

# Real Estate Errors and Omissions Insurance

Community of Practice, April 7, 2021  
Mitigating Risks in a Hot Market



# BCREA Managing Broker Community of Practice

## Agenda

- E&O update
- Claims and trends in a hot market
- Risk management tips

# Our Mission Statement

We provide cost-effective professional liability insurance, loss prevention tools and legal support services for the protection of real estate licensees and thereby the public.

# What we do

E&O has been protecting licensees for over 33 years:

- mandatory for all licensees
- not-for-profit
- self-insured

# What we do

E&O protects licensees against liability for:

- errors, omissions or negligent acts that happen in the performance of their professional duties.

# What we cover

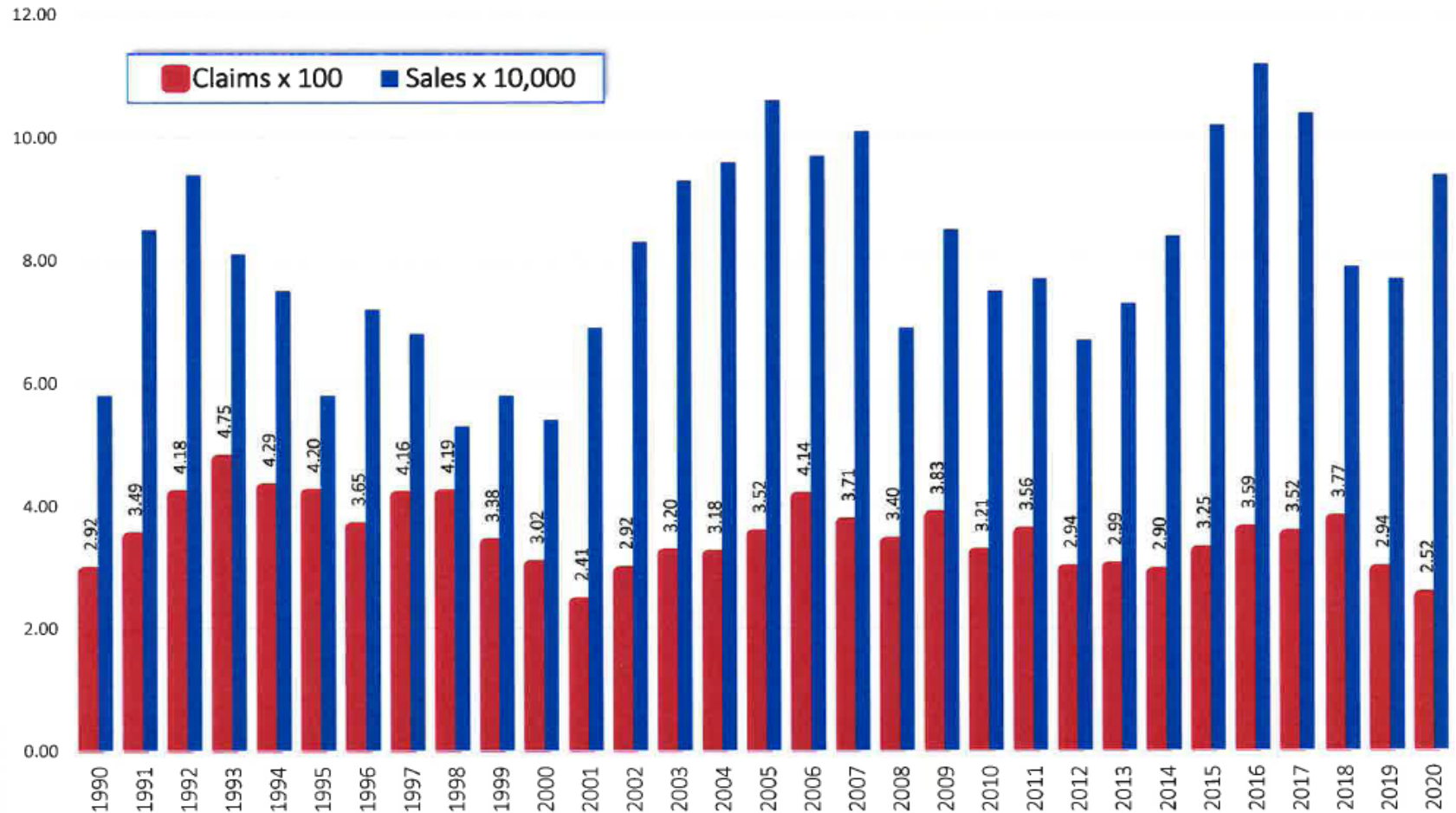
Terms of coverage are in Indemnity Plan RE0421

