



# Insurance Coverage Considerations for Affordable Housing Developers

October 17, 2018

# Executive Risk / Management Liability Coverages

- Directors & Officers Liability

- Written and purchased to protect the entity, your Board of Directors and Officers.
- Acts essentially as a “Management Errors & Omissions” policy
  - Covers claims for *financial* damages incurred as a result of a management decision
  - Most D&O policies are written with Defense Costs Within the Limits of Liability.
  - Written as claims-made meaning claims must be reported within the policy period they occurred.
  - Typically include a Professional Services Exclusion
  - It is generally preferred to have Duty to Defend policy language
- Important to obtain coverage for General Partnership Liability as a standard Non-Profit D&O form will not provide coverage to For Profit entities

# Executive Risk / Management Liability Coverages

- Employment Practices Liability (EPL)
  - Liability insurance covering wrongful acts arising from your employment operations
  - Types of Claims Covered by EPL
    - Gender or Racial Discrimination and other protected classes such as color, religion and national origin
    - Failure to Promote
    - Sexual Harassment
    - Hostile Work Environment
    - Retaliation
    - Wrongful Termination
  - Most EPL policies are written with Defense Costs Within the Limits of Liability.
  - Typically written as claims-made meaning claims must be reported within the policy period they occurred.
  - It is generally preferred to have Duty to Defend policy language
  - Recommended to include Third-Party EPL which provides you with discrimination coverage to non-employees.
  - Actual Damages as a result of a Wage & Hour Claims are typically not covered. You may receive a sub-limit to defend these types of claims.

# Executive Risk / Management Liability Coverages

- **Fiduciary Liability**
  - Protects a businesses' and employers' assets against fiduciary-related claims of mismanagement of a company's employee benefit plans as defined by ERISA.
- **Crime Insurance including coverage for Guest Property & Social Engineering**
  - Coverage for employee theft of money, securities, or property.
  - Guest Property endorsement adds coverage for employee theft of a customer's property.
  - Social Engineering Coverage – provides coverage for the voluntary parting of money by an employee to a third-party as a result of that employee being tricked or fraudulently induced into the transfer of those funds.
- **ERISA Bond**
  - Insurance to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who “handle” plan funds or other property.
  - Typically covered under a crime policy if a separate Crime policy is purchased.

# Cyber / Data Privacy Insurance

- Truly becoming an enterprise risk management issue
- Coverages Include:
  - First Party Coverages
    - Crisis Management Event Expenses
    - Security Breach Remediation & Notification Expenses
    - Computer Program & Electronic Data Restoration Expenses
    - System Failure
    - Funds Transfer Fraud
    - E-Commerce Extortion
    - Business Interruption
    - Dependent Business Interruption
  - Third Party Coverages
    - Network & Information Security Liability
    - Communication and Media
    - Regulatory Defense Expenses
    - PCI Liability
    - TCPA defense (sublimit)
- Valuable risk management tools & training are usually available to you at no additional cost

# Errors & Omissions / Professional Liability Policies

- Errors & Omissions / Professional Liability policies are written to cover professional services provided to others for a fee.
- Types of Errors & Omissions policies typical to Affordable Housing Providers
  - Social Services Professional Liability - covers liability for damages arising from errors and omissions in the providing of professional services. Most often written in conjunction with a General Liability policy
  - Property Managers Professional Liability - Coverage for claims alleging negligence or error in the provision of property management services
  - Construction Management Professional Liability - The management, coordination, and supervision of the design and construction process

# Errors & Omissions / Professional Liability Policies

- Asset Managers

- Maybe more appropriately called Investment Advisor Errors & Omissions
- This professional liability insurance defends and pays damages for the potential loss in the value of assets belonging to your investors.
- Written in conjunction with Directors & Officers Liability policies due to the professional services allegations often overlapping or being brought in tandem with D&O allegations.
- Activities considered to be “Asset Management”
  - Mismanagement of assets
  - Misrepresentation made in the PPM or other communication to investors or potential investors
  - Failure to provide adequate disclosure of the investment risks involved
  - Failure to properly value assets
- Adding this coverage to D&O policies typically results in an increase in premium and/or retentions.

