

Drones: Assessing the Risks

Whether you hire a company to operate a UAV or do it yourself, know your insurance options.

Amid the game-changing excitement over drones in real estate, don't let the liability issues they create fly under the radar. Suppose you're working with a professional photographer who has already received a Section 333 waiver from the Federal Aviation Administration to operate unmanned aerial vehicles. Are you aware of your coverage under your brokerage's errors and omissions insurance if the drone hits someone or damages property and a liability claim is filed against you? The scenario may sound hypothetical, but it's one you need to consider as unmanned aerial photography and video assume a bigger part of real estate marketing.

You can't assume your brokerage's E&O policy—or your own coverage, if you have an individual policy—would cover an accident caused by something so new to the industry as drone technology. Until drone use becomes firmly established in the business and develops a substantial track record, insurance coverage will generally remain a gray area to be decided on a case-by-case basis by different carriers.

Here are steps you can take to mitigate your risk.

Examine your current policy. Ask your insurance agent or broker to examine your commercial general liability insurance policy and work with the insurance company that issued the policy to provide an endorsement to cover drone-related incidents. For coverage to apply, there needs to be a description of the unmanned aircraft and a description of the

LAW

operations or projects to be performed. These descriptions can be as broad as “all unmanned aircraft used in the insured's business for any operation or project connected to the insured's business” or as narrowly tailored as “operation of Model BX500 unmanned aircraft, serial number 1247ZQ, used to take aerial photos of 12 Main Street, Macon, Ga., on Dec. 1, 2015.”

Consider drone insurance. If you are using drones or intend to, talk to an independent insurance agent or broker about getting unmanned aircraft or drone insurance. Do this even if you're working with aerial photographers who have the proper FAA waiver to operate drones. They might have their own coverage, but their coverage won't necessarily help you if you're held liable separately from them.

Check into personal injury liability. Talk to your agent about obtaining coverage in an E&O policy for personal injury liability. This can occur when a drone operator takes a photo that infringes on the privacy rights of another party. For example, a drone operator takes a picture of a home for a marketing brochure. The picture also includes part of the neighbor's backyard where teenagers are sunbathing. If the broker prints and distributes hundreds of copies of the brochure and the neighbor finds out, there could be a privacy violation and the neighbor could make a claim against the real estate

practitioner for an error or omission in his or her professional services.

Inquire about legal defense costs. Ask about legal defense costs. If you are hit with a claim, and you don't have separate unmanned aircraft or drone coverage, then it's possible your E&O policy could cover your defense costs, as well as liability, for personal injury.

Right now, the commercial use of drones requires an FAA exemption, and that exemption has been granted to about 1,800 operators across the country, including hundreds that provide aerial photography and video services for consumers and businesses.

Also, hobbyists and amateurs must register all drones weighing between 0.55 pounds and 50 pounds with the FAA by Feb. 19, 2016.

Later this year, the FAA is intending to issue a final rule setting forth requirements for anyone operating drones commercially. At that point, whether you personally operate a drone in your business or hire another company to do so, making sure that you've protected yourself as fully as possible should give you peace of mind as you set out to provide bird's-eye property views in your real estate marketing.



Eric Myers is vice president and real estate program manager at Victor O. Schinnerer & Co., a REALTOR Benefits® Program partner.

[eric.e.myers@schinnerer.com]