- New policy year April 1, 2021
- No changes in coverage or premium
- Download from website
- Link and info in March Risk Report

# Claims

Hot Market = more claims

# Claims Reported Compared to B.C. Residential Sales

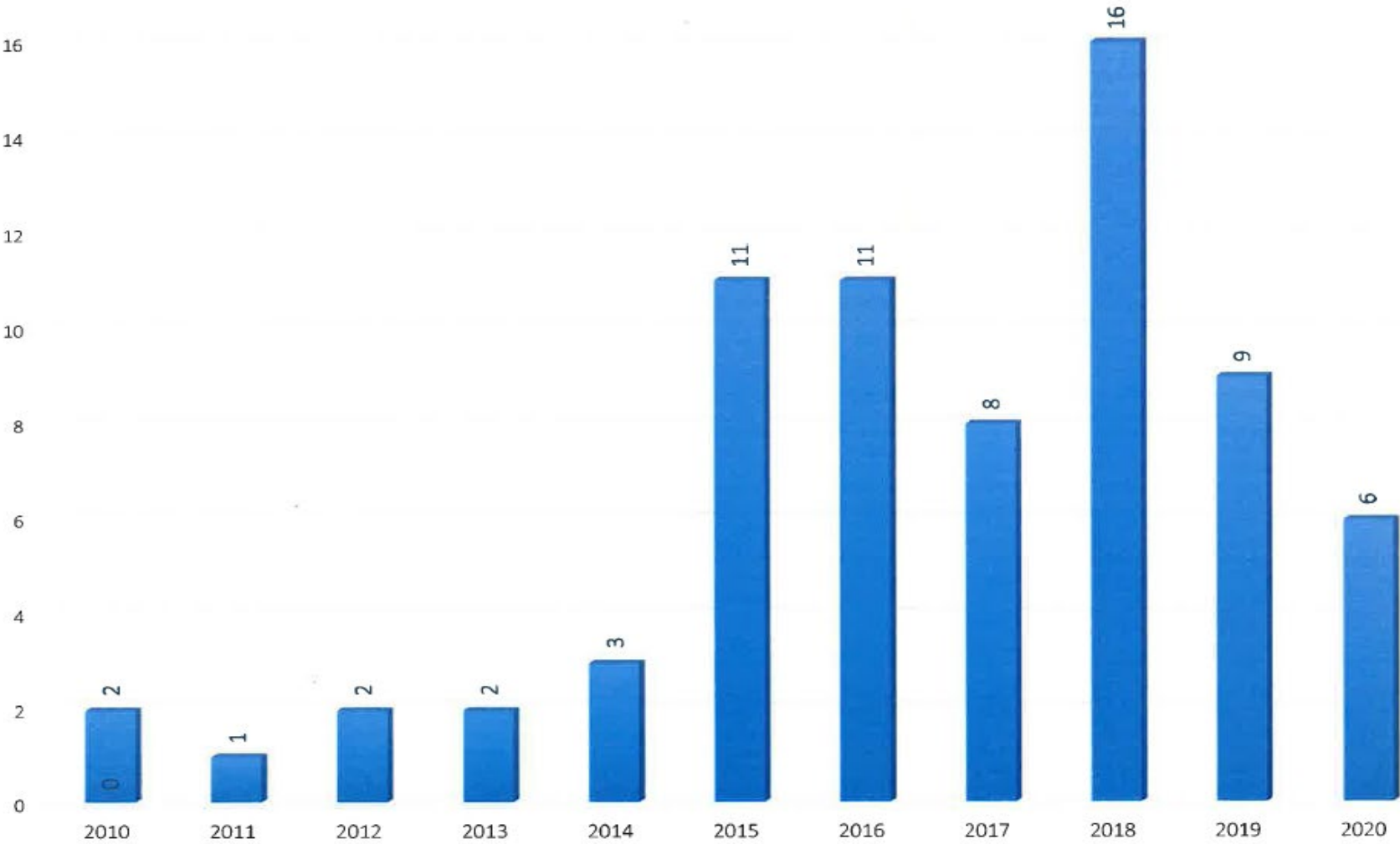




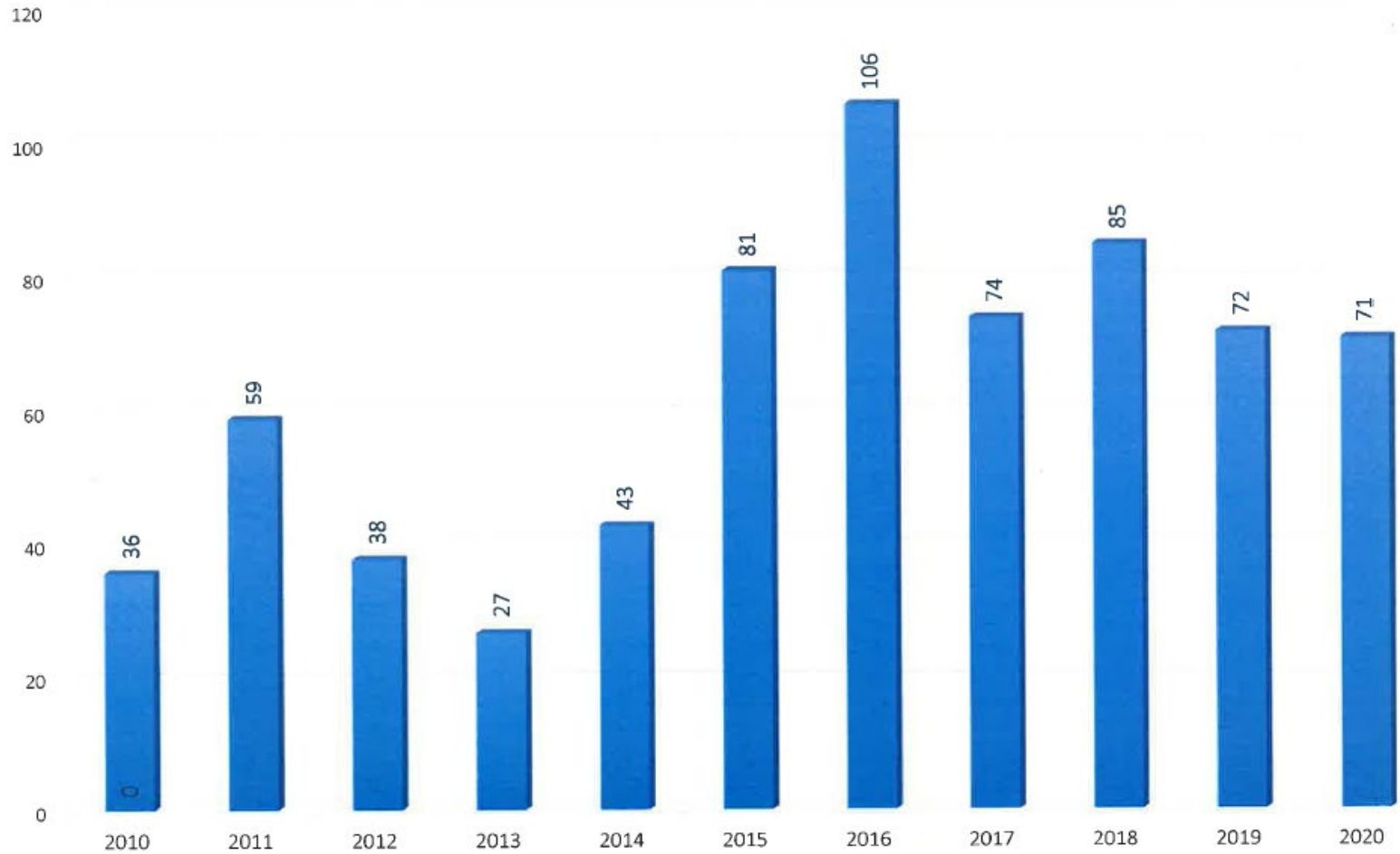
# Hot Market Claims

- Valuation claims
- Drafting/contract issues
- Claims arising from imbalanced supply/demand

