



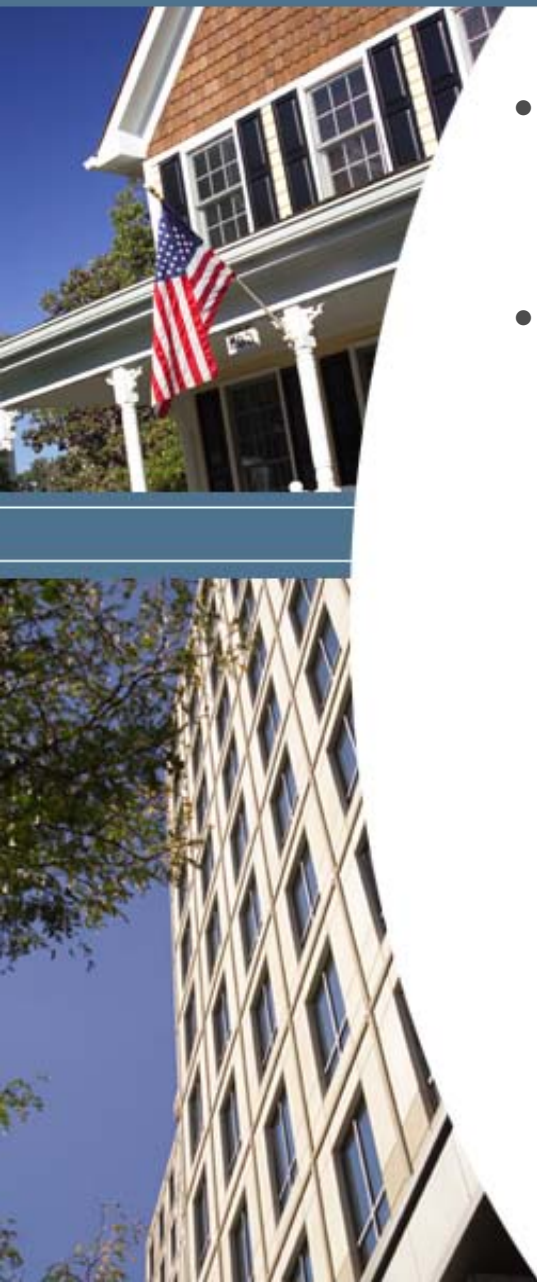
# Defending Your Company Against Individual Cases

