

WIRE FRAUD/FRAUDULENT IMPERSONATION

A question we have been getting lately is about wire fraud and am I covered. The short answer is maybe. The actual answer is a bit more complicated. To understand the issue let's be sure we are discussing the same issue as wire fraud can take a couple of forms.

1. Your system/website or one of your licensees' devices are hacked and someone uses this information to create emails that appear to come from the firm or one of your licensees. Your client then relies on this to forward funds be it earnest money or full payment to a fraudulent address.
2. Someone without hacking any devices or systems creates an invoice that appears to come from you but does not. Again the client relies on this to forward funds.

The Real Estate E&O policy was not designed with this type of exposure in mind. Actually when Real Estate E&O policies were first designed fraudulent transfers or wire fraud were not an issue. Having said that it is possible that your real estate E&O policy might cover it. It will depend heavily on the actual facts and allegations. We can tell you that insurance companies will look very closely at these types of claims. We know some professional liability carriers are considering restricting or adding new exclusions for this type of issue. You should not depend on your Real Estate E&O coverage to be the primary source of coverage.

Your first line of defense for this, if not doing already, is creating a disclosure form alerting your clients to this possibility, and advising them of the proper steps to take to confirm any wire instructions. This should be signed by your client and kept in your file. We know several firms are also putting warning language about this on all their emails. Your legal counsel should be able to assist with this.

Secondly, you should review all your procedures for keeping information safe which includes how and where licensees use all their portable devices and home computers. For example, sending non-encrypted data over a public Wi-Fi is generally not a good idea.

There are two other types of coverage that you should consider to help protect yourself.

1. A Cyber Liability Policy – Coverage may be available with cyber liability policies to assist in dealing with item #1 above. This coverage can go by social engineering, fraudulent impersonation, wire fraud, etc. There is no consensus with the insurance companies at this time as to coverage for this specific issue. Many insurance companies will not provide social engineering coverage as it is a third party loss versus a first party loss. Cyber liability also includes things such as hacking of client's personal information, ransom ware, etc. Cyber liability as it stands now will not help with item #2 above as there was no breach of your systems or devices. Your best protection is what we stated in the paragraph above about disclosures.

One other thing to keep in mind is that the market for cyber liability coverage is still somewhat in its infancy and change is constant. There currently is not a lot of consistency in how insurance companies are providing coverage or how they price it. As the market matures over the next few years thing will become more consistent.

2. A Crime Policy - If you have a crime policy, you should contact your insurance agent to see about adding a social engineering, wire fraud endorsement to the policy. There is still some debate as to whether this is a cyber-issue or a crime issue. If you do not have a crime policy, we strongly suggest you look into it. I would also check to see if any coverage is provided to your licensees since they are typically independent contractors. They may or may not be protected under the policy. You will also need to check to be sure the policy covers third party losses,

If you have any questions please do not hesitate to contact us at 800-222-4035 or www.wugioe.com.