December 2009
Vol 19. NO. 3

Origination News

▶ For Mortgage Brokers, Correspondents, Lenders and Wholesalers

Claiming ASAP Is Key

By Lee Brodsky

Mr. Brodsky, founder of the Mortgage Banking Insurance Group at independent brokerage JMB Insurance, has written an opinion piece on what he sees as the limits and benefits of different types of coverage.

CONFUSED BY DIFFERENT INSURANCE coverages? Not understanding can turn into huge problems. Take claim reporting for example. Most policies have specific reporting deadlines. Notify the carrier too late, and an otherwise covered claim may be denied.

This will provide a starting point for understanding. Requirements may vary from carrier to carrier. So, it's best to read yours or seek out the advice of your carrier or a qualified insurance broker.

Mortgage Bankers Bonds: There are usually two main parts: Fidelity, (also known as employee dishonesty) and Mortgage Errors & Omissions. Fidelity protects you from employee fraud or theft and may be extended to include fraud by closing agents, third party originators and others. ME&O protects you or your investors from losses due to specific "mistakes" by your firm and your liability to mortgagors and investors. These policies often limit coverage for such "mistakes" as failure to arrange flood insurance on a mortgagor's property.

MBBs can also be extended to include coverage which can be written to cover losses stemming from borrower fraud, theft of investors' funds, stolen documents from your office and other crimes.

Check your policy to see what specific monetary, document or property losses are covered. Firms often mistakenly believe that mortgage bankers bonds cover all fraud. Not so. The fidelity portion will typically only cover losses in which an employee is acting alone or in collusion with others.

Generally, the carrier will reimburse you for a covered loss (up to your limit, minus your deductible). Or, they'll make payments jointly to you and any loss payees such as investors and/or warehouse lenders to whom, under the policy, insurance proceeds are to be paid in the event of loss. Expenses, such as legal fees for court proceedings and accountancy fees for determining the extent of the loss, are generally covered as well. In cases of fraud and theft, the carrier may want to go after the perpetrators in court to see if they can recover some of the loss.

VIEWPOINT

"Policies will require notice within a specific number of days."

You have a claim at the point when you "discover the loss." While your policy may describe this in detail, it basically translates to "the moment you realize a covered loss may have occurred."

Most policies will require notice within a specific number of days. You will also need to provide "proof of loss" to the insurance carrier, most likely, within six months after the discovery is made. For proof, you'll need to provide a written narrative of the particulars as well as any pertinent documents and an itemization of the amount lost. The six months gives you, as well as outside investigators and accountants (whose fees are likely covered as a claim expense), the time needed to determine the full extent of the loss.

Professional Liability Insurance: This protects your firm from lawsuits resulting from mistakes made during origination, underwriting and other professional roles. These lawsuits will generally be brought against you by clients accusing you of negligence in your professional duties. Though typically, the types of errors and omissions mentioned in the Mortgage E&O section above are specifically excluded.

Most policies cover damages and claim expenses (up to your limit, minus your deductible). Damages include any amount you're legally required to pay as a result of an arbitration hearing or court decision (i.e., you were sued and lost). The coverage also tends to include settlements, though the insurance company will need to approve the deal. In addition, the policy will detail what is not considered part of the coverable loss. This can include civil or criminal fines, taxes owed by any party and punitive damages.

Claim expenses are any costs resulting from attorneys and others as a result of the investigation, defense, negotiation and appeal of a claim. Insurance companies will want to hire, or at least approve, any lawyers hired to handle your case and will not reimburse you for any fees you've incurred by hiring your own attorney without their written consent. These expenses are generally part of the overall policy limit.

Taking into consideration what's covered by the policy, a claim is typically any demand for money or services, a lawsuit or the initiation of a disciplinary proceeding against you by a regulatory board, agency or equivalent government entity.

Insurance carriers want to be involved from the beginning, so they can protect their own interests by hiring legal counsel they trust.

Viewpoint: Claiming As Soon As Possible Is Key

Notify your insurance carrier of a potential claim as soon as possible. But, generally, no later than 60 days after a claim is made against you or late notification may impact your claim. Your policy may also ask you to report circumstances that you are aware of that could lead to a claim arising.

Directors & Officers Liability Insurance: This protects the personal assets of directors and officers of your firm from lawsuits alleging negligence in the performance of their roles as leaders and decision makers. The coverage may also extend to your corporate entity. These policies can be thought of as management liability for your corporate executives and are applicable for both publicly traded and privately held companies. These policies protect you from a wide range of suits. For instance, investors and warehouse lenders might assert you misrepresented your company or were guilty of breach of contract. D&O policies usually specifically exclude those losses.

Covered losses often include damages, legal judgments against you, settlements, defense costs and pre- and post-judgment interest. As per usual, the carrier will pay up to your limit minus your deductible.

These policies are often careful to state that the covered loss does not include such expenses as civil or criminal fines, taxes (though some insurance companies may pay for your share of payroll taxes owed on back pay) and costs incurred to make a building more handicapped accessible.

There are a number of circumstances that constitute a claim. They can generally be summed up as your receipt of demand (written or sometimes even oral notice) that a case is going to be brought against a director or officer of the firm (or the firm itself). So, if you receive a complaint that includes a demand for money or services, that's most likely considered a claim. Also, included is the receipt of any document notifying you that you're to be the defendant in a civil, criminal, administrative or arbitration proceeding. An indictment or the filing of a notice of charges may also be a claim. If you are notified charges are being brought against you in front of a government agency you may have a claim.

You'll need to contact your carrier anywhere from 30 to 90 days after you receive notification that a claim is being made against you. One policy I've worked with gives 15 days. If you're near the end of your policy period, the reporting option may expire when the policy expires even if it's within the requisite number of days.

Employment Practices Liability Claim Insurance: This can protect your firm, its management and its employees from a wide range of employment-related lawsuits. The policies can even be extended to cover actions against you by third parties such as vendors or customers. Depending on your policy, the suits covered could include different types of discrimination, harassment and wrongful dismissal, discipline or evaluation. EPLI can be offered as part of D&O liability insurance, or written as a separate policy. Just as with D&O, covered losses often include damages, legal judgments against you, settlements, defense costs, and pre- and post-judgment interest. Payouts would be up to your limit minus your deductible.

Again, because the two policies are closely related and often paired together, the definition of what circumstances constitute a claim is similar to that given for D&O.

While D&O and EPLI have similar definitions of a claim, the reporting requirements can vary. With D&O, it's the receipt of demand that marks the beginning of your reporting window. With EPLI, it's actually the point at which you're aware of the issue that could lead to a claim and have begun to investigate it. The policy may give you 60 days or as little as 30 to notify the carrier. If you wait all the way until the actual demand is made, you may miss your reporting window.