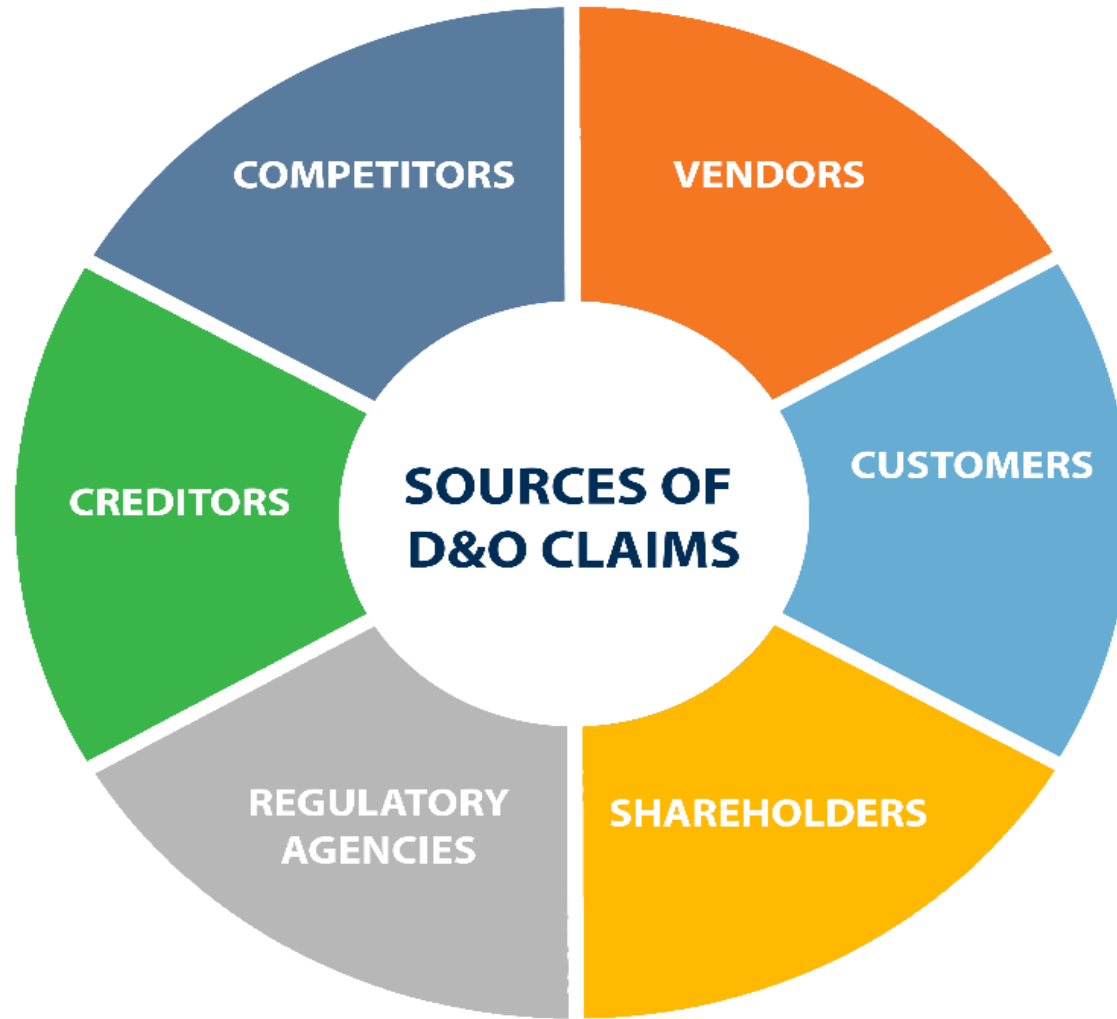
# Errors & Omissions / Professional Liability Policies

- Developers Errors & Omissions

- Provides Defense and Damages to a Developer that they become legally obligated to pay because an alleged breach of duty, error or omission of their services as a real estate developer.
- Why *might* this be needed? Many General Liability policies will include a Professional Liability Exclusion.
- Services as a real estate developer may include the following:
  - Project manager: Establishing and managing the design, construction bid packages and establishing the permits, variances, easements etc.
  - Construction manager: The management, coordination and supervision of the design and construction processes.
  - General contractor: The fabrication and build of the project, including at-risk construction management exposures.
  - Miscellaneous exposures: Miscellaneous exposures tied to the services provided by a real estate agent, title agent, notary public and property manager.
- Review of the coverages terms and conditions of these policies is critical.



