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Knowing When a Claim Is Made and How to Report It

Understanding your real estate errors and omissions (E&O) insurance policy is extremely important. The policies administered by Rice Insurance Services Center (RISC), a division of AssuredPartners NL, LLC, like most E&O policies are claims-made-and-reported policies. Under a claims-made-and-reported policy, failure to timely notify your insurance provider of a claim may jeopardize any coverage that may otherwise have been available. As the name suggests, claims-made-and-reported policies apply to claims that are both first made against the insured and reported to the company during the policy period.

Many people are more familiar with occurrence insurance policies like homeowners and automobile policies, which differ from E&O policies in important ways. Under an occurrence policy, coverage is provided for losses that occur during the time the policy is in force. For example, assume you were involved in a car accident in September 2020 and are served with a lawsuit related to that accident in March 2021. Since your automobile coverage is written on an occurrence basis, the insurance policy most likely to apply to the lawsuit is the one in effect in September 2020 (the date of the occurrence), even though the lawsuit did not arise until March 2021.

On the other hand, if you listed a home that sold in September 2020 and were served with a related to that sale in March 2021, assuming your E&O policy is written on a claims-made-and-reported basis, the insurance policy most likely to apply to the lawsuit is the one in effect in March 2021 (the date the claim is first made), even though the sale occurred in September 2020. Additionally, the claim must also be reported in compliance with the insured's duties during the individual policy period in effect when the claim is first made.

It is important to recognize anything that may be considered a claim under your policy and to report it to your E&O insurance carrier immediately. We hear from many insureds that believe only a lawsuit is a claim, but that is not true. Some emails, letters, and faxes meet the definition of a claim. Very broadly, a claim is generally service of a lawsuit, institution of alternative dispute resolutions, or a written demand for money or services that alleges a negligent act, error, or omission in your professional services and seeks damages. The specific definition of a claim varies from policy to policy, so be sure to review your policy's definition of a claim.

Because claims-made-and-reported policies only apply to claims that are both made and reported during the individual policy period, waiting to report a claim may jeopardize coverage. For example, if you are insured through a policy that runs January 1, 2020 to January 1, 2021 and a claim is made against you in September 1, 2020 (during the January 1, 2020 to January 1, 2021 policy period) but not reported to us until April 2021, the carrier may not cover the claim because it was reported after the expiration of the individual policy period in which it was made.

We urge you to report any claim, even if you don't feel you did anything wrong, think the claim is frivolous, or think it will go away. Consider the following example. Mr. Broker receives a demand letter from the buyer that meets the definition of a claim in May 2020. Mr. Broker doesn't think he did anything wrong and thinks the buyer and seller may come to an agreement that resolves the issue. Mr. Broker doesn't hear anything about the issue for some time. In April 2021, Mr. Broker is served with a lawsuit relating to the same issue. Coverage is reviewed under Mr. Broker's insurance with effective dates of January 1, 2020 to January 1, 2021, because that was the policy in effect when the claim was first made. The carrier may not cover the claim, because it was reported after the end of the policy period in which it was first made, so the claim was not both made and reported during the individual policy period in which it arose.

Please remember to report all E&O claims to your insurance provider in writing immediately, as failure to do so can jeopardize coverage under claims-made-and-reported policies.

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