Real Estate

Our expertise in real estate includes:

REIT Liability Property Managers’ E&O Real Estate E&O Tenant Discrimination

Partnership (General and Limited)

We have provided innovative solutions to “real estate” Insureds with complex structures , assisting them in designing coverage that advoided the potential costly losses because significate policy language was not eliminated. Having an in-depth understanding of the policy language is especially beneficial when designing a program with complex issues. We designed a “structure” that innovatively solved a problem that has existed when Insureds’ corporate structure includes limited partners, general partners, LLCs, C corporations, etc. Having the ability to read the Insureds’ contracts and raising questions about liability assumed under the contracts they enter, allow us to better design a program for the agents’ insureds.

**REITS Liability**

The Real Estate Investment Trust (REIT) team at ExecutivePerils has decades of experience in designing innovative program structurers to address the different “capacities” directors, limited partners, general partners and members serve. As well as the Insured vs. Insured exclusion avoidance.

**Property Managers’ E&O**

As a property manager who oversees residential buildings (i.e., condos or rental apartment complexes) or commercial buildings (i.e., office buildings or main street properties), for other building owners, you face specific risks. That's why we offer specialized property manager insurance to fit your needs.

 **Coverage Checklist:**

 **Discrimination Coverage –** Sub-limited fair housing discrimination coverage (defense expenses and damages) is offered by endorsement for property manager services at no additional charge.

**Failure to Maintain Insurance –** The policy form does not exclude claims arising from failure to maintain insurance\*.

**Real Estate Agent and Broker Services –** Coverage is automatically granted for property managers who also perform these services.

**Spousal and Domestic Partner Coverage Services –** Coverage is extended to spouses or domestic partners of insureds for claims arising from a wrongful act committed by an insured.

Pre-Claim Assistance – Covers expenses related to the evaluation and mitigation of a potential claim. No deductible applies.

Network and Information Security Offense Coverage (NAISO) – Full policy limits. Often referred to as “Cyber Liability”. Covers claims for the transmission of a computer virus; claims for the failure to control access to the insured’s computer or network; and the failure to prevent unauthorized access to, or use of, data containing confidential information of others (not limited to professional services).

Crisis Event Expense Reimbursement – Reimbursement coverage ($10,000/$30,000) for public relations consulting services incurred responding to any event that has had a material adverse impact on the reputation of the named insured. Includes death or departure of a principal, potential dissolution of the named insured, workplace violence, or any other event that has a material adverse impact on the named insured’s reputation. No additional charge.

Automatic Acquisitions Coverage – Entities acquired or formed during the policy period are automatically granted coverage for 90 days or until the expiration date (whichever is earlier) for wrongful acts committed on or after the acquisition or formation date. No additional charge.

Limited Claims Knowledge – Knowledge of claim or circumstance limitation only applies if a “principal insured” had knowledge on or before the policy knowledge date.

Innocent Insured Provision – The Criminal, Dishonest, Fraudulent or Malicious Conduct exclusion does not apply to any insured person who did not participate in or have knowledge of such con

Wrongful eviction: As a property manager, you are responsible for evictions. Not following the proper eviction process can lead to claims being brought against you. Professional liability insurance protects you even if you haven’t made a mistake.

Tenant discrimination: Claims of discrimination are a common risk that property managers face.  A potential tenant also may claim that you did not rent a property to them based on their race, religion or gender, even if you’ve done nothing of the sort. Having the right professional liability insurance will cover you when current or potential tenants claim that you wrongfully discriminated against them.

**Real Estate E&O**

* As a real estate agent or broker your client faces specific risks. That's why we offer customized real estate agent insurance to fit your needs.
* More clients require the professionals they hire to carry errors and omissions (E&O) insurance. You may **risk losing the opportunity** for a new project without it.
* **Contracts only go so far** in protecting professionals from potential lawsuits, as contract provisions are routinely challenged in court and at a considerable expense.
* **Clients do not hesitate to take legal action** if they feel the professional services performed failed to meet their expectations.
* **Defense costs, even in frivolous cases, can be costly.**
* A quality professional liability insurance program can be **both cost-effective and help protect your client’s business** and financial security.

Coverage Checklist:

**Bodily Injury and Property Damage –** Full policy limits without exclusions for bodily injury or property damage claims arising out of broadly defined real estate agent or broker services. No limitations, sub-limits, or exclusions related to “lock-box” or “open house”.

**Pollution, Fungi, and Bacteria –** Full policy limits without exclusions for the failure to advise of pollution, fungi (mold) and bacteria.

**Pre-Claim Assistance –** Covers expenses related to the evaluation and mitigation of a potential claim. No deductible applies.

