

Errors & Omissions Insurance

What to look for when reviewing your E&O policy...

Is it a claims-made policy? Important facts about a claims-made policy:

- Claims-made policies require that the policy be in effect at the time a claim is made or reported regardless of when the wrongful act took place.
- Claims-made policies contain a retroactive date/prior acts date. This is the date the first policy inception and from where uninterrupted coverage begins.
- If you decide to close your agency you should consider purchasing “tail end” coverage – Extended Reporting Period (ERP) endorsement. The ERP endorsement provides coverage for the time period from the retroactive date to the date the policy expires. If the ERP is not purchased and a claim arises after the expiration date of the last policy written – no coverage is available.

When reviewing your E&O policy you'll want to review the following:

- Who is considered an insured on my policy?
 - Whether you operate as a sole proprietor or a corporate entity, you may find yourself asking the question, “who is considered an insured on my policy?”
 - Review the definitions of Insured to ensure that you and your staff meet the definition.
 - If you use Independent Contractors – review the policy to ensure coverage is provided.
 - You will need to review the Exclusions section of the policy as well to ensure they are not excluded from the policy.
 - An Independent Contractor may have their own policy in place, but that policy does not protect them or you if the work they are performing is under the auspices of your firm/agency.
 - Make sure that all of your business or organizational names are covered under your E&O insurance. If you're not named, you're not covered. The same applies to liability on behalf of others insured on your policy.
- What is covered under my E&O policy?
 - Errors and omissions insurance (E&O) is a type of professional liability insurance that protects companies and their workers or individuals against claims made by clients for inadequate work or negligent actions." It is designed to cover court costs and settlements for those times when you or your employees make a serious error and it negatively impacts a client. Even if the accusations are incorrect, the cost of going to court can bankrupt a business.
 - Most E&O policies in the marketplace that provide coverage for Title Agents, Abstractors and Escrow Agents are written on miscellaneous policy forms. You will need to review the definition of “Professional Services and Wrongful Act” where they are defined in the policy where it will state what coverage is provided in the event of a claim or incident.
 - Review any Endorsements attached that may define coverage.
 - Review the Exclusions section of the policy to ensure work you perform is not excluded.

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- What is not covered under my E&O policy?
 - You need to be aware of the common exclusions within your policy in order to understand and plan for the implications of these circumstances. Knowing what is excluded under your insurance policy will/should encourage your agency and others to invest more time in planning to prevent potential claims from occurring.
 - Criminal or illegal acts are not covered by errors and omissions. Nor is discrimination, acts that pollute, or the financial insolvency of your agency.
 - Bodily harm or damaged property are also not covered under an E&O policy.

Special Enhancements to look for in your E&O policy:

- Does your E&O policy provide coverage for fraudulent funds transfer/wire fraud?
 - Most E&O policies do not provide coverage for wire fraud.
 - If coverage is provided it usually contains a sublimit
 - Do not rely on your E&O policy to provide coverage for wire fraud. Any wire fraud claim you would report could jeopardize coverage under your E&O policy for E&O claims.
- Does your policy provide coverage for CFPB claims?
 - Most policies do not – review the Insuring agreements or endorsements for coverage.
- Does your policy provide coverage for RON exposure?
 - Most policies provide coverage for Notary services but only if there is physical presence.
 - Check with your carrier if this coverage can be added to the policy.

The bottom line is do not rely on your thoughts about what your policy covers and does not cover. Call your insurance agent or broker to discuss the nuances to your policy to ensure it provides the protection you need. Policies are changing to adapt to the needs of the consumer – but you need to be diligent and ask questions.