

Hot real estate market?

Excess coverage protects your practice as property values soar

Current market conditions mean business is booming for lawyers, but keep in mind that your risk exposure may be growing in lockstep with property values.

A hot market changes the way real estate deals unfold. Not only do lawyers see a higher transaction volume, but unconditional offers proliferate, and closing intervals may shrink. All these factors place pressure on lawyers and can increase the chance of an error in even the best-run practice. For example, when buyer clients come in with an unconditional deal and a tight timeline only to struggle to secure the insurance needed to satisfy a lender, negotiating a closing extension becomes the lawyer's job. The risks associated with renegotiating closing terms are a substantial deviation from the risk profile of a routine real estate deal.

At the same time, growth in land values can mean that if you do make a mistake, the resulting claim could easily hit the limit of your professional indemnity coverage. Early in 2020, the Canada Mortgage and Housing Corporation (CMHC) predicted that the COVID-19 pandemic would deliver an 18 per cent blow to Ontario house prices; instead, prices increased by 25 per cent from March 2020 to March 2021. This trend was exaggerated in the Greater Toronto Area where, according to the Toronto Regional Real Estate Board (TRREB), the average price in April 2021 was \$1,090,992 — a 33% year-over-year increase. Until interest rates increase and mortgages become more difficult to maintain, Ontario real estate lawyers can

probably expect that values will continue to go up. For real estate lawyers, this means that if something goes wrong on a file, the potential damages are so much worse than if the same error had occurred 20, 10 or even just five years ago.

What's more, the odds of something going wrong increase when the market is hot. Not only can pressure to win bidding wars lead to reckless decision-making by buyers, it can leave a bad taste in the mouths of "winning" and "losing" buyers alike. As the market heated up in 2020, complaints to real estate regulators surged, with reports to RECO, the Ontario regulator, increasing 43 per cent over the previous year alone. A key focus of these complaints has been the blind-bidding system in Ontario which requires buyers to submit bids without knowing what price others have offered. When a buyer "wins" a bidding war with a high bid, they may suffer buyer's remorse. This leaves some lawyers in the dangerous position of trying to protect the interests of reneging buyer clients.

If lawyers micro-managed every file to eliminate all risk, it would be hard to have enough time to keep a practice alive. It's not reasonable to expect lawyers to be perfect or to never make a mistake. Even where lawyers can implement all relevant best practice suggestions into their workplace routines, the unexpected

can still occur – and in a hot market, it will occur more often. So, plan for the unexpected. If you haven't already done so, it may be time to consider whether excess insurance is appropriate for your practice.

When making a disaster plan or reviewing a firm's insurance needs lawyers should take a hard look at what can go wrong in their specific practice in the context of current economic conditions. What may have been enough coverage even two years ago may be completely inadequate in 2021 and beyond. When performing an updated risk calculus, a lawyer should look at the average price of properties they handle and consider how busy their practice is before they plot out how many claims could arise and their potential cost when preparing for a worst-case scenario.

To help with planning, LAWPRO has a "Test Your Exposure" stress test available on its website that can help lawyers determine if their firm would benefit from getting excess insurance. LAWPRO can provide excess limits that go as high as \$9 million per claim/in the aggregate above the \$1 million per claim/\$2 million in the aggregate limits provided under the primary program. For more information on LAWPRO's excess insurance program please visit our website (lawpro.ca/Excess), contact us at service@lawpro.ca or call us at (416) 598-5800 or 1-800-410-1013. ■

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