

Negligent Referrals and You

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Felix has decided to sell his house and contacts Mary, an independent insurance agent, who he knows has been in the community for many years. Felix asks Mary if she knows of a good real estate agent who can help him. Mary tells him she knows the perfect person, Rusty Nail at Nail Real Estate. Mary doesn't hear from Felix until about 3 months later when Felix calls her and relates the following story.

Rusty advised Felix that an open house would be a good way to show the house to prospective buyers and that it would best for Felix to be out of the house during that weekend. When Felix returned, the interior of the house had been destroyed. Felix learned that Rusty had a party that left Felix's house in shambles with damages in excess of \$10,000. When Felix approached Rusty to pay for the damages, Rusty responded that he in fact was not a real estate agent, that his license had been suspended for 3 years and he had no insurance to cover the damages.

Felix blamed Mary's recommendation of Rusty for the damages and threatened to file suit against her. Mary then reported the claim to her errors & omissions carrier. Is this covered?

The Swiss Re Insurance Agents Errors and Omissions policy provides coverage for claims arising out of "professional services" rendered to others. "Professional Services" is defined to include activities as a managing general insurance agent, general insurance agent, insurance agent or insurance broker. As a general rule, referring a customer to a third person or entity unrelated to the insurance products provided by the agency is not considered "professional services" under the policy. In this case, the claim for negligent referral against Mary would not be covered under her insurance agent's errors & omissions policy.

What can you do to protect yourself in this type of situation? There are several options.

1. Risk avoidance - decide you are not going to continue providing referrals
2. Risk mitigation - continue providing referrals, but offer several names and be sure to include a statement or statements that specifies the scope and limits of what you are providing; for example, that the person getting your referral should look into the qualifications of anyone they choose to use to be sure their needs and requirements are met. You should consult with an attorney licensed in your state as to the use of and the specific language of a disclaimer and the legal effect of such language.

Unfortunately, sometimes it just doesn't pay to be nice, and in fact it can cost you.

Richard F. Lund has been with Swiss Re since 1992, as both a claims counsel and now as an underwriter in the insurance agents errors and omissions program. He has written numerous articles on agents E&O risk management and loss control and has presented

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This article is intended only for educational or illustrative purposes and should not be construed to communicate legal or professional advice. You should consult legal or other professionals with respect to any specific questions you may have. The above tips cannot guarantee the prevention of errors and omissions claims against your agency, but they may minimize your risk against these types of claims and increase the defensibility of those claims that may be presented.