Williams Underwriting Group

REAL ESTATE ERRORS AND OMISSIONS INSURANCE

WHAT YOU SHOULD KNOW

REAL ESTATE E&O INSURANCE
WHAT YOU SHOULD KNOW

This presentation is designed to provide you with basic knowledge to help you understand your real estate errors and omissions insurance coverage.

The presentation is broken down into six sections:

1. **Definitions.**
2. **How does the policy work?**
3. **What am I covered for?**
4. **Mandated state coverage – how does it work?**
5. **What is excluded?**
6. **Why are claims denied?**

****The information provided in this presentation is generic in nature and is designed to give you basic information on how real estate errors and omissions policies work. You will need to review your own policy for specific policy terms, coverage's, exclusions, conditions and policy limits and sub limits. Please contact the insurance agency that provides your coverage if you have specific coverage and policy questions. This presentation does not replace the advice of a professional insurance agent or legal counsel.**

DEFINITIONS

Below are a few definitions of coverage and policy terms you will need to know to help with your understanding of real estate errors and omissions insurance.

1. **Claims-Made Policy:** Claims-Made Insurance Policies provide coverage based on the date the insured first becomes aware of a loss or potential loss and submits the claim. The date of the real estate transaction must occur on or after your retroactive date and prior to the policy expiration date.

2. **Claim:** A demand for damages or a demand for services. Most policies require this to be in writing. Please check your policy. The demand does not have to be a lawsuit. A letter, note, email etc. is sufficient.

3. **Extended Reporting Period Endorsement (Tail Coverage):** This optional coverage is sold separately and allows for the reporting of covered claims after the policy is no longer in force. This coverage is normally purchased by an insured when they retire, inactivate their license, go out of business or change their business structure. Most policies will allow you to purchase up to three (3) years. This Endorsement does not extend the policy period or change the scope of coverage. This endorsement does not typically reinstate or increase policy limits. The endorsement normally must be requested in writing and paid for within 90 days of the end of the policy period

4. **Limited (Basic) Reporting Period:** An automatic limited reporting period is typically included in the policy. This allows covered wrongful acts to be reported up to 60 or 90 days in most policies after the policy expiration date. This does not extend the policy period; change the scope of coverage or reinstate/increase policy limits. The basic reporting period does not apply to claims that are covered under any subsequent insurance you may purchase.

5. **Policy Period:** Period to report claims for covered wrongful acts that occur on or after the retroactive date of your policy and before the policy expiration date. The inception and expiration dates are shown on your declaration page or certificate of insurance.

6. **Real Estate Services:** Means services performed by a licensee as described in the states license law. Depending on the insurance company the definition may be expanded to cover property management activities as well as the following services, consultant, counselor and notary public services provided they are done in connection with real estate services.

7. **Retroactive Date:** The earliest date of coverage, sometimes called "Prior Acts Coverage". This date is generally the date you first become covered under a Claims-Made policy, which has been continuously in force (no gaps). It is extremely important for you to determine your own retroactive date. Your declaration page or certificate of insurance may list this date.

8. **Wrongful Act:** Means an actual or alleged negligent act, error, omission, misstatement, neglect, breach of duty, etc. committed or attempted by a licensee solely in the connection with the licensee's rendering or failing to render real estate services.

HOW DOES THE POLICY WORK?

Uncovered Prior Act	Retroactive Date	Policy Period	Tail Coverage
	01/01/2010	01/01/2015-2016	

For a claim to be covered under the policy, the real estate service in question must occur on or after your retroactive date and must be reported during the current policy period or any applicable basic reporting period or extended reporting period (tail coverage).

