

Examine Excess Flood Insurance to Keep Tide of E&O Claims Low

Excess flood insurance is flood coverage that is available in excess of the limits offered by the National Flood Insurance Program limits of \$250,000/\$100,000 for homeowners and \$500,000/\$500,000 for commercial properties. (Congress is looking to raise these limits, so always check the amount of coverage available under the NFIP before making recommendations to your clients.)

Every time you have a client who purchases the maximum limit of flood coverage offered by the NFIP, you should be prepared to offer additional flood coverage from the excess flood market. (Of course, this presupposes that you have offered NFIP coverage, which you should do regardless of whether the mortgage company requires it.) Make notes that you offered both flood and excess flood coverage to your client. If the client decides not to purchase the coverage, follow up with a letter memorializing your recommendation and his or her refusal. If you have your clients sign a checklist of coverages they desire, make sure both flood and excess flood coverage are on the list.

Why should agents offer excess flood coverage? A professional insurance agent will want to protect the agency's clients to the fullest extent possible. Additionally, you are protecting yourself and your agency by documenting your files where the need for excess flood coverage is indicated. Finally, you do not want to be that agent, sitting in front of the jury, trying to explain why you did not offer excess flood coverage to your client, who, to compound all her problems associated with losing her home in a flood, is also facing a very large uninsured loss.

Excess flood coverage is generally found in the surplus lines market (for more on surplus lines, see the April "E&O Angle"). Therefore you will need to identify and affiliate yourself with a surplus lines broker who has access to the excess flood market. You should familiarize yourself with the product and the requirements for obtaining excess flood coverage because it is not as readily available as coverage under the NFIP. In fact, excess flood coverage is not available for all properties.

If you have a customer who is underinsured following a flood loss, her attorney may assert that you neglected to offer excess flood coverage and file suit. Following Hurricane Katrina, one of the most troublesome allegations against New Orleans insurance agents was failure to offer excess flood coverage. The following scenario shows why these claims are difficult to defend:

Your client, a homeowner, insures her home for \$2.5 million and her contents for \$1 million. She also purchases the maximum flood coverage from the NFIP, \$250,000/\$100,000. Her home is then destroyed by a flood and her homeowner's carrier denies the claim because the flood is not a covered peril. The NFIP steps forward and pays out policy limits of \$250,000 on the home and \$100,000 on the contents. Thus, your client receives \$350,000 on her \$3.5 million loss.

Your client files suit against you, her insurance agent, looking to recover the \$3,150,000 outstanding balance of her loss. The trial will be decided by 12 jurors, all of whom either suffered storm losses or know someone who suffered a storm loss and are unhappy with the handling of their claims by their insurance companies.

Your client will take the stand and testify that she purchased every coverage you offered to her. You told her that she purchased the maximum amount of flood coverage available. She testifies that had she been offered Excess Flood Coverage, she would have purchased it, as she had purchased all of the other coverages.

As her insurance agent, it is now your turn to take the stand. What will you say? 

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Sample Flood Insurance Acknowledgement Form

Here is a sample flood insurance acknowledgement form to use in your agency:

Standard property policies, including but not limited to homeowners policies, dwelling policies or commercial property insurance policies, exclude coverage for flooding events. As your insurance agency, we strongly recommend that you purchase flood insurance and excess flood coverage if values exceed the maximum coverage available on the primary policy. It is possible that coverage as recommended below may not be available from the carriers we represent.

I hereby acknowledge the acceptance, rejection or unavailability of flood and excess flood coverage as indicated below. It will be conclusively presumed this election, rejection and/or acknowledgement of unavailability will apply to all future renewals, continuations, changes or replacements thereof.

Type Coverage

- Building Coverage
 - Contents/Personal Property
 - Excess Building Coverage
 - Excess Contents/Personal Property
- (Indicate if accepted, rejected or unavailable.)*

Named Insured:

Applicant's Signature Date:

Address of Property:

Agent/CSR Signature Date: