



ERRORS AND OMISSIONS INSURANCE GUIDELINES

Sections 117 and 118 of the *Real Estate Act* Rules requires all mortgage brokerages to have errors and omissions insurance in a form of insurance and terms and conditions approved by the Executive Director of the Real Estate Council of Alberta (Executive Director).

These Errors & Omissions Insurance Guidelines (the "Guidelines") identify the terms and conditions that will be required in an insurance policy before the Executive Director is prepared to approve it as suitable for use by Alberta mortgage brokerages.

By execution of the Guidelines, the insurer acknowledges it has a form of policy that meets the requirements and that it agrees to the undertakings provided herein. Upon receipt of an executed copy of the Guidelines, the Executive Director may approve the Policy for use by Alberta mortgage brokerages.

The insurer acknowledges _____
(insert policy form name or policy product identifier) (the "Policy") meets the following requirements:

1. The word "insured" includes all persons engaged by the insured in connection with the work performed for the insured, including licensed brokers and associates who the brokerage authorizes to deal in mortgages on the brokerage's behalf, employees and former industry members and former employees.
2. The assignment clause of the policy ensures the legal representatives of the insured are covered in the event of the insured's bankruptcy, insolvency, competency or death automatically, without notice and at no extra charge as long as the policy is in place.
3. The policy covers an insured Alberta licensed mortgage brokerage/broker for all acts arising from the business of a mortgage broker and dealing in mortgages as defined under the *Real Estate Act* of Alberta (Act).
4. The policy covers all claims, subject to standard exclusions, made during the term of the policy for acts occurring at any previous time, providing the insured had no prior knowledge. The policy will not impose a retroactive date exclusion.
5. An automatic minimum 12 month extended reporting period (ERP) will be provided if the insurer cancels or refuses to renew the policy. However, if the named insured cancels or does not renew its policy and does not replace it with another policy, the extended reporting period may be reduced to 60 days. The insured's acceptance of another policy with a different carrier relieves the insurer of any obligation it may have to provide an ERP. If the ERP is triggered, it will be provided at no extra charge to the name insured or to his legal representatives, as the case may be.

6. The Policy complies with the *Real Estate Act*, the *Real Estate Act Rules* (Rules), these Guidelines and any other applicable legislation. The Policy includes a clause that states that where the terms of the Policy conflict with the Act and Rules, these Guidelines and any other applicable legislation, the Policy will be amended to comply accordingly.
7. The insurance coverage must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving an insured and \$1,000,000 in respect of all occurrences during a 365 day period involving the insured brokerage.
8. Under the Policy, the insurer will undertake to provide a defence for all claims covered by the policy, including groundless allegations.
9. Under the Policy, notice to the insurer of a claim should be made by the mortgage brokerage, or by anyone, including the executive director, if the mortgage brokerage is unable or unwilling to report a claim.
10. Under the Policy, injured third parties have a direct right of action against the insurer after judgment, without affecting the insurer's right to adjudicate the claim in accordance with the policy's terms and conditions or the insurer's right of action against the insured.
11. The insurer is the first payer on claims to injured third parties and will collect the deductible directly from the insured if a deductible applies.
12. If RECA makes a payment from the Real Estate Assurance Fund as a result of an insured's failure to disburse or account for money held in trust with respect to a deal in mortgages, it is considered an injured third party.
13. The insured is responsible for notifying the insurers of every incident that might lead to a claim during the Policy term.
14. If the insurer receives notice of a potential claim during the policy term and the claim associated with the incident is made after the policy term, the claim will be covered under the Policy that was in place when the incident was reported.
15. Regarding the "Fraud" endorsement:
 - a. subject to subclause (b), the policy certificate will include additional coverage for loss resulting from fraudulent acts and will operate to protect the public within the minimum limits required for the Policy (i.e. up to \$500,000 per claim/ \$1,000,000 in the aggregate, including the insured's obligation for deductible amounts). The insurer will have the right to subrogate against the insured; and
 - b. claims under the endorsement may be made in the same manner as claims made under the policy, including notice of claim to the insurer and a direct right of action for injured third parties
16. The policy contains an endorsement that stipulates the Executive Director must be given written notice of any cancellation prior to expiry date of such policy and the notice of cancellation will not become effective until a minimum of 30 days after the

receipt of such notice by the Executive Director.

17. The written confirmation received from the insurer that the insurer's policy is in compliance with these terms must contain several acknowledgements and undertakings, namely:
- a. the Insurer must acknowledge that at no time will any policy issued fall short of the standards set out in the minimum requirements above, including an acknowledgement that the RECA endorsement will be automatically added to every policy issued;
 - b. the Insurer must undertake that all interpretations of any policy term will never produce a result that is less than the minimum requirements set out in this letter and will always be deemed to result in an interpretation in accordance with at least the appropriate minimum requirements;
 - c. the Insurer must acknowledge that, subsequent to approval of its policy by RECA, the Insurer will not make or cause to be made any material changes limiting, restricting or reducing the coverage in its policy in any respect without prior notice to, and the approval of RECA; and
 - d. the Insurer will immediately notify the Executive Director upon the placement of a new policy.

WE HEREBY ACKNOWLEDGE RECIEPT OF THE REQUIREMENTS AND AGREE WITH ALL THE MINIMUM REQUIREMENTS AS SET OUT ABOVE.

_____ *(name of insurer)* HEREBY
ACKNOWLEDGES THAT IT IS COMMITTED TO MEET THE FOREGOING UNDERTAKINGS
AND THAT THE TERMS OF ITS POLICY, _____
(insert policy form name or policy product identifier) COMPLY WITH REQUIREMENTS 1 TO17,
ABOVE.

Signed this _____ day of _____, 20____,

(name of insurer)

"SEAL"

Per: _____
(proper officer/signing authority for insurer)

Position: _____

"SEAL"