Errors, Omissions, Insurance:
The Real Estate Professional's Guide to E&O Coverage
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Introduction: How Real Estate Agents Can Close the Door on Lawsuit Risk
INTRODUCTION: HOW REAL ESTATE AGENTS CAN CLOSE THE DOOR ON LAWSUIT RISK

You know how doctors can face a malpractice lawsuit when they make a mistake? Real estate agents actually have a similar "malpractice" risk: clients can sue you, claiming you haven't done your job as an agent.

But here's the thing: while it's easy to know when doctors make a mistake ("I'm sorry, doctor, but you've left a scalpel in my chest!"), it's harder to say for sure when a real estate agent has.

For instance, if you fail to warn buyers about things like water seepage in a basement, termite damage, or ice damming on a roof, they could sue you for failing to uphold professional standards. Even if you didn't know about the defect, the buyer might sue. And even if you're ultimately cleared of wrongdoing, lawsuits cost money.
Errors & Omissions: The "Malpractice" of Real Estate

The phrase "errors and omissions" refers to the malpractice risks real estate professionals face - in other words, the risks they face related to the standard of care they're expected to uphold. E&O risks may include...

- Property condition disclosure (or non-disclosure).
- Dual agency.
- RESPA violations.
- Breach of fiduciary duty.
- And more.

If a client believes that a real estate professional has made one of these mistakes or oversights, they can sue. The costs of that lawsuit, whatever its outcome, may be covered by real estate Errors and Omissions Insurance.

How does this insurance work? As a real estate professional, you're probably familiar with mortgage insurance, so let's use that as a starting point to help us understand real estate E&O.

How Real Estate Errors & Omissions Insurance Works

A lender who offers a high loan-to-value (LTV) mortgage might sign up for mortgage insurance, which pays them if the borrower defaults on the loan and can't pay it. Because of how much money is at stake with these mortgages, lenders and banks want protection in case something goes wrong.

E&O Insurance works a bit like that. In your career as a real estate agent, you'll work a lot of sales. For the most part, nothing will go wrong. But if there is a problem with a sale, your client could sue you, and the cost of the lawsuit could wipe out your business. E&O Insurance may pay these legal costs so that your business is able to keep functioning.

When real estate Errors and Omissions covers a lawsuit, it may pay for...

- Lawyers' fees.
- Judgments.
- Settlements.
- Court and witness fees.

You might have a lot of questions running through your head about E&O Insurance. In this guide, we'll walk you through the basics: how realtor's E&O works, when real estate agents should consider buying a policy, and how much they can expect it to cost.

By the time you finish reading, you'll understand when your agency might want to consider signing up for E&O, how to find a good deal on insurance premiums, and what you can do to prevent lawsuits.
PART 1: How Does Errors and Omissions Insurance Protect Real Estate Professionals from Lawsuits?
PART 1: HOW DOES ERRORS AND OMISSIONS INSURANCE PROTECT REAL ESTATE PROFESSIONALS FROM LAWSUITS?

As we mentioned, Errors and Omissions Insurance works like "malpractice" insurance for real estate agents. While that gives you a basic idea of what your coverage can do, you probably still have a number of questions. In this chapter, we'll answer some common questions realtors have about their E&O Insurance, including...

- What counts as "Errors and Omissions?"
- Why do clients initiate a dispute?
- What can you do to minimize the likelihood of being sued?
- How can Errors and Omissions Insurance reduce the cost of lawsuits?

Along the way, we'll look at case studies, real-life examples, statistics that show how much a lawsuit could cost your agency, and what steps you can take to prevent an E&O lawsuit.

What Counts as "Errors and Omissions?"

An errors and omissions claim can sometimes be as much about a client's perception of your work as it is about reality. Clients can allege you did something wrong, pinning the blame on you, when in reality, you made no mistakes.

Let's go back to our metaphor about doctors and malpractice insurance. What could a surgeon be sued for? They could be sued for botching an operation, misdiagnosing a condition, inadequately informing a patient about a side effect, or failing to treat a patient in the best way.

Similarly, you could be sued by clients who claim you either made a mistake or didn't fulfill your professional duties as a real estate agent. Those two things – errors and omissions – make up your E&O liabilities.
Common Housing Headaches that Prompt E&O Lawsuits

Imagine a tree-lined street with picturesque Victorian homes. The crown jewel of the block boasts large bay windows, delicate dentils, and a charming turret. This house that looks beautiful on the outside could suffer from dozens of problems on the inside, including:

- Lead paint.
- Septic tank issues.
- Mold.
- Roof leaks.
- Asbestos.
- Radon.
- Insects and rodents.
- Countless other headaches.