# Claims for negligent valuation



# Claims for negligent drafting



# Too much demand/too little supply

- Buying sight unseen
- Subject free offers
- Multiple offers

# 1. Valuation Claims in Hot Markets

## Claims around Value

- Sellers say they undersold
- Buyers say they overpaid
- Appraisals are evidence of value but “an art, not a science”

# Value continued...

## Example of Value Claim

- Seller claims that the Seller's agent failed to properly advise on value and they got too little
- Buyer's remorse

# Value continued...

## How to avoid claim

- Discuss expectations and value
- You recommend price range, client decides
- Discuss comparables, do CMA, keep copies

## 2. Negligent Drafting in a Hot Market

- Seller's remorse/buyer's remorse
- Parties want out of deals
- Parties look to the contract for escape valves
- Careful drafting , discussions, setting expectations and documenting advice given and instructions is key



# Drafting continued...

## Examples of negligent drafting claims

- Authority to enter into a contract
- Problems with e-signatures
- Terms/wording of a contract

# Drafting continued...

## How to avoid

- Slow down, proof read all offers/counters
- Careful use of e-signature software-encourage to proof full document and not on a small screen
- Ensure title, company searches are done and full written authority to sell from the person on title or valid POA-avoid dealing with the kindly/domineering relative not on title
- Review prices, dates, parties to contract and all terms carefully
- Document all advice and instructions

# 3. Supply/Demand Offer Issues in Hot Markets

Hot markets are the home to:

- Bully offers,
  - Referential offers,
  - Multiple offers, and
  - Back-up offers
- 
- Offers made sight unseen
  - Unconditional offers

# Offers continued...

## Claims examples:

- Buyer enters into contract sight unseen, subject free and then refuses to close after realizing view is obstructed
- Buyer making subject free offer claims they were unaware of risks
- Buyer with pre-approval is unable to get financing when property appraises too low
- Buyers try to get out of subject free contract when they discover defects

# Offers continued...

To avoid offer issues in hot markets, as seller's agent:

- Multiples- develop rules with client, follow them, update them, document them and communicate
- Use offer comparison charts for sellers in multiples

## OFFER COMPARISON TEMPLATE

### OFFER COMPARISON FOR PROPERTY

Date:  

	Offer #1	Offer #2	Offer #3	Offer #4
<b>Notice to Seller of Expected Renumeration</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Buyers' REALTOR*</b>				
<b>Brokerage</b>				
<b>Contact</b>				
<b>Offer Price</b>				
<b>Deposit Amount &amp; Terms</b>				
<b>Conditions &amp; Terms</b>				
<b>Notice of Assignment</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Completion Date</b>				
<b>Possession Date</b>				
<b>Adjustment Date</b>				
<b>Inclusions</b>				
<b>Exclusions</b>				
<b>Time Open for Consideration</b>				
<b>Notes/Other</b>				
<b>Reviewed by Seller</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Offers continued...

To avoid offer issues in hot markets, as buyer's agent:

- Use condition acknowledgment forms with buyers going subject free
- Do due diligence before hand with buyers in multiples
- Discuss market, set expectations and document all

# How to report a claim

- Report potential claims promptly
- Report claims in writing, with a statement and documentation
- Send report to:

[reception@reeoic.com](mailto:reception@reeoic.com)



# More on E&O

- [www.reeoic.com](http://www.reeoic.com)
- Password: eno
- FAQs
- Brokerage loss prevention talks, call us!

*Questions?*

*Thank you.*