

Use of Power-of-Attorney Prohibited

On October 1, 2011, the Real Estate Insurance Exchange (REIX) advised that new policy wording came into effect on the Errors and Omissions Insurance policy. The Advisory Board added items to the list of excluded activities that were no longer covered by the REIX insurance program.

One such item was the use of a Power-of-Attorney. REIX does not provide coverage for claims arising out of or in respect of activities operating under or 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.

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 \$5,000 for each finding and \$15,000 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.