

# What are you buying? What are we selling?

Elements of a lawyers' professional liability insurance policy

## For more information

- Read Fundamentals of Loss Prevention for Lawyers. This guide is normally available only to ISBA Mutual insured lawyers and law firms, but you can get it at <http://go.isbamutual.com/DCBAguide>

## Claims Made and Reported Policy

**Claims Made and Reported Policy:** your coverage and limits of liability is only available during the policy term or any extended reporting period.

**Occurrence Policy:** your coverage and limits of liability survive after the expiration of the policy.

All lawyers' professional liability policies sold in Illinois are **Claims Made and Reported**.



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## Coverage Agreement

- Insuring/Coverage Agreement
  - The Company will pay Claim Expenses and Damages that the Insured becomes legally obligated to pay as a result of a Claim
    - Wrongful Act occurred on or after the Prior Acts Date/Retroactive Date
    - Insured had no knowledge of a Claim at the time the policy was put in effect
    - No coverage for Claims that have been previously reported or should have been reported to a prior insurer



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## Who is Covered? The Named Insured

**NAMED INSURED** is the lawyer or law firm to whom the policy is issued

an Named Insured entities under the policy are:

- Lawyer or solo practitioner,
- Limited liability corporation,
- Limited liability partnership,
- Partnership,
- Professional association,
- Professional corporation

who is covered under this policy? Any lawyer who is, becomes, or was an:

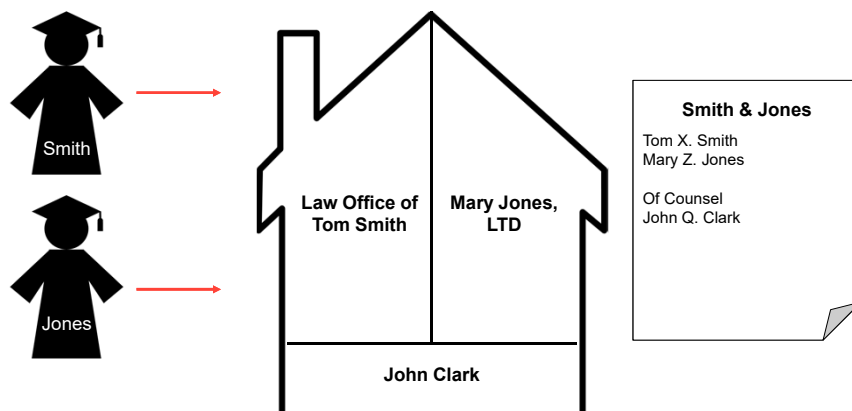
- Owner,
- Officer,
- Partner,
- Employee,
- Shareholder,
- Member,
- Independent contractor,
- Of Counsel,

but only for claims arising out of the rendering or failure to render professional services within the scope of his/her employment, or contract with the **Named Insured**.



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## Who is Insured?



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## Claims Made and Reported Policy – Dates are important!

### Policy Dates

- ▶ Prior Acts Date/  
Retroactive Date
- ▶ Effective Date
- ▶ Expiration Date
- ▶ Extended Reporting  
Date

### Claim Dates

- ▶ Occurrence/  
Wrongful Act Date
- ▶ Claim Made Date
- ▶ Report Date



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## What is a Claim?

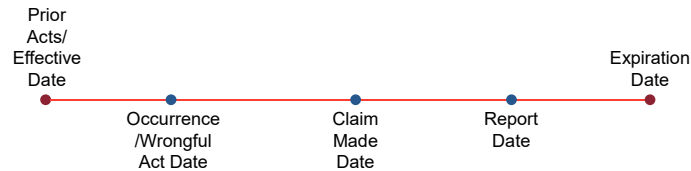
A Claim under the policy is:

- A demand for money or services
- A lawsuit or request for arbitration
- Incident or circumstance that may give rise to or result in a Claim
  - Wake up at 2 am in cold sweat. Did I forget to file that document?
  - Client is unhappy with the outcome or the cost of representation.
- Generally the claim is made by your client, however sometimes a non-client can make a claim such a beneficiary under your client's will.



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## The Timeline – Claims Dates



Occurrence/Wrongful Act date: The date when the alleged Wrongful Act took place.

Claim made date: The date the a lawyer within the firm became aware of the alleged Wrongful Act.

