



Risk Reduction Report

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Don't Let Your E&O Insurance Add To The Stress Of An Acquisition Or Merger

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Let's say that in 1995 you started a new business, selecting office space in a modest strip mall located in a suburb of Madison, Wisconsin with five agents. Your company name is ABC Realty and your philosophy was to provide your clients with a full array of services. Over the next fifteen years, hard work and dedication helped your company grow from five to 125 agents and has expanded into the Greater Madison market, as well as other neighboring communities. During this time, the firm weathered many markets, including the current housing recession. Because of the current market conditions, you feel that it's time to merge your company with another firm.

Many real estate firms are at the same crossroads. The owner of 123 Realty wants to expand into the Madison area and makes you an offer to purchase the assets of your company and bring you on as a Managing Broker of the newly-created Madison office. During the negotiations, you come to an agreement, based on current operations, about what the vision of the new company will be. However, one item has slipped through the cracks ...

You've insured your firm continuously for the past 15 years; all transactions closed by your company during that time have to be covered by E&O insurance. Now that the company has merged with 123 Realty, how will you deal with the liability for those transactions?

We at HSA Insurance Services deal with this very common scenario on a regular basis. You should understand how the insurance carrier looks at this

type of situation. Let's use this scenario to help guide our story.

Since ABC Realty opened in 1995, you've continuously been insured by XYZ Insurance for your real estate E&O. Over that time, you haven't had any E&O claims. The policy is providing coverage for past transactions, back to 1995, the date you opened your doors. During the process of the negotiations, 123 Realty purchased the assets of ABC Realty, effective June 1, 2010; however, ABC Realty is still responsible for transactions that closed *prior* to the date of the acquisition. ABC Realty will retain ownership of the corporation. How do we handle this situation?

Since you are still the owner of the corporation and legally responsible for past transactions, one way to deal with the exposure is to purchase an extended reporting policy, also known as a "tail policy." The cost of a typical tail policy can range from 100% to 250% of the standard premium, depending upon the insurance carrier.

If you are alarmed at the cost of the tail policy, ask us how you could have dealt with this situation better.

All E&O policies have language relating to mergers and acquisitions. Since each merger or acquisition is different, dealing with the E&O insurance is different. There is truly no standard solution for these situations. Our office can guide you through the process so that you understand how your policy relates to these transactions. Use our expertise to handle these past transactions to your benefit.

To get a quote from HSA Insurance Services, click [here](#).