**Network and Information Security Offense Coverage (NAISO) –** Full policy limits. Often referred to as “Cyber Liability”. Covers claims for the transmission of a computer virus; claims for the failure to control access to the insured’s computer or network; and the failure to prevent unauthorized access to, or use of, data containing confidential information of others (not limited to professional services).

**Crisis Event Expense Reimbursement –** Reimbursement coverage ($10,000/$30,000) for public relations consulting services incurred responding to any event that has had a material adverse impact on the reputation of the named insured. Includes death or departure of a principal, potential dissolution of the named insured, workplace violence, or any other event that has a material adverse impact on the named insured’s reputation. No additional charge.

**Automatic Acquisitions Coverage –** Entities acquired or formed during the policy period are automatically granted coverage for 90 days or until the expiration date (whichever is earlier) for wrongful acts committed on or after the acquisition or formation date. No additional charge

**Discrimination Coverage\* –** Discrimination (inclusive of fair housing discrimination) is not excluded or sub-limited for real estate agent or broker services. No additional charge.

**Limited Claims Knowledge –** Knowledge of claim or circumstance limitation only applies if a “principal insured” had knowledge on or before the policy knowledge date.

**Innocent Insured Provision –** The Criminal, Dishonest, Fraudulent or Malicious Conduct exclusion does not apply to any insured person who did not participate in or have knowledge of such conduct or violation.

**Subpoena Response –** By automatic endorsement with no sub-limits.

**Partnership (General and Limited)**

Both the entity limited partnership and the general partners carry more liability due to the nature of the structure.

*Most standard D&O policies explicitly exclude or restrict coverage for general and limited partnerships.*

A general partner can serve as both a manager and invest alongside their investors. This creates an inherent conflict of interest since they can benefit financially from the partnership they are managing. This leaves them exposed to lawsuits alleging various sorts of misconduct.

This exposure presents a bigger (and more expensive) problem than you might think. Limited partnerships and limited liability companies, which are common in the real estate and energy sectors, can be delicate arrangements, and accusations of various misdeeds can escalate to legal issues in a hurry.

Common allegations may include misrepresentations in order to induce an investor to purchase limited partner interests, misappropriation of the partnership’s assets or funds, as well as misappropriation of partnership opportunities.

In addition, individual general partners and entity general partners and the limited partnership, itself, may be accused of breaching the partnership agreement,

providing excessive compensation to the general partner, fraud, mismanagement or misconduct in the business operations, failing to equitably distribute profits according to the terms of the partnership, or exerting undue influence in causing a partner to amend the partnership agreement against his or her interest.

Historical court cases have included actions against the individual and corporate general partner and the entity limited partnership for breach of fiduciary duties and misrepresentations.

For example, a limited partner plaintiff who were the investors in a limited partnership accused the general partner defendant of purchasing and retaining a piece of land, thus preventing the limited partners from gaining any opportunity or benefit from that purchase or possible sale.

According to the plaintiff – and, ultimately, the judge – this constituted breach of the limited partnership or contract. The plaintiff was awarded upwards of $1.5 million.

Another notable case demonstrates what can happen when there are allegations of breach of the partnership agreement.

The plaintiffs, who were investors in the limited partnership, alleged that the defendant, who was the corporate general partner, failed to pay the correct amount of the preferred return owed to the limited partners as specified in the partnership agreement. The plaintiff also accused the defendant of improperly paying management fees to himself and the corporation he wholly owned. The corporation was also a defendant in this case.

The total judgment against the individual and corporate general partner was $1.6 million. Prior to the trial, the plaintiff settled with the corporation for $2 million. Most standard D&O policies explicitly exclude or restrict coverage for general

and limited partnerships. Some D&O underwriters will attempt to respond to this capacity by providing coverage to individual general partners or by general partnership liability (GPL) endorsement. However, this approach may be imperfect because it does not extend coverage to exposures specific to limited partnership exposures.

General partners and limited partnerships need a defined policy that responds to the risks specific to both corporations and general partners, as well as the limited partnership. Instead of a standard D&O policy, partnerships should seek a blended directors and officers/general partnership liability coverage (D&O/GPL). Though they address the same risks, D&O and GPL are two different types of coverage for two different types of legal structures.

When pursuing a D&O/GPL policy for a client, seek coverage that provides a broad definition of insureds, including directors and officers, individual general partners and corporate general partners. Also seek policies that cover a broader range of entities, from corporations to limited liability companies and scheduled limited partnerships. A comprehensive policy will also provide automatic coverage for newly formed or acquired partnerships, as well as subsidiaries of the insured organization.

You have these risks in your client portfolio. These are difficult exposures requiring the proper coverage with adequate limits.

When advising a new client, be cautious about steering them towards a standalone D&O policy. Their business structure may necessitate an executive liability package that includes D&O/GPL coverage. And do not forget to review existing clients’ organizational structures next time their D&O policy comes up for renewal. You may find they are taking unnecessary risks in their business.