In the example above the licensee will only have coverage for covered real estate transactions that occur on or after January 1, 2010 (retroactive date) and before their coverage expired 1-1-2016. Once you receive a claim, it should be reported to your insurance company as soon as practical as the claim has to be reported in the policy period that it was received. This is another area where it is important to check your policy to be aware of its claim reporting requirements. In the above example, the transaction occurred after 01/01/2010 (retroactive date) the client received a claim in 2013 but did not report until sometime after 2016 (after policy expired) there may not have coverage. If the transaction had occurred prior to 01/01/2010 (retroactive date) and was reported during the above policy term there may not be coverage since the transaction occurred prior to their retroactive date of 01/01/2010

As long as the claim is covered the policy will also provide a defense for you even if the allegation is groundless. If legal counsel is necessary, the insurance company typically will appoint an attorney to represent you. The insurance company has a pool of attorney’s that they use. Not only are the attorney’s well versed in real estate law, they also tend to be very good litigators as well.

In most cases, defense costs are outside the limits of liability. In other words, the cost of defense does not reduce the amount of liability available to pay any damages.

WHAT AM I COVERED FOR?

As stated in the definitions you are in essence covered for your negligent errors, acts and omissions in the rendering or failing to render real estate services. The real question is what does that really mean? What types of claims are covered? Below is a list of general claims we see. The list is not all encompassing, but will give you a sense of some of the types of covered claims.

1. Hidden Latent Defects/Conditions of Property: These are claims that buyers are not told about that are hidden or not easily seen, sometimes even by an inspection. Examples are covering up prior water or fire damage, not disclosing windows don't seal properly, mold issues, etc.

2. Breach of Contract: This is basically not following through on your agreement. Examples include failing to market the property properly, missing dates in the contract, etc.

3. Fiduciary Issues/Earnest Money: This primarily involves the failure to collect or return funds. Examples include funds not being returned when a sale does not close, improper distribution of earnest money, not properly indicating the amount of funds required and payment dates, etc. conversation or advising the other party of things that may hurt the insured's client.

4. Water problems/Basements/Wells/Septic & Sewage: These generally fall into the failure to disclose/misrepresentation realm. Examples are failing to disclose a crack in the foundation that leaks, misrepresenting what a well can be used for or its flow rate, failing to disclose the septic lines need repairing, the water capacity of a property etc.

5. Miscellaneous: These are claims that are not captured in the other areas described. An example may be failure to list proper dues for a homeowners association.

6. Property Size/Acreage/Easements, etc.: This involves errors, often in the MLS listing, regarding square footage, wrong acreage amounts, not disclosing utility, road or other easements,

7. HVAC, plumbing, roofing, electrical: This is another area that is typically some sort of failure to disclose or misrepresentation. Claims include failing to disclose the AC unit needs repair, plumbing needs to be replaced, the roof leaks, wiring is not up to code, etc.

8. Zoning/Occupancy/Wrong Lot-Unit: These are usually the result of the agent just not taking the time to do their job properly. Claims include not verifying the zoning will not permit the use the buyer wants, listing and selling the wrong lot or condo, etc.

9. Contracts/Proper Forms: These are claims resulting from contracts not being properly completed or using wrong forms. Claims include issues relating to not putting in contingencies, proper dates, not properly completing disclosure/agency forms, not providing disclosure forms on a timely basis, not providing bids in writing to seller and seller accepting another lower bid etc.

10. Termites/Pests: These again are typically a failure to disclose or misrepresent issue. A typical claim is a failure to disclose either damage caused by termites/pests or the current infestation of them.

In addition to these claim examples a policy may also provide coverage for some of the following items either automatically or for an additional fee. Many of these coverage's may also have their own sub limits of liability. Please check your policy for details.

- Fair Housing Discrimination
- Lock Box Claims
- Failure to advise of the presence of pollutants
- Sale of primary residence
- Sale of other residential property (usually subject to conditions)
- Regulatory complaint defense
- Short term escrow and earnest money coverage
- Contingent Bodily Injury and Property Damage resulting from your duties as a property manager.

MANDATED STATE COVERAGE – HOW DOES IT WORK?

