Professional Practices

Lesson 17

Real Estate Errors and Omissions (E&O) Insurance

45 Hour Louisiana Post-Licensing

10/14

WHAT IS REAL ESTATE ERRORS & OMISSIONS INSURANCE?

Real estate errors and omissions (E&O) insurance is professional liability insurance that protects real estate licensees against covered claims arising from negligent acts, errors, and omissions in their professional services. It also protects the public by providing a source for payment of covered damages when an individual is harmed by a real estate licensee's negligent act, error, or omission.

Most licensees think a claim will never be made against them. However, more than 1,800 Louisiana E&O claims have been submitted to Rice Insurance Services Company, LLC (RISC) since 2003, when it began handling the Louisiana group program. Continental Casualty Company (Continental), a CNA insurance company, is the group program's carrier. Continental has incurred nearly $14 Million in defense costs and damages on behalf of Louisiana insureds since 2003.

These claims consist of demands, lawsuits, and alternative dispute resolutions (mediations and arbitrations) against real estate licensees that seek damages and allege a negligent act, error, or omission relating to the insured licensee's professional services. Whether or not the licensee thinks a claim has merit, it is important to report all claims to the licensee's insurance provider. In the case of a frivolous claim, the insurance may provide coverage for defense costs, such as attorneys' fees, which can quickly accumulate even in cases of zero or minimal liability. In cases where the insured has made an honest mistake, the insurance may provide coverage for defense costs and damages, which protects both the insured and the public.

ERRORS & OMISSIONS INSURANCE OPTIONS

Louisiana is one of 13 states that has a real estate licensee group E&O insurance program and requires licensees to maintain such coverage.

Group Policy v. Independent Policy

Many states, including Louisiana, that require real estate licensees to maintain E&O insurance contract with a provider to offer a group policy to licensees. Group E&O policies are designed to make insurance available and affordable to all licensees by spreading risk over a large group. Louisiana's group policy is administered by RISC and issued by Continental. The limits of liability under the basic group policy are $100,000 per claim, up to $300,000 in the aggregate, with a $1,000 deductible for damages and no deductible for claim expenses. The group policy's limits of liability only apply to damages, so they are not reduced by the payment of claim expenses.

Licensees may also purchase E&O insurance outside of the group program, as long as it meets state minimum requirements and proof of coverage is provided to the Louisiana Real Estate Commission. While other carriers can reject applications or charge higher premiums to high-risk licensees, the Louisiana Real Estate Commission's group policy provider cannot refuse to insure any active real estate licensee or charge different premiums for basic coverage.

Individual Licensee Policy vs. Traditional Firm Policy

Individual and firm licensees may purchase coverage for their individual licenses through the state group program. This type of coverage insures negligent acts, errors, and omissions in the licensee's professional services, regardless of what real estate firm the licensee is associated when the services were rendered. Another type of policy is a traditional firm policy. A traditional firm policy insures the named real estate firm. A traditional firm policy also insures the firm's licensees for professional services rendered, but typically only for professional services performed while associated with the insured firm. Therefore, if you are moving firms and will be switching from individual license coverage (such as the group policy) to coverage under a traditional firm policy, check to see if the firm policy will insure future claims concerning services you performed before joining the new firm. If not, you may be interested in maintaining individual coverage or purchasing an extended reporting period endorsement, also known as "tail coverage." Tail coverage will be addressed later in greater detail.

Comparing Policies

You should request and read a sample copy of any policy you are considering purchasing. Take note of the following issues:

- Who is considered an insured? Some policies, including the group policy, cover individual licensees and apply regardless of what firm the insured licensee was associated with at the time of the transaction. Other policies are issued to firms and only protect licensees against claims relating to transactions while they are with the insured firm.
- Look at the definition of professional services to determine what types of activities are insured.
- Are there any available endorsements that may apply to your business (ex. property management, appraisal, etc.)?
- Review the limits of liability. Check to see if defense costs reduce the available limits of liability. If so, the amount to pay covered damages will be reduced by the amount of defense costs paid over the life of the claim. It is not unusual for defense costs to be tens of thousands of dollars. Are increased limits endorsements or excess policies available to increase the amount of coverage? Being involved in transactions with expensive property, property management, or appraisals may increase the risk of high-dollar claims, but remember anyone may make an honest mistake.
- Consider other types insurance, like general liability, which may cover different risks than E&O insurance.

