

Use of Power of Attorney Prohibited

Section 3.9 of the Real Estate Insurance Exchange Errors and Omissions Insurance Policy states as follows:

PART III: EXCLUSIONS

This insurance policy does not apply to:

[...]

3.9 a **claim** relating to or arising out of activities as an insurance agent or insurance broker, builder, contractor, property developer, notary public, property appraiser, court appointed administrator, paralegal, commissioner for oaths, mortgagee, mortgage broker, mortgage associate, condominium manager brokerage, condominium manager broker, condominium manager associate broker, condominium manager associate, fee appraiser, escrow agent, **or acting as an attorney pursuant to a power of attorney;**

[...]

It is the position of REIX that it is inappropriate to act under a Power of Attorney on your own listing or on behalf of your own buyer. REIX does not provide coverage for claims arising out of or in respect of activities operating under or pursuant to a Power of Attorney.

Section 18.1(2) of The Real Estate Regulations states:

(2) Every registrant shall maintain errors and omissions insurance in the minimum amount of \$1,000,000, with respect to a claim, by participating as a subscriber in the Real Estate Insurance Exchange in accordance with the terms and conditions of the Real Estate Exchange Agreement.

Saskatchewan Real Estate Commission Bylaw 702, dealing with standards of practice, states that:

702 - A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.

Therefore, it is the position of the Commission that where a registrant takes or is granted a Power of Attorney on behalf of a client, that registrant is in breach of section 18.1(2) of the Regulations and Bylaw 702. *The Real Estate Act* stipulates that such a breach amounts to professional misconduct and the registrant can be subject to

sanctions, including but not limited to, a fine not exceeding \$25,000 for each finding and \$100,000 in the aggregate for all findings, costs, and/or suspension or cancellation of one's registration.

The reasoning and rationale for this position are clear. Section 18.1(2) creates the obligation for registrants to maintain errors and omissions insurance. This insurance is made mandatory for the protection of the public. If a registrant partakes in an activity that negates this insurance, that registrant is in breach of the *Act*, Regulations and Bylaws, and is subject to sanction.

Where to get more information:

For more information you can contact the Commission directly:

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This document was developed to provide helpful information to registrants in Saskatchewan about their duties and *The Real Estate Act*, its *Regulations*, and the Commission Bylaws. It may be updated as required without notice. Please check the Commission website (www.srec.ca) to ensure you are referencing the most current version. This does not constitute legal advice. For complete details consult the *Act*, *Regulations* or Bylaws, or contact the Commission at info@srec.ca.