

Basic Considerations Regarding Lawyer Professional Liability Insurance

Is professional liability insurance required?

Texas lawyers are not required by law to have insurance to practice law. A number of considerations may prompt lawyers to obtain insurance, however:

1. Professional liability insurance protects clients against errors that could happen to anyone.
2. The protections afforded by limited liability partnerships against vicarious liability require a minimum of \$100,000 in insurance.
3. Several lawyer referral services in the state require professional liability insurance.
4. Clients sometimes require professional liability insurance, particularly large corporations, banks and insurance companies.
5. Defense costs in legal malpractice claims are often high even when no error actually occurred.
6. Professional liability insurance protects individual lawyers against financial ruin from an adverse judgment. Lawyers are personally liable for their mistakes. Professional corporations and limited liability partnerships do not protect lawyers from liability for their own mistakes.
7. The lag time between an error and a claim can be quite long. Younger lawyers need to consider obtaining insurance early in their career so that they will be protected from early mistakes discovered after building up assets.

How much coverage do I need?

There is no magic formula for determining appropriate limits. Consider the following in determining appropriate limits:

1. The dollar value of transactions or suits that you work on.
2. The cost of defending a claim. About 1/3 of total payments under lawyers' professional liability policies are for defense costs. Even if you cannot afford coverage equal to the value of matters you work on, you can at least get the cushion that being able to pay defense costs gives you.
3. The value of assets you want to protect.
4. If you are in a firm, compare your coverage level to other firms with similar exposures.

Can I buy insurance and drop it as my financial position changes?

Most legal malpractice insurance is written on a claims made basis. This means that an insurance policy covering an error must be in place at the time the lawyer becomes aware of a claim. Having insurance at the time an error is made is useless if insurance is not in force when the claim is made.

Can I buy prior acts coverage for time periods when I didn't have insurance?

Most insurers no longer provide such coverage.

Can I buy insurance for myself if my firm does not have insurance?

Most insurers will not provide such coverage. When a lawyer works in a firm, they may have vicarious or supervisory liability for the acts of other lawyers.

If I leave a firm, what can I do to obtain coverage?

If the old firm continues to be insured, lawyers who leave the firm are usually defined as insureds under the old firm's policy for acts while employed by the firm. If the old firm does not continue to remain insured, due to dissolution or a choice not to carry insurance, prior lawyers are no longer insured under that policy. Successor law firms may be able to obtain coverage for predecessor law firms if the exposures are similar. Individual lawyers may be able to obtain coverage for work they did at a prior insured firm under a different firm's policy. A dissolving firm may be able to buy extended reporting coverage which provides additional time to report claims made against the dissolving firm.

Are all insurance policies the same?

Lawyers' professional liability insurance is not regulated as to form or rate in Texas. As a result, the differences in coverage between policies can be significant. Important differences can include the following:

Deductibles may be either per claim or aggregate.

Expense allowances for defense costs vary from policy to policy.

Some policies may not cover DTP A or punitive damages.

Some policies may not cover grievance expenses.

Exclusions for particular types of practices, such as securities practice, are possible.

Some policies give insureds control of settlement of the claim, but with a penalty that caps the maximum benefit under the insurance. Other policies allow a peer review of a contested settlement and do not penalize the insured.

Some policies provide coverage to innocent insureds when another insured commits a fraudulent or criminal act.

Some policies exclude malpractice counterclaims in suits initiated by insureds for fees.

Are all legal malpractice claims handled in the same manner?

Claim handling varies significantly from insurer to insurer. Some insurers use nonlawyers to manage claims, while other use attorneys to manage their claims. Counsel employed by insurers varies as well. Some insurers use the same lawyers to defend legal malpractice claims that they use to defend automobile claims.

How can I save money on insurance when I am starting out?

Some insurers provide lower cost policies to beginning lawyers or lawyers with certain kinds of practices. For example, Texas Lawyers' Insurance Exchange provides coverage at greatly reduced prices to lawyers in practice 4 years or less, to part time lawyers, to lawyers who only work on contract to other lawyers, and to lawyers who only want coverage for referral service clients. TLIE's price for a \$100,000/\$300,000 policy with a \$1,000 aggregate annual deductible is only \$500 for a newly licensed lawyer. Reduced rates under this new attorney program discount premiums during the first four years of practice. Part time lawyers with minimal practices can pay as little as \$450.

Any last thoughts for an attorney seeking insurance for the first time?

Lawyers professional liability insurance can be confusing, but asking lots of questions of agents and insurers is expected. Don't be afraid to discuss any aspect of the insurance that is unclear to you. You owe it to yourself to understand what you are buying and who is standing behind the promises of the insurance policy.