Discrimination Claim

Q: Does my policy provide coverage for discrimination claims which may be brought against me as a real estate agent or broker? The policy is silent on the issue.

A: Because there are various types of discrimination claims which might be brought, the answer to your question is not unlike our response to many similar questions -- “It depends”.

“Discrimination” is a broad term. Some discrimination claims are covered, while others may not be covered. It depends on whether the discrimination claim is brought under the Fair Housing Act (“FHA”), a state Fair Housing Act, or is a typical general discrimination claim that could be brought against any business or person. Each claim must be examined on its own merits in order to determine whether there is a trigger to defend or to indemnify an Insured for that particular claim.

Most real estate professionals who ask this question are referring to discrimination claims which may be brought against them under the FHA. Title VIII of the Civil Rights Act of 1968 is known as the FHA (the “Act”). The Act was enacted to protect a person’s right to own, sell, purchase, or rent housing of their choice without fear of unlawful discrimination and to allow everyone equal access to housing. The Act applies to virtually all residential housing and, in particular, when the owner uses the services of a real estate professional to help sell or rent their property.

The FHA protects certain protected classes from discrimination in any respect related to the sale, rental or financing of dwellings, or in the provision of brokerage services in connection with the sale or rental of a dwelling. Real estate professionals, not uncommonly, find themselves the subject of claims made by individuals under the FHA. The Act is not an intent-based statute. That is, the violation of the Act does not require that someone meant or intended to discriminate. Rather, the pivotal inquiry is generally whether something the real estate agent or broker did resulted in, or could have resulted in, a violation - irrespective of whether they meant for it to happen. Therefore, claims by third parties under the Act for civil damages trigger a duty to defend, and, likely, a duty to indemnify the real estate professional who is performing real estate professional service for covered damages as defined by the policy, which may be awarded to the third party.

The policy does not cover or pay for fines, penalties, sanctions, required training, or other equitable relief that is attributed to or required of the real estate professional. Claims made against real estate professionals by aggrieved third party clients or customers under an applicable state Fair Housing statute, are similarly covered by the Policy. Any Fair Housing claim is subject to the Limit of Liability within the Policy’s Insuring Agreement. For those policies endorsed with the Property Managers Endorsement, a Property Manager or Community Association Manager would be subject to the sub-limit indicated on the endorsement.

Employment related discrimination claims, or claims which result from activities of a general business nature, and which do not arise out of the performance of real estate professional services, would likely not be covered by your Real Estate Services Professional Liability Policy. Those matters should be referred to your Employment Practices Liability carrier and/or to your General

travelers.com

The views expressed in these materials are those of the author and do not necessarily reflect the views of The Travelers Companies, Inc. or any of its subsidiary insurance companies (“Travelers”). This material is for general informational purposes only and is not legal advice. It is not designed to be comprehensive and it may not apply to your particular facts and circumstances. Consult as needed with your own attorney or other professional adviser. This material does not amend, or otherwise affect, the provisions of any insurance policy issued by Travelers. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy. Coverage depends on the facts and circumstances involved in the claim or loss, all applicable policy provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications and state regulations.

© 2017 The Travelers Indemnity Company. All rights reserved. Travelers and the Travelers Umbrella logo are registered trademarks of The Travelers Indemnity Company in the U.S. and other countries.
Ask Brenda

Liability carrier for coverage consideration and determination.

As indicated earlier, coverage for each claim is determined based on the facts and circumstances particular to that individual claim. In the event you receive notice of a discrimination claim, notice of a Complaint filed with the FHA or a state Housing Authority by a third party, or notice that a Fair Housing investigation is being initiated - or if you become aware of circumstances that could potentially give rise to a claim - please immediately report to Travelers at bsicclaims@travelers.com and a claim professional will contact you for a full and complete coverage investigation and determination.

Do you have a question for AskBrenda that you would like to see answered in a future newsletter? Email us at AskBrenda@Travelers.com