

## Real Estate Agents and Failure To...



Real Estate agents can be sued for a variety of reasons. Most of them start with "Failure to..." followed by Disclose, Recommend, Properly Advise, Identify, Explain, or Comply. Failure to disclose is the biggest of these, easily accounting for half of all buyer initiated lawsuits. Agents that demonstrate their expertise and advise their real estate clients on the top risks they face are better positioned for successful, long-term relationships.

A comprehensive risk management strategy for real estate agents and brokers includes prevention (risk reduction techniques), early detection (immediate reporting of claims and even potential claims) and treatment (E&O insurance). Common sense risk reduction techniques can lower the chances of a claim happening in the first place. If a claim does occur, treatment comes in the form of immediate reporting and a solid Errors and Omissions policy backed by experienced claims handling; because claims happen, sometimes even to good people who have tried to do everything right.

### Top Risks

**Failure to Disclose and/or Misrepresentation:** The overwhelming majority of claims against real estate agents and brokers fall into this bucket. The reason for this is simple - there is a natural and innate reluctance on the part of a property seller to reveal facts about a property that might impede the sale or at the very least lower the potential sale price. Examples include: agent-owned property transactions; foreclosed and short sale property transactions; dual agency transactions; and errors in marketing a property.

Other common claims include bodily injury/property damage and acting outside of one's area of expertise. In addition to having a risk management plan in place, immediate reporting of claims or even potential claims is critical in managing results.

### Early Detection - Reporting

Helping clients to understand the importance reporting claims and potential claims immediately is critical. There is an understandable reluctance to report incidents that may give rise to claims for fear that simply reporting an incident will lead to increased insurance premiums in the future (most of the time this is not the case), but letting them fester is a bad call. We have countless examples of claims that were only reported after they blew up, but for which we could have achieved great results if only we had been brought in at the outset. Handling claims and potential claims is an E&O carrier's job. Report claims and potential claims immediately.

### Treatment - Real Estate Errors and Omissions Policy

Despite best intentions, people make mistakes. In the errors and omissions world, the saying "to err is human, to get sued for it, pretty much a given" has a lot of truth. The right Real Estate Errors and Omissions policy will best respond to the claims unique to real estate agents and brokers.

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