As a real estate agent, you’re required to disclose any issues to potential buyers, but this can be difficult because you don’t always know when there’s something wrong with a house. You can hire inspectors and appraisers, but it’s still possible that they’ll miss something. If a mold problem goes unnoticed, the client could sue you, claiming you faltered in your duties and owe them financial compensation.

However, disclosure issues are only one of the common sources of real estate E&O lawsuits. Here’s a list of potential reasons you could be sued:

- Failure to disclose physical and structural problems with a property.
- Breach of fiduciary duty or failing to act in a client’s best financial interest.
- Failure to check that the information listed about a property is accurate.
- Failure to inform clients about liens on a property.
- RESPA violations.

These common sources of lawsuits look fairly cut and dry, but often it’s not so simple.

Real estate agents have a duty to disclose property defects to potential buyers.
E&O Case Study: A Property with a Gruesome Past

A strange lawsuit in Pennsylvania shows how unpredictable these E&O realty cases can be. A buyer in Pennsylvania sued her real estate agent for failing to disclose that the house she bought had been the site of a murder/suicide. Are real estate agents required to disclose whether a serious crime has been committed at a property?

It's an interesting question. In many states, there's a law that says you don't have to disclose if a property has a "psychological stigma" – which is the law's way of saying you don't have to tell someone if the house gives you the willies.

Pennsylvania doesn't have a similar law, so the buyer was able to sue her real estate agent. The courts ultimately ruled in favor of the real estate agent, asserting that the murder/suicide was not a material defect that the seller must disclose.

What can you learn from this example? There are two main takeaways:

- Your professional duties are based on the laws in your state.
- E&O lawsuits are unpredictable because clients could sue you for failing to disclose all kinds of problems, including some you'd never even think of.

When you fail to uphold the standard of care (as established by state law) or breach your fiduciary duty, a client may sue to recover for that loss – even if a client only perceives that you have committed a transgression.

What Isn't an Errors and Omissions Dispute?

Remember that errors and omissions disputes are only about mistakes or oversights related to your professional work. Other disputes can arise that Errors & Omissions Insurance won't cover.

For instance, a potential buyer could sue you if they’re injured during an open house. Say the buyer trips over a power cord and face-plants into a table. They sue you over dental bills to repair a chipped tooth. This lawsuit – many people refer to cases like this as slip-and-fall lawsuits – is typically covered under General Liability Insurance, not E&O Insurance.

While Errors and Omissions Insurance may cover your professional liabilities, keep in mind that intentional wrongdoing, crimes, and fraud aren't covered under E&O. As a rule, it's usually safe to assume that a crime or fraudulent actions won't be covered by your business insurance.
Why Do Clients Initiate E&O Lawsuits?

Clients may raise an E&O lawsuit against your real estate agency if they think that you’ve...

- Caused them to suffer a financial loss.
- Breached a contract.
- Failed to meet standard of care guidelines.
- Posted inaccurate information in a listing.
- Misrepresented the condition of a property.
- Breached your fiduciary duty.
- Violated RESPA laws.

- Acted outside the scope of your work as an agent.
- Treated them unfairly or failed to give them adequate attention or guidance.

There’s also one rather cynical reason why clients might sue you – they think they can get a big payday from a lawsuit. By suing you, clients could potentially score thousands of dollars. That’s more than enough to motivate some folks to file a lawsuit.

Let’s move on to some real-life examples that show the kind of lawsuits that are often filed against real estate agents.

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**Note:** E&O won't cover lawsuits initiated by the federal government or a law enforcement agency over RESPA violations.
Realtor Insurance Case Studies: Why E&O Can Be Crucial for Agents

We’ve already listed some of the common reasons realtors might be sued, but it can be helpful to look at a few real-life examples. Below we summarize four lawsuits that show the kind of claims you might see if a client sues you.