CLAIMS MADE AND REPORTED POLICIES

Most real estate E&O policies are claims made and reported policies. Under a claims made and reported policy, the policy that applies to a claim is the one in effect when the claim is first made. For the policy to apply, the claim must arise and be reported in writing during the individual policy period (or any applicable extended reporting period). Additionally, the claim must concern professional services that occurred after the insured's retroactive date.

Three Important Dates for Determining Coverage under a Claims Made and Reported Policy

- Date the Claim Arose: Did the insured have a policy or extended reporting period in effect on the date the claim first arose?
- Date the Insured Reports the Claim: Was the claim reported in writing during the policy period or any applicable extended reporting period? Did the insured satisfy his/her duties under the policy?
- Retroactive Date: Were the professional services performed on or after the retroactive date?

Date the Claim Arose:

The claim must arise during the individual policy period or an applicable extended reporting period (ERP) ("tail coverage"). ERPs allow the policy to apply to claims that arise after the policy's expiration or cancellation date and during the ERP. If a claim arises after the policy has expired and there is no ERP in effect, then there will be no coverage to apply to the claim, even if the licensee had insurance in effect when the professional services were rendered. ERPs are important, because many E&O claims arise years after the professional services were provided.

The group policy provides a 90 day automatic ERP if a licensee doesn't renew coverage under the group policy because the licensee's license is retired, inactivated, or expired. The group policy also provides 1, 2, and 3 year optional ERP endorsements for licensees who choose not to renew coverage under the group policy for any reason. An ERP endorsement extends the policy to apply to claims that arise 1, 2, or 3 years after the policy's end date. Under the group program, ERP endorsements must be purchased within 90 days after the policy's end date. If you are insured outside of the group program and choose not to renew coverage, contact your provider for more information about any available ERPs.

The following are examples of situations where you might want to consider purchasing an ERP endorsement:

- Retiring/Inactivating/Expiring License: An ERP endorsement may protect you against potential future claims involving transactions you handled while your license was active.

    Example: Mr. Broker worked in real estate from January 1, 1998 to December 31, 2010, during which time he maintained continuous E&O coverage through several carriers. Mr. Broker's last policy was a 2010 RISC policy with effective dates of January 1, 2010 to January 1, 2011. Mr. Broker retired on December 31, 2010 and deactivated his license. RISC policies are only available to active licensees; therefore, Mr. Broker was not eligible to purchase a 2011 RISC policy.

A) Mr. Broker thought there was no reason to worry about E&O coverage, since he retired from real estate. On October 1, 2012, Mr. Broker was served with a lawsuit filed by a client he worked with in November 2007. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy. Mr. Broker submitted the lawsuit to RISC. Unfortunately, there was no coverage for this claim, because Mr. Broker's policy expired on January 1, 2011, more than a year before the claim arose.

B) Instead of not worrying about E&O as in *A* above, assume Mr. Broker purchased a three-year ERP endorsement within ninety days of the expiration of his 2010 policy. This endorsement extends the reporting period of Mr. Broker's 2010 policy to January 1, 2014, an additional three years after the policy's expiration date. Mr. Broker is then served with the lawsuit on October 1, 2012 and timely reports it to RISC. Because the claim arose and was reported within the ERP, it is covered under Mr. Broker's 2010 RISC policy. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

- <u>Moving to a New Firm:</u> The group policy is issued to individuals, so it applies regardless of what firm the individual was with when the professional services occurred. Other policies are issued to firms and only protect the firm's licensees for services provided on behalf of the insured firm. If you move from a firm where you had individual coverage to a firm with a traditional firm policy, then you risk not being covered under the new firm's policy for professional services you performed while with the prior firm.

Example: Mr. Licensee worked with Happy Property Real Estate from the time he was first licensed on January 1, 2004 to May 1, 2006. On May 1, 2006, Mr. Licensee left Happy Property Real Estate and began working with Green Acres Realty, where he worked until December 31, 2010. Mr. Licensee maintained continuous coverage while he was with Happy Property Real Estate and Green Acres Realty by purchasing individual policies through RISC. Mr. Licensee's last RISC policy expired January 1, 2011.

