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## **Insurance: Professional Liability Insurance Considerations for Commercial Real Estate Business**

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Maintaining appropriate coverage against error or omission by a commercial real estate-related business requires some understanding of how the insurance industry defines a commercial real estate risk and how a particular business fits those definitions. While real estate brokerages, property management companies or general contractors are "commercial businesses", for insurance purposes, insurance companies determine risk, coverage and pricing based on the clientele these businesses serve. A real estate or property management firm listing or managing residential properties may be covered differently, and is paying different premiums, than a similar firm catering to commercial properties. Generally, businesses working with commercial properties pay higher premiums, and often have more coverage restrictions, than those working with residential properties.

### **Less Claims, Bigger Claims**

Professional liability claims regarding residential properties overwhelming outnumber claims involving commercial properties, by roughly ten to one. While this sounds like an insurer's dream scenario in favor of covering commercial risks, the dollar amount of commercial property claims is significantly higher due to higher valued commercial properties and the greater complexity of defending such a claim results in higher legal fees. No real estate professional is immune, whether agent, appraiser, property manager, attorney, title agent or general contractor. Each will pay proportionally more for insurance coverage (E&O, general liability and workers compensation) due to the potential for a large claim.

### **Coverage Concerns**

Most insurers do not issue different policies for professionals working with residential or commercial properties. Thus it is essential for the insured to read the policy and endorsements to understand where there is and isn't coverage. Typical coverage restrictions or exclusions might include commercial right of ways or eminent domain, sale of owned property, property management or open house coverage.

Some policies might automatically exclude any coverage for commercial properties and require that coverage be endorsed back in. It is important to know how a commercial property is defined - residential property with more than 3 or 4 units, any non-residential property, mixed use, etc? Companies working with commercial properties often frequently use subcontractors - are independent contractors covered or excluded in the E&O or general liability policy?

### **The Professional Liability/General Liability Connection**

The blurred line between an E&O claim (with coverage typically excluding bodily injury/property damage) and a general liability claim (with coverage typically excluding professional services) becomes even fuzzier based on policy language relating to commercial properties. Especially true

for property managers, general contractors or property inspectors, how is coverage applied if the professional error or omission results in property damage or bodily injury? (The owner of a strip mall hires a property manager, who fails to secure a contract for snow clearing - the professional omission; and a customer slips and is injured on the property - the general liability claim). This over-simplified example addresses the need to understand coverage, definitions and exclusions and for the insured to purchase E&O and GL coverage appropriate to services provided.

#### Before Buying, Ask the Questions, Tell Your Story

A business should not be hesitant to fully explain their services for fear of not obtaining coverage or higher cost. There is no value in purchasing a policy that doesn't provide proper coverage. All policies have exclusions, but they should not exclude essential coverage needs. Similarly, your insurance representative should have a firm understanding of your business and available insurance options. Commercial risks may require more complex solutions, requiring greater diligence from your representative.

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