

# **REAL ESTATE BROKER'S AND AGENT'S GUIDE TO ERRORS AND OMISSIONS INSURANCE**



## Steps in Shopping for E&O Insurance

### STEP 1

Start the process no later than 45 days before your policy renews or the date wish to start your coverage. Larger firms should start the process 60-90 days before renewal.

### STEP 2

Order a loss run report from the carriers you were insured with the previous 5 years.

### STEP 3

Select an insurance broker that specializes in E&O Insurance. To quote E&O insurance effectively, it requires specialized knowledge. It is also best to work with a broker that has access to multiple carriers in order to provide you options. You do not need to engage the services of multiple insurance brokers if you select one that has strong insurance carrier access and specialized knowledge. C.A.R.'s endorsed insurance broker RealCare Insurance ([www.realcarecar.com](http://www.realcarecar.com)) is one of those brokers.

### STEP 4

Take your time filling out the application completely and fully. Answer all the questions truthfully. **This is a critical step** as you are making a warranty to the insurance company that the information is true and complete. They can later decline a claim if the application contained material misrepresentations about your firm. It is very important to detail all professional services performed or that you anticipate performing in the next year.

### STEP 5

Survey your agents by email (keep those emails) to ensure there are no known claims or incidents that could turn into a claim that have yet to be reported to your existing insurance company. Any such matters should be reported to your existing E&O carrier prior to the expiration of your policy. There will be a question on the application regarding this and it needs to be answered mindfully.

### STEP 6

Provide to your insurance broker the application, loss runs (if applicable), details of any claims in the past 5 years and a copy of your current E&O policy dec page (if applicable) to prove your prior acts date. Additionally, if you have risk management programs, new agent mentoring or ongoing training programs that would demonstrate your diligence to keep claim activity low, submitting a narrative about such will only help an insurance underwriter, who will be reviewing your application, give you the best pricing possible.

### STEP 7

Review quotes – not only for price, but for coverage as well. No two E&O policies in the industry read the same or provide the same coverage. This step is vital in order to know what your money is buying. Ask for sample policies and any endorsements to accompany your quotes. Read all of the exclusions to learn what your policy will not cover. A specialized insurance broker can assist in analyzing the various quotes/policy forms to help with your decision.

### STEP 8

Make sure the carrier you are selecting is "A" rated by AM Best ([www.ambest.com](http://www.ambest.com))

## Tips for reviewing quotes/policies

**\*\*All policies have a definition section. If a word in your policy is BOLD it means it is defined. It is very important to read the definition of the words.**

**Agent owned coverage** – review what properties are covered and under what stipulations. There are usually steps that must be followed in order to trigger coverage; as well as some policies have restrictions on the number of days you own such a property and who can sell the properties.

**Choice of Counsel** - it is important to know who will be representing you if you have a claim. Do you get to select that individual or are they assigned by the insurance company? It is advisable to purchase a policy where you have a say in who represents you.

**Commercial Property** – if your firm sells commercial property ensure your policy properly addresses such.

**Deductible reductions** – many, but not all, policies offer some form of a deductible reduction if certain conditions are met. Review what triggers a reduction in the deductible and select the one that works the best for your firm.

**Disciplinary Proceeding Expense** – policies that have this coverage often vary in limits. Review your quotes to compare.

**Discrimination/Title IV** – policies that have this coverage often vary in limits. Review your quotes to compare.

**Extended Reporting Period (Tail Coverage)** – if you are close to retirement or contemplating closing your brokerage to join another firm, it is important to have a policy with the option to purchase at least a three-year extended reporting period (tail). Remember – any transactions that you previously closed will only have coverage if you have continuous coverage at the time a claim is filed. Even though your brokerage firm is no longer in business, you can still be sued for your prior work and the only way to ensure you are covered for such is to buy an extended reporting period (tail coverage) for your existing E&O policy.

**Family transactions** – some policies exclude or restrict family transactions. Determine if your operation would be affected if there is such a restriction.

**Insured** - Review the definition of an insured – make sure it includes independent contractors (your agents) and administrative staff of independent contractors.

**Land and Mobile Homes transactions** – some policies exclude such transactions

**Lock Box/Open House Coverage** – some policies only cover lock box and policies have varying limits. Review your quotes to compare.

**Named Insured** - Make sure all your DBA's are listed as a named insured. Only those entities named on the policy will have coverage in the event of a claim. This is especially important with the new BRE team names.

**Pollution Coverage** – often a restricted coverage on policies. Read what each quoted policy will be providing in this area as it differs greatly and select the broadest coverage that fits your budget.

**Prior Acts (retroactive date)** – Your prior acts date is the start date of the first E&O policy you purchased assuming you have continuously renewed that policy. Your retroactive date is portable and any new company quote should show that date. If you have had a gap in coverage, then your prior acts date will be reset.