A) While Mr. Licensee was with Happy Property Real Estate, he worked with a seller in a transaction that closed on December 1, 2004. On June 1, 2006, just a month after Mr. Licensee left Happy Property Real Estate, the seller made a claim against him. Mr. Licensee timely reported the claim to RISC.
Mr. Licensee's 2006 RISC policy, with effective dates of January 1, 2006 to January 1, 2007 applied to the claim because it was in effect when the claim arose and was reported. That policy's retroactive date was January 1, 2004, because that was the date from which Mr. Licensee had maintained continuous E&O coverage. The professional services giving rise to the claim occurred on December 1, 2004, after the policy's retroactive date.

Because RISC's individual policies are sold to individual licensees, the fact that Mr. Licensee changed real estate firms between the date of the transaction and the date the claim was made does not affect coverage. Because Mr. Licensee had coverage when the claim was made, had E&O coverage at the time of the transaction, maintained continuous coverage between those dates, and timely reported the claim in writing, the claim was covered. For purposes of this example, assume the claim would otherwise be covered under the policy.

B1) On January 1, 2011, Mr. Licensee began working with Big City Real Estate. Big City Real Estate had coverage through another carrier's traditional firm policy. Generally, traditional firm policies cover the real estate firm and its agents for their professional services performed on behalf of the insured firm. Mr. Licensee chose not to purchase a RISC policy or ERP in 2011, because he believed he was adequately insured under Big City Real Estate's firm policy, which had effective dates of January 1, 2011 to January 1, 2012 and provided "prior acts" coverage.

On June 1, 2011, a buyer whom Mr. Licensee worked with while he was with Green Acres Realty made a claim against Mr. Licensee relating to a transaction that closed on January 1, 2008. Big City Real Estate's firm policy would be the most likely to apply, because it was the policy in effect when the claim arose. Unfortunately, the firm policy only covered Mr. Licensee's professional services performed on behalf of Big City Real Estate. Because the claim involved Mr. Licensee's professional services performed on behalf of Green Acres Realty, Big City Real Estate's firm policy did not cover the claim. Disappointed, Mr. Licensee submitted the claim to RISC, thinking it may be covered because he had a policy with RISC at the time of the transaction. However, the RISC policy did not apply to the claim, because it expired before the claim was made and there was no ERP in effect. Therefore, Mr. Licensee had no coverage for this claim.

B2) Instead of assuming he was adequately covered through Big City Real Estate's firm policy, as in *B1* above, Mr. Licensee purchased a three-year ERP endorsement from RISC within ninety days after the January 1, 2011 expiration of his last RISC policy. The endorsement extended the policy's reporting period by three years to January 1, 2014. When Mr. Licensee received the buyer's claim on June 1, 2011, he timely submitted it to both Big City Real Estate's insurance carrier and RISC. Although there was no coverage under Big City Real Estate's firm policy, there was coverage under Mr. Licensee's last RISC policy, because the claim was made against Mr. Licensee and reported to the carrier during the ERP. For purposes of this example, assume the claim would otherwise be covered under the policy.

<u>Date the Insured Reports the Claim</u>

The claim must be reported in writing during the individual policy period (or applicable ERP) when it is first made against the insured. Some insureds think a claim is not made until they are served with a lawsuit. That is not necessarily the case! Under the group policy, a claim is a written demand for money or services or service of a lawsuit or institution of arbitration or mediation proceedings seeking damages and alleging a negligent act, error, or omission in professional services. Remember, an email from an upset client may meet the definition of a claim.

The insured must comply with the insured's duties under the policy. Failure to do so may jeopardize any available coverage.

Under the group policy, the insured has the following duties:

- Provide <u>written</u> notice of the claim as soon as possible, and in no event more than 90 days after, the claim is first made. Note, orally informing RISC of a claim is not considered adequate reporting under the group policy.
- Do not admit liability, make a settlement, pay damages, or assume any duty or obligation.
- Immediately forward every demand, notice, summons, or other process about any claim.
- Cooperate with the insurance company.

What to Do When a Claim is Made:

- Report it in writing immediately to your insurance carrier.
- Check with the provider for its reporting requirements.
- Cooperate with the provider and supply copies of any requested documents.

What **<u>Not</u>** to Do When a Claim is Made:

- Ignore the claim. Most E&O policies require timely notice of a claim. Failure to timely report a claim may jeopardize any available coverage.
- Admit liability. Some licensees admit fault or accept responsibility before submitting a claim to the carrier. However, licensees may be unaware of legal defenses applicable to a claim. Admission of fault can prejudice the carrier's ability to defend. Further, this may violate the insured's duties imposed by the policy and jeopardize any available coverage.
- Try to settle the claim yourself. Licensees work hard to help clients and maintain a good reputation. However, if an insured agrees to do something, like pay money or have an item repaired or replaced, it may jeopardize any available coverage.