The key thing to remember is that coverage is license specific. The coverage belongs to the licensee and follows the licensee throughout the state regardless of where the licensee resides (portable during the policy term).

As long as you are an active licensed resident agent, your coverage will apply to real estate transactions worldwide, subject to a few conditions. (Please review your policy for specific wording) As long as you are a resident of the mandated state in which you have purchased your insurance and you are also licensed in another state that requires real estate errors and omissions insurance, the other state will normally require a special certification form to be completed to verify that you have coverage. If a licensee resides outside the state, then the policy only provides coverage for real estate transactions that occur in the state. Here again, please review your policy as there may be exceptions to this rule if you work for a firm that is located in the state.

Some states require that firms/entities also purchase coverage on its license (CO, IA, ID & LA) as well, but most states do not. Regardless of whether firm coverage is required, the real estate policy for the individual licensee will typically provide coverage to the firm for its vicarious liability of the real estate agents that it is responsible for.

When a claim is made against a licensee, the claimant or their legal counsel will typically name the licensee and the firm. So as long as the licensee has coverage in force that applies and it is an otherwise covered claim, the firm will be protected under the terms, conditions and limits of liability of the licensee. If the firm also has its own coverage then in most cases both policies will apply and in most states the coverage limits are stackable. This means you add the two limits of liability together.

Most policies will show two limits of liability. The first number is typically a per claim or wrongful act limit meaning that is the limit of liability you have for any one covered claim. The second is an annual aggregate or total policy limit which is the total amount of liability limits you have for the policy period regardless of the number of claims.

WHAT IS EXCLUDED?

As important as it is to know what is covered, it is just as important to know what is excluded. Below are some typical exclusions found in a real estate errors and omissions policy. Exclusions are typically included in a policy because the exclusion in question is normally covered under another type of policy or has nothing to do with your duties as a real estate agent. Again, please check your policy for complete details.

- Dishonest, fraudulent, criminal or malicious acts
- Unfair completion, piracy, other intellectual property, etc.
- Notice of claim given under another policy
- Bodily Injury, Property Damage, Advertising Injury or Personal Injury
- Violations of state or federal security laws
- Discrimination or employment practices
- Conversion, misappropriation or failure to pay, collect or return fees or commissions
- Failure to maintain insurance or bonds
- Contractual, hold harmless or indemnification agreements
- Ownership interest, including that of a spouse, in other property that sold, managed, built or developed (Most policies allow some ownership. It typically varies from 10-25%)
- Failure to pay or collect money held for others
- Formation or involvement in other businesses.
- Insured vs Insured
- Pollution (Policy may contain some coverage for failure to advise. Still no coverage for testing, clean up, monitoring, etc.)
- Workers Compensation, ERISA and other state and federal labor laws

WHY ARE CLAIMS DENIED?

Knowing why claims are denied is important. Knowing why will help you better understand the policy and help you from making some of the same mistakes. It is also important to note that all claims when submitted are reviewed and determined based on their own merits. Each claim is unique and has its own set of facts that go into determining whether a particular claim is covered.

- Claim allegation is outside scope of services covered under the policy or is excluded.

- Loss reported beyond the basic/limited reporting period included in the policy or any extended reporting period that has been purchased. The transaction/closing occurred before the policy termination, but the claim is reported after any basic or extended reporting period.

- Insured knew of loss before applying for coverage, but failed to report it to their previous carrier.

- Loss/Occurrence prior to the retroactive date. The transaction occurred before the insured obtained continuous coverage.

- Insured instigated the lawsuit. If an insured sues to recover a commission, and a counter claim is made, the counter claim may not be covered, depending on the circumstances.

- Lawsuit or claim defaulted or settled before the claim was submitted. Sometimes a default judgment can be set aside, but if an insured agrees to settlement before submitting a claim, they are acting on their own. The insurance carrier is not obligated to defend or pay for any claims that were settled before the claim was submitted.