



ERRORS & OMISSIONS WEBINAR

John L. Mondics | President, Mondics Insurance Group, Inc. | April 30, 2014



WHY PURCHASE ERRORS AND OMISSIONS INSURANCE?

- The days of caveat emptor or buyer beware are gone
- Real estate professionals are held to the highest ethical standards the law allows.
- Three of ten real estate professionals will be sued during their career.



LITIGATION IS EXPENSIVE

- You can spend upwards of \$100,000 defending a simple failure to disclose lawsuit.
- We live in a litigious society and litigation pervades the real estate industry more than most fields.



INSURANCE COMPANY SELECTION

It should be noted however that E & O is only one part of an overall insurance program that should include general liability, automobile liability, workers' compensation, property insurance and other insurance coverage designed to protect you and your operation.



TEN OF THE TOP REASONS AN AGENT OR BROKER MAY BE SUED

- 1 Failing to Disclose
- 2 Failing to Recommend Inspections
- 3 Failing to Identify Potential Issues
- 4 Failing to Properly Advise on the Terms of a Contract
- 5 Exaggerating Features of the Property

TEN OF THE TOP REASONS AN AGENT OR BROKER MAY BE SUED

- 6 Failing to Explain the Significance of a Disclosure Issue to Buyers
- 7 Making Promises You Cannot or Do Not Keep
- 8 Failing to Explain the Significance of a Disclosure Issue to a Seller
- 9 Failing to Comply with the Time Frames in the Contract
- 10 Representing Clients in Unfamiliar Geographical Areas

INSURANCE COMPANY SELECTION

Before we get in to the application process it is important to discuss briefly the selection of a carrier for your coverage. There are several insurance companies offering real estate E & O coverage but the number of quality companies is limited to a relative few. It is important to check on the rating of your carrier.



INSURANCE COMPANY SELECTION

Best's Credit Ratings are independent opinions regarding the creditworthiness of an issuer or debt obligation. Best's Credit Ratings are based on a comprehensive quantitative and qualitative evaluation of a company's balance sheets strength, operating performance and business profile. The rating categories are easy to understand but look for a minimum rating of "A".



INSURANCE COMPANY SELECTION

Another source is Ward's. Annually, Ward Group analyzes the financial performance of over 3,000 property-casualty insurance companies domiciled in the United States and identifies the top performers in each segment. Each Ward's 50[®] company has passed all safety and consistency screens and achieved superior performance over the five years analyzed.

Finally look for a broker who understands your business, exposures and the appropriate coverage.



THE APPLICATION

The application process can be a source of frustration and problems if handled incorrectly.

- Be accurate
- Supply full disclosure
- Exceed the minimum requested information
- Don't assume or guess at your answers.



THE APPLICATION

Typically the easiest part of filling out an insurance application is the date and named insured. Unfortunately in E & O insurance it can be the first step down the wrong path.



THE APPLICATION

We will discuss dates in more detail later but this is where you select your date of coverage and retroactive date or prior acts coverage date. Pay attention to these dates as they are impactful.



THE APPLICATION

Who is insured is another mine field if not watched closely. Real estate related entities take on different names and forms for various reasons. List all entities including:

- Individuals
- Corporations
- LLC's
- Partnerships including former partners
- Predecessor firms and successor firms

PRIOR LOSSES

Prior claims activity disclosure is important. If you are a larger insured you should be receiving and reviewing your claims activity on a regular basis. When you provide this information to the new or renewal underwriter review the information to make sure it is accurate and up to date.



PRIOR LOSSES

If there are unusual circumstances or a good explanation of any prior claims take the time to explain them on your application. Don't rely on the brief description typically shown on claims runs. This is your chance to explain in greater detail what took place and what steps you have taken to prevent a reoccurrence.



THE CLAIMS MADE FORM

The best way to understand the claims made form which is typically used in providing errors and omissions insurance is to compare it to the occurrence form of liability coverage.



THE OCCURRENCE FORM

Under the occurrence form of coverage an event must take place during the policy period. Coverage is triggered and coverage applies based on when the incident occurred. It doesn't matter when the claim is made or reported as long as it complies with policy provisions on timely reporting of claims.



THE CLAIMS MADE FORM

Under the claims made form a claim must take place and be reported during the policy period. A common way to address this limitation is to buy “prior acts coverage”. The renewal and subsequent policies will retrospectively pick up coverage provided back to the original inception date of the first policy.



