

REAL ESTATE

Don't Rely On Your Insurance Agent

Joshua Stein Contributor *I write about commercial real estate negotiations, deals and legal issues.*

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Every property owner needs insurance coverage that properly reflects the specifics of their particular property or development project. Insurance agents sell that insurance. They often also help the property owner determine what insurance makes sense. Agents typically know what they are doing, so owners typically rely on them.

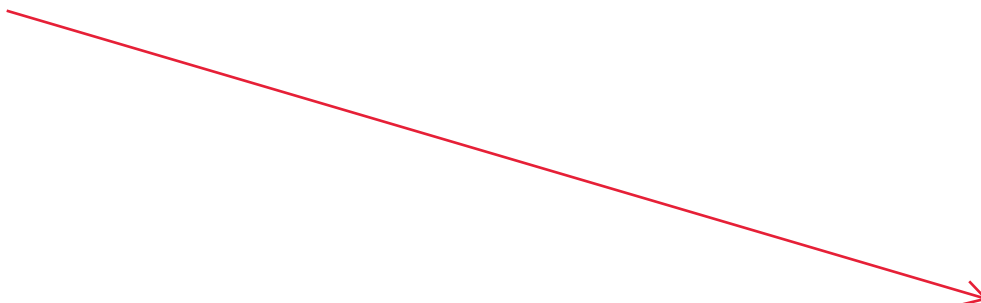
What happens, though, if the agent gets it wrong? For example, the agent might advise that an owner doesn't need a particular type of coverage. Later, the owner might suffer a loss and try to make an insurance claim. But the insurance company might deny coverage because the owner should have had the type of coverage that the agent said wasn't necessary.

This happened in [a recent federal case](#), just one of many similar cases. The property owner had undertaken a construction project of somewhat limited scope – partial renovation of a hotel. The insurance agent said the owner didn't need a builder's risk policy and could rely on its regular insurance package for the risks arising from the project.

During the course of the project, a flood damaged some materials in storage. The property owner tried to recover under its regular insurance. The insurance company denied coverage, but apparently (though it's not stated) the company would have covered the loss if the property owner had bought builder's risk insurance. The owner sued its insurance agent for negligence because the insurance agent had advised the owner it didn't need builder's risk insurance coverage. The owner lost.

The court said owners are supposed to know what insurance coverages they need for their properties and projects. The agent has no legal responsibility to educate or even advise an owner about those issues. The agent's legal responsibility consists of selling the owner whatever insurance the owner decides it wants. The owner therefore had no claim against the insurance agent.

Many cases have reached a similar conclusion. Sometimes, though, the courts make an exception if a "special relationship" exists between the owner and agent. In this litigation, the owner tried to prove such an exception applied. The owner argued that the agent had developed a deep and intricate understanding of the owner's business over the course of a series of in-person meetings at the owner's offices. The agent had aggressively pitched the owner's business, promoting the agent's "insurance prowess" and coming up with a new structure for the owner's overall insurance program. None of that made any difference to the court, which stated: "It would be the rare agent who does not hold himself out as highly skilled, and the rare insured who doesn't rely on the agent's skill in making insurance selections." Thus, there was no exception made, and no liability for the insurance agent.



If an owner doesn't have the necessary expertise to design its own insurance program, can't legally rely on its insurance agent to do that, and doesn't want to take its chances, what can the owner do? Answer: the owner probably needs to hire a third-party insurance adviser or consultant to help the owner when it structures its insurance program and deals with its insurance agent. The agent can certainly advise the owner and sell insurance, but the owner needs someone else – not just the agent – to look over the owner's shoulder during that process.

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Joshua Stein

I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**