

CONTINENTAL CASUALTY COMPANY
 (A stock insurance company, hereinafter called the "Company")

Administrative Office:
P.O. Box 6709
Louisville, Kentucky 40206-0709
(502) 897-1876
(800) 637-7319

REAL ESTATE LICENSEES ERRORS AND OMISSIONS

DECLARATIONS

THIS IS A CLAIMS-MADE POLICY. PLEASE READ THIS POLICY CAREFULLY.

NOTICE: THIS IS A CLAIMS-MADE POLICY. EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN, THIS COVERAGE IS LIMITED TO LIABILITY FOR ONLY THOSE **CLAIMS** WHICH ARE FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE COMPANY WHILE THE POLICY IS IN FORCE.

- POLICY NUMBER:** 12 EO 0009NM
- ITEM 1. POLICYHOLDER:** The New Mexico Real Estate Commission on behalf of its licensees who hold an active real estate license under New Mexico Real Estate License Law and who have paid the required premium
 5200 Oakland Ave NE, Suite B, Albuquerque, NM 87113
- ITEM 2. GROUP POLICY PERIOD:** From 01/01/2012 to 01/01/2013
 (12:01 A.M. Standard Time at the address stated in Item 1)
- ITEM 3. LIMITS OF LIABILITY:** (a) \$100,000 per Licensee per Claim (Damages)
 (b) \$500,000 Aggregate all Claims per Licensee (Damages)
- ITEM 4 a. SUBLIMITS DISCRIMINATION:** (a) \$25,000 per Licensee per Discrimination Claim (Damages)
 (b) \$25,000 Aggregate all Discrimination Claims per Licensee (Damages)
- ITEM 4 b. SUBLIMITS ENVIRONMENTAL:** (a) \$10,000 per Licensee per Environmental Claim (Damages)
 (b) \$20,000 Aggregate all Environmental Claims per Licensee (Damages)
- ITEM 4 c. SUBLIMITS ESCROW:** (a) \$5,000 per Licensee per Escrow Claim (Damages)
 (b) \$10,000 Aggregate all Escrow Claims per Licensee (Damages)
- ITEM 4 d. SUBLIMITS LOCK BOX:** (a) \$5,000 per Licensee per Lock Box Claim (Damages)
 (b) \$10,000 Aggregate all Lock Box Claims per Licensee (Damages)
- ITEM 5. DEDUCTIBLES:**
DAMAGES \$1000 each Claim
CLAIM EXPENSES \$0 each Claim
- ITEM 6. PREMIUM:** \$252 per year per Licensee
- ITEM 7. RETROACTIVE DATE:** As determined for each Insured according to the policy
 This insurance does not apply to any Claim or Claims made against the Insured based upon, arising out of, or attributable to any negligent act, error, or omission or Discriminatory Conduct committed or alleged to have been committed prior to the Retroactive Date listed above.
- ITEM 8. OPTIONAL EXTENDED REPORTING ADDITIONAL PREMIUM:** One Year is 100% expiring premium (\$252 plus any applicable endorsement premium); Two Years is 150% expiring premium (\$378 plus any applicable endorsement premium); Three Years is 200% expiring premium (\$504 plus any applicable endorsement premium)

The Declarations and the forms listed and attached hereto, together with the completed and signed application shall constitute the contract between the Insured and the Company.



 Authorized Representative

1/1/2012

 Date



REAL ESTATE LICENSEES ERRORS AND OMISSIONS POLICY

NOTICE

THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, COVERAGE UNDER THIS MASTER POLICY IS LIMITED TO LIABILITY ONLY FOR THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE COMPANY DURING THE **INDIVIDUAL POLICY PERIOD** OR ANY APPLICABLE EXTENDED REPORTING PERIOD. NO COVERAGE EXISTS FOR **CLAIMS** FIRST MADE AGAINST THE **INSURED** BEFORE THE BEGINNING OR AFTER THE END OF THE **INDIVIDUAL POLICY PERIOD**. PLEASE REVIEW THIS MASTER POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

INSURING AGREEMENT

I. COVERAGE

The Company will pay **Damages** in excess of the Deductible, which the **Insured** shall become legally obligated to pay as a result or by reason of a **Claim**, so long as the **Claim** is first made against the **Insured** during the **Individual Policy Period** and reported to the Company in writing during the **Individual Policy Period**, unless an Extended Reporting Period applies provided that:

- A. the negligent act, error, or omission or **Discriminatory Conduct** giving rise to the **Claim** was committed or alleged to have been committed subsequent to the **Retroactive Date**; and
- B. prior to the inception date of the **Individual Policy Period**, no **Insured** had a basis to believe that any such negligent act, error, or omission, or **Related Act, Error, or Omission** or **Discriminatory Conduct** might reasonably be expected to be the basis of a **Claim** against the **Insured**.