<table>
<thead>
<tr>
<th>CAUSE OF LAWSUIT</th>
<th>DESCRIPTION</th>
<th>COST</th>
<th>TAKEAWAY</th>
</tr>
</thead>
</table>
| Inaccurate listing | • Seller told agent that the house was connected to the city’s sewer system.  
• Agent relayed this information to the buyer.  
• After purchase, buyer found that the house had a septic tank and sued the agent for misrepresentation.  
• The judge found in favor of the buyer, forcing the agent to pay the cost of connecting the house to the city’s system | $4,200 | Failing to verify information can cost you. |
| RESPA Violations | • One of the nation’s largest realty teams is being sued for violating RESPA.  
• Among other things, RESPA prohibits agents from paying referral fees or kickbacks to parties that refer clients.  
• RESPA laws exist to protect buyers from questionable practices that could cost them extra money. | $11.2 million | Make sure you’re in compliance with RESPA. The HUD’s breakdown of RESPA laws is helpful. |
| No cause (meritless) | • Seller’s agent informed buyers about a potential water intrusion problem in a house.  
• Two years later, water intrusion began causing damage.  
• Buyers sued the seller’s agent.  
• The lawsuit lasted for years but the court ruled in favor of the seller’s agent. | $60,000 (legal fees, covered by the buyer) | Lawsuits are expensive, even if you’re ultimately cleared of wrongdoing. |
| Misrepresentation of a property’s condition | • After purchase, buyer was asked to contribute $2,000 to the homeowner’s association for roof repairs.  
• Buyer said roof repair needs should have been identified during the inspection and sued in small claims court.  
• The judge found in favor of the agent, noting that the defect hadn’t been identified until after closing and that the buyer had voted in favor of funding repairs! | Legal fees + time | Even when you aren’t found liable for any wrongdoing, responding to a lawsuit can be a drain of time and energy. |
Wait... More Lawsuits? Additional Risks to Watch out For

While the chart you just saw represents some of the more common lawsuits real estate agents face, it’s by no means exhaustive. Let’s look at a few less common lawsuits and whether they’re covered by E&O Insurance:

- **Failure to meet standard of care guidelines / breach of fiduciary duty.** A client might allege you pushed for a higher price in order to get a higher commission for yourself, but ultimately cost them money. In so doing, you breached your fiduciary duty. These lawsuits are often covered by E&O.

- **Unfair treatment of clients or failure to provide adequate guidance.** Clients could allege that you dropped the ball on a deal. You were too busy working with other clients and couldn’t put in an offer on time for them, causing them to lose out on a home they desperately wanted. Lawsuits like these may be covered by E&O.

- **Acting outside the scope of what an agent should do.** Generally speaking, E&O Insurance only covers the work you do as a real estate agent. If you act outside the scope of your professional liabilities, E&O probably won’t cover it. For instance, if a real estate agent offers to perform an inspection on a house but isn’t qualified to do so, this could lead to lawsuit (one that probably isn’t covered by E&O).

- **"Agency" lawsuits.** A real estate agency can be sued if its agent went outside the scope of her duties as an agent. For instance, if an agent says she’ll oversee a home renovation, her agency could find itself embroiled in a lawsuit, should the agent mess up the buyer’s renovation. These disputes might not be covered under E&O because they have to do with work that real estate agents performed outside their professional duties.

What do these examples show us? It’s important to know what is and isn’t covered by E&O Insurance. Real estate agents that offer to do inspections, oversee renovations, or make recommendations about non-real-estate matters could be sued in a lawsuit that won’t be covered by E&O. When you work outside of the scope of real estate, you expose your business to greater risk. It’s best to stick to real estate work!
What Are the Most Common Real Estate Lawsuits?

As you’ve seen from the examples provided so far, real estate lawsuits can run the gamut. According to information from Realtor.org [PDF] and numbers published by Rice Insurance Services [PDF], the most common claims against insurance agents are as follows:

- Ethics
- Antitrust
- Earnest / Escrow Money Disputes
- Technology Problems
- Third-Party Liability (including incident covered by General Liability Insurance)
- Deceptive Trade Practices Act / Fraud
- Employment
- RESPA Violations
- Agency (suits alleging that an agent improperly owes a duty to a third party besides the buyer or seller)
- Property Condition Disclosure (possibly filed as a breach of duty, breach of contract, negligence, or misrepresentation lawsuit)

The nice thing about E&O Insurance is that when you’re sued – even if the lawsuit is unfair or completely ridiculous – your insurance can cover your legal bills. That benefit could mean the difference between bankruptcy and carrying on with business as usual.
Ways to Minimize the Likelihood of Being Sued

No real estate agent can completely eliminate the possibility that they'll be sued. There will always be that client, who feels entitled or wants to blame everything on you. That's just part of the business.