Insurance Considerations

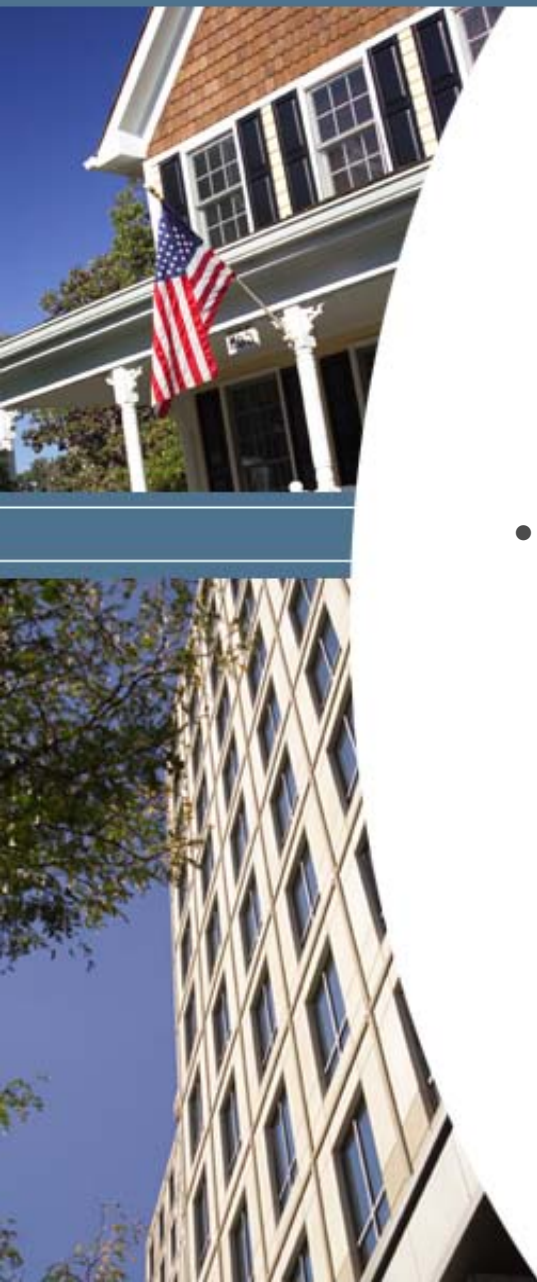


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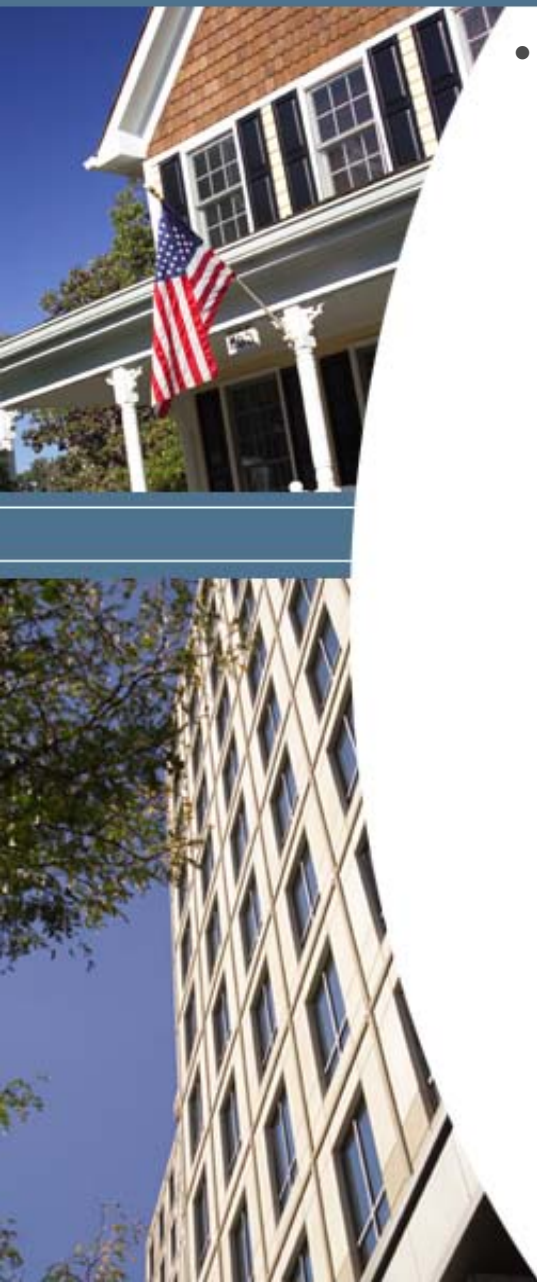


- Do Not Overlook The Possibility That Insurance Coverage Might Be Available For Certain Types Of Individual Lawsuits Brought Against Your Companies
- Most Common Types of Coverage Mortgage Banks and Other Financial Institutions Carry:
  - » E&O Insurance
    - Covers errors and omissions (but not alleged intentional acts or breach of contract) that may arise during origination, underwriting, processing, closing, warehousing, servicing and other professional roles (depending on the policy).
    - Some policies may cover alleged statutory or regulatory violations, including TILA, RESPA, fair housing violations
  - » Mortgage Bankers or other Fidelity Bonds
    - Losses due to alleged dishonest acts of employee, which may include third parties such as closing agents, loan originators, servicing contractors and others.