The Company has the right and duty to defend the **Insured** against any **Claim** seeking **Damages** covered by this policy until the applicable Limits of Liability or Sublimits of Liability are exhausted. The Company has the right to select counsel; to investigate the circumstances of the **Claim**; and to pay judgments, settlements, and **Claim Expenses** as the Company deems necessary. In the event a **Claim** is subject to arbitration or mediation, the Company is entitled to exercise all of the rights of the **Insured** in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding. The Company has no duty to defend any **Claim** not covered by this policy.

The Company will not settle any **Claim** without the consent of the **Insured**, which consent shall not be unreasonably withheld. If the Company recommends a settlement to the **Insured** which is agreeable to the claimant and the **Insured** does not agree to settle, the Company's applicable Limits of Liability or Sublimits of Liability are reduced to the total amount for which the **Claim** could have been settled. The maximum amount the Company will pay in the event of any later settlement or judgment is the amount for which the **Claim** could have been settled plus the amount of **Claim Expenses** incurred up to the time the Company made the recommendation.

II. LIMITS OF LIABILITY

The Declarations sets forth the Company's Limits of Liability for the **Licensee**. The Limits of Liability and Sublimits of Liability are excess of the Deductible. All other persons or organizations included under the definition of **Insured** share such Limits of Liability and Sublimits of Liability with the **Licensee**. The Limits of Liability and Sublimits of Liability apply regardless of the number of **Claims** made or the number of persons or organizations making **Claims** against the **Insured**. If **Related Claims** are subsequently made against the **Insured** and reported to the Company during this group policy or any renewal of this group policy, all such **Related Claims**, whenever made shall be considered a single **Claim** first made within the **Individual Policy Period** in which the earliest of the **Related Claims** was first made.

- A. The Company shall pay **Claim Expenses** in connection with covered **Claims**. **Claim Expenses** are in addition to the limit of liability.



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- B. Subject to the paragraphs below, the Company's Limits of Liability for **Damages** for each **Claim** shall not exceed the per **Claim** Limit stated in the Declarations.
- C. The Company's Limit of Liability for **Damages** for all **Claims** per **Licensee** shall not exceed the Aggregate Limit stated in the Declarations.
- D. The Company's Sublimit of Liability for **Damages** for each **Discrimination Claim** per **Licensee** shall not exceed the per **Discrimination Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Discrimination Claims** per **Licensee** shall not exceed the Aggregate **Discrimination Claim** Sublimit set forth on the Declarations. **Damages** paid within the **Discrimination Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- E. The Company's Sublimit of Liability for **Damages** for each **Environmental Claim** per **Licensee** shall not exceed the per **Environmental Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Environmental Claims** per **Licensee** shall not exceed the Aggregate **Environmental Claim** Sublimit set forth on the Declarations. **Damages** paid within the **Environmental Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- F. The Company's Sublimit of Liability for **Damages** for each **Escrow Claim** per **Licensee** shall not exceed the per **Escrow Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Escrow Claims** per **Licensee** shall not exceed the Aggregate **Escrow Claim** Sublimit set forth on the Declarations. **Damages** paid within the **Escrow Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- G. The Company's Sublimit of Liability for **Damages** for each **Lock Box Claim** per **Licensee** shall not exceed the per **Lock Box Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Lock Box Claims** per **Licensee** shall not exceed the Aggregate **Lock Box Claim** Sublimit set forth on the Declarations. **Damages** paid within the **Lock Box Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- H. In addition to the applicable Limits of Liability or Sublimits of Liability, the Company will pay **Claim Expenses** in connection with covered **Claims**. **Claim Expenses** are in addition to the Limits of Liability or Sublimits of Liability. The Company's payment of the applicable Limits of Liability or Sublimits of Liability ends the Company's duties to defend, pay **Damages**, and pay **Claim Expenses**.
- I. If a **Claim** involves coverage issued to two or more **Licensees**, the amount paid by the Company on behalf of all **Insureds** under each **Licensee's** coverage shall be prorated in relationship to the amount awarded against each such **Insured**, but in no event shall the amount paid by the Company for all **Insureds** under each **Licensee's** coverage exceed the per **Licensee** Limits of Liability shown on the Declarations.
- J. Limits of Liability and Sublimits of Liability are not renewed or increased by virtue of the operation of the Automatic or Optional Extended Reporting Period.