For the rest of the people you'll serve, there are ways to minimize the likelihood that you'll be sued. Let's take a look at risk management tips you can apply to your real estate agency.

5 Ways to Reduce the Chance of a Real Estate Lawsuit

Even the best real estate agents can be sued in an E&O lawsuit. Sometimes the "mistakes" that lead to a client lawsuit aren't really mistakes. They result from miscommunications or client overreactions to a problem with their home purchase or sale. (And while we're on the topic: don't underestimate the potential for "overreactions:" buying a home is a high-stakes game for most people, and emotions can run strong. Emotionally charged situations are the ones most likely to lead to lawsuits.)

What can you do to prevent lawsuits? Here are five strategies to protect your real estate agency:

1. **Communicate.** They say real estate is about three things: location, location, location - but really you could say it's all about communication, communication, communication. Given how many lawsuits are about disclosure issues, it's crucial that real estate agents be crystal clear about any problems a property might have.

2. **Document everything.** Going hand in hand with communication is documentation. Email makes it easy to document any communications with clients. Send a follow-up to email to clients to confirm things you've agreed to verbally. Take comprehensive notes and retain all papers.

3. **Know your state laws and codes of ethics.** It goes without saying that violating your state laws could lead to legal trouble. But knowing your codes of ethics is also important. If you're sued, the plaintiff's lawyers will look for evidence that you failed to fulfill your professional duties. One clear-cut way they can prove this is by showing you didn't follow the professional guidelines established in a real estate agent's code of ethics.

4. **Build relationships.** It's a good business practice to build a solid relationship with your clients, but it can also prevent a lawsuit. Clients may be less likely to sue you if they feel they can talk to you about an issue they have with a property.

5. **Avoid going “above and beyond.”** Real estate agents can get in trouble if they offer advice they're not qualified to give. Be careful about making recommendations to buyers and sellers or referring contractors. Stick to the services you are specifically contracted to do.

While you can't prevent every lawsuit, these five strategies can help you minimize problems or avoid disputes altogether.
How E&O Insurance Reduces the Cost of Lawsuits

If, despite your best efforts, someone brings a lawsuit against your real estate agency, the good news is that Errors and Omissions Insurance can reduce the cost of the lawsuit. Here's how it works.

What You Pay for Errors & Omissions Insurance

In order to have real estate Errors and Omissions Insurance, you'll pay...

- **An annual premium.** This is the amount you pay each year to your insurance agency. In essence, you pay a little each year in exchange for a lot of protection when you need it.

- **A deductible.** This is the amount you're responsible for paying before your benefits kick in. Most real estate agents have a deductible between $1,000 and $2,500. When you've paid that, your insurance can cover the remaining legal costs until you reach your policy limit, usually $1 million.

Because your legal bills will accumulate quickly in a lawsuit, E&O can save you from having to pay out of pocket for the mammoth expense of legal costs, judgments, and settlements.

How Much Does E&O Insurance Usually Cost for Real Estate Agents?

You can view our more detailed real estate insurance cost estimates online, but let's take a quick look at what your annual premiums might be for Errors and Omissions Insurance.

The typical annual premium of E&O Insurance for different real estate professionals breaks down as follows:

<table>
<thead>
<tr>
<th>PROFESSION</th>
<th>TYPICAL ANNUAL COST OF E&amp;O INSURANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgage Brokers</td>
<td>$2,760</td>
</tr>
<tr>
<td>Property Managers</td>
<td>$1,386</td>
</tr>
<tr>
<td>Real Estate Agents</td>
<td>$660</td>
</tr>
<tr>
<td>Real Estate Appraisers</td>
<td>$790</td>
</tr>
<tr>
<td>Title Abstractors</td>
<td>$880</td>
</tr>
<tr>
<td>Title Agents / Closing Agents</td>
<td>$1,250</td>
</tr>
</tbody>
</table>

Depending on the area of real estate you work in, you could have to pay between $660 and $2,760 for E&O Insurance. These numbers are based on what the typical small-business owner pays – your agency may have higher or lower premiums.
How Much Do Lawsuits Cost?

It's difficult to estimate what a real estate lawsuit might cost because lawsuits can come in all shapes and sizes. Think back to the case studies we looked at. The less expensive lawsuits cost a few thousand dollars, while the most expensive lawsuits for a big agency were multi-million dollar cases. That's a fairly accurate sample of the range of lawsuit costs you could see.

