

Whether you have E&O Insurance or are contemplating its purchase, you need to know what to look for in a policy. Keep in mind that the application you complete for this insurance represents your operation, it doesn't have to be typed, but it should be neat. To avoid delays in processing your application, if you have a question when completing the form, rather than "skip it", call your agent for assistance. Submitting an application does not obligate you to purchase the insurance. If your application is approved, the Company will provide a quotation for your consideration. In the event your firm does not fall within the Company's underwriting guidelines, you should be sent a written explanation for the decline. If information has been misinterpreted, call and relay your concerns. Ask what further information the Company is willing to review in order to reconsider your application. Once you have a quotation in hand, you'll want to ask some questions about the coverage the Company is offering to provide.

1. What is the definition of an *insured*? Does the definition include past or present officers, directors, partners, stockholders, employees and independent contractors?
2. What is the definition of covered *professional services*? Typically, you'll want to know that services provided as a real estate agent, broker, property manager, leasing agent, consultant or counselor, appraiser, auctioneer, business broker, mortgage broker, notary public are included in the definition. Some companies extend coverage to those that serve as a member of a real estate board or committee.
3. Will coverage include *full prior acts* or *will I have a prior acts retro-date*? This issue is an important one. Normally, as long as you have maintained prior consecutive years of insurance (companies vary on the amount of time required; however, it usually runs between 3 and 5 years), the insurance will address covered claims which arise during the new policy, as long as the insured did not have prior knowledge of the situation. Remember, all applications question whether you are aware of a claim or circumstance that might result in a future claim. If you've left your E&O insurance expire at one point in time, or have never carried the insurance at all, your policy will be issued with a retro-date. The retro-date means that all acts committed prior to the retro-date are excluded from coverage. The insurance will only address covered claims from retro-date forward.
4. Are *defense costs outside the limit of liability*? You want a "yes" to this question. This means that in the event of a claim, any costs that are incurred as a result of defending the matter, are absorbed by the Company, they do not reduce the limit of liability on your policy.
5. Do I have *first dollar defense*? Companies usually charge more for this feature; however, it is worth comparing the price difference versus not having first dollar defense. When you have first dollar defense, you only pay the deductible in the event damages are paid or a settlement is made. Without first dollar defense, you are responsible for damages and defense costs up to the deductible amount.

6. Does the policy have an *Awareness Provision*?

An awareness provision will permit you to report notice of a situation which you feel might possibly result in a future claim. Some companies only accept notices of actual claims...you've received suit papers. An awareness provision is a great feature. It permits you to alert the company to a potential claim. If you decide to change insurance companies, and the matter you reported as a potential claim to your prior insurance company materializes, the former insuring company would address the claim. Without this feature, your new insurance company could possibly deny the claim based on your having had prior knowledge of a potential claim. Having prior acts coverage makes no difference, no insurance company will cover a claim when it can be determined that you knew of a potential risk of claim and failed to make notification to your former insurance company (provided they had an awareness provision) or having made note of it on your application for coverage whereby the insurance company would have told you they would not cover any claims arising from the situation.

7. What limit of coverage is provided for the use of *lock boxes*?

Some companies offer a "sublimit" which means the amount of insurance allowed for property damage to a client's property, caused by use of a lock box, is not at the full policy limit. A common limit is \$25,000. maximum per claim and per policy period. Some companies do offer full limit lock box coverage, which means if you are carrying a \$1,000,000. limit on your E&O policy, lock box claims would be subject to this limit, rather than restricted by a sublimit.

8. Does the policy permit you to handle the listing and selling of your *own residential properties*? Some policies do allow an owner of a property to handle the listing and sale themselves, others permit the firm to handle the sale; however, the property owner may not be involved, it must be handled by another agent in the firm. And, there are some policies where neither scenario would be covered under the policy.

9. How does the Insurance Company handle *Environmental and Fair Housing coverages*?

There are a few areas to be conscientious of when looking into these areas. Environmental claims may only be covered for claim expense only, up to either the policy limit, or a sublimit. There may not be any environmental coverage on commercial properties. Environmental coverage may include damages and claim expenses, again check for a sublimit. Fair housing claims covered for damages or claim expense or both. The protection may be up to the policy limit, or restricted to a sublimit.

10. Does the Company offer a toll-free number where you can call to discuss and seek advice on sticky situations?

11. If you ever have a claim, what attorneys are used and where are they located? You're looking for local representation through a firm located in the

nearest city. Depending on the size of your firm, some companies may consider using an attorney you suggest; however, they do have certain criteria that must be satisfied and the ultimate choice remains with the insuring company, not the insured.

12. What type of options are available to me should I sell the business/retire? You'll want to do some homework and find out how long the "Extended Reporting Period" is under the policy. Depending on the reason that the policy is not being renewed, the Extended Reporting Period could run anywhere from one year to unlimited. There is an additional charge for this extended reporting period based upon the amount of time you wish to be able to report claims under the policy. What does the extending reporting period do? It extends the claim reporting period of a terminated policy. If you sell your business/retire and six months later receive suit papers, you can report the claim to your E&O insurance company. Without the extended reporting period, you would be responsible for handling the matter at your own expense. Remember, E&O Insurance is written on what is called a "claims made" policy form. This means that all claims against the insured must be made while the policy is in force. Even though the act causing the claim may have taken place while your coverage was in force, you are out of luck if you do not have an actual policy or extended reporting period in force when the suit papers arrive.....unless, your policy had an awareness provision and you gave notice of the matter as a potential claim prior to the expiration of the policy.

Errors & Omissions Insurance is a vital part of your business needs. It is what will see you through the rough times and provide you with peace of mind. Ask your insurance agent questions, know your coverage and make the time to shop coverage every so often.