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Current trends in professional liability insurance for real estate professionals

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When we last reported on the market for errors and omissions and professional liability insurance for real estate agents, appraisers, attorneys and other professionals, it was noted that the insurance industry was still reacting to high claim volume from the mortgage and real estate meltdown that occurred roughly between 2004 and 2010. Due to the nature of these "Claims-Made" policies, many professionals were still being sued and/or disciplined for transactions from earlier years. The increased claim volume resulted in higher premiums, stricter underwriting and other market conditions that impacted the professional real estate insurance market.

While most would agree we have not returned to the traditional markets of yesterday, the markets have become more stable. At least as important for buyers of professional liability insurance, the problems of the "melt-down period" - disputed valuations, foreclosures, questionable mortgage underwriting and inflated property values among them, are starting to wane. Many of those problem properties have already been sold, foreclosed on or refinanced and the resulting insurance claims have taken place. Less frequency in claims means that the market for insurance is also becoming more stable in terms of pricing and underwriting capacity.

As in the past, appraisers continue to bear the brunt of the consequences. It would not be overly simplistic to say that because the appraisal profession may be the most heavily regulated of the real estate professions, and the only one that is typically mandated to carry E&O insurance, that they are the ones most often sued or receiving disciplinary complaints. However, we have still seen a significant decrease in actions against appraisers. Aiding in this trend have been groups like the MBREA, whose legislative work and lobbying has improved the playing field for appraisers, resulting in more positive responses from insurers.

Other professions seeing improvement in the insurance climate include real estate agents and brokers. Claims are diminishing for scenarios such as improper evictions, BPO's and overly aggressive sales tactics. Disclosure (and non-disclosure) , misrepresentation of property condition, zoning or square footage, money/escrow disputes, breach of contract, short sale disputes and fair housing issues continue to comprise the majority of claims involving residential sales. Claims or disputes involving commercial sales remain a small fraction of overall issues, though the severity of those claims in terms of dollar amounts tend to be significantly greater. Many brokerages are benefitting from having in-house risk managers or attorneys (or contracting these services out to a qualified attorney) to mitigate problems and instruct agents in better practice management. Though this type of arrangement is not as common as in other parts of the country, in-house risk management proves a very effective tool in keeping agents and firms out of harm's way.

Title agents, mortgage brokers, home inspectors and property managers are all benefiting from a more positive insuring underwriting climate, especially title agents, who have had to deal with high prices and underwriting restrictions for the past few years. Real estate attorneys still may be considered difficult-to -write underwriting risks, with little relief in pricing or strict underwriting guidelines occurring. However, it makes sense that this scenario will follow the general trends as noted above over time.

As the real estate market settles, so too is the professional insurance outlook for agents, appraisers and others. Now, it is more likely that the skills and practices of a real estate professional will dictate whether claims or complaints occur rather than dour economics of the housing industry of the past several years.

John Torvi is the vice president of marketing and sales at the Herbert H. Landy Insurance Agency, Needham, MA.