



Commercial Insurance

# E&O Edge

## Lawyers Professional Liability Real Estate

**Lawyers Risk Management Note:** As an area of substantive law, Real Estate continues to be the number two claim frequency driver, second only the Personal Injury Plaintiff work. Further, Real Estate has traditionally been an area of practice that posed severity concerns as well, especially with the increase in property values over the past decade. Even the recent decline in the Real Estate market in certain areas of the country is not enough to substantially mitigate that risk and may even increase it in certain situations. In that regard, helping you better understand that risk and manage it more effectively is critical to our mutual success. Thus, we offer the following observations relative to the handling of real estate matters.

### **Loan Closing, Property Transfers, Leasing Transactions**

The number of claims against law firms coming from non-clients is on the rise. In situations where you represent the lender in the transaction, the borrowers may well believe that you are representing them. After all, they are paying for the loan closing, so they make inaccurate assumptions relative to whom you owe a duty. When you attend loan closings, we strongly suggest that you provide disclosure or non-engagement letters to all parties you are not representing which outline

who your clients are and that you do not represent any other parties in the matter at hand. A standardized preprinted disclosure form that can be read, reviewed and signed will make this an easy task. Make sure to retain a copy of the signed form for your file.

During a closing sometimes the unexpected happens. Although loan closings are often routine and provide minimal remuneration to your firm, there are inherent risks in sending paralegals or other non-barred individuals to handle the closing. They may well lack the requisite knowledge or experience necessary to identify the importance of encumbrances to the title which may come up at the very last minute. If they provide improper advice and the transaction is completed, the seller and/or purchaser could later be "up in arms" because of an old lien, easement or right of way, or CCR (Covenants, Conditions and Restrictions), Agreements, Resolutions or Ordinances that affect the value or the use of the real property in question. This can lead to law suits against your firm.

Do you ever think of mold, lead paint, radon, asbestos, mud slides, earthquakes, tsunamis, land fills or even legends of ghosts, just to name a few, when you purchase or lease real property? It's something we may all think

about, but often don't take the time and trouble to research. The impact can be dramatic and costly. Disclosure is the key. Make sure your legal services include verification of the exposure evaluation with written disclosure of environmental issues or documentation that the necessary verification has not been provided to date and that the client should conduct an independent investigation. The actual service may be performed by an environmental agency, Realtor®, appraiser, home inspector, other professional, or your firm, depending on the complexity, the expertise required and the specific situation. These services should include an investigation of past and potential future environmental issues.

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This information is merely a guide and does not include all potential risk management practices and in no way should be considered a representation that, if the above tips are practiced consistently, there will not be a claim made against you. The above information is necessarily high level and is based on generally recommended risk management practices and is not intended to be exhaustive or all-inclusive. It should, under no circumstances, be construed to constitute legal advice.