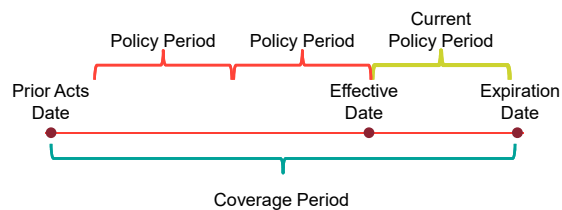
Report date: The date the firm informs the insurance company of the alleged Wrongful Act.

When Occurrence Date, Claim Made Date and Report Date are between the Effective Date and the Expiration Date, they are within the coverage period.



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## The Timeline – Prior Acts Date

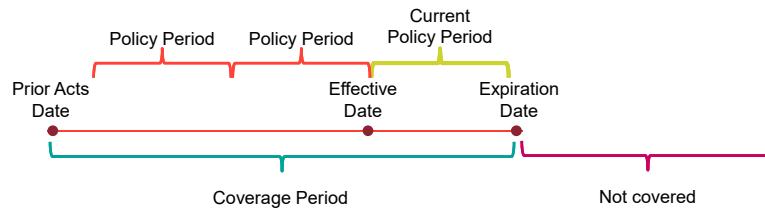


Prior Acts Date (or Retroactive Date): The earliest date for which insurance company provides insurance coverage for legal services rendered. You must show proof of continuous insurance coverage back to that date.



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## The Timeline – Claim Reporting



The Occurrence/Wrongful Act Date can be any time after the Prior Acts date, but the Claims Made Date and Report Date need to be in the current Policy Period (between the Effective Date and the Expiration Date).

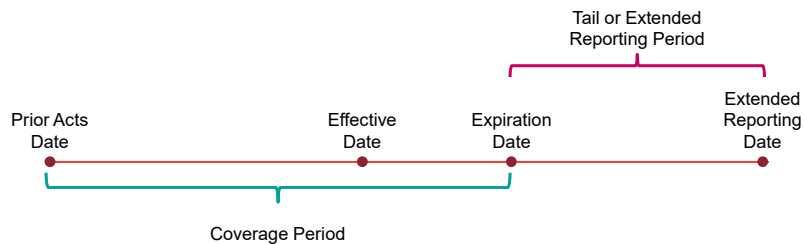
If the Occurrence Date is before the Prior Acts Date, the Wrongful Act is not covered by the policy.

If a Claim took place in a prior policy period, but is reported in the current policy period, there may be an issue with timeliness of reporting.



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## The Timeline – Extended Reporting Period



When a firm closes or dissolves, they can get a Tail or Extended Reporting Period endorsement that will allow the reporting of alleged Wrongful Acts after the firm is no longer practicing.

With a Tail, it is OK if the Claim Made Date and Report Date are after the Expiration Date, as long as they are during the Extended Reporting Period.

The Occurrence Date still needs to be between the Prior Acts Date and the Expiration Date.

If the Wrongful Act occurs after the Expiration Date, it will not be covered.



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## Is a Claim the same as Malpractice?

Reporting a Claim is reporting an allegation or potential allegation.

- Elements of proving malpractice
  - A duty is owed as the result of an attorney-client relationship
  - Deviation from the standard of care, negligence in legal representation of the client
  - The negligence was proximate cause of an injury, usually involving monetary loss
  - Actual damages were suffered by the client



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## Common Conditions: The “Maybe”

- Statements in Application are true and accurate
  - Application is incorporated into and become part of the policy
- Insured will assist and cooperate with company to resolve claim
- Changes to the risk (the firm) are reported in a timely manner
  - Mergers, Acquisitions
  - Spinoffs, Splits, Dissolution
- Notice of a claim or potential claim is timely, as soon as practicable in a manner required by the policy
- Notice of Suspension or Disbarment
- Voluntary Payments made by the insured to try to fix the problem are not covered or reimbursed without consent of the carrier.



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## Common Exclusions: The “Maybe”

- Prior Knowledge/Late Notice of a Claim
- Criminal, Dishonest, Fraudulent Acts
- Work on behalf of entity other than the Named Insured
- Work done on lawyer’s own behalf
  - When beneficiary or distributee
  - Lawyer-owned business
  - Insured vs. insured – same firm
- Bodily Injury and Property Damage
- ERISA, and other employee benefit claims
- Investment or Financial advice
- Work on behalf of a government entity as an employee or public official
- Damages excluded:
  - Punitive or Exemplary damages, Civil or Criminal Fines, Penalties or Sanctions
  - Demand for Return of Fees



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## Summary

- Claims Made and Reported Policy
- Coverage Agreement
- The Named Insured
- Policy and Claims Dates
- What is a Claim?
- Common Conditions
- Common Exclusions



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Thank You

