

# How to Avoid the Small Firm Tail Coverage Trap

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# Meet Mark:

Mark Bassingthwaighte, Esq., serves as Risk Manager at [ALPS](#), a leading provider of insurance and risk management solutions for law firms. Since joining ALPS in 1998, Mark has worked with more than 1200 law firms nationwide, helping attorneys identify vulnerabilities, strengthen firm operations, and reduce professional liability risks.

He has presented over 700 continuing legal education (CLE) seminars across the United States and written extensively on the topics of risk management, legal ethics, and cyber security.

A trusted voice in the legal community, Mark is a member of the State Bar of Montana and the American Bar Association and holds a J.D. from Drake University Law School. His mission is to help attorneys build safer, more resilient practices in a rapidly evolving legal environment.



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## Understanding the Tail Coverage Risk for Small Law Firms:

Just as with small businesses in every sector, small law firms experience widely varying outcomes in terms of longevity. Some firms remain active for decades; others close their doors within a few short years. Regardless of lifespan, every small firm will eventually face a final day of operation. Without advance financial planning, however, the lawyers left standing as that day approaches may be about to discover they're in a tail coverage trap, a preventable but costly exposure.

## Why Departing Lawyers Often Skip Tail Coverage:

In the later stages of a small firm's life, it's not unusual for partners to retire or move on and choose not to purchase tail coverage. The reasoning is straightforward. The "former attorney" language set forth in their firm's malpractice policy makes it clear that they will have all the protection they need. However, there is an assumption that the firm will maintain continuous coverage after their departure. But what happens if those departures contribute to the firm's eventual collapse a year or two later?

## Common Causes of Small Firm Dissolution:

Of course, departures aren't always the catalyst. Financial struggles, partner conflict, the loss or disability of a rainmaker, burnout, or other operational challenges can all push a firm toward closure. As dissolution becomes imminent, the remaining lawyers typically begin exploring the availability of tail coverage, and this is when the surprise hits.

## The Financial Shock of Tail Coverage Premiums:

Lawyers are sometimes caught off guard when they learn that tail coverage premiums are due upfront, and that multi-year tails cost more than anticipated. This is where the coverage trap becomes real because some firms simply lack the financial wherewithal to purchase the desired tail. Should that happen, every lawyer at the firm, including those who recently departed, will be left without coverage for their prior acts.



## **Practical Risk-Management Strategies to Avoid the Tail Coverage Trap:**

Fortunately, small firms can take proactive steps to avoid this exposure. One effective approach is establishing a designated malpractice insurance premium savings account that includes funds earmarked specifically for future tail coverage. In addition, if lawyers begin departing in anticipation of a possible closure, they should be asked to contribute a portion of the estimated cost of a firm tail.

## **Why Business Planning Matters for Malpractice Risk Reduction:**

The larger issue is that many small firms never develop a plan for winding down the practice. From a risk-management perspective, that's a significant business planning misstep with real consequences, including the possibility of falling into the tail coverage trap. Learn from the experiences of others. If your firm hasn't yet begun planning for an eventual closure, now is the time.