

E&O BULLETIN



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A problem can arise under Section 74 of The Income Tax Act in connection with transfers of property when husband and wife separate. For example, suppose they had jointly bought 100 acres of vacant land for \$20,000 and later as part of the settlement on separation the wife conveyed her interest to the husband, and that two years after that the husband sold the property for twice the purchase price. Apparently, under Section 74 the wife would have to include half of the taxable capital gain in her income without regard to the value of the land at the date of separation.

Members have an obligation to co-operate fully with the adjusters and give them all necessary information. Recently, a member refused to disclose his file because he felt it would be violating the duty of confidentiality. The adjuster was prevented from dealing with the claim until the stalemate ended when the member received notice from the claimant's solicitor that he would be made a third party. One of the purposes of the Society's Errors and Omissions Insurance is to afford protection to the public and this aim would be largely frustrated if members did not disclose their files to the adjuster. Paragraph 6 of the contract of insurance under the heading "Conditions" requires the insured to co-operate with the insurers and failure to do so could result in coverage being denied.

Not long ago, a member acting for a bank registered what was to have been a first mortgage. His instructions were to perform a sub-search only and he was not required to certify title. The books at the Registry Office were not up-to-date. The daily sheet which shows registrations as they are made was running behind and did not show that a collateral mortgage in favour of another bank had been registered four minutes earlier. The adjuster's advice is to check the clerk's desk for entries yet to be made on the daily sheet. In Toronto, this may pose a practical difficulty, particularly on busy days but nonetheless it is the member's responsibility to carry out his client's instructions.

When something has gone wrong, members are urged not to try to carry out repairs themselves. They should instead report the matter to the adjuster promptly, both to protect their own coverage and because it is often more effective when someone not personally involved undertakes to correct the situation.

Kenneth Jarvis,

Secretary.