III. DEDUCTIBLE

The **Insured** shall pay the Deductible, as stated in Item 5 of the Declarations for each **Claim**. The Company's obligation to pay **Damages** begins only after the **Insured** has paid the Deductible. The Deductible applies to the payment of **Damages** only. The Company is obligated for amounts payable in excess of the Deductible up to the applicable Limits of Liability or Sublimits of Liability. The Company may pay any part or all of the Deductible to settle, defend, or investigate a **Claim**. The **Insured** must promptly reimburse the Company any amount of the Deductible paid by the Company. In the event the **Insured** does not reimburse the Company within sixty (60) days, the Company will be entitled to recover reasonable costs and attorney fees incurred in collecting such reimbursement.

If a **Claim** involves two or more **Licensees** who are affiliated with the same **Real Estate Firm**, only one Deductible applies. If a **Claim** involves two or more **Insureds**, the Deductible amount will be shared equally by all **Insureds** involved in the **Claim**. Payment of the Deductible is the joint and several liability of all **Insureds**, but collection of the Deductible will be the responsibility of the **Real Estate Firm**.

**IV. SUPPLEMENTARY PAYMENTS**

Payments made under this section are not subject to the Deductible. In addition to the Limits of Liability and Sublimits of Liability, the Company will pay the following:

- A. Premiums on appeal bonds and bonds to release attachments. Premiums are limited to bonds no larger than the Company's remaining Limits of Liability or Sublimits of Liability. Obtaining the bond is not the Company's obligation.
- B. \$250 for each day the **Insured** attends a trial or hearing in a civil lawsuit covered under this policy; however, attendance must be at the Company's request. In no event shall the amount payable under this provision exceed a \$5,000 Aggregate Limit during the **Individual Policy Period**. In addition, the \$5,000 limit is the maximum the Company will pay even if such trial or hearing spans more than one **Individual Policy Period**.
- C. Postjudgment interest on that portion of any judgment to which this insurance applies and which accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited, whether in court or otherwise, that part of the judgment for which the Company is responsible.
- D. If the **Insured** receives a subpoena for documents or testimony arising out of **Professional Services** and notifies the Company within 20 days of receipt of such subpoena and the **Insured** would like the Company's assistance in responding to the subpoena, the **Insured** may provide the Company with a copy of the subpoena and the Company will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at the **Insured's** deposition and while providing trial testimony, provided that:
 1. the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
 2. the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past;
 3. the underlying lawsuit relates to **Professional Services** and does not involve **Professional Services** to which Exclusion J would apply; and
 4. the **Professional Services** occurred after the **Licensee's Retroactive Date**;The amount payable under this provision shall be subject to a \$2,500 Aggregate Limit during the **Individual Policy Period**. In addition, the \$2,500 Aggregate Limit is the maximum the Company will pay even if the subpoena, action requested thereby, or underlying suit spans more than one **Individual Policy Period**. Any written notice to the Company of a subpoena shall be deemed notification of a circumstance under **Section XII. CIRCUMSTANCE REPORTING**.
- E. The Company will pay a maximum of \$2,500 with respect to all **Claim Expenses** incurred in the handling of a complaint to a real estate regulatory board or commission, provided that:
 1. The complaint arises from an act, error, or omission or **Discriminatory Conduct** that would otherwise be covered by the policy;
 2. the **Professional Services** occurred after the **Licensee's Retroactive Date**; and
 3. the **Insured** notifies the Company within 20 days of receipt of such complaint and provides the Company with copies of such complaint;

The maximum amount payable during the **Individual Policy Period** for **Claim Expenses** pursuant to this paragraph shall not exceed \$5,000, even if such complaint spans more than one **Individual Policy Period**. The Company shall not pay any **Damages** arising from such complaints. Any written notice to the Company of a complaint to a real estate regulatory board or commission shall be deemed notification of a circumstance under **Section XII. CIRCUMSTANCE REPORTING**.

