



Affinity Programs

# PROFESSIONAL COUNSEL<sup>SM</sup>

Advice and Insight into the Practice of Law<sup>®</sup>

## Real Estate – Professional Liability Fact Sheet

### Description of Practice Area

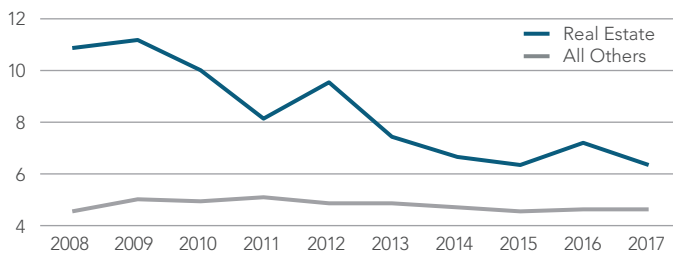
As an area of practice, real estate law includes legal activities dealing with all aspects of real property transactions including, but not limited to, real estate conveyance, title searches and property transfers, leases, condominiums and cooperatives, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing. While land use matters are included, this category does not include environmental law areas such as air and water pollution.

### Frequency of Real Estate Claims

CNA claim frequency in the real estate area of practice has been consistently higher when compared to all other areas of practice in the last decade. In fact, the number of reported claims has decreased since the 2008 economic downturn but still remains higher in comparison to all other areas of practice combined.

### Historical Claim Frequency (per 1,000 attorneys)

Claim counts arising from real estate transactions have been consistently higher than all other areas of practice combined.



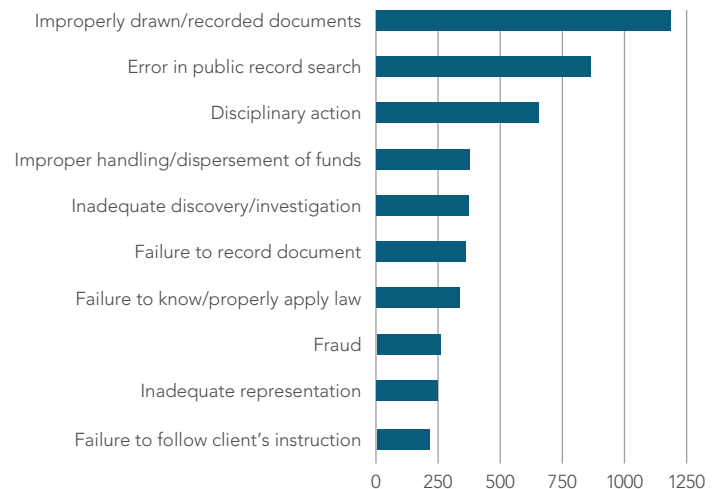
### Quick Stats

- Average of 4,173 claims reported per year
- Average of 1,708 claims paid per year
- Average cost per claim: \$93,102
- Average yearly cost of all real estate law claims: \$26.9 million
- #1 claims area by count combining residential and commercial real estate

Source: CNA Lawyers Professional Liability Claim Data 2008-2017

### Top Allegations Asserted in Real Estate Claims

This chart represents the most common claim allegations against real estate practitioners between 2008 and 2017.



## Risk Management Tips

### *Do Not Dabble in Real Estate*

Real estate law is an area of practice that involves a majority of the general population. Family and friends will often seek help or representation when leasing or buying a home. Nevertheless, residential and commercial real estate transactions create a large exposure when mistakes are made. Consider working with a mentor or co-counsel if planning to add real estate law to your law practice.

### *Avoid Conflicts of Interest*

Conflicts of interest are alleged in all areas of practice but tend to be complex when asserted in commercial real estate transactions. As seen in business transaction representations, it is critical to define who the client is in commercial real estate transactions. For example, at the outset of a real estate development all investors will agree on a plan. As issues arise, however, the investors will probably express differing opinions on how to proceed. Who does the attorney represent? Is it a joint representation? Is the attorney-client representation clearly defined in an engagement agreement? Were potential conflicts identified and addressed over the course of the legal representation? Fully assess conflicts of interest upon initiation of the engagement and throughout the course of the representation.

### *Watch Out for Wire Fraud*

Real estate transactions require transfer of large amounts of money that are typically completed via wire transfers. Hackers take advantage of wire transfers in real estate transactions by infiltrating one of the many email accounts involved in a real estate transaction and wait until wire instructions are provided to the buyer. The hacker will then send “new” wiring instructions and await the transfer. All legal staff involved in real estate transactions should be educated on this threat.

### *Clearly Define the Representation*

Real estate representations — whether residential or commercial — lend themselves to limited scope representations. Therefore, at the inception of the legal representation, an engagement agreement should define the scope, as well as the expectations regarding professional services to be rendered by the attorney. Client and counsel must understand the work that will be completed on behalf of the client and which aspects of the real estate transaction may require separate counsel or experts in such areas as tax, environmental, financial, or other specialized issues.

### *Maintain Constant Communication with Clients*

Real estate transactions may take months or even years to complete. It is important that attorneys remain in ongoing communication with their clients so that there is a clear understanding of the status of the matter and causes for any delays. What may seem like a typical timeframe for attorneys may be excruciatingly slow for clients seeking to close a deal. Attorneys are responsible for keeping their clients well-informed.

### *Review. Review. Review.*

Improperly drafted/recorded documents are the leading cause of real estate legal malpractice claims. Legal descriptions of property are a critical component of all real estate transactions and often become the source of a legal malpractice claim when incorrectly transcribed. All written materials drafted for client signature should be reviewed multiple times and, if possible, by multiple attorneys.

### *Caution When Interacting with Unrepresented Party to a Real Estate Transaction*

In an effort to save money, a party to a real estate transaction may forego hiring an attorney to represent one’s individual interests. Attorneys should refrain from providing legal advice to the unrepresented party over the course of negotiations and at closing. By providing any form of legal advice to the unrepresented party, attorneys become vulnerable to the potential exposure of a legal malpractice claim if the deal fails to materialize or issues arise after the closing.

### *Protect Client Data*

Client real estate files include information that is valuable to hackers and fraudsters. Names, social security numbers, dates of birth and financial information must be protected to avoid clients from becoming victims of identity theft or wire fraud. Work with an IT professional to ensure that all critical client information is protected from bad actors.

### **CNA Risk Control Resources**

Visit [www.cna.com/lplriskcontrol](http://www.cna.com/lplriskcontrol) for PROfessional Counsel and InPractice...with CNA publications that include practical guides, articles, industry trend studies and other self-help tools.

Distributed By:



**MASSBAR**  
ASSOCIATION  
THE PREMIER VOICE OF THE LEGAL PROFESSION™



20 West Street, Boston, MA 02111  
Boston: 617-338-0581 Springfield: 413-788-7878  
[www.massbar.org](http://www.massbar.org) [twelsh@massbar.org](mailto:twelsh@massbar.org) [twalsh@massbar.org](mailto:twalsh@massbar.org)