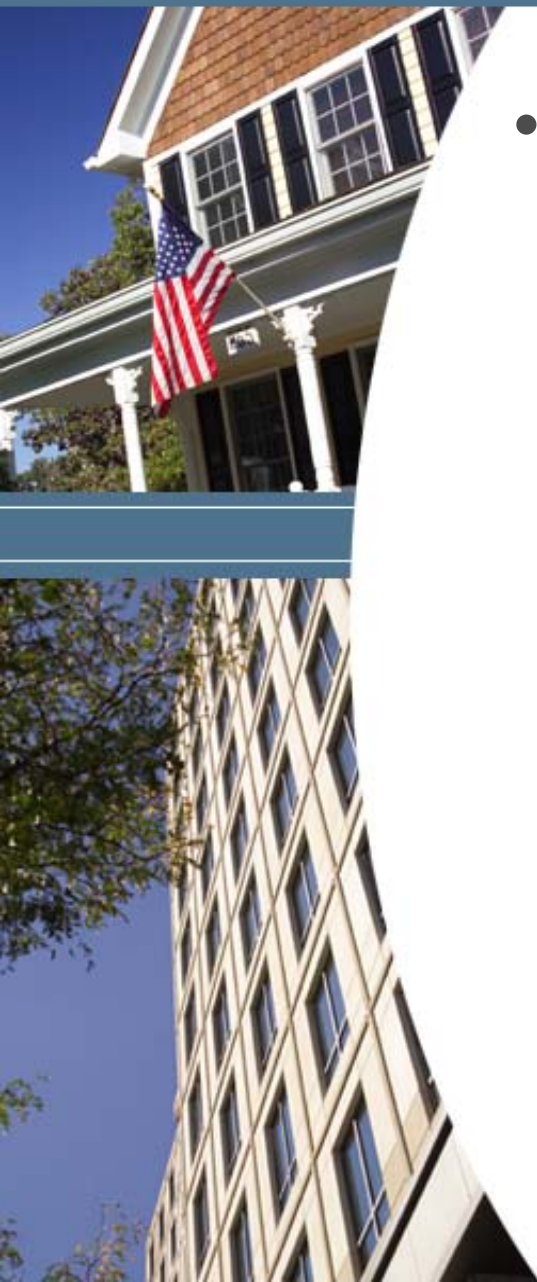


- » CGL
  - Could cover third-party claims alleging bodily, personal or advertising injury or property damage.
- » D&O
  - Suits naming corporate directors and officers personally.
- » Mortgage Impairment/Mortgagee E&O
  - Covers losses to your mortgaged properties
- Be aware of:
  - » Policy period – claims made v. occurrence
  - » Policy limits; “burning limits”
  - » Claims procedures
  - » A coverage chart is helpful

- Title claims have been an ongoing source of difficulty. Getting a claim accepted can be a challenge. Title companies are putting road blocks in the way in the form of extensive requests for documentation before they will accept a tender.



- The list includes:
  - » (1) any and all assignments of the mortgage, deed of trust or other instrument securing the loan, and the consideration paid therefore;
  - » (2) any and all documents regarding the securitization of the loan, including but not limited to any indentures, prospectuses, and trustee agreements;
  - » (3) any information reflecting whether the loan was “put” back to claimant and the reasons therefore;
  - » (4) any and all documents relating to agreements by third parties to indemnify you for a loss sustained on the loan, including but not limited to guaranties, mortgage insurance policies, mortgage pool or portfolio insurance policies and any other kind of indemnity agreement, insurance policy or risk hedging agreement, however named, in any manner or fashion related to the loan or the claim;
  - » (5) any and all documents relating to other insurance claims or indemnity claims made relating to this loan or property including whether and why such claims were denied; and
  - » (6) any and all documents reflecting agreements to service.
  - » (7) the underwriting guidelines for the type of loan that is the basis of the above claim, including but not limited to all loan to value and loan to income limits;
  - » (8) the executed note, including all riders, allonges and endorsements;
  - » (9) the executed mortgage and/or deed of trust, including all riders;
  - » (10) all loan origination and/or underwriting files, including but not limited to all underwriting worksheets, underwriting evaluations, loan applications, preliminary reports, title commitment letters, verifications of borrower and property information, appraisals, broker price opinions, valuations of property, credit reports, loan approvals and inter-creditor agreements;
  - » (11) all loan closing files and/or escrow packages, including but not limited to all escrow instructions and closing instructions;
  - » (12) all indemnities, pay off letters, sales contracts and title insurance policies;
  - » (13) information on all loan disbursements and procedures;
  - » (14) all loan modification files, including but not limited to all modification documents and endorsements issued regarding modifications;
  - » (15) loan workout files;
  - » (16) loan payment history.



- To maximize your chances, you should:
  - » Tender the claim as soon as possible
  - » Make sure you reference relevant provisions of the title policy to trigger coverage
  - » Include the policy and other relevant documents
  - » Provide firm deadlines; include the name of the outside counsel you intend to refer the matter to if no response is received by that date
  - » Be polite but be persistent

# Thank You!

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