



Real Estate Firm Liability: Why Standard D&O and E&O Aren't Enough

When real estate transactions result in losses, real estate firms tend to take the blame. Whether the allegations involve decisions made by the firm's board of directors or the actions of an individual broker, lawsuits are common. Directors and officers (D&O) and errors and omissions (E&O) insurance can provide protection, but to manage your professional risks in real estate, it's critical to ensure your organization's policies have the terms needed to shield against the industry's unique risks. Your protections may be inadequate if you're operating with standard D&O and E&O coverage.

KEY DEFINITIONS

Before we dive into specifics, here's a quick summary of the two coverage types discussed in this article:

- + **D&O liability insurance** provides coverage for lawsuits against the directors and officers or executives of an organization. Lawsuits often name individual executives and board members, and their personal assets can be at risk. D&O insurance protects the organization and the individuals who serve it with three layers – often called "sides" of coverage. Side A covers legal costs when the organization does not provide indemnification, Side B covers legal costs when it does provide indemnification, and Side C provides coverage for the organization itself.
- + **E&O, or professional liability insurance**, provides coverage for claims alleging financial loss due to errors or omissions in professional services provided. Common claims involve missed deadlines, omissions, or poor professional advice, resulting in financial loss.



SPECIAL LIABILITY CONCERNS FOR REAL ESTATE PROFESSIONALS

A wide range of industries use both D&O and E&O insurance. D&O insurance is widely used by any organization with directors or officers, whether a large public company, a private company, or a not-for-profit organization. E&O insurance is used by large businesses and individual professionals in a wide range of trades, from graphic design and technology consulting to law and insurance.

However, the fact that these policies are used across industries does not mean that the same policy will be equally suitable regardless of the industry. Different sectors have unique exposures and insurance needs, so securing coverage designed for those risks is important.

Real estate, in particular, has some special risk considerations that all policies may not address. Real estate transactions can be fast-paced and high-stake, creating ample opportunities for minor errors that lead to significant losses. The industry is also tightly regulated and scrutinized, creating even more exposure.



DOES YOUR INSURANCE COVER THESE SIX REAL ESTATE INDUSTRY RISKS?

Don't wait until you face a claim to realize the exposure is excluded from your insurance. Review your coverage now for these important coverages:

1. Antitrust D&O Coverage

In May 2024, an antitrust class-action lawsuit against the National Association of Realtors (NAR) was **settled** for \$419 million. The lawsuit accused NAR of creating an anticompetitive pricing system. Large lawsuits like this can trigger additional lawsuits and insurance coverage exclusions, so it's important to check your D&O policy to determine whether this coverage is in place.

2. Fair Housing Discrimination Coverage

Real estate professionals can run afoul of **antidiscrimination protections** even if they don't mean to be discriminatory. This is a common source of litigation, so real estate professionals are wise to ensure that coverage is in place, but some policies exclude these claims.

3. Lockbox and Open House Coverage

Squatters and vandals often target empty houses. Real estate professionals can minimize these risks by diligently locking up and using the lockbox correctly. However, there's still a chance that something will go wrong, so having coverage for claims related to the lockbox and open house losses is essential.

4. Failure to Advise coverage

The O in E&O stands for omissions, and in real estate transactions, omitting information that later proves relevant can lead to ugly disputes and lawsuits. Real estate professionals can protect themselves by providing sound advice, documenting that advice, and securing professional liability insurance with failure to advise coverage.

5. Mold Coverage

Mold can be a nightmare for property owners. Consequently, lawsuits involving mold and failing to provide notice about mold present a serious risk for real estate professionals. However, mold exclusions are common in insurance, so make sure your policy includes this coverage.

6. Independent Contractors

Many real estate professionals are classified as independent contractors, not as employees. This is important because some policies exclude coverage for independent contractors. Look for harassment and discrimination coverage that includes third-party and independent contractors.

Does your insurance broker understand real estate risks? IMA provides insurance designed for real estate firms, with the terms and coverages needed to protect against this industry's complex risks.

We offer an exclusive E&O coverage package that uniquely addresses exposures faced by real estate firms. **Contact us to learn more and compare your coverage.**

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