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Error and Omissions for real estate agents and brokers - protecting your practice

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The purchase of real estate is likely one of the most expensive and emotional purchases an individual will make in their lifetime. All parties involved want the process to go smoothly. And while there are a number of professionals who must all perform their respective tasks to bring the sale to proper completion, ultimately it is the real estate broker or agent that operates in the greatest spotlight of any sale. The buyer, seller, lender, appraiser and title agent all conduct their business based on the deal that the Real Estate agent has arranged. As the hub on which the transaction turns, the agent is susceptible to perceived, if not actual, responsibility for anything that might go wrong.

Real estate agents and brokers generally protect themselves in the course of performing their professional activities with errors and omissions insurance (sometimes called professional liability or malpractice). This type of insurance is one of several steps that an agent or broker can take to increase their levels of skill and professionalism. Continuing education classes, workshops and involvement in state and local REALTOR associations contribute significantly to a professional agent's competency. It is no surprise then that these activities may also help reduce the premium an agent might pay for errors & omissions coverage. Your coverage not only protects you for an alleged error, but may also protect you if another professional is accused of making an error, and all parties in the transaction have claims made against them. A recent claims example involves the brokers, mortgage lender and attorney being sued for an improperly done land survey.

The importance for any real estate agent and broker to understand their insurance policy seems obvious. Who and what does the policy cover? What does the policy exclude? What is the process in the event of a claim? Does the policy cover work performed by subcontractors? Does it cover the subcontractors or just the policyholder? What about lock box protection? Discrimination? Though every insurance policy is different, there are some common features.

Most errors and omissions policies are written on a "Claims-Made" basis. Coverage is limited to only those claims made during the policy period which arise from a covered professional service rendered after the retroactive date. Some policies are written on a claims-made and reported basis. This means that the claim must be made and reported during the policy period. Retroactive dates are assigned based on the first year a real estate agents errors and omissions Insurance policy was purchased and thereafter continuously renewed. Coverage may be transferred from one carrier to another as long as done prior to your policy expiration date. Proof of your current policy's retroactive date, which can typically be found on your declarations page or an attached endorsement, is usually required to maintain retroactive coverage.

Should you retire, or fail to renew your policy you have the option of purchasing an extension of time in which to report a claim for work done between your retroactive date and your expiration date.

This is called an extended reporting period endorsement or "tail" coverage. Costs vary depending on the length of extension period. Review your policy for these options, as they may vary anywhere from a one year extension to an unlimited option under certain circumstances.

Consider carefully the limit option you wish to purchase. Some states require minimal coverage to maintain a license, but is that enough coverage to protect your personal and business assets? Remember that if you have subcontractors or additional insureds on your policy, your coverage level may be reduced as it is spread amongst these different parties.

Review your policy exclusions carefully as this will identify what is not covered in the policy. If you are engaged in secondary activities like property management, appraisals or insurance sales, make sure these activities are not excluded under your policy.

Though none of us ever think we will be sued, it is prudent to choose your insurance company carefully. Insurance companies are rated according to their financial stability with the highest rating being A++. You want to be sure that your carrier will be around to respond and pay out a claim should you have one. We do not recommend working with a carrier who has lower than an A- rating. by A.M. Best.

One last word in choosing whom to place your insurance coverage with, make sure they are accessible and experienced in real estate errors and omissions insurance. Your agent should be able to answer questions about the policy, application and claim process. They should also be responsive to providing proof of coverage to you in a timely manner and providing certificates of insurance should you need one.

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