

# Look Out for Gaps in Your Errors and Omissions Insurance Coverage

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Errors and omissions insurance coverage has become one of the necessary costs of doing business in today's real estate market. Only one with an obsessive love of danger may decide to go "bare." However, even if you have no desire to court disaster, there are circumstances that could result in your loss of coverage.

The following questions come up frequently among insureds in the E&O program administered by Pearl & Associates, Ltd. and underwritten by the Kemper Insurance Companies. We hope we can shed some light on a few of the more misunderstood aspects of real estate errors and omissions insurance policies.

Q. When a REALTOR® leaves a firm or the business, what happens to his or her E&O coverage?

A. If you are covered under a firm's policy and then leave the firm or the business entirely, the policy remains with the firm. The policy should be reviewed; however, to determine if the coverage will still apply to claims made against you after you've left the firm for acts or omissions in your performance of real estate services while you were with the firm.

To determine coverage under your policy, review the definition of "Insured." The definition of Insured under the Kemper policy includes, "any present or former partner, member, officer, director or employee for real estate services performed on behalf of the Named Insured." The Kemper policy also covers present or former independent contractors as Insureds. If the definition of "Insured" under your policy does not include this type of policy wording, you may be left without coverage upon leaving the firm. Generally, if the person performing the activities giving rise to the claim was an Insured at the time the activities took place, then that person would be considered an Insured under the policy regardless of whether he or she works for the firm at the time the claim is filed. There are a few other scenarios that may leave you without coverage after you've left the firm. First, the broker owner of the firm may choose not to renew the errors and omissions policy. Second, the broker owner may choose to cancel the policy. Third, he may choose to purchase a policy without retroactive coverage. In all of these scenarios, everyone insured under the policy would lose their coverage, unless the broker owner decides to purchase an extended reporting period (ERP).

If you are the only REALTOR® covered under a policy, such as a broker with no associates, and you decide to discontinue operations, you may either cancel the existing policy or allow the policy to lapse. Coverage will cease effective the date of cancellation or policy expiration unless you purchase an ERP. An ERP provides an extension for reporting claims made against you for an act or omission committed on or after the retroactive date and prior to the end of the policy period. Typically, an insured can purchase an ERP for a term of one, two or three years and it must be purchased within 60 days of policy cancellation or expiration. The cost of an ERP varies, but under the Kemper policy, a one-year ERP costs 80 percent of the expiring annual premium. A two-year ERP

costs 120 percent of the expiring annual premium and a three-year ERP will cost you 150 percent of the expiring annual premium.

Q. What is a Prior Acts Date?

A. The prior acts date is referenced on the policy declarations page as either the "prior acts date" or "retroactive date." If a claim is made against you, the act or omission must have occurred after the prior acts date and on or before the end of the policy period in order to qualify for coverage under the policy. If your policy does not contain a prior acts date, you might have full prior acts coverage. This removes the limitation on the date of real estate services performed. Your policy would respond to claims first made against you during the policy period and reported in writing to the carrier either during the policy period or during the 60 day extended reporting period.

There are several reasons why a carrier might impose a prior acts date on the policy. First, it allows its underwriters to utilize current information in evaluating a risk, so as to provide for rates that are based on current market conditions and firm experience. Second, it eliminates the possibility of the carrier providing coverage for claims either considered "stale" or of which the insured probably had prior knowledge. Third, it makes the coverage more affordable, not having to provide coverage for a long exposure period prior to the policy period in question.

Q. How is prior acts coverage determined?

A. If you are applying for errors & omissions coverage for the first time, you will most likely be quoted a premium that does not include prior acts coverage. For example, if the desired policy effective date is November 1, 2001, the insurance carrier will issue a policy with a prior acts date of November 1, 2001. The policy will respond only to claims made against you if the act or omission in your performance of real estate services occurred on or after November 1, 2001 and reported in writing to the carrier on or before the end of the policy period.

Another criteria for the establishment of a prior acts date is the date the firm was formed. In this way, activities of agents in their work previous to the inception date of the firm are precluded under the firm's policy. You would be surprised how many agents contact us for coverage on transactions they conducted for other firms, and now want their current firm to provide them coverage.

You may lose your prior acts coverage if you fail to maintain continuous coverage. As long as you continuously renew your policy, your prior acts date will carry forward year after year. Thus, after the first year, you would have one year of prior acts coverage. After the second year, you'd have two years. Most of the time, full prior acts coverage is provided after three to five years of continuously renewing your policy.

Lastly, if you decide to switch carriers, the new carrier will most likely maintain the same prior acts date as listed on the present policy.

Please remember, prior acts coverage is provided for the services performed for the Named Insured only. If the firm has changed its name during the policy period, the previous firm name must be referenced on the policy by endorsement.

Q. How does a Claims Made policy work?

A. In a Claims Made policy, coverage is provided for any claims made and reported to the insurance carrier on or after the prior acts date and during the policy period or within a 60 day extended reporting period. If the policy contains a prior acts date and a claim is made for an act or omission that occurred before that date, there is no coverage. If you have full prior acts coverage, the policy in force at the time the claim is made will respond to the claim, no matter when the act or omission actually occurred.

Claims-made policies are different than most other types of policies, such as a homeowner's or auto policy. These policies are written on an "occurrence" basis. Occurrence policies provide coverage for an injury or damage that takes place during the policy period, regardless of when the claim is reported. For example, if you were involved in an auto accident in 1999 and an injured party brought suit against you in 2000, the policy that was in force when the accident occurred will respond. Almost all REALTOR®

errors and omissions policies are written on a claims- made basis.

Information contained in this article provides a general interpretation of real estate agents errors and omissions policies. When in doubt, you should always ask your agent. Since real estate professionals have a one-in-five chance of being sued, it is of the utmost importance you carry this valuable protection as well as understand policy coverages. If you have any questions regarding the Pearl/Kemper Errors and Omissions program, please feel free to contact Pearl & Associates, Ltd., at toll-free 800-289-8170.

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