

# RISC

Rice Insurance Services Company, LLC

## RISK REDUCTION FROM RISC

### **E&O Case Study: The Unbuildable Lot**

**FACTS:** This case involves a real estate agent's alleged wrongful representation regarding zoning and legal subdivision. Seller's parents owned a large tract of farmland. Before they passed away, Seller's parents divided the large tract into several smaller lots and deeded two adjacent lots to Seller. All of the lots were less than one acre in size. Local zoning laws designated the property as residential with a one-acre minimum to build. Nevertheless, homes were built on many of the lots adjoining Seller's two lots. Seller listed the two lots for sale with a real estate agent. Seller's first lot sold; the purchasers of that lot obtained a building permit and constructed a home.

Buyers, represented by the listing agent, bought the second lot for \$45,000.00 with the intention of building a home. The real estate agent assured Buyers that they would be able to obtain a building permit to build a home on the lot. The MLS listing stated the correct zoning designation, which indicated that a one-acre minimum lot size was required to build. However, the Property Disclosure Statement stated that the property was legally subdivided. Although the lot did not meet the one-acre minimum size requirement and the agent did not investigate the legality of the subdivision, the agent did not anticipate a problem with the transaction. The lots on either side of the Buyers' property were sold and homes had been constructed on both lots. Those lots were also under the one-acre minimum requirement. Seemingly, a building permit could easily be obtained for a similar adjoining lot.

When Buyers attempted to get the building permit, they were told that the lot was contained within an illegal subdivision and the minimum size requirements would not be waived. To bring the lot into compliance Buyers would have to engage in several tasks that would drastically increase the cost of construction. Specifically they were told they needed to pave a road, including a sidewalk and gutter system, and obtain a steady source of water. Buyers sued the real estate agent's firm claiming that the agent was negligent in representing that the property was legally subdivided and that a building permit could be obtained.

There was language in the disclosure statement that specifically stated that the real estate agent did not guarantee the accuracy of the disclosures. Additionally, the purchase agreement specifically stated that the real estate agent would not investigate zoning. Still, the lawsuit alleged that Buyers were induced to purchase the property in reliance on the representations of the real estate agent. The lawsuit also alleged that the real estate agent failed to exercise reasonable care in representing Buyers, because the agent did not recommend that Buyers investigate the zoning status before purchasing the property. The Buyers were claiming damages for the difference in value in the property after it was determined that the lot could not be built on, the money they spent to buy the lot (including interest they paid on the mortgage), and the attorney's fees they incurred trying to recoup their damages.

**RESULT:** The insurance carrier paid nearly \$50,000.00 to Buyers to resolve this claim against the real estate agent.

**SUGGESTED APPROACH:** Had the real estate agent recommended that the Buyers investigate the zoning status and determine whether or not they would be able to obtain a building permit rather than assuring the Buyers that a permit could be obtained, the agent could have eliminated or significantly reduced his risk.

When dealing with vacant land, always recommend that the buyer check zoning restrictions, deed restrictions, and any other regulatory restrictions on the property. The buyer should also check the legality of the subdivision, whether the lot meets the minimum requirements for building, the suitability of the property for its intended use, accessibility, and the availability of utilities (water, sewer and power). Always recommend that the buyer obtain a survey. Even if the buyer does not investigate these items, if you recommend the investigation, you may avoid liability.

# **Features for Nebraska Group 2011 E&O Program**

Underwritten by Continental Casualty Company and administered by Rice Insurance Services Company, LLC  
Please See Policy Forms and Program Information on our Website: [www.risceo.com](http://www.risceo.com)

**Limits of Liability.** Standard policy: \$100,000 Per Claim/\$300,000 Aggregate per Licensee.

**Primary Residence Coverage.** Policy includes coverage for sale or listing of licensee's Primary Residence (so long as it is not a For Sale By Owner sale or listing).

**Insured-Owned Residential Property Coverage.** Policy includes coverage for sale or listing of residential properties owned by the Insured (in addition to the licensee's Primary Residence) if specific policy conditions are met.

**Fair Housing/Discrimination Coverage.** Policy includes \$25,000 per claim, \$25,000 aggregate sublimit (Damages and Claims Expenses) for Fair Housing/Discrimination for no additional premium.

**Lock Box Coverage.** Policy includes \$25,000 per claim, \$25,000 aggregate sublimit (Damages) for Lock Box Property Damage for no additional premium.

**Personal Injury Coverage.** Policy includes coverage for Personal Injury Claims, as defined in the policy, for no additional premium.

**Appraisal Activity.** Policy applies to the licensee's activities as a licensed real estate appraiser.

**Property Management.** Policy applies to the licensee's activities involving property management, as defined in the policy.

**Circumstance Reporting.** Licensees may report a circumstance or potential claim. If a claim is later made, coverage will be reviewed under the policy in effect at the time the circumstance was reported.

**Subpoena Assistance Coverage.** Policy provides representation by legal counsel if the insured receives a Subpoena in a lawsuit related to a transaction in which the insured provided professional services, even if no claim has been made against the insured.

**Firm Coverage.** A real estate firm that is registered with the Nebraska Real Estate Commission may purchase firm entity coverage, which provides the firm entity with additional limits of liability in the event a covered claim is made against the real estate firm.

**Franchise Coverage.** A franchise group that the licensee works for or represents is included in the definition of an insured for vicarious liability for negligent acts, errors, or omission arising out of professional services by the licensee.

**\$500,000 Per Claim Increased Limits Available to Individual Licensees.** An individual licensee may purchase an endorsement to increase limits of liability to \$500,000 per Claim / \$1,000,000 Aggregate for an additional premium. Limits of liability of \$250,000 per Claim / \$750,000 Aggregate are also available to individual licensees for an additional premium.

**Enhanced Excess Program for Firms.** We offer a firm excess policy with limits at levels of \$250,000, \$500,000, or \$1,000,000. In addition to traditional excess coverage, our new excess program offers these key new features at no additional cost: (1) Automatic coverage for **Environmental Hazards Claims** up to a sub-limit of \$100,000 for claims against an insured seeking damages alleging failure to advise of the existence of pollutants, asbestos, radon or lead; and (2) automatic coverage for **Discrimination Claims** up to a sublimit of \$100,000 for claims against an insured alleging discrimination in the performance or failure to perform professional services (in addition to the **Discrimination** sublimits provided in the underlying group program). The principal broker or officer of the firm must complete an excess application form in order to obtain a quote for firm excess coverage. All licensees of the firm are required to participate in the group program to qualify for firm excess coverage. Please contact us for more information.

**Enroll Online.** Easy online enrollment for no additional fee! Enroll now on our Website: [www.risceo.com](http://www.risceo.com)

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