V. TERRITORY

- A. If the **Licensee** is domiciled in the State of New Mexico, then this policy applies to **Professional Services** performed anywhere in the world, provided that:
 1. the **Licensee** will be covered for **Professional Services** performed outside the State of New Mexico only if the **Licensee** is duly licensed in such jurisdiction and the services performed would require a license pursuant to the laws of New Mexico had the acts been performed in New Mexico; and



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2. the **Claim** arising out of the rendering of such **Professional Services** is brought within the United States of America, its territories or possessions.
- B. If the **Licensee** is not domiciled in the State of New Mexico, then this policy and the coverage provided hereunder applies only to **Professional Services** performed in New Mexico. The **Claim** arising out of the rendering of such **Professional Services** must be brought within the United States of America, its territories or possessions.
- C. For purposes of this section, a **Licensee** who is not domiciled in the State of New Mexico shall be treated as domiciled in the State of New Mexico if the **Licensee's Principal Real Estate License** is affiliated with a real estate office located in the State of New Mexico and the **Licensee** resides within fifty (50) miles of the New Mexico State line.

VI. EXCLUSIONS

This insurance does not apply to any **Claim** alleging, arising from, or related to:

A. Fraudulent or Dishonest Acts

Fraudulent, dishonest, criminal or malicious acts committed by the **Insured**, at the **Insured's** direction, or with the **Insured's** knowledge, or by anyone for whose acts the **Insured** is legally responsible;

B. Insolvency

the insolvency of the **Insured**;

C. Failure to Pay or Collect

the failure to pay, collect or return insurance premiums, escrow monies, earnest money deposits, security deposits, tax money or commissions, except that this exclusion shall not apply to an **Escrow Claim** until the **Escrow Claim** Sublimit of Liability has been exhausted;

D. Wrongful Termination

the wrongful termination of employment, breach of an employment contract, or other employment disputes;

E. Bodily Injury

bodily injury, sickness, disease, mental anguish, pain or suffering, emotional distress, or death of any person;

F. Property Damage

physical injury to, destruction, or loss of use of tangible property, except that this exclusion shall not apply to a **Lock Box Claim** until the **Lock Box Claim** Sublimit of Liability has been exhausted or to an **Environmental Claim** until the **Environmental Claim** Sublimit of Liability has been exhausted;

G. Unfair Competition

unfair competition, piracy, advertising injury, or theft or wrongful taking of concepts or other intellectual property;

H. Libel or Slander

libel, slander, defamation of character, disparagement, detention, humiliation, sexual harassment, false arrest or imprisonment, wrongful entry or eviction, violation of the right to privacy or malicious prosecution, personal injury, or other invasion of rights to private occupancy;



I. Discrimination

discrimination on the basis of race, color, creed, national origin, sex, religion, age, sexual preference, marital status, any mental or physical handicap or disease, or any other unlawful discrimination category, except that this exclusion shall not apply to a **Discrimination Claim** until the **Discrimination Claim** Sublimit of Liability has been exhausted;

J. Owned Property

Professional Services relating to property:

1. developed or constructed by, or
2. more than 10% owned by, or
3. purchased or attempted to be purchased by an **Insured** or by the spouse of an **Insured** or by any entity, corporation, partnership, or trust in which the **Insured** or spouse of an **Insured** owns or controls more than 10% financial interest; however, this exclusion does not apply to:
 - a. any **Claim** arising from the sale of property acquired by the **Insured** pursuant to a guaranteed sale listing contract. The guaranteed sale listing contract must be a written agreement between the **Insured** and the seller of a property in which the **Insured** agrees to purchase the property if it is not sold under the listing agreement in a specified time. For coverage to apply, the **Insured** must hold title to the property for less than one (1) year and must continually offer it for sale; or
 - b. the sale or listing of residential property which is the **Licensee's Primary Residence**, so long as it is not a For Sale By Owner sale or listing;

K. Statutory Violations

violation of the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, or any state Blue Sky or securities laws, or amendments thereto;

L. Maintenance of Insurance

failure by an **Insured** to provide or maintain insurance;

M. Specified Activities

the **Insured's** activities as:

