

Loss Control

Bulletin

Land Surveyors

Professional Liability Insurance

Professional Liability Insurance Upon Retirement — 2000 Program Update

Canadian Council of Land Surveyors Retirement/Past Actions Program

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Your professional liability as a land surveyor is lengthy. As with most other professional practices, a land surveying practice is liable for third party claims that result from negligent acts, errors or omissions committed by any present or former director, officer, shareholder, employee or contract employee of the insured firm. Should a claim be made against the Named Insured and fall within the respective provincial Statute of Limitations (which varies from province to province), both the individual land surveyor and his or her firm may be found liable for damages resulting from the negligent act, error or omission. As the policy is written on a "claims-made" basis, the claim by the plaintiff must be presented by the Named Insured to the Insurer during a valid policy period of insurance. If the policy has lapsed because the Named Insured has retired, closed the firm down and gone to work in the public sector or is now working as an employee for another firm, then he or she may wish to consider a Retirement/Past Actions policy.

When the CCLS Professional Liability Insurance Program was placed through the ENCON facility, it was agreed that ENCON would provide, at no cost to

the prospective retiree, a retirement program. This program provides cover for all land surveyors that were insured under the CCLS program for a period of at least two continuous years prior to their retirement or their requiring "Past Actions" cover, subject to certain criteria. Some of these criteria are set out below; however, they are subject to change or modification, and the reader should check with Jardine Lloyd Thompson Canada to ensure that there have not been any changes made since the preparation of this article. At the time of writing this update Bulletin, the Retirement/Past Actions program is available at NO premium cost to CCLS members.

There are some important points to remember.

1. The Retirement/Past Actions program will not provide any protection for the land surveying firm itself. Cover is only intended to protect the individual surveyor.
2. The Retirement/Past Actions program policy will only be called upon when all other ongoing practice policies have been exhausted or no other policy of insurance is available to the Insured. Therefore, any retired individual surveyor that was an employee of an existing firm would first turn to his or her old firm's policy for protection. The terms and conditions of that policy would apply before any protection is afforded by the Retirement/Past Actions program policy.
3. Any surveyors wishing to avail themselves of the protection offered by the Retirement/Past Actions program MUST have been insured under an active practice policy through the CCLS program

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commencing on June 1, for a continuous period of at least two years. After the two year period, the surveyor must take out a one year "Past Acts" extension to the practice policy, for a premium which is based on the last fiscal year fees. To obtain this extension under the policy, the surveyor must advise Jardine Lloyd Thompson Canada that he or she is intending to retire or close the firm down, and will need to have the existing policy endorsed with a "Past Acts" date. This endorsement states that the policy will only provide protection for all work done before the declared "Past Acts" date. The intent of this endorsement is to provide the surveyor with a period of time to have an accountant, financial expert or legal counsel close out the company, and remove whatever assets there may be remaining in the company. Recall that there is no protection provided for the company name under the Retirement/Past Actions policy.

4. Another point to remember is that the surveyor seeking to be insured under the Retirement/Past Actions policy must be a member of his or her respective provincial association in an appropriate status (i.e., retired). Membership must be continued each year, if the surveyor wishes to be protected by the Retirement/Past Actions policy.
5. The limits and deductible that the surveyor may have under the Retirement/Past Actions program will be the same set of limits and deductible the surveyor maintained under the last active practice policy.
6. Finally, if the surveyor is retiring and not working in any other survey capacity, then the surveyor will have NO deductible under the Retirement/Past Actions policy. However, if the surveyor has decided to close the firm, and is continuing to practice surveying for another company or in another capacity, such as in the public sector, the deductible will be included. The deductible will be the same as the one the surveyor has chosen for the most recent active practice policy.

The surveyor wishing to be insured under the Retirement/Past Actions program is required to complete, date and sign a one page application which will be sent out each year by the surveyor's provincial association. This application must be returned to the provincial association, who will verify that the surveyor is still a member of the association in good standing, and the association will forward all applications to Jardine Lloyd Thompson Canada for processing. After approval of membership and completion of the application form, a new Master Retirement/Past Actions policy will be issued with an endorsement attached to the policy for each of the provincial associations, listing all the respective surveyors that are insured under the policy and whether they are retired or covered for "Past Acts" as they now work elsewhere. A full copy of the policy will be found at the offices of each provincial association. The policy is NOT sent out to each retired member or member insured for "Past Acts."

An Important Point

If you are a partner of an active, ongoing firm and are considering retiring, you may wish to set up an agreement with the partners continuing with the firm, to add yourself as an Additional Named Insured under the existing practice policy. There should be no cost for your partners to do this for you. The agreement should also contain a clause that states that the firm will provide you with 30 days written notice in the event that they should sell the firm or merge with another firm at a later date and they are no longer able to continue to insure you under the existing policy. This would then provide you with enough time to make alternative arrangements. You might wish to have your legal counsel help you draft the agreement.

Whether you are closing down your firm, changing directions within your profession, or retiring from practice, it is important to consider your legal liability from "Past Acts" to protect yourself into the future.



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