

STRENGTHMATTERS®

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



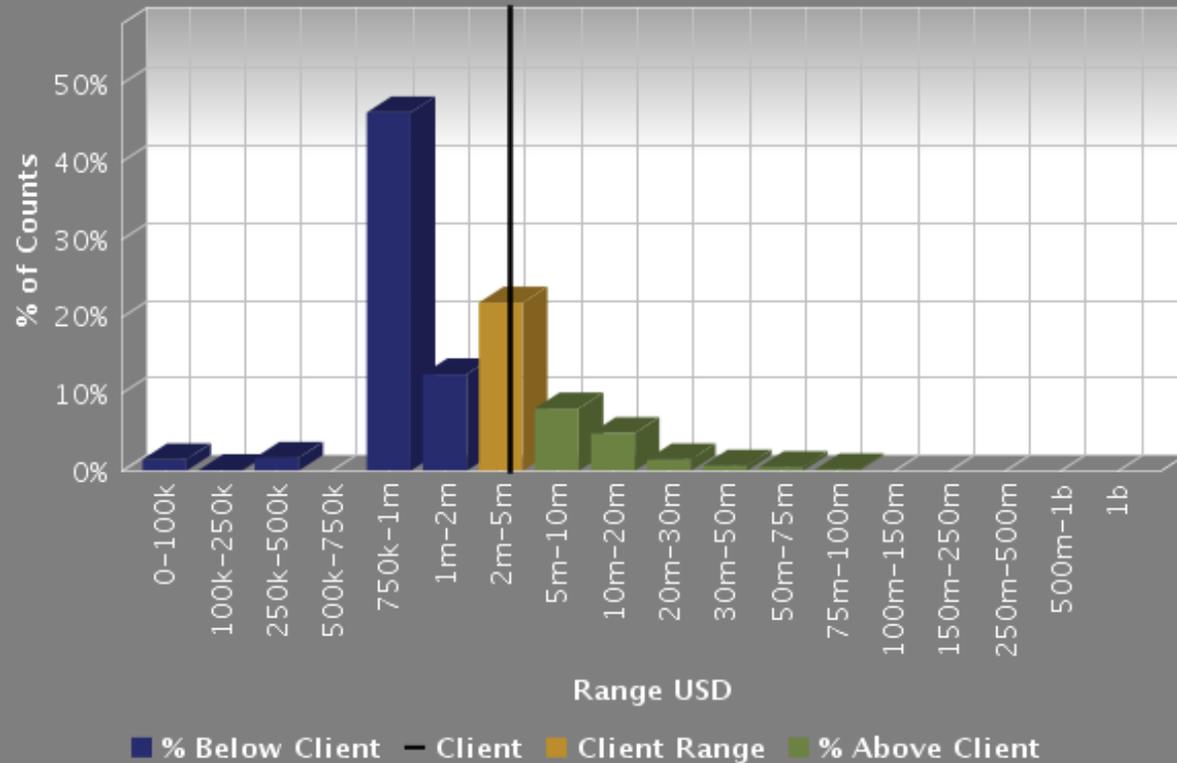
Benchmarking

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

Benchmarking Snapshot

Charted on 10/16/2018

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



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?



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