1. a lawyer, title agent, mortgage banker, mortgage broker or correspondent, escrow agent, construction manager, property developer, or insurance agent, except that the escrow agent portion of this exclusion shall not apply to an **Escrow Claim** until the **Escrow Claim** Sublimit of Liability has been exhausted; or
2. the **Insured's** activities as an appraiser, if the appraisal activity performed requires licensing or certification other than a real estate license;

N. Real Estate Investment Trusts

activities involving property syndication, limited partnership, or real estate investment trusts in which any **Insured** has, or had, a direct or indirect interest in the profits or losses;

O. Contractual Liability

liability assumed by any **Insured** under any contract, indemnity agreement, purchase agreement, hold harmless clause, or other similar agreement unless such liability would have attached to the **Insured** in the absence of such contract;



P. Pollution/Mold/Fungi

whether suddenly or over a long period of time:

1. the actual, alleged or threatened emission, discharge, dispersal, seepage, release, or escape of **Pollutants**, asbestos, radon, or lead;
2. the actual or alleged failure to detect, disclose, report, test for, monitor, clean, remove, contain, dispose of, treat, detoxify, or neutralize, or in any way respond to, assess the effects of, or advise of the existence of **Pollutants**; or
3. any nuclear reaction, nuclear radiation, or radioactive contamination or any act, condition, or pollution incidental to the foregoing.
4. the actual or alleged:
 - a. or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth, or presence of; or
 - b. failure to detect, report, test for, monitor, clean, remove, contain, dispose of, treat, detoxify, or neutralize or in any way respond to, assess the effects of, or advise of the existence of any **Fungi** or **Microbes**, or of any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of **Fungi** or **Microbes**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **Damages** claimed.

As used in this exclusion, pollution includes the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **Pollutants**.

Except that this exclusion shall not apply to an **Environmental Claim** until the **Environmental Claim** Sublimit of Liability has been exhausted;

Q. Expected or Intended

injury or damage expected or intended by the **Insured** except that this exclusion shall not apply to a **Discrimination Claim** until the **Discrimination Claim** Sublimit of Liability has been exhausted;

R. Commission Disputes

disputes over commissions between real estate brokers and/or salespersons or disputes over commissions involving lawsuits initiated by the **Insured**. This exclusion does not apply to disputes over commissions involving counterclaims filed with the approval of the Company;

S. Prior Acts

negligent acts, errors, or omissions or **Discriminatory Conduct** committed or alleged to have been committed either (1) prior to the date the **Insured** received an active real estate license or (2) subsequent to the effective date of suspension, revocation, or inactive status of the **Insured's** real estate license;

T. Fines and Penalties

any fines, penalties, assessments, punitive damages, exemplary damages, or multiplied damages or matters deemed uninsurable under applicable law; or

U. Conversion

conversion, misappropriation, or commingling of funds or other property.



VII. EXTENDED REPORTING PERIODS

In case of cancellation or nonrenewal, a Licensee may be eligible for the following Extended Reporting Periods to apply, both subject to Paragraph C below:

- A. Automatic Extended Reporting Period: In case of cancellation or nonrenewal because a Licensee retires, places license on inactive status, or allows his/her license to expire, the policy will apply to Claims first made against the Insured and reported to the Company up to ninety (90) days after the effective date of cancellation or nonrenewal. Said ninety (90) day period will be hereinafter referred to as the Automatic Extended Reporting Period.
- B. Optional Extended Reporting Period: In case of cancellation or nonrenewal for any reason, the Licensee shall have the option, upon payment of an additional premium within ninety (90) days after the effective date of the cancellation or nonrenewal, to cause the policy to apply to Claims first made against the Insured and reported to the Company during the Optional Extended Reporting Period. The Optional Extended Reporting Period will replace the Automatic Extended Reporting Period. The premium for the Optional Extended Reporting Period will be fully earned and is determined as shown below:

| <u>Optional Extended Reporting Periods</u> | <u>Premium</u> |
|--|----------------|
| One Year | 100% |
| Two Years | 150% |
| Three Years | 200% |

The Optional Extended Reporting Period cannot be canceled by the Company or the Insured.