**Professional Services covered** – VERY IMPORTANT - some policies detail them in the definitions section of the policy, others require they be listed on the dec page of your policy. Ensure any and all services you engage in are listed (residential, leasing, property management, business broker, escrow, BPOs etc.). Should you enter into a new service during the policy year it will be critical to notify your broker to ensure you have coverage for such in place.

**REOs** – ask if they are covered under residential real estate sales or if they are considered property management. DO NOT ASSUME! Many carriers want property management shown under your professional services to cover REOs.

## ADDITIONAL CONSIDERATIONS

### **What policy limits should I purchase?**

You will want to ask for multiple limit option quotes. You should purchase the highest limits your budget will allow as most policies are defense inside the limits which erodes the amount of money left to pay out on a claim. Additionally, you want to evaluate your sales volume and contracts with outside vendors which commonly seek a \$1,000,000 claim and aggregate limit.

### **What deductible should I purchase?**

You will want to ask for multiple deductible option quotes. Often you will find that higher deductibles do not have as large of a cost savings as you might think. You need to select a deductible that you can afford to pay out of pocket in the case of a claim. Remember to seek out what, if any, deductible reduction options your quotes may contain as this should be a factor in your deductible decision.

### **When should I buy E&O if I'm new broker?**

E&O should be purchased before taking a listing or showing property and should be continuously renewed with no gap in coverage to provide proper protection.

### **Does C.A.R. Insurance Products endorse an insurance broker for E & O insurance?**

Yes, C.A.R. has done its due diligence in endorsing a broker who is knowledgeable in the E & O field. That broker is RealCare Insurance Marketing, Inc. and their contact information is 1-800-939-8088 (ext. 207) or [www.RealCareCAR.com](http://www.RealCareCAR.com).

## Errors & Omissions Glossary of Terms

TERM	MEANING
<b>Admitted/Non-admitted</b>	<p>An admitted carrier in California is required to file their rates and policy form with the Department of Insurance for approval. Admitted carriers are also a part of the California Insurance Guarantee Association (CIGA), which provides protection for policyholders should the carrier be declared insolvent. Claims that occurred before the carrier became insolvent can be paid up to \$500,000.</p> <p>A non-admitted carrier is an insurance company offering insurance in the state without going through the filing process required for admitted companies. Non-admitted companies can often provide insurance coverage that admitted carriers cannot because of their unrestricted rate/form structure.</p> <p>The choice between companies often comes down to the financial strengths (see <i>Ratings</i>) of the individual providers, rather than their status as admitted or non-admitted.</p>
<b>Choice of Counsel</b>	<p>This provision outlines who and/or how an attorney will be selected to represent you in the case of a claim. Is it the insurance company's sole choice, or is it the insured's, or is there an agreement at the onset? For example, the E &amp; O program with RealCare offered to C.A.R. members provides direct access to C.A.R.'s Strategic Defense Attorney Panel.</p>
<b>Claims-Made Coverage</b>	<p>A claims-made policy covers you for any covered claim provided it meets two criteria:</p> <ul style="list-style-type: none"> <li>• You are insured when the claim is made.</li> <li>• You have <u>continually</u> renewed insurance coverage from the time of the incident until the time the claim is made. (See <i>Retroactive Date</i>)</li> </ul>
<b>Consent to Settle clause/provision</b>	<p>This is a provision that requires that the insurer may not settle a claim without the consent of the insured. However, such a provision may be severely restricted by a <i>hammer clause</i>.</p>
<b>Declaration (Dec) Page</b>	<p>First page of your policy that shows the named insured, effective date, <i>retroactive date</i>, and premium.</p>
<b>Deductible</b>	<p>A portion of the defense and/or liability cost (depending on the policy) that will be borne by the insured. Also referred to as <i>Retention</i>.</p>
<b>Deductible – loss only</b>	<p>A policy where the deductible amount only applies to the liability cost or award, but not to the cost of defense. Also, known as <i>First Dollar Defense</i>.</p>

