

## **REO BUSINESS-RISK & REWARD**

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The cycles of the real estate market dictate how you generate your business which can present challenges in managing your risk. At the height of the market a few years ago, we were dealing with multiple offers, waiving inspection items and creative ways in which to get an offer accepted.

Today the market is quite different with short sales and REO's being a significant source of opportunity.

Following are some important insurance considerations relating to the requirements put forth in the lender listing agreements.

### **Errors & Omissions**

All E& O Policies define the scope of services that will be covered under the policy. Ideally, the definition of professional services for a real estate firm should include duties of a real estate agent, broker and property manager.

Some policies further define what services are considered to be property management activities. These may include 1) development and implementation of management plans & budget; 2) oversight of physical maintenance of property; 3) solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions; 4) development, implementation and management of loss control and risk management plans for such property; 5) development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of such property; or 6) personnel administration and record keeping in connection with such property.

If your policy does not cover property management activities or you are operating outside of the scope of your professional services as defined in your E&O policy then your policy will **not cover** any claims that arise from these activities.

Some lender listing agreements require you to provide additional duties that you might not normally provide or are beyond your area of expertise such as safety inspections, environmental inspections or renovations of the property. Several of the policies offered by the current E&O providers specifically state that property management services **do not** include renovation services or analysis or evaluations of, or recommendations concerning environmental hazards or exposures.

You should undertake a rigorous review of your E&O policy with your Insurance Broker to determine where your exposures for uncovered claims exist so you can adequately address funding these risks to the firm. Consideration can be given to placing an additional E&O policy that would cover "property preservation" exposures that can fall outside of the real estate E&O policy.

## **General Liability**

All E&O policies contain an exclusion relating to bodily injury or property damage claims. This is covered under the firm's general liability policy.

Many carriers will write general liability coverage for a real estate office and attach an exclusion for properties you manage and /or properties you list for sale. What this means is they are only providing coverage for your office premises-if someone slips and falls while at your office.

When the policy is written in this manner it is not covering you for what you do-listing and selling properties or managing properties. Your exposure as a real estate agent, broker or property manager is when you are out showing property and your negligence causes bodily injury to a 3<sup>rd</sup> party or property damage.

You must confirm the coverage afforded under your current general liability policy addresses the real estate activities you are engaged in. If it does not then you will be faced with defending yourself in an uncovered claim as well as the lender if named as an additional insured under your policy.

You should be aware that residential property management is considered a high risk activity that many carriers are not willing to cover.

Typically these listing agreements will require you to name the lender as an additional insured under your general liability and automobile liability policies. In order to add an additional insured under your policy you must submit to your underwriter for approval and there may be an additional premium charge.

If the listing agreement requires you to cover independent contractors under your general liability policy you will need to address this with your underwriter as general liability policies generally do not provide coverage for independent contractors.

You should confirm the limit of liability that the lender requires in your contract. The standard general liability limit is \$1,000,000 per occurrence; \$2,000,000 annual aggregate. If you are required to carry a \$3,000,000 combined single limit you will need to increase your general liability limit to \$3,000,000, if possible, or purchase an umbrella policy to provide the higher limits.

Many of these listing agreements require a full indemnification to the lender. When coverage is not afforded under an insurance policy, the firm and the agent will be responsible for these uncovered exposures assumed through the agreement.

The reality today is that lenders are shifting **ALL** of their risk to the real estate agent and firm thereby significantly increasing the risk of the transaction. It is important that, following discussions with your Insurance Broker and Attorney, you transfer as much risk as possible to the insurance carrier and determine methods to fund the uninsured risks of this market.