- C. Coverage afforded by the Automatic and Optional Extended Reporting Periods:
 - 1. Shall apply solely to Claims arising from a negligent acts, errors, or omissions or **Discriminatory Conduct**:
 - a. committed or alleged to have been committed subsequent to the **Retroactive Date**,
 - b. committed or alleged to have been committed prior to the effective date of cancellation or nonrenewal, and
 - c. which are otherwise insured under all the other terms, conditions, and exclusions of this policy.
 - 2. Shall not apply to any Claim, which is insured by any other policy of insurance, nor as excess above such other policy of insurance.
 - 3. Nothing in Paragraph A or B shall serve to increase the Limits of Liability or Sublimits of Liability as provided in Section II, Limits of Liability, or Section IV, Supplementary Payments. The Limits of Liability and Sublimits of Liability for any Extended Reporting Period shall be a part of, and not in addition to, the Limits of Liability and Sublimits of Liability listed on the Declarations.

VIII. DEFINITIONS

Claim means:

- 1. a written demand for money or services received by the Insured, or
- 2. service of a lawsuit or institution of arbitration or mediation proceedings against the Insured seeking Damages and alleging a negligent act, error, or omission in the performance or failure to perform Professional Services. A Claim also includes a Discrimination Claim.

Claim Expenses means:

- 1. fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a Claim if incurred by the Company or by the Insured with the Company's written consent,
 - 2. fees charged by attorneys designated by the Company.
- Costs, fees, or expenses of employees or officials of the Company are not Claim Expenses. Nor shall Claim Expenses include salaries, loss of earnings, or other remuneration by or to any Insured.

Damages means compensatory damages. Damages do not include fines; penalties; punitive, exemplary, or multiplied damages; or matters deemed uninsurable under applicable law.

Discrimination Claim means

- 1. a written demand for money or services received by the Insured, or



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2. service of a lawsuit or institution of arbitration or mediation proceedings against the **Insured**, alleging **Discriminatory Conduct**.

Discriminatory Conduct means acts, errors or omissions in violation of Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988 (or any similar state or local law or ordinance) in the rendering of **Professional Services**.

Domestic Partner means any person qualifying as a “domestic partner” under any federal, state or local laws or under the **Real Estate Firm’s** employee benefit plans.

Environmental Claim means a **Claim** alleging the **Insured’s** failure to detect, report, or assess the effects of or advise of the existence of **Pollutants, Fungi, or Microbes**;

Escrow Claim means a **Claim** alleging the **Insured’s** failure to pay, collect, or return escrow monies or earnest money deposits in connection with the **Licensee’s Professional Services**; provided that: (i) such **Insured** has met the requirements of the New Mexico Real Estate License Law governing client funds and (ii) such funds are held separate from the **Insured’s** funds.

Fungi means any form of fungus including but not limited to yeast, mold, mildew, rust, smut, or mushroom.

Group Policy Period means the period set forth in the Declarations. The **Group Policy Period** may be shortened by cancellation.

Individual Policy Period means the period set forth in the Certificate of Coverage commencing with the date the **Licensee** obtained coverage under this group policy by paying the appropriate premium and ending with the cancellation or expiration of the **Licensee’s** coverage under this group policy. The **Individual Policy Period** must be within the dates of the **Group Policy Period** shown on the Declarations.

Insured means the following:

1. the **Licensee**;
2. the **Licensee’s Unlicensed Employees**;
3. the heirs, executors, administrators, or assigns of the **Licensee** in the event of the **Licensee’s** death, incapacity, or bankruptcy but only to the extent that such **Licensee** would have been provided coverage under this policy;
4. the spouse or **Domestic Partner** of the **Licensee** but only for **Claims** arising solely out of such status and only if the **Claim** seeks **Damages** from marital community property, jointly held property, or property transferred from the **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any act, error, or omission of a spouse or **Domestic Partner**.

When this policy provides coverage for a **Claim** made against any of its **Insureds** listed in 1, 2, 3, or 4 above, **Insured** will also mean:

5. any **Real Estate Firm** or real estate franchisor that the **Licensee** represents but only for its vicarious liability for the negligent acts, errors, or omissions or **Discriminatory Conduct** arising out of the **Licensee’s Professional Services**.

Licensee means the person who holds an active real estate license issued by the **Policyholder** under New Mexico Real Estate License Law and who has paid the required premium.

Lock Box means a device to allow authorized persons without a key to enter a locked door.

Lock Box Claim means a **Claim** alleging property damage or loss of use of property resulting from such property damage in the distribution, operation, or use of a **Lock Box** on property not owned, occupied by, or leased to the **Insured**.

Microbes mean any non-fungal microorganism or non-fungal colony-form organism that causes infection or disease.



