

# Statistically Speaking

A risk management publication for real estate professionals

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## Misrepresentation / Failure to Disclose

Over the last 60 years Travelers has paid millions of dollars in real estate professional liability claim expenses. During the 2006 – 2015 time period alone, claim expenses incurred for allegations of either misrepresentation or failure to disclose totaled over \$43 million dollars. Such incurred expenses included a firm's deductible obligation as well as money paid for damages and defense. The *average* misrepresentation or failure to disclose claim rang in at almost \$35,000, and the average of the top quartile was over \$1 million!

Claims alleging misrepresentation or failure to disclose can arise out of many different circumstances. Consider the following example:

A real estate agent represented the sellers of an older property that had some condition issues. The sellers completed the Seller's Property Disclosure form and the buyers had a property inspection done. The sale was completed and the buyers moved into the home, but soon discovered additional issues with the property not identified on the Seller's Property Disclosures. These issues allegedly included non-compliant wiring, asbestos, an unidentified heating oil tank, water intrusion and foundation issues that included a missing portion of the foundation. The buyers sought damages against the seller's real estate agent for almost \$800,000, which included the cost of

tearing down the existing home and rebuilding it from scratch. The buyer claimed that the real estate agent knew of the issues but did not disclose them. They subsequently demolished the house before any of the issues could be verified, which made it impossible to prove whether the issues existed or not. No damages ended up being paid, and the insured real estate agent essentially did nothing wrong, but the cost to defend the claim was still significant.

The above example illustrates the importance of disclosing all known potential issues with a property, and how professional liability policies can protect even when a real estate agent has done nothing wrong.