But let's look more at how costs can vary:

- **Frivolous lawsuits ($2,000 to $5,000).** A frivolous lawsuit is an unfair complaint that a judge throws out before it can go to court. Even these unfair claims can be costly. The US Chamber Institute for Legal Reform estimates that small-business owners pay between $2,000 and $5,000 for the typical frivolous lawsuit.

- **The typical E&O lawsuit (approximately $44,000).** Our research shows that for a "malpractice" or Errors and Omissions case, you can expect to pay around $44,000 in legal costs. The total costs will also depend on a number of factors, including where in the country the case is tried, what the outcome is, whether the defendant owes damages, and many more.

- **Non-lawsuit costs.** There are "costs" other than your legal bills and damages that come with a lawsuit, including damages to your reputation. Much of your business is likely based on referrals and customer loyalty, and the reputational damages that come with a real estate lawsuit could be damaging. E&O Insurance may also cover settlements, which occur when you settle out of court. Settlements are typically a quieter and quicker way to resolve a lawsuit.

In an uncertain time when you're not sure how much a lawsuit will wind up costing you, you'll have comfort knowing that E&O can offer financial protection to your real estate agency.
PART 2: When Do Real Estate Professionals Need E&O Insurance?
PART 2: WHEN DO REAL ESTATE PROFESSIONALS NEED E&O INSURANCE?

Currently, 12 states require real estate agents to have E&O Insurance in order to be licensed. In these states, you'll need coverage and can either buy it though a state broker or an independent insurance agency (like insureon).
Even if E&O is not required by law, it can offer valuable protections to real estate agents. As we've seen throughout this eBook, agents can be sued for a multitude of reasons. It's smart to have a risk management strategy that accounts for the cost of a lawsuit. Plus, there are some situations where business partners and parent real estate agencies require you to have Errors and Omissions Insurance.

Why would a business partner require you to carry E&O?

- **A client has a problem with a sale.** They could sue everyone who was involved, including brokers, agents, and appraisers. Business partners may want you to have your own insurance policy so they know that the costs of legal action won't fall on them.

- **You work as a contractor for a parent agency.** Some larger agencies require their contractors to carry insurance for the same reason. If a buyer is frustrated with their home purchase, your parent agency might want you to have your own E&O to pay for a lawsuit so their policy doesn't have to cover as much.

Your E&O requirements will depend a lot on where you work and the specifics of your business. Even if you're not legally or contractually required to have E&O, it can make financial sense to have this coverage.

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**When Should You Sign Up for E&O Insurance?**

Investing in real estate agent E&O Insurance as soon as you start practicing is wise because...

- It helps build trust with clients and potential business associates.
- E&O polices are claims-made policies, which means they cover more the longer you have them.

Further, it can be reassuring to clients to know that they're working with a real estate agent who has insurance. Why might clients want to know you're covered?

- Insured agents are often in a better financial situation.
- You have a risk management strategy in place, which may pay for potential lawsuits.

These reassurances for clients demonstrate that you're not going anywhere and you take your work seriously.

Additionally, agents should consider signing up for E&O Insurance early because of how a "claims-made" insurance policy works. Incidents and claims that happen before your policy is active or after it is terminated can't be covered. Say you're sued over a house you sold five years ago. If your E&O wasn't active back then, it probably won't cover the lawsuit.

To collect benefits, your Errors and Omissions policy must be active...

- When the alleged incident occurs.
- When the claim is filed.

Because real estate agents can be sued years after a sale is completed, it's important to start E&O early and renew your policy each year. That way you'll have years' worth of coverage.

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**E&O coverage requirements vary based on industry, local restrictions, and state laws.**
Closing the Deal on Your Risk Management
CLOSING THE DEAL ON YOUR RISK MANAGEMENT

Even if you don't plan on making errors or omissions in your work, all real estate agents are at risk of a lawsuit. Mistakes happen and clients can unfairly blame you for problems – real or imagined – with their property.

Lawsuits, even frivolous ones, cost money. In this eBook, you've seen examples of real estate agents who did everything right but still faced lawsuits costing tens of thousands of dollars.

Real estate agents can benefit from Errors and Omissions Insurance for protection against paying exorbitant lawsuit costs out of pocket. You'll know that temperamental clients or unexpected lawsuits won't be able to tear down the business you've built.