Policyholder means the New Mexico Real Estate Commission.

Pollutants means any solid liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant, or contaminant, including but not limited to radon, asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

Primary Residence means a residential property of two or fewer units which serves as the **Licensee's** principle residence.

Principal Real Estate License means the state license under which the majority of the **Licensee's** real estate transactions are conducted.

Professional Services means

1. services performed by the **Licensee** as a real estate broker or salesperson as defined in New Mexico Real Estate License Law and for which the **Licensee** is required to have a real estate license;
2. **Property Management Services** performed by the **Licensee**;
3. auctioning real property; and
4. services performed or advice given by the **Licensee** as a real estate consultant or counselor, notary public, or escrow agent in connection with the services as a **Licensee** in (1) (2), and (3) above.

Property Management Services are the following services provided in connection with the management of commercial or residential property:

1. development and implementation of management plans and budget;
2. oversight of physical maintenance of property;
3. solicitation, evaluation, and securing of tenants and management of tenant relations, collection of rent, and processing evictions;
4. development, implementation, and management of loss control and risk management plans for real property;
5. solicitation and negotiation of contracts for sale and leasing of real property;
6. development, implementation, and management of contracts and subcontracts, excluding property and liability insurance contracts, necessary to the daily functioning of the property;
7. personnel administration; and
8. record keeping.

Property Management Services do not include **Renovation Services** or analysis of, evaluations of, or recommendations concerning environmental hazards or exposures.

Real Estate Firm means a legal entity with which brokers or salespersons, as defined in New Mexico Real Estate License Law, are affiliated and which employs the **Licensee**.

Related Claims means all **Claims** arising out of a single negligent act, error, or omission or **Discriminatory Conduct** or arising out of **Related Acts, Errors or Omissions** in the rendering of **Professional Services**.

Related Acts, Errors or Omissions mean all negligent acts, errors or omissions or **Discriminatory Conduct** in the rendering of **Professional Services** that are temporally, logically, or causally connected by any common fact, circumstance, situation, transaction, event, advice, or decision.

Renovation Services are the following services provided in connection with the renovation and reconstruction of commercial or residential property:

1. management of facility renovation and reconstruction plans;
 2. development and management of renovation and reconstruction contracts and subcontracts;
- and



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3. development of loss control and risk management plans in connection with the reconstruction or renovation.

Retroactive Date is the date when the first real estate errors and omissions coverage was effective insuring the **Licensee** on a claims-made basis and since which time the **Licensee** has been continuously insured by coverage similar to that provided by this agreement. The **Retroactive Date** is established separately for each **Licensee**.

Unlicensed Employee means the support staff under the real estate **Licensee's** supervision and control who is assisting the **Licensee** in the performance of the **Licensee's Professional Services**, including the personal assistant, clerk, secretary, messenger, and intern but shall not include an owner, officer, director, or any other staff member who is not under the direct supervision of the **Licensee** or assisting the **Licensee** in the performance of the **Licensee's Professional Services**.

IX. PREMIUM

This coverage shall not be effective until and unless the application for coverage has been approved by the Company and the premium has been paid. Each **Insured's** premium shall be fully earned at the inception date of the policy unless the Company cancels the entire policy.

X. AUDIT

The Company may audit the **Insured's** records to determine the accuracy of pertinent information provided by the **Insured**. The Company will give reasonable notice to the **Insured** of such an audit. The audit will take place during the **Insured's** regular business hours.

XI. THE INSURED'S DUTIES IF THERE IS A CLAIM

A. The **Insured** shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the **Claim** is first made but in no event more than ninety (90) days after the **Insured** becomes aware of such **Claim**. Such written notice shall include the name of the **Licensee** and shall include the time, place, and details of the **Claim**. Notice shall be delivered to:

U.S. Mail Delivery

Claims Department

P. O. Box 6709

Louisville KY 40206-0709

Overnight Delivery

Claims Department

4211 Norbourne Blvd.

Louisville KY 40207-4048

Electronic Delivery

Fax: (502) 897-7174

Email: claims@risceo.com

B. The **Insured** shall not admit any liability, make any settlement, pay any **Damages**, or assume any duty or obligation for any **Claim** without the prior written consent of the Company. The **Insured** shall not incur any **Claim Expenses** for any **Claim** without the prior written consent of the Company.

