



CELEBRATING
63 YEARS

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To prevent potential errors and omissions in insurance claims document, document, document...- by Elaine Matternas

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The buzzword for the real estate industry is “location, location, location.” But if you want to prevent or mitigate a potential errors and omissions insurance claim, your refrain should be “document, document, document.”

Errors and omissions insurance is designed to respond to claims made against professionals for just that—errors or omissions that occur in their provision of professional services. Because those who provide real estate services—from sales and brokerage services to property management to appraisals and more—are licensed professionals, they are expected to adhere to certain standards of care in carrying out their professional duties.

If a real estate transaction goes awry and a buyer, seller, client, lender, or other party involved in the transaction points the finger at you, such a claim or allegation often results from a failure to follow prescribed procedures or failure to document important information in a timely fashion.

Consider, for example, the situation where a seller fails to disclose a condition of the property on a disclosure form—and signs it—but claims that the real estate agent failed to explain the fine print of the form. If the agent keeps detailed notes of the discussion with the seller about the forms, goes through the various forms with the seller, explains them and answers questions, and then documents the conversation, it is less likely that the real estate agent would be the subject of an errors and omissions claim.

Or consider an incident where a real estate appraiser, midway through an inspection of a property, discovers that he or she is not able to gain access to an area or is missing a piece of information that would impact the appraisal report. The appraiser transmits this information to the client, gets verbal agreement to proceed “as is,” but fails to document or confirm the agreement in the work file or to adequately acknowledge the change in the appraisal report. Two or three years later (and oftentimes when a loan goes into default for whatever reason), the appraisal report comes under further scrutiny and is deemed to be deficient.

A well documented file can help the real estate professional avoid an errors and omissions claim. Or, if a claim is made, the file can become the first line of a solid defense.

Good file documentation starts with good policies and procedures, whether you are a staff of many or a staff of one. It requires that your procedures be in writing, communicated clearly and with proper training for all staff members, and reviewed periodically for necessary updates. Internal audits or file reviews are also helpful in flagging areas where changes or additional training is needed.

Here are a few points to keep in mind about file documentation:

- Commit it to writing. An old attorney friend had these words of advice: “A word spoken is a mere token, but a word in writing is forever there.” You only have to read the news coming out of Washington on a daily basis to know that there are a lot of reputations, livelihoods, and careers hanging on who said what when—and how it was documented.
- Be timely, thorough—and objective. Make notes immediately after a conversation, and include all relevant facts, but stick to the facts. Today’s technology makes it much easier to document conversations on the spot than the old system using handwritten notes. But whatever system you use, your notes will be much sharper when recorded at the time of the conversation or immediately after.
- Proofread your communications. Review your written communications carefully to make sure that they are clear and concise and cannot be misunderstood. This is especially important before pushing the “send” button on your emails and texts. And avoid using insider jargon that the recipient may not understand.
- Establish a written record retention policy that complies with the statute of limitations in your state(s) and any other state regulations affecting your business.

The good news? Good procedures and good file documentation will not just help to keep you out of court; they also make good business sense. They can keep your office running smoothly and efficiently, resulting in good customer service, increased sales, and little or no down time responding to a claim.

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