THE CLAIMS MADE FORM

For example if you had a policy with a 1/1/2010 original effective date each subsequent insurer should show a prior acts or retro date of 1/1/2010. Even though you may have purchased the policy and coverage from a new company or various companies the company on your coverage at the time of notice would be responsible for the claim. While this retro date structure does give you the coverage for prior acts it could have an impact on your present policy and its aggregate.



LIMITS

The limits of liability coverage you select is important for obvious reasons.

It is wise to purchase higher limits to protect yourself and your company.

If the cost of higher limits seems too high then look at various deductibles. You can probably afford the increase in a deductible for \$1,000 to \$5,000 but few firms can afford a \$1,000,000 claim with only a \$500,000 limit in coverage.



DEFENSE COSTS

Defense costs also play a large role on your applicable limits and the impact on your aggregate limit. Policies vary from including the defense costs in the limits to policies that allocate defense costs outside of the limits.

For example if you purchase a \$1,000,000 limits with defense costs inside the limits and you incurred a \$150,000 in defense costs you would only have \$850,000 in limit remaining.

Policies are available that have defense costs “outside” the limits giving you more coverage.



AGGREGATES

One of the most misunderstood or ignored limit of an insurance policy is the aggregate. An aggregate limit is the maximum amount of a policy will cover during a policy period. If you have a \$1,000,000 occurrence limit and you have a \$1,000,000 aggregate and you have a claim that is valued (including reserved amounts) at \$100,000 then you will only have \$900,000 in coverage left. The only way to get you back to the full \$1,000,000 is to approach the underwriter to reinstate the aggregate.



AGGREGATES

There is also a great impact or exposure to aggregates made by the claims made form and retroactive coverage. If you recall we discussed retroactive dates making your present policy cover prior acts. Basically your present policy is now responsible for all the occurrences that have taken place.



PRICING

While as an insurance professional we like to think that our services are not subject to shopping of our price much like the selection of an attorney or a physician but the reality is that the ever changing cost of insurance and coverage drive many insured's to the marketplace. We have discussed earlier many of the pitfalls in purchasing coverage but it is also important to understand what drives pricing.



PRICING

There are many factors that are considered when insurance companies price your proposal. A starting basis is what all types of real estate related business services do you provide. This includes differentiating between residential and commercial, mortgage banking, etc.



PRICING

The breakdown of both historic and projected revenues have a large impact on pricing.

- Largest Transactions
- Average Size Transaction
- Number of Transactions
- Accurate Number of Full/Part Time Employees
- Formal Training Procedures
- Implementation and Controls



PRICING

Where you practice can also be considered. Underwriters want to know that you don't step outside of your area of expertise including your geographic area.



PRICING

Finally prior claims experience. We have discussed this earlier but it is important that you understand that prior claims can and will be considered in both the acceptance and pricing of your coverage. Follow the steps previously mentioned and be proactive in providing detailed information.



ENHANCEMENTS

Today's insurance marketplace has evolved to the point where many of the carriers are offering expanded coverage to include specific extensions or enhancements to its clients. While we don't want to drill down on these today it is important for you to be aware that these betterments and others are available in the marketplace. Examples of these are:

- Increase Limits – Some insurance carriers will provide limits as high as \$5,000,000
- Optional Two Year Policy Terms



ENHANCEMENTS

- Unlimited Claims Defense
- Choice of Counsel
- Confidential Risk Management Assistance via Hotline
- Broadened Definition of a Real Estate Professional
- Fair Housing Discrimination



ENHANCEMENTS

- Open House Coverage applies to Bodily Injury and Property Damage
- Lock Box Coverage for Bodily Injury and Property Damage
- Fungi/Bacteria Coverage Failure to Disclose



OTHER COVERAGES

As mentioned earlier E & O is only one policy in an arsenal of policies you need to operate every day. It is important to review your other coverage to make sure that all policies together provide you the protection you need. Many times insured rely on expansions of certain policies to provide coverage that is best covered by a policy specifically designed to cover that type of exposure.



OTHER COVERAGES

At the end of the day there are several different ways to cover your business. The last suggestion I will give you is to work closely with your insurance agent or broker. There are several out there but much like the real estate business there are good ones and bad ones and everything in between so choose one you are comfortable with and you can put together a program that should suit your needs.



THANK YOU

PLEASE CONTACT ME WITH ANY QUESTIONS.

JOHN L. MONDICS

MONDICS INSURANCE GROUP, INC.
JOHN@MONDICSINSURANCE.COM
(214) 739-4800

