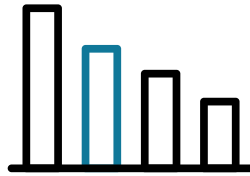




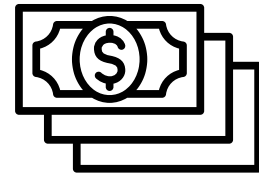
2 claims area by cost

- average total cost \$22.7 million per year



2 claims area by count

- average 665 claims per year



\$34,000 average cost per claim

RISK MANAGEMENT TIPS



Meet clients in person at least once

Meet with the client in person to review the transaction and understand client instructions, particularly with respect to the client's intended uses of the property. Not every matter is straightforward, and you don't want to have to address a problem that was only noticed the day of closing, or never noticed at all.



Remember, the lender is also your client in most residential transactions

The lender is also your client and is owed a duty of care. Provide any information to the lender that is material to the lender's decision to advance funds under the mortgage. Lending clients can sue lawyers for failing to disclose all relevant information they knew or ought to have known.



Document your conversations with and instructions from the client

This is the best defence against a malpractice claim. Clients may only be involved in one or two real estate transactions in their lifetime and will remember the details, while the lawyer who sees countless transactions will likely have little specific recollection of one matter. Keep notes of your conversations and document discussions and your actions in a detailed reporting letter to the client.



Do not give your Teraview password to anyone

Your Teraview PIN is only valid for your transactions. As tempting as it may be in a busy real estate practice to let the clerk register instruments requiring a lawyer's electronic signature...just don't.



Review the title insurance policy with your client

You should have a solid understanding of the title insurance policy and be able to explain standard coverages, exclusions and property-specific exceptions. It is also important to have a detailed understanding of the client's planned use of the property to ensure the coverage obtained applies to those uses.

COMMON MALPRACTICE ERRORS

Communication - 36%

- Failing to inform a client about restrictions on land use contained in a subdivision agreement
- Failing to review the survey and to discuss the risks or problems it reveals with the client
- Not inquiring about or following through on the client's intentions for future use of the property. For example, not doing the necessary zoning searches or getting title insurance with a future use endorsement. The client may intend to build a swimming pool, but sewers or utility easements may make this impossible. Zoning may not permit a home-based business or multiple dwelling units
- Failing to ensure that the condominium unit shown on the plan meets the client's expectations (e.g., whether it overlooks a lake or a parking lot)

Inadequate investigation - 35%

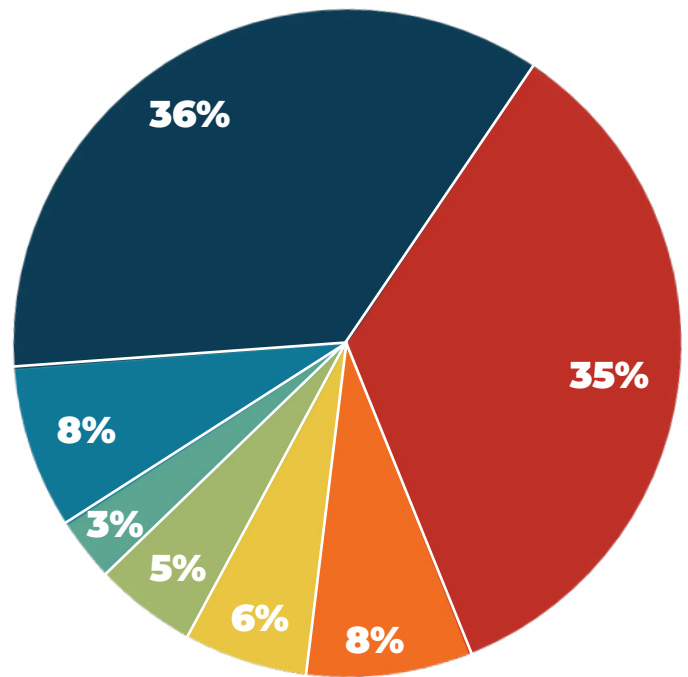
- Misreading (or not reading) a survey, search, or reference plan
- Failing to review a condo status certificate and bring deficiencies to the client's attention
- On a condominium purchase, failing to ensure that the parking space and locker specified in the agreement of purchase and sale are actually for sale and that the legal description of both units is correct

Errors of law - 8%

- Failing to fully understand or properly apply the part-lot control provisions of the Planning Act
- Not being sufficiently aware that different types of searches are required depending on the type of property being purchased (e.g., single unit vs. multi-unit, commercial vs. residential)

Clerical and delegation - 6%

- Not meeting with the client. Delegating the entire file/transaction to a law clerk
- Failing to review the statement of adjustments for clerical errors



Conflict of interest - 5%

Fraud - 3%

Other - 8%

Visit practicepro.ca for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more

Be aware of frauds involving deposit cheques and fund diversion emails. Visit practicepro.ca/fraud.

*All claim figures from 2012-2022. All cost figures are incurred costs as of April 2023

©2023 Lawyers' Professional Indemnity Company. LAWPRO is a registered trademark of Lawyers' Professional Indemnity Company. All rights reserved. This publication includes techniques which are designed to minimize the likelihood of being sued for professional liability. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.