<u>Retroactive Date:</u>

The claim must concern professional services performed after the retroactive date. Under the group policy, the retroactive date is the date the insured first obtained, and since which has continuously maintained, real estate E&O insurance, with no gaps. If there is a gap (or break) between policy periods, even for one day, there will be no coverage for claims relating to professional services performed before and through the last day of the gap. This is true even if the insured had coverage in place on the date the professional services were rendered and again when the claim arises. Accordingly, it is imperative to maintain continuous coverage to preserve coverage for prior acts. It is also important to maintain continuous coverage to ensure you are in compliance with Louisiana real estate licensing law.

TYPES OF CLAIMS THAT MAY BE COVERED

Generally, real estate E&O insurance applies to claims alleging negligent acts, errors, or omissions in the insured licensee's services under his/her real estate license and for which a license is required. The claim must also fall within the dates we've already discussed. Additional coverages (such as regulatory complaints, appraisal services, and otherwise excluded items) may be available by endorsement. Licensees should submit anything that could constitute a claim for coverage consideration, as there may be available coverage of which the licensee is not aware.

Under the group policy, if a claim falls within the dates we've already discussed; seeks covered damages; and alleges a single covered negligent act, error, or omission, then the carrier pay claim expenses to defend the entire claim, including uncovered allegations. However, there would be no damage coverage for uncovered allegations or uncovered damages.

TYPES OF CLAIMS THAT MAY NOT BE COVERED

Common Causes of Uncovered Claims

- Failure to maintain continuous coverage from date of the subject professional services through the date the claim is made.
- Failure to comply with insured's duties under the policy.
- The licensee's acts fall outside the policy's definition of "professional services."
- A policy exclusion applies. These vary, but may include:
    - Fraudulent, dishonest, intentional, and criminal conduct
    - Bodily injury, sickness, disease, mental anguish, pain, suffering, emotional distress, and death
    - Property damage
    - Property developed or constructed by the insured, insured's spouse, or insured's company

Often a claim will assert both covered and uncovered allegations. For example, many claims make a covered negligence allegation and an allegation of fraud, which is excluded from coverage under most E&O policies. When the group policy provides coverage for even one allegation, the insurer has a duty to defend the insured against all allegations in the claim. In such instances, the insurer defends the claim under a reservation of rights, meaning the insurer will defend the insured against all allegations, but there would be no coverage for damages relating to any uncovered allegations. We recommend that licensees investigate other types of insurance, such as general liability or business owners insurance, which provide coverage for different kinds of claims than E&O insurance.

ERRORS & OMISSIONS CLAIMS STUDIES

Claim Study 1: Square Footage Discrepancy

Facts:

Prior to marketing the subject property, the listing agent drew a floor plan of the house showing 3,500 square feet. The seller believed the home had 4,000 square feet and wanted the listing agent to list the home as having 4,000 square feet. In an apparent compromise, the listing agent then advertised the house as having 3,750 square feet.

The buyer made an offer on the home. The purchase agreement contained standard language that the buyer was not relying on any agents' representation of square footage. After the purchase agreement was signed, but before closing, the listing agent gave the buyer's agent a copy of the drawing that showed 3,500 square feet. However, there was nothing in writing to confirm whether the drawing was ever provided to the buyer.

After closing the buyer had the carpet cleaned, at which time he discovered the home had less square footage than advertised. The buyer hired an engineer to measure the square footage. The engineer determined the house only had 2,750 square feet, 1,000 less than the advertised square footage, because he did not include an unheated addition in his calculation. If the unheated addition was included, the property would be 3,400 square feet, almost the amount shown by the listing agent's floor plan but still 350 square feet less than the advertised amount.

The buyer sued the sellers, the selling agent, and the listing agent for misrepresenting the square footage and miscellaneous minor issues with the electrical and heating systems. The buyer claimed to be entitled to damages in excess of $100,000, based on the difference in value of 1,000 square feet (the 3,750 advertised versus the 2,750 measured by the engineer), and sought punitive damages.

Result:

While this was not a Louisiana claim, square footage discrepancies are fairly common in all of the states where RISC handles policies. In this case, the listing agent's carrier paid $39,000 to settle the case prior to trial and more than $50,000 in legal expenses.

Suggested Approach:

The listing agent realized there was a discrepancy in the square footage measurement prior to listing the property and prior to closing but did not investigate the discrepancy or expressly disclose the discrepancy to the buyer or buyer's agent. The listing agent should not have listed the home as having more square footage than her measurements revealed. Further, the claim may have been avoided if the listing agent had the buyer sign a separate document that specifically disclosed the discrepancy in the square footage, provided that the buyer was not relying on the listing agent's representations, and recommended that the buyer retain a professional to measure the square footage.

Nothing herein should be construed as legal advice or advice regarding any applicable standard of care.

Claim Study 2: Setback Issue

Facts:

The buyers made an offer to purchase a home in a residential subdivision, with the intention of building an addition. While looking at the property, prior to making an offer, the buyers asked their real estate agent about the property's boundaries. The buyers' agent indicated that he did not know the location of the boundary lines but assumed the house sat approximately in the middle of the lot. The purchase agreement provided for a survey within 15 days of the date of the purchase agreement. Pursuant to the purchase agreement, the buyers had 3 days to notify the sellers of any objections to the survey. The sellers would then have 3 days to cure the objections. If the sellers were unwilling or unable to cure the objections, then the buyers could either receive a refund of their earnest money and terminate the contract or waive the objections and proceed with closing.

A survey was performed within the time set forth in the purchase agreement. The survey revealed that the residence was built 3 feet within the applicable setback, which would make it difficult or impossible for the buyers to build the addition as planned. The buyers were given a copy of the survey 10 days prior to the scheduled closing date. The buyers objected to the setback line pursuant to the purchase agreement, but the sellers were unable to correct the issue. Prior to closing, the real estate agent provided the buyers with a copy of the survey showing the setback lines and location of the house, which the buyers initialed and dated. The real estate agent sent the buyers an email prior to closing, confirming their discussion regarding the survey and recounting the setback issue. The email further advised the buyers that they had the right under the purchase agreement to request a return of their earnest money and terminate the contract and suggested the buyers consult with an attorney if they were interested in pursuing that option.

The buyers proceeded with closing and then sued the buyers' agent individually, the buyers' agent's firm, the listing agent individually, the listing agent's firm, and the sellers for breach of fiduciary duty, negligence, negligent misrepresentation, and fraudulent inducement. The buyers alleged the cost of building the addition was increased due to the setback violation. The buyers argued that the insured buyers' agent should have known that the residence was within the setback more than 10 days before closing. The buyers claimed that the agent could have pulled old plats or aerial photographs of the property from the public records or ordered the survey sooner.

Result:

The carrier paid more than $35,000.00 in attorneys' fees for the defense of this claim. The court ruled in favor of the buyers' agent and firm, finding there was no question that the buyers had notice of the setback before closing and chose to close anyway. No damages were assessed against the insureds.

What the Real Estate Agent Did Right:

The attorney for the buyers' agent argued that the agent had no liability, because he disclosed the setback problem prior to closing, as evidenced by the buyers' initials and date on the plat. Note that the buyers' initials on the plat prevented a "he said/she said" scenario, which occurs often when there is nothing in writing to prove an agent and claimant discussed a particular issue. Further, the buyers could not argue the real estate agent showed them the plat but did not specifically point out the setback issue, because the agent followed the conversation with an email. Finally, the buyers failed to mitigate their damages by proceeding with closing in spite of the real estate agent's advice that they could terminate the contract in light of the sellers' failure to resolve their objection to the survey.

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Claim Study 3: Wrong Lot

Facts:

Sometimes buyers think they are purchasing one lot but actually end up with another. When this occurs, it is usually in connection with vacant land. In one example, both the listing and selling agents worked with the same real estate firm. The sellers, who lived out of town, retained the listing agent to sell Lot 1, located in a planned development. The listing agent went to the development to locate Lot 1. Each lot had a placard indicating the lot number, but Lot 1's placard was located between Lots 1 and 2. The listing agent placed the "for sale" sign on Lot 2. The listing agent did not meet the sellers at the property or confirm the location with the subdivision plat.

