Triumph through the turmoil

Liabilities plaguing the residential sector

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Residential housing providers and adjacent stakeholders have suffered consecutive quarters of liability-related rate hikes irrespective of portfolio composition. As nuclear verdicts persist, claims experience soars, and plaintiff litigation prevails, policyholders find it difficult to navigate the insurer battleground without being scarred in the process.

While the property market shows signs of softening[1] (traditionally marked by rate decreases and overlined capacity) headlines concerning liability insurers are less promising. Many insurers have taken a hardened stance on reserving capital for premier risk profiles — with some carriers non-renewing policies or significantly reducing line sizes to minimize overall book exposure amidst business plan adjustments.

Current market conditions are riddled with liability coverage constraints. Real estate investors are navigating solutions for hard-to-place exposures in addition to capacity shortages due to lessened appetite for habitational risks.

Background

Residential investors are navigating a difficult business landscape with increasing operational costs, including insurance premiums, program administration and claims management. The economics of insuring operational properties and development projects have put upward pressure on investment returns for these assets, in turn having a direct effect on underlying investment activity. Insurance premiums continue to be one of the highest realized expenses in comparison to utilities, maintenance and taxes.[2]

Soaring costs can be attributed to specific risks as well as softened sentiments towards record-level judgments and settlements (considered "nuclear"

[1]https://www.wtwco.com/en-us/insights/2024/10/insurance-marketplace-realities-2025

[2]https://www.jchs.harvard.edu/state-nations-housing-2024

verdicts). Jury awarded verdicts continue to be at the highest levels seen in decades. Monetary damages far out-weigh tangible costs for bodily injury and property damage, even less quantifiable costs for mental duress.

Claims experience and nuclear verdicts certainly have a strong influence as well. Insureds specializing in the residential sector are susceptible to alleged incidents involving bodily injury by way of physical violence, armed (or unarmed) assaults, sexual abuse, slips/trips and falls, battery, trafficking (illicit drugs or humans), habitability claims and fatalities, among others. Insurers have largely introduced policy language to address these concerns, a common response to known conditions, and not in favor of policyholders. Many carrier forms include verbiage which restricts, or eliminates, coverage for losses arising from these activities.

While insureds may not be able to fully eliminate exposure to certain incidents, firms can research liability placement enhancements to offset rising premiums — such as restructuring its primary and excess capacity, taking a larger retention, or using discretion to self-insure certain inherent risks. While challenged, commercial liability capacity remains available (albeit in finite amounts) — general liability and umbrella/excess liability. Layered programs have become increasingly compressed, putting upward pressure on excess liability placements.

Liability program structures vary considerably. Alternative products such as structured solutions and captive arrangements are more widely contemplated as competition for traditional products trade at a premium. Brokers continue to leverage data and analytics to make informed decisions about risk, appropriate limits and losses, helping to drive discussions around client's specific risks in lieu of general industry data.

Client impact

Insureds must determine how much risk to retain versus transfer to third parties — whether contractually through management and vendor agreements or via financial instruments such as insurance policies. Policyholders should be keenly aware of constraints imposed by lenders, capital partners, or memorandums obligating certain types or amounts of insurance by rated insurance carriers.

Minimizing exposure by identifying risks that can be reduced or eliminated without a negative business impact should remain a high priority.

Below are additional ways insureds can increase the probability of a successful renewal experience:

- **Loss control**. One of the many important aspects of controlling losses begins in advance of the loss occurring. Proactive risk management supports an organization by thoughtfully mitigating inherent risks. Real estate investors must keenly evaluate investments before acquisition, particularly loss trends. Understanding vulnerabilities is the first step to addressing them.
- **Contractual provisions**. Collaborate with counsel to review pertinent legal contractual agreements with a keen eye on hold harmless and indemnification provisions (in addition to insurance requirements). Insurance policies are a contract of indemnification. In the event of a claim, insurers will consider all recourse available to a policyholder.
- **Claims administration**. Partnering with a strong claims advocate is crucial. Depending on activity, insureds should consider having a dedicated internal claims resource in addition to broker advocacy and third-party administrators. Service levels may depend on program retention levels.
- **Market relationships**. Personalize your risk by building a strong rapport with your broker and insurer partners (incumbents and alternatives). Insurers see many submissions throughout the course of a year. Take an opportunity to explain your business, including preventative measures against many common causes of bodily injury or claims — including those aforementioned.
- **Property upkeep**. One of the best ways to reduce exposure to slips, trips, and falls is to proactively maintain your premises. Take careful consideration of due maintenance, weather appropriate attention and reported safety conditions. Documenting evidence of physical premises and living conditions via photographs prior to resident move-in (and subsequent to resident move-out) is recommended to combat habitability claims that may arise.
- **Service providers**. Having regional, or national, service providers on call when disaster strikes is key. Vet vendors in advance to ensure they meet your firm's minimum standards. Claims frequently involve property damage from water and fire loss, though it is also important to be prepared for events that involve injury to third parties. Media attention is swift and can be damaging to a firm's business and reputation — it's best to have policies in place to address high profile events if they occur.

Conclusion

Today's liability market proves challenging for insureds due to nuclear verdicts and heightened claims activity. Frequency and severity of claims relating to certain types of injuries including abuse and molestation, fatalities, and trafficking have forced insurers to re-think its business strategy, resulting in a shortage of available capital in the traditional market.

To combat program pricing, structure and coverage volatility, insureds can explore alternative solutions, implement best practices such as mitigating risk through contractual risk transfer, build relationships with insurers and reconsider certain activities which may provide heightened opportunities for hazardous incidents to occur.

WTW encourages insureds to engage early and often with its broker partner to avoid surprises on liability program pricing or coverage considerations.

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