

# Learn about typical **E&O Claims** and how to avoid them



## **Water Intrusion**

Water intrusion caused by faulty foundations, roofs, and windows is very common. Inferior design, construction, and/or installation can create moisture problems, which can lead to wood dry rot, mold, and pest infestation. Also, poor drainage can result in wet basements and damaged personal property. These problems are prevalent in both old and new construction, making it vital to never assume that new construction or renovations are without flaws.

An initial home inspection revealed faulty windows, which resulted in a failed transaction. When a subsequent sale occurred, the real estate agent failed to have the seller update the disclosure statement and only verbally advised the purchasers of the defects. The buyers soon discovered the problems and sued the sellers and agent. The cost to settle the case was \$12,000.

## **Boundary Misrepresentation**

Frequently, litigation ensues after a seller and/or real estate professional incorrectly identifies property landmarks as being “the boundary.” Buyers may decide to build a fence or install a pool on what they think is their property only to discover that it is their neighbor’s. More serious problems can arise if the agent misinterprets the boundary pins and/or fails to provide the buyers with survey results. Real estate professionals should recommend the buyer have the property’s boundaries surveyed to verify acreage and demarcation and provide that report to the buyer. Never guess if unsure of a boundary or its marking.

After a professional survey, the real estate agent incorrectly interpreted the positioning of the stakes and failed to provide the buyer with a copy of the findings, resulting in the buyer making substantial landscaping renovations on the neighbor’s property. The litigation ended with the agent paying a rather significant settlement to both the buyer and the neighboring property owner.

## **Foreclosure Sales**

Many real estate professionals with an extensive residential background attempt to handle foreclosure sales. These transactions require a special expertise and diligence to complete and dabbling in the area can lead to mistakes and claims.

A real estate agent, inexperienced with foreclosure sales, was hired to auction a property by the mortgage lender. Unfortunately, the agent failed to consider the second mortgage when auctioning the property. The buyer eventually agreed to complete the sale, with the agent paying off the second mortgage note and being barred from future auction sales for that lender.

## **Misrepresentation Of School District**

School districts, on occasion, make changes to which schools serve certain neighborhoods within a community. Problems can arise if real estate professionals fail to conduct due diligence.

Having sold many homes in the same neighborhood, a real estate professional assumed the most recent listing was in the same school district although he was aware the district had recently redrawn its boundaries. Because the agent failed to verify the school boundary information, the claim eventually settled for a large amount.

## **Homeowners’ Associations And Restrictive Covenants**

Newer residential subdivisions typically utilize homeowners’ associations and restrictive covenants to help protect the integrity of the neighborhood and property values. These restrictions can include building specifications, land use regulations, and even pet stipulations. Claims can arise when potential buyers don’t receive a copy of these governing documents or agents attempt to interpret their applicability.

A real estate professional incorrectly advised his clients that their granddaughter could live in their new property despite

restrictive covenants specifying a much older age requirement. To further complicate matters, the agent failed to provide the buyers with a copy of the covenants prior to executing the purchase agreement. The matter was eventually resolved following extensive negotiations.

### **Misrepresentation Of Well Water**

It is not uncommon for real estate professionals to represent that well water flow and quality is adequate for a buyer's needs. The source of this statement may come from the seller, but it shouldn't be assumed that the buyer will necessarily agree. Contaminated water can involve significant expenditure if clean water has to be delivered to maintain the property's legal occupancy. A well inspection may also detect other environmental hazards, such as underground storage tanks.

Despite visual evidence of ongoing well testing on the property, a real estate agent took the sellers' word that there was no problem with the quality of their well water. After closing, the buyers received notice from an environmental engineering company about contamination in their water supply. They then sued the agent, alleging misrepresentation and failure to recommend a water quality inspection.

### **Real Estate Litigation**

Property sales may result from a legal situation necessitating the transaction or may be impacted by an associated lawsuit. Any such dispute is usually revealed during the title search and should be disclosed to all potential buyers since it could ultimately affect the property's title.

Although aware of ongoing litigation regarding ownership to a driveway, a real estate professional did not inform potential buyers of the property's legal status since their state did not require a Seller's Property Disclosure Statement. The buyers terminated the contract when they learned of the issue, then sued the agent for extensive damages.

### **Zoning Misrepresentation**

Mistakes occur when a real estate professional assumes their residential expertise will translate into the commercial arena. Claims are typically generated after a buyer learns their new property cannot be used for their intended purpose although represented as such by the listing agent.

As an expert in residential real estate, an agent incorrectly advised a client that he could operate his commercial business out of his new home. After the city contacted the buyer about his nonconformance to zoning regulations and denied his variance request, he sued the agent and supervising broker, who settled for a substantial sum.

### **Latent Defects**

A home that appears to be in proper working order may have underlying issues not visible to potential buyers. Cracks in basement walls, ceiling stains, and uneven floors can all signal more extensive problems. Professional home inspections can help detect such defects before closing.

Relying on an undated soil study provided by the sellers that indicated no problems, a real estate professional recommended a property to his buyers, who also wanted to install a swimming pool. After closing, the buyers learned the soil condition was much worse than disclosed and also that the home's foundation had shifted. The agent was sued for failure to recommend a soil study or home inspection, resulting in a six-figure settlement.

### **Misrepresentation Of Property Income**

Income-generating properties and fashionable neighborhoods may impact a parcel's value, but can't guarantee it. By speculating on the future viability of a property, a real estate professional could create an unreasonable expectation of profitability. To help prevent an unforeseen financial loss, always recommend buyers seek the advice of a qualified expert.

A real estate professional erroneously believed a particular retail property and its upper-floor residential rental units would be successful. Having been assured by the agent of this "guaranteed" income, the buyer acquired the property, which ultimately failed due to empty rentals and low business traffic. The matter was resolved for \$75,000 after a two-week trial.

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