

Real Estate Appraisers – Frequently Asked Questions Regarding Errors & Omissions Insurance

As one of the largest providers of Errors & Omissions Insurance for Real Estate Appraisers in the United States, the Herbert H. Landy Insurance Agency is increasingly asked questions regarding claims issues, how to best handle risk that might lead to an insurance claim, and other matters related to Errors & Omissions insurance. In today's turbulent real estate climate, there are some definite trends, as well as steps that can be taken by appraisers to help avoid claims and otherwise maintain a more risk-free operation.

The frequency of Errors & Omissions insurance claims has increased over the past year by several hundred percent. The claims are overwhelmingly related to overvaluation of property. The second biggest category of claims involves alleged mortgage fraud. In fact, claims are being brought by lenders alleging that it was the appraiser's responsibility to determine the financial capability of the buyer. Claims are being brought in fairly equal numbers by both homeowners and lenders. We are also seeing a significant increase in complaints to state disciplinary boards regarding these issues, as well as allegations that the appraiser did not use proper or sufficient property comparisons in the appraisal.

As many of these claims appear unfounded, it is important to understand how an Errors & Omissions insurance policy might respond to these or other types of allegations. Most insurance policies explain the details of coverage in the beginning of the policy. Generally, this includes information on the insurer's "Duty To Defend". Coverage offered through the Landy Agency states that the Duty to Defend covers any suit that the insurance applies to, even if the suit is "groundless, false or fraudulent". Similarly, coverage is extended for certain costs related to the insured's involvement in regulatory board complaints. There is considerable detail and information in any insurance contract that a policy holder should become familiar with. In the simplest analysis, the coverage and exclusions in an insurance policy coincide with sound and ethical business practices. All policies are not created equal. Any appraiser or real estate professional should become very familiar with what their E&O policy covers, or does not cover as part of their risk management plan.

Another trend we are observing, both in claims and in professional appraisal circles, is identity theft. Appraisals are being submitted using names and license numbers of appraisers who were not involved in the appraisal. If a claim or complaint is then brought against the appraiser whose name appears on the appraisal, they may find themselves in the uncomfortable position of proving that they did not perform the appraisal.

Another common area of inquiry about Errors & Omissions insurance involves retroactive coverage, changing firms and limits of liability. Retroactive, or Prior Acts coverage, is coverage for past acts. It is a date that is assigned on your insurance policy indicating how far back the insurance company will cover. For example if you have had continuous E&O Insurance in your name since 7/1/2003, this would be your prior acts date. The Insurance carrier will respond to a claim for work you performed from 7/1/2003 forward, assuming you have had continuous E&O Insurance with no lapses in coverage. Most reputable insurance providers will honor your prior acts date if you switch to a new insurer. Should you leave the business or retire, you would have the option of purchasing an Extended Reporting Period. An Extended Reporting Period is an extension of time in which you can report a claim. It does not extend coverage on a going forward basis, but extends the time in which you can report a claim for work done between your prior acts date and your expiration date. In the event of retirement or ceasing to practice, purchasing an Extending Reporting Period is advised. Several options are available in coverage offered by Landy, as well as with other reputable insurers. With the current economic climate, the cost of doing business is constantly being assessed, including the cost of insurance. One way to reduce insurance costs might be to reduce the limits on a policy, for example from \$1,000,000 of coverage per claim to \$500,000 per claim. This is a decision, however, that most insurance professionals, claims representatives and attorneys would advise against. Reducing limits actually has a relatively small impact on the cost of the insurance and also means that the available coverage for prior acts is reduced. Despite a potential small cost savings, there is little to no benefit of reducing insurance limits.

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The issues of risk management, as they relate to Errors & Omissions insurance and the many other aspects of running an appraisal business, are considerable and go far beyond the scope of this article. The type of business formation used (sole proprietor, corporation, LLC), the choice of your business partners, the strength of your contracts, identity theft protection and many other factors will affect your ability to operate a sound and secure business. We recommend you consult a qualified insurance professional to discuss your needs and questions regarding Errors & Omissions insurance, and similarly use resources such as attorneys, accountants and professional associations in regard to developing sound business methods.

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