*

You can download a Commission Protection Claim Reporting Form from the insurer's website [www.reco-claims.ca](http://www.reco-claims.ca) or from RECO's self-serve portal <https://myweb.reco.on.ca>. You can also contact RECO and request that a form be emailed to you.

#### *Step 2*

Complete and submit the signed Claim Reporting Form to [claims@reco-claims.ca](mailto:claims@reco-claims.ca).

#### *Step 3*

The claims adjuster will review your claim, determine if there is coverage, and explain how they can assist you with next steps. Note, the claims process can be lengthy. Often claims are paid within two to three months, however, more complex occurrences can take considerably longer. In the public interest, RECO may also investigate if the brokerage has complied with the *Trust in Real Estate Services Act, 2002* (TRESA).

### How long do I have to report a claim?

Registered salespersons and brokers may claim commissions owed to them from the two-year period prior to the date of occurrence, which is the date of first notification of the loss to the insurer. Once the date of occurrence is established, all commission claims must be reported to the insurer within two years following the date of occurrence. This permits the insurer to investigate and settle the claims faster for all claimants.

#### Example: Brokerage Bankruptcy

Occurrence date (date of first notification of the loss to the insurer)	Dates from when you can claim lost commission as a result of your brokerage's bankruptcy	Date by which you must have reported your commission loss claim to the insurer
Oct. 1, 2024	Oct. 1, 2022 – Oct. 1, 2024	Oct. 1, 2026

### Who should I contact for more information about a claim?

If you wish to report a claim or have questions about an existing claim or circumstance, please contact:

#### Claims Adjuster

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

If you have a coverage related question, please contact:

#### Insurance Broker

Alternative Risk Services  
Berkeley Castle  
250 The Esplanade, Suite 302  
Toronto, ON M5A 1J2  
Phone (toll free): 1-866-426-1666  
Fax: 1-855-529-9462  
E-mail: [info@ar-services.ca](mailto:info@ar-services.ca)

### Disclaimer

This document is an overview of some of the terms of the Commission Protection extension of the policy. 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 of claim is provided.

#### 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.

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