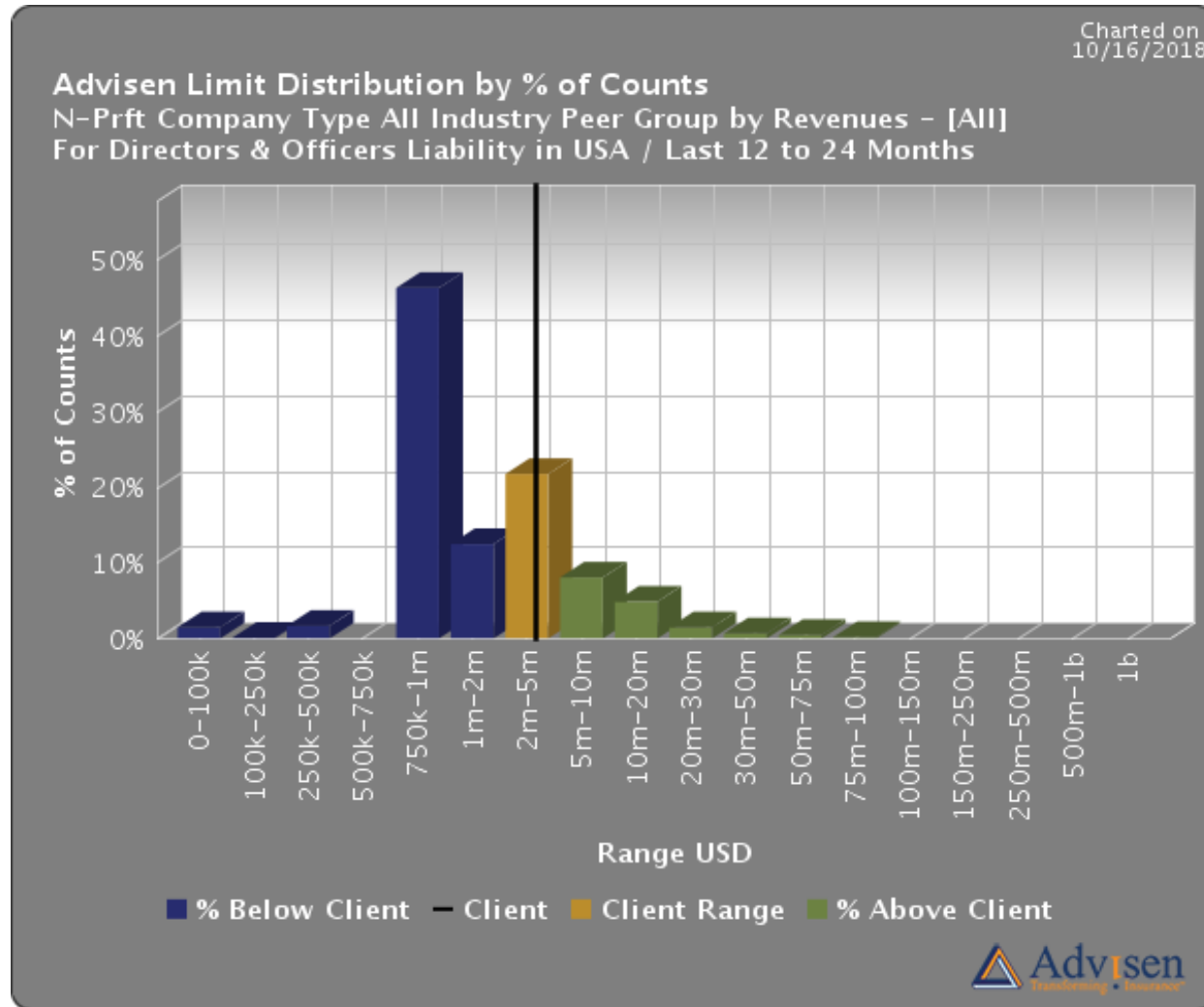
# D&O Claims



# Benchmarking

- Limit adequacy
- Advisen and other paid services
- Internal Benchmarking
- Cyber Calculator
- Outside Factors
  - Contractual
  - Board Members

# Benchmarking Snapshot



## Advisen Limit Distribution

### by % of Counts

N-Prft Company Type All Industry Peer

Group by Revenues - [All]

For Directors & Officers Liability in USA /  
Last 12 to 24 Months

Client: 5M
% Below or Equal to Client: 84.0
% Above Client: 16.0

Range USD	% of Counts	Cumulative %
75m-100m	0.2	99.9
50m-75m	0.5	99.7
30m-50m	0.7	99.2
20m-30m	1.5	98.5
10m-20m	4.9	97.0
5m-10m	8.1	92.1
2m-5m	21.8	84.0
1m-2m	12.5	62.2
750k-1m	46.4	49.7
250k-500k	1.7	3.3
100k-250k	0.1	1.6
0-100k	1.5	1.5

Program Count: 811



# Questions?



- Disclaimer and Distribution Conditions

- This presentation is intended as a summary only and does not include all of the policy terms, conditions, limitations, and exclusions. Please always refer to your insurance policies for specific coverage information.
- This presentation shall not be distributed in any manner and/or medium without the written permission of Strength Matters and IMA, Inc.