C. The **Insured** shall immediately forward to the Company every demand, notice, summons, or other process received by the **Insured** or the **Insured's** representatives about any **Claim**.

D. The **Insured** shall cooperate with the Company and, at the Company's request, the **Insured** shall assist the Company in responding to the **Claim** and making settlements. The **Insured** shall attend hearings and trials and help in securing and giving evidence at the Company's request.

XII. CIRCUMSTANCE REPORTING

If during the **Individual Policy Period**, the **Insured** becomes aware of any act, error, or omission that may reasonably be expected to be the basis of a **Claim** against the **Insured** and gives written notice to the Company via any of the means listed in **Section XI. THE INSURED'S DUTIES IN THE EVENT OF A CLAIM** of such act, error, or omission and information about the potential **Claim**, including but not limited to:

1. the specific act, error, or omission;
2. the dates and persons involved;
3. the identity of the anticipated or possible claimants; and



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4. the circumstances by which the **Insured** first became aware of the potential **Claim**, then any **Claim** that arises out of such reported act, error, or omission and that is subsequently made against the **Insured** and reported to the Company shall be deemed to have been made at the time such written notice was given to the Company.

XIII. SUBROGATION

If the Company makes any payment under this policy, the Company shall receive all of the **Insured's** rights of recovery against any persons or organizations. The **Insured** shall assist the Company in whatever way is necessary to secure such rights. When a **Claim** is made, the **Insured** shall do nothing to thwart the Company's recovery of amounts paid to other parties who might be responsible for the **Claims**.

XIV. CHANGES

The terms of this policy may not be waived or changed unless the Company issues an Endorsement. All Endorsements become a part of this policy upon the Endorsement's effective date. The **Policyholder** or the **Licensee** and the Company may make changes in the terms of the policy upon mutual consent.

XV. ACTION AGAINST THE COMPANY

The **Insured** may not bring a lawsuit against the Company unless the **Insured** has complied with all the terms and conditions of this policy. Nor shall an action lie against the Company until judgment or trial determines the **Insured's** responsibility to pay.

XVI. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the Company of its obligations under this policy.

XVII. CANCELLATION

A. The **Policyholder** may cancel this policy by giving, mailing, or delivering the Company advance written notice of cancellation or surrendering the policy to the Company at least one hundred twenty days (120) days before the effective date of cancellation. If the **Policyholder** cancels the policy, it is responsible for notifying each **Licensee** of the effective date of cancellation.

B. The Company may cancel this policy in accordance N.M.A.C. § 16.61.5.9 (C) for one of the following reasons:

1. non-payment of premium,
2. revocation of the **Licensee's** real estate license, or
3. an applicant is denied a real estate license.

To affect such cancellation, the Company shall mail or deliver to the **Licensee** a written notice stating the reason for such cancellation and stating when, not less than fifteen (15) days after the mailing or delivery, the cancellation shall be effective. If notice is mailed, proof of mailing will be sufficient proof of notice.

XVIII. NONRENEWAL

If the Company elects not to renew this policy, it will give, mail, or deliver to the **Policyholder** written notice of nonrenewal at least one hundred twenty (120) days before the expiration date of the policy.

XIX. CONFORMITY TO STATUTES

If applicable law is in conflict with this policy, the policy is amended to conform to that law.

XX. OTHER INSURANCE

This insurance is excess over any other insurance, whether primary, excess, contingent, or on any other basis, except when purchased specifically to apply in excess of this insurance. When both this insurance and other insurance apply to any **Claim**, whether primary, excess, or contingent, the Company shall not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limits of Liability or Sublimits of Liability under this policy for such



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Damages bears to the total applicable Limits of Liability and Sublimits of Liability of all valid and collectible insurance against such **Claims**.

XXI. LICENSE INACTIVE

In the event a **Licensee's** license is placed on inactive status during a period in which the **Insured** has paid the applicable premium, the policy will remain in effect for the remainder of the **Individual Policy Period** as if the license had not been placed in inactive status, regardless of whether the license is re-activated, except that coverage will not be provided for acts, errors, or omissions of the **Insured**, which occur during the period when the license was in an inactive status.

XXII. AUTHORIZATION CLAUSE

By accepting this policy, the **Insured** agrees that the statements in the application are the **Insured's** agreements and representations. The **Insured** agrees that these statements are true and correct as of the inception of this policy. This policy has been issued relying upon those statements and representations. The **Insured** agrