

# Mortgage Bankers Professional Liability insurance – Frequently Asked Questions

## What is Miscellaneous Professional Liability for mortgage bankers?

Professional liability insurance covers a mortgage banking firm's liability for errors & omissions made in providing professional services such as loan origination, loan underwriting, processing, marketing, closing, warehousing and servicing.

## What does this coverage do for me, a mortgage banker?

Professional liability insurance covers claims involving violations of lending regulations such as the Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act (defense costs only), and the Fair Housing Act (defense costs only). This insurance also covers claims against mortgage originators involving loan commitments to borrowers, foreclosure and eviction, escrow determination, ARM miscalculations, pay-offs and releases, and servicing transfers.

## What are some examples of claims that have been covered by this insurance?

### Misrepresentation of Loan Terms

A borrower filed a lawsuit against an insured alleging that an employee of the insured promised to provide him with a loan that did not include a pre-payment penalty. Upon attempting to refinance, the borrower discovered that the loan did indeed include a pre-payment penalty, and the borrower suffered a financial loss in the re-finance transaction. The matter was resolved with a settlement in which the policy covered all defense expenses in excess of the deductible, totaling approximately \$15,000. In addition, the policy contributed \$15,000 towards the settlement and release of the insured. In all, this insured's professional liability policy paid \$30,000 in total coverage.

### Borrower Alleges Violation of Real Estate Settlement Procedures Act to Avoid Foreclosure

A borrower filed a lawsuit against an insured alleging various violations of the Real Estate Settlement Procedures Act (RESPA). The lawsuit was an attempt to avoid foreclosure. The borrower had an option ARM loan that had recently reset, and the borrower could no longer afford to make the loan payments. The insured vehemently denied all of the allegations in the lawsuit. The court granted the insured's motion to dismiss the lawsuit, as the allegations were without merit. Nevertheless, the professional liability policy covered all defense costs in excess of the deductible, which totaled \$45,000.

### Class Action Lawsuit for Excess Fees

A class action lawsuit was served on an insured alleging that they illegally and routinely required payment of excess fees and yield spread premiums. The lawsuit asserted causes of action for breach of contract, violation of the Consumer Protection Act, and unjust enrichment. A settlement was reached in the matter, and the professional liability policy covered defense expenses in excess of the deductible and contributed to the final settlement. These payments totaled approximately \$500,000.

## Why else do I need this coverage?

It is widely believed that more robust regulation is coming to the financial institution industry and that mortgage bankers will be impacted. There is a good chance that there will be a federal regulator monitoring consumer financial products such as mortgages and credit cards. Further, if Congress passes legislation targeting non-depository financial institutions by enacting a 'Duty of Care' provision, mortgage originators will almost certainly need professional liability insurance, similar to the way physicians carry medical malpractice insurance. If it is deemed that a lender violated a 'Duty of Care' standard, and a loan goes into foreclosure, the chance that the lender will be sued increases dramatically. The future landscape of mortgage lending – for mortgage banks, commercial banks, and credit unions – will depend on the final outcome of much of the proposed legislation and regulation. One thing seems certain; more regulation of mortgage lending is coming, and with it comes increased exposure to professional liability claims against mortgage originators.