

Risk Management: Best Practices for Real Estate Professionals



Presented October 2, 2024

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Berkley Service Professionals

At Berkley Service Professionals, we transform uncertainty into opportunity so our clients can confidently build a better tomorrow. We do this by providing customized professional liability insurance solutions for miscellaneous nonmedical professionals. We are highly experienced underwriters whose expertise enables us to understand the inherent professional liability risks of service professionals and we excel at writing complex accounts. Berkley Service Professionals responds quickly with innovative coverage solutions that fulfill the needs of our brokers and their clients. We provide high-quality, results-oriented, expert in-house claims management. Our mission is to relentlessly protect our clients' work, reputation and dreams.

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Practice management recommendations should be carefully reviewed and adapted for the situation including any particular project requirements, standards and protocols established by the company.

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Presented by



Jay S. Gregory
Partner
Gordon Rees Scully Mansukhani | GRSM50



- Focuses his defense of professional liability actions brought against real estate brokers, insurance agents and brokers, appraisers and attorneys
- Spoken at numerous seminars relative to the defense of design professionals, use of expert witnesses, deposition preparation, and risk management issues
- Jay also acts as a mediator and/or arbitrator in various forms of alternative dispute resolution



Tom Rea
Executive Vice President
Berkley Service Professionals



- More than 25 years of experience, predominantly in specialty professional liability insurance
- Created successful Miscellaneous Professional Liability products and teams from the ground up
- Held various positions ranging from product head to product/portfolio manager in addition to senior underwriter and underwriter
- Worked in large and small insurance company environments

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Workshop Outline

Sources of Exposure and Risk

Guidance for Managing and Minimizing Risks

Tips to Avoid a Professional Liability Claim

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Potential Claimants



- Buyer
- Seller
- Client
- Customer
- Other agent
- State

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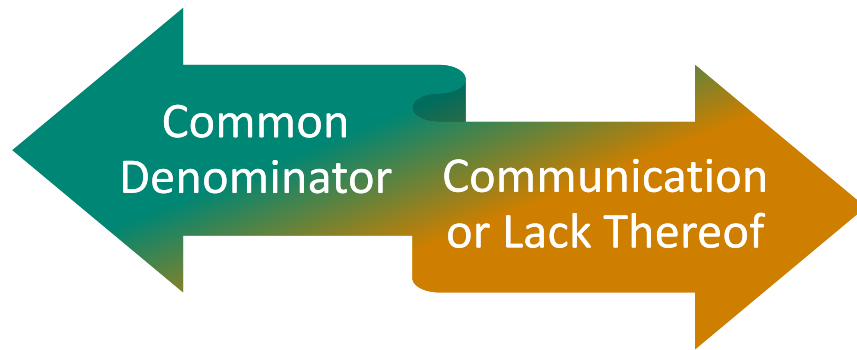
Potential Claims/Theories of Liability

- Negligence
- Negligent misrepresentation
- Fraudulent/intentional misrepresentation
- Breach of contract
- Consumer Protection Act
- Deceit
- Violation of statute
- Discrimination/State/Federal
- Breach of fiduciary duty

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Typical Exposure



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Sources of “Representations”

- Agency disclosure
- Listing agreement
- Seller’s statement of property condition
- Inspection reports
- MLS listing
- Marketing materials
- Craig’s list
- Oral representations
- Texts/emails/IM’s

Perils of Dual Representation

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Legal Theories

Misrepresentation

- Negligent
- Intentional



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To State Cause of Action for Negligent Misrepresentation

Claimant must Establish that the Agent

1. in the course of his/her business;
2. made a false representation of material fact;
3. for the purpose of guiding others;
4. claimant reasonably relied on representation as true; and
5. claimant suffered damage.

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Conveying Information



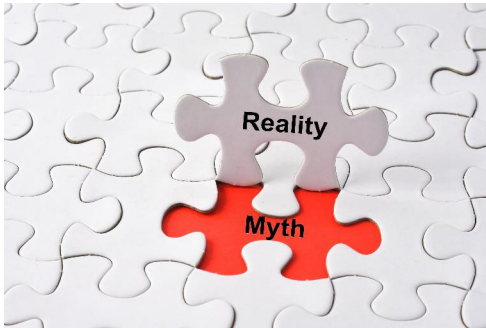
What can an Agent Safely Communicate?

- Perils of Non-Disclosure
- Perils of telling half the story
- Perils of turning a blind eye

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Nuances



Some Nuances

- What is false information?
- Difference between facts and opinions.

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Tips to Avoid Exposure to a Professional Liability Claim

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Risk Mitigation Strategies



Risk Analysis

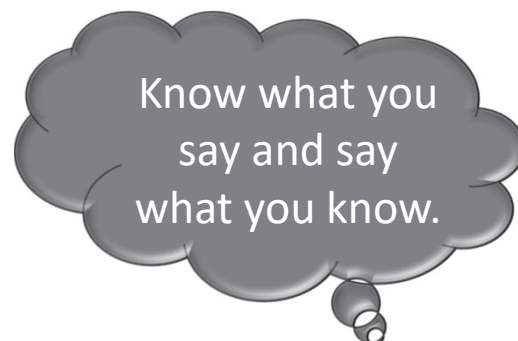
- How to minimize risk and exposure

(Time to start taking notes.)

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Communication Management



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Documentation Management

- Memorialize Communications



- Document, Document, Document



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Agreements and Disclosures



- Exclusive listing agreement
- Purchase and sales agreement
- Mandatory disclosure statements
- Buyer's v. seller's agent

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Educating the Team

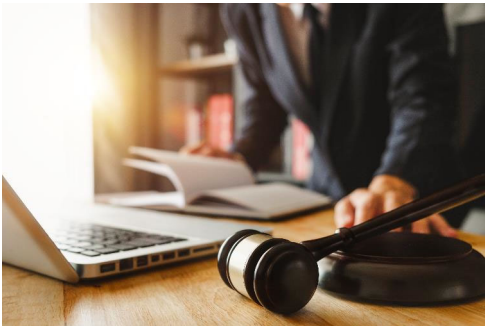


- Good office procedures
- Training
- Consistency

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Claims Are Expensive



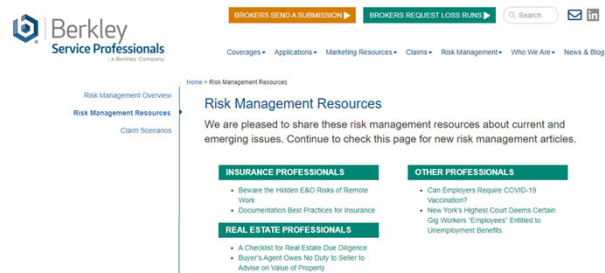
- What to do when a “claim” comes?
- Report to insurance agent
- Preserve file including all communications

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Summary

- Berkley Service Professionals (BSP) offer claims made and reported professional liability insurance for licensed non-medical professionals and miscellaneous service exposures
- BSP products currently include: Insurance Agents/Brokers E&O, Real Estate Agents/Brokers E&O, Manufacturers E&O, Miscellaneous Services E&O and Excess E&O insurance



Available Risk Management Resources on BerkleySP.com

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Questions?

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