

## What's It Worth? Issues with Property Valuations

The valuation of property causes substantial problems in the context of potential insurance agent errors and omissions (E&O) claims. Valuation claims can arise in all types of situations. They can occur on a large scale when an agent is obtaining a policy for a commercial account with multimillion dollar buildings at issue. They can also occur on a much smaller scale, especially in a financial climate where property values may be dropping, replacement costs may be rising and property owners are motivated to take out “bare bones” insurance coverage. Policyholders may have a cynical view of their agents’ attempts to increase limits as a way to increase premium, as opposed to a means to protect their assets in the event of a large loss. Until, of course, a loss occurs. Consider the multitude of claims following every natural catastrophe that are brought against insurance agents once homeowners or small business owners realize that they may not get enough insurance proceeds to rebuild their homes or businesses.

So what can an insurance agent do to avoid potential E&O claims for undervaluing property? Most importantly, agents should be wary of the potential for professional liability claims related to valuation. Know that there is no simple formula that will keep independent agents out of trouble. Professional duties can arise in many different contexts. If you undertake the task of determining the value of the property, you have a duty to do it well; if you have a “special relationship” with a client, you may be held to a higher standard of care such that it may be reasonable for the client to rely on you for property value determinations; if you advise a client they are “covered,” a later claim of misrepresentation may arise if they suffer a loss and have insufficient limits to cover it.

There is no easy answer, but we suggest a simple reminder to help avoid potential claims regarding incorrect valuations of property—the Four D’s: determine, deflect, develop and document.

- Determine:** Consider from the outset the method of determining the value. If you will be using valuation software, then make sure to understand the software well. The valuation obtained will only be as good as the information you provide. Take courses to understand the computerized valuation process. Use comparables, when available, in conjunction with any computerized program you use. If valuation is not your forte, do not undertake the process; instead, be sure your client is aware that you are relying on him or her to complete the valuation.
- Deflect:** Use other reliable resources. If your client has a good understanding of the value of his or her property, and what it would cost to replace it, then by all means, have the client provide the valuation. Sometimes the carrier can be of assistance. If you are not sure that the client’s estimates or your own numbers make sense, consider using an independent property appraiser. Consider using an “agreed value” for the property so that any coinsurance problem can be avoided. Utilize all possible endorsements that are available to extend coverage, such as blanket coverage for commercial property, increased cost of construction or code upgrade coverage, coverage for betterments and improvements and endorsements for off premises power failures in the event of a disaster.
- Develop:** Develop procedures within your agency on how to deal with property valuation. By creating a system that is documented and consistently followed, you have a better chance of successfully defending a claim that you failed to properly value property. For certain risks, checklists may be helpful. Ensure that it is your standard process to routinely advise clients in writing to review the value of their property. Have available a written explanation of how coinsurance may be applied to reduce a loss payment to review with your clients. Make it routine to put a copy of any request to review values or written explanation of coinsurance in the client’s file.
- Document:** The success in defending any E&O claim rests on the existence and quality of the documentation in your file. This is very true regarding issues of property valuation. Document various proposals and especially the client’s declination to take out coverage for a certain limit. Be sure to document that discussions of valuation were held, how the valuation was determined, and the client’s agreement on the value. Document any changes to limits so that the file reflects why the change was made and that it was discussed with your client.

Just remember that since there are numerous ways to make mistakes when valuing property, agents must undertake property valuations with as much care as possible. 

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## More on Property Valuation Issues

With tornados, wildfires, floods and earthquakes, the losses from catastrophes in the first half of 2011 were record-setting. With catastrophe losses comes exposure to potential E&O claims against agents for uncovered losses. The allegations of failure to offer coverage and proper limits are common, and the determination of property values is a major issue. The Big “I” Virtual University has some good articles on the topic of undervalued property at [www.iiaba.net/VU](http://www.iiaba.net/VU). Also check out [www.iiaba.net/EO](http://www.iiaba.net/EO) for a free webinar recording titled, “Avoiding E&O Claims from Catastrophe,” which touches on setting limits.

—A.P.