The buyers contacted the selling agent about purchasing a lot in the development. The selling agent showed the buyers several lots, including Lot 2, on which the "for sale" sign meant for Lot 1 was placed. The buyers did not focus on the lot number, but rather assumed the lot with the "for sale" sign was actually for sale. Further, even if they had looked at the placard, the buyers may have made the same mistake as the listing agent. The buyers made an offer on the lot, which the sellers accepted. The resulting purchase agreement did include a provision allowing for inspections and surveys; however, the buyers chose not to get a survey, because of the recent subdivision plat. All of the transaction paper work referred to Lot 1, the information pulled from the sellers' deed. The out-of-town sellers had no reason to know that the buyers had looked at the wrong lot or that the "for sale" sign was placed on an incorrect parcel.

The mistake was discovered a year later, when a third party began constructing a home on Lot 2, the lot the buyers thought they purchased. After retaining an attorney to review their deed and the subdivision plat, the buyers discovered they actually owned Lot 1. Unfortunately, large rocks covered Lot 1, making it less valuable than Lot 2. In fact, Lot 1 appraised for $15,000 less than Lot 2. Upon realizing they had not purchased the lot they thought, the buyers sent a letter to the qualifying broker for the listing and selling agents, requesting to be paid the difference in value between the lots.

Result:

The carrier expended $325 to hire an appraiser to investigate the buyers' damages and reached a settlement agreement with the buyers for $15,000, the difference in value between the two lots.

Suggested Approach:

When listing vacant property, have the sellers meet you at the lot if possible. If feasible, walk the boundaries with the sellers. If the sellers live out of town, as in the example above, have them email or fax a plat with their lot circled. Further, if a plat is readily available, compare the lot numbers shown on the plat to the lot number owned by the sellers.

When showing vacant property, always recommend that the buyers obtain a current survey. Further, have the buyers sign and date the survey (and plat if one is provided to them) prior to closing, to evidence they received it. If the buyers decline to obtain a survey, the selling agent should have the buyers sign and date a statement indicating the agent recommended a survey and the buyers refused. This may prevent "he said/she said" arguments later. If there are any questions about the exact location of the property in which the buyers are interested (for example, the buyers indicate they are interested in "that lot by the pond" when that could describe more than one parcel), then meet the buyers at the property before submitting a purchase offer.

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TIPS TO AVOID ERRORS & OMISSIONS CLAIMS

While even the most diligent licensee may be the victim of a frivolous claim, diligent business practices help decrease risk. Even if these procedures do not prevent a claim, they may greatly enhance the chance of a successful defense.

1. Resolve problems far before the closing date. Don't wait until the last minute to address problem issues. When people are rushed to resolve matters right before closing, they are more likely to make mistakes or overlook items.
2. Don't try to be an expert at everything. Involve key professionals, such as attorneys, home inspectors, termite inspectors, appraisers, lenders, and surveyors when needed. Provide a list of several names or a copy of the yellow page listings but do not recommend a specific individual or firm! Keep a copy of the list you provide.
3. It is generally a good idea to require agency disclosure on every transaction. Be familiar with your state's laws regarding when a written agency disclosure is required, at what stage it must be completed, and who must be provided with signed copies. Typically, agency relationships should be disclosed as soon as possible, but in any event, prior to providing specific assistance to the client. For example, buyers should be advised if the agent showing them the house is the seller's agent.
4. Document conversations, recommendations, and activities in a log. It is also often helpful to document conversations by sending a brief follow up email. Keep organized detailed records of all real estate transactions. This is often required by state law, will assist you in recalling the particulars of a transaction, and will be helpful to an attorney if a defense is needed in the future.
5. Brokers should have regular meetings with their firms' licensees and remain informed as to their activities. Establish consistent guidelines and make sure everyone in the firm understands and complies with them.
6. Listing agents should have the seller complete any required property disclosure form. This form should never be filled out by the real estate licensee. Additionally, if any issues arise while the property is listed, advise the seller to update the disclosure form accordingly.
7. Recommend that buyers obtain a home warranty and retain written evidence of the recommendation.
8. Recommend that buyers obtain a home inspection. If they decline, have them sign a form confirming this decision.
9. Many states and associations have standard contract forms. It is wise to address items that are outside of standard form language with the client's legal counsel, or else the real estate licensee risks the unauthorized practice of law.
10. When information is obtained from a third party, licensees are often well served to disclose the source when making representations, because sometimes information from what appears to be a valid source turns out to be inaccurate. For example, if you believe a property is on city sewer based on a prior listing or a statement by the city utility office, disclose the source of your representation.

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