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Triple Play
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The Changing Landscape of Appraising Risk Management & Insurance Issues for Today's Appraiser

1

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The Current Regulatory & Legal Climate for Real Estate Appraisers

Class Goals & Objectives

- New Risks Every Day
- Fallout from the "Great Recession" – How Appraisers Were Affected
- The Government's Response – Dodd-Frank, USPAP, CFPB & TRID – Making a Hard Job Even Harder
- Insurance Claims, Coverage & Prevention

2

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The Current Regulatory & Legal Climate for Real Estate Appraisers (Cont'd)

- Board Complaints – The New Normal?
- Current Numerical Trends in E&O Insurance Claims
 - Improved Economy
 - New Threats - FDIC
 - Same Old – Human Error

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Errors & Omissions as a Risk Management Tool

- An E&O Policy can act as a roadmap to better practice management
- Provisions of coverage define parameters for your practice

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Why E&O – Protection in the Course of Providing a Professional Service

- Every Policy Has a Definition of Professional Services
- Some Policies Specific to Real Estate Appraisal Services, Others May Cover Other Professional Services (Like Sales)
- Is What You Do Covered? – Residential, Commercial, etc?

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More E&O Policy Definitions

- Who Is An Insured: The Individual, Corporation, LLC, Partnership , and/or Other Entity
- Additional Insureds
- Independent Contractors

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Even More E&O Policy Definitions

Policy Exclusions, Amendments & Coverage Conditions

- Typical Exclusions in an E&O Policy – Bodily Injury, Property Damage, Insured vs. Insured or Commission/Fee Disputes
- Also, Promise of Future Status, Performance or Value, Intentional Wrongdoing, Financial Interest
- Liability Assumed Under Any Contract or Agreement
 - Wait! What About AMC Contracts?!



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Yet Even More E&O Policy Definitions

- Claims Made Policy – The policy reacts to when the claim is made, not when the incident occurred
- Prior Acts/Retroactive Date of Coverage – the date back to which you would be covered for your professional acts. Events prior to this date would not be covered – The Reason You Buy Insurance!
- Your prior acts date should not change when you renew your insurance policy or change insurance companies



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Yet Even More E&O Policy Definitions

- Extended Reporting Period – Protecting Your Work
- Your Professional Liability Does Not End When You Do!
 - When You Retire
 - Close Your Business
 - Death or Disability
 - Change of Business Formation

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Claims vs. Supplemental Payments

A "Claim" is a written demand for money, typically preceded by a subpoena or a request for an arbitration hearing. A Claim is made on an allegation of an error or omission.

Many actions taken against a real estate appraiser have not yet become a claim but may be covered in the Supplemental Payments section of a Policy:

- Disciplinary or license hearing – 1 in 4 become a Claim
- Subpoena Expenses
- Security Incidents

10

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Recent Claims Trends – Part 1

- Hybrids
- Evolving Standards
- Identity Theft
- Metadata
- Human Error!

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Recent Claims Trends – Part 2

- Social Media Issues
- E-Mail Dangers
- Subpoenas and How to Respond
- Confidential Information
- Time Management

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Licensing Complaints

- AMC Licensing Complaints
- Homeowner Issues
- USPAP Confidentiality

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Avoiding E&O Claims & Licensing Complaints

- Accurately document all relevant information and all relevant information obtained from any source.
- Limit communications with third parties re subject of the appraisal
- Take care not to hold yourself out as an expert in areas where you lack expertise
- Stress to your staff that the best way to avoid a claim is to perform consistently superior work
- Develop a training program for your staff

14

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Avoiding E&O Claims & Licensing Complaints (Cont'd)

- Be aware of your staff's use of all technology and social media for business purposes
- Send confirmations; prepare memos of all phone calls and save e-mails, text messages and all other social media posts. "If it's not in writing, it doesn't exist"
- Keep in mind that your file is an open book and that it includes paper, emails, social media and other forms of electronically stored information.

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Avoiding E&O Claims & Licensing Complaints (Cont'd)

- Treat every request for information seriously. Determine whether your client (end user) is aware of the request. There may be privilege or issues as to scope. Consult with your attorney before responding to any document or deposition subpoena

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Avoiding E&O Claims & Licensing Complaints (Cont'd)

- Designate a management level employee as a "point person" for client complaints. Investigate, document the investigation and respond in a timely manner. Report any claim and consider reporting a potential claim pursuant to the terms of your E&O policy

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E-Discovery – Discovery of Electronically Stored Information (ESI)

- Personal e-mails and texts are not personal
- Social media
- E-discovery and litigation holds

18

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Contact the Presenters

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19
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About the Presenters

<p>John Torvi is the Vice President of Marketing & Sales at the Herbert H. Landy Insurance Agency of Needham, MA. John has been in the insurance industry, focusing on the needs of business owners, for 28 years. He holds a Bachelors Degree from Providence College and a Masters Degree from Springfield College and is a frequent speaker and contributor to professional journals and conferences for the legal, accounting, real estate and insurance industries.</p>	<p>Steve Young maintains an active legal practice defending claims in the federal and state courts, as well as before state administrative agencies. Steve's practice focuses on the defense of insureds covered by errors and omissions (E&O) policies, with an emphasis on real estate professionals and insurance agents and brokers. Steve is responsible for national claims hotlines covered by certain of the firm's insurance carrier clients including the Great American Insurance Company</p>
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20
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