<b>Endorsements</b>	An <i>endorsement</i> is an addition to the standard form of the policy. For example, the ABC Insurance Company E&O policy might not normally cover property management, but it is possible that there might be an <i>endorsement</i> to the policy that would provide for such coverage.
<b>Exclusions</b>	The practices, conditions and acts which are excluded from coverage. Standard exclusions often include fraud, mold, bodily injury, property damage, improper funds handling and commission disputes (to name a few).
<b>Extended Reporting Period</b>	Also known as <i>Tail Coverage</i> . The "tail" OR ERP (extended reporting period) endorsement allows you to report claims that come in after the policy is terminated for covered incidents that occurred while you were insured. Many policies offer a 1, 2 or 3 year tail period. There is a time limit - usually 60 days from the time your policy expires - to purchase the tail.
<b>First Dollar Defense</b>	Coverage for the defense of a claim which is not subject to a <i>deductible or retention</i> .
<b>Gap in Coverage</b>	A period of time during which the insured had no coverage.
<b>Hammer Clause</b>	A clause or provision which provides that, if the insurer wants to settle and the insured refuses, then the insurer can cap its liability based on the wording outlined in the <i>consent to settle</i> paragraph of the policy.
<b>Inside Limits</b>	This refers to defense costs. If defense costs are <i>inside</i> (the) limits, it means that they are applied to the insurer's limit of liability for any one claim. For example, if the per claim limit of liability were \$500,000 and <i>inside the limits</i> defense costs were \$60,000, there would be \$440,000 left to pay any damages. This is also known as <i>Shrinking Limits</i> .
<b>Insured</b>	Who is covered by the policy e.g. <i>named insured</i> , company principals, subsidiaries, independent contractors, administrative personnel, etc. Policies will differ as to who is considered the <i>insured</i> .
<b>Limits of liability – Aggregate</b>	The total amount of coverage (regardless of the number of claims) for which the insurer is responsible in any policy period.
<b>Limits of liability – Each Claim</b>	The total amount of coverage for which the insurer is responsible for any one claim.
<b>Loss run report</b>	A report showing the insured's claims history, including any losses.
<b>Named Insured</b>	Entity as listed/shown on the <i>dec page</i> of your policy.
<b>Outside Limits</b>	Defense costs are <i>not</i> applied against the insurer's limit of liability for any one claim. Also called, <i>First Dollar Defense</i> .
<b>Prior acts</b>	See <i>retroactive date</i> . The terms are used interchangeably.
<b>Ratings</b>	This refers to the financial strength of an insurance company as rated by a service such as A.M. Best ( <a href="http://www.ambest.com">www.ambest.com</a> ).
<b>Reservation of Rights</b>	An insurer's notification to an insured that coverage for a claim may not apply. Such notification allows an insurer to investigate (or even defend) a claim to determine whether coverage applies (in whole or in part) without waiving its right to later deny coverage based on information revealed by the investigation.
<b>Retention</b>	See <i>Deductible</i>

<b>Retroactive Date</b>	Your retroactive date is the start date of the first claims-made policy you are actively renewing. You are covered for any covered incident as long as it occurs on or after your retroactive date (also known as <i>prior acts</i> date). That date remains the same and is not advanced <u>as long as you maintain continuous coverage</u> . Using the example above, if you have a prior acts date of 2009 on your policy and it is now 2014, your policy covers you for the last five years. Your retroactive date is also portable. If you are currently insured with someone else for professional liability, you can bring that date with you to any insurance company of your choosing.
<b>Shrinking Limits</b>	See <i>Inside Limits</i>
<b>Surplus Line Insurers (Excess and Surplus Lines)</b>	Surplus Line Insurers are <i>non-admitted</i> insurers. They are often used to provide insurance not generally available in the admitted market.
<b>Tail Coverage</b>	See <i>Extended Reporting Period</i>

## Questions to ask a brokerage firm about their E&O Insurance

Errors and Omissions insurance is not required by law in the State of California; however, any reputable firm should carry such coverage to protect itself and its agents/brokers.

1. Does this company carry E&O insurance?
  - a. What is the name of the insurance carrier?
    - i. Make sure they are A rated – [www.ambest.com](http://www.ambest.com).
  - b. What is the policy expiration date?
  - c. What are the limits of coverage (per claim/per aggregate) and deductible?
2. Do I contribute to the cost of the coverage? Annually? Per Transaction?
3. Do I contribute to the cost of the deductible if there is a claim?
4. Is there a deductible reduction provision in your policy? If so, what requirements must be met to trigger the reduction (i.e. - use of home warranty, home inspection or transaction management system)?
5. What Professional Services does your policy cover? (i.e. – Commercial, REOs, Property Management, Leasing, Business Opportunities)
6. Does your E&O policy cover agent-owned transactions? If so, what restrictions or requirements should I be aware of before entering into such a transaction?
7. Are my personal assistants covered by your E&O Policy?
8. How many claims were settled and/or reported to the insurance company last year?
9. Who is responsible for renewing the insurance and how is the decision made on what policy to purchase?
10. Who should I notify if I receive a complaint or if I think there could be a possible claim? Do you have written guidelines I should follow?

\*\* It is advisable to ask your broker for a certificate of insurance or a copy of the policy each year to verify coverage is in place. There should never be a gap in effective/expiration dates year to year or transactions from previous years may be uncovered.