



# MALPRACTICE ALERT!

**OBLIC**

Ohio Bar Liability  
Insurance Company

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## TITLE AGENT/AGENCY ISSUES

O.R.C. Section 3953.23 was amended recently to require title insurance agents or agencies that handle escrows in real property transactions to maintain E&O insurance, and/or a surety bond. The required limits of liability for E&O insurance or the bond was to be determined by the Ohio Department of Insurance (ODI).

The ODI promulgated Rule 3901-7-02. This Rule requires the following, as of February 12, 2007:

All title insurance agents or agencies handling escrows in real property transactions not involving the issuance of title insurance must have a surety bond protecting all parties to a transaction against theft, fraud or other failures in properly disbursing funds. The bond must provide a minimum of \$150,000 of coverage.

All title insurance agents or agencies must maintain E&O insurance with a minimum coverage amount of \$250,000.

All subcontractors of a title agent or agency must be covered by E&O insurance in the amount of at least \$50,000.

### OBLIC Coverage for Title Agents

Lawyer title agents who are insured under an OBLIC lawyer's professional liability policy can add a coverage endorsement for acts or omissions as a title agent. This endorsement does cover any acts or omissions of a person for whom the insured attorney-agent is liable. If an insured attorney-agent subcontracts with a third party to do a title search, and a claim is made against the attorney-agent due to an error in the search, the insured attorney-agent is covered. The OBLIC policy does not cover the third party. Our understanding of the Rule is that if the error is covered by the agent's policy, then at least the agent has met the requirement of the Rule.

OBLIC is not a bonding company. If a bond is required, agents should acquire an appropriate bond to meet the Rule.

OBLIC does not cover title agencies as additional insureds. Acts or omissions of "Insureds" – persons who are attorneys in an insured law firm, *or employees of the named insured law firm*, can be covered by a title agent endorsement. Persons employed by a title agency, who are not employees of the named insured law firm, are not covered for their acts or omissions, and if the insured attorney-agent is not liable for those acts or omissions, then the OBLIC policy does not provide any coverage for such a claim.

As an example, assume that a lawyer has an ownership interest, and is a title agent, in an agency that is incorporated. The agency employs title agents who are not members or employees of the insured law firm. A claim is made arising out of an act or omission of one of those agents against the agent and the Agency, Inc. Unless the insured attorney-agent is liable for the actions of that title agent, there is no coverage under the OBLIC policy for that claim. Presumably, the attorney would not be individually liable as a shareholder for such act or omission in this example.

Insured attorney-agents who operate incorporated title agencies in which they are the only agents are covered for most negligent acts or omissions that are likely to occur, as the agent is going to be ultimately liable for such acts or omissions as the agent responsible for the real estate transaction.

If an agency is operated in which agents are not employees of the law firm, and the insured attorney-agent would not have personal liability for the acts or omissions of those agents, then E&O coverage for a title agency would be the appropriate insurance policy to purchase.

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### AMENDMENTS TO THE FDCA

Congress recently passed the Financial Services Regulatory Relief Act of 2006. The Act served to

amend the Fair Debt Collection Practices Act in three respects.

-A formal pleading in a civil action shall not be construed as an initial communication under the FDCAP, and does not trigger the notice provision otherwise required in an initial communication.

-Notices required by the IRS, the GLB Act, or other federal or state laws regarding breach of data security are not to be treated as initial communications under the FDCPA.

-Collection activities can continue within the 30 days following the initial communication to a debtor, provided that the debtor has not notified the debt collector in writing that they dispute the debt or the debtor requests the name and address of the original creditor. However, any collection activities should not overshadow the debtor's right to dispute the debt or request the name and address of the original creditor.

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### **OBLIC POLICY FORM REVISED**

The OBLIC policy form has been revised. Most of the suggested revisions are organizational in nature, such as moving language to a more logical location in the policy. The changes apply to policies issued for lawyers in private practice, and with a policy period beginning March 1, 2007 and thereafter.

For example, all defined terms are in bold type, and in quotations. They had been in bold type, but not in quotations. The basis for this format change was to reinforce the point that such terms are defined terms, and also to make certain that defined terms are set-out in the event that bold type does not show up well in a fax transmission, or due to some other duplication issue.

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The major changes in terms of coverage or content are summarized as follows:

1) Definition of **“Predecessor Firm”** is changed to provide that such a firm is one of at least 50% of the lawyers, assets, etc acquired by the Named Insured. This is a change from the current greater than 50% language in the policy. This change may expand the coverage afforded by the policy in certain circumstances.

2) Services as a mediator or arbitrator is now automatically covered as **“Professional Services.”**

3) **“Policy Period and Territory”** under the **“Insuring Agreement”** section has been deleted. A new Exclusion (p) is added to provide the limitation of coverage territory instead. The geographic limitation of coverage has not changed.

4) A change to the purchase of an **“Extended Reporting Endorsement,”** Condition III A. now allows purchase by the Named Insured of a **“tail”** with limits of liability lower than those carried on an expiring policy. This change provides greater flexibility for policyholders when considering the purchase of an **Extended Reporting Endorsement.**

5) The **“Reimbursement to the Company”** section under the **“Conditions, Limits of Liability,”** has been amended to add sub-part (d). This provision allows OBLIC to recover **“Claim Expense”** incurred in defending a claim from the policyholder, in the event that a determination is made in a court or arbitration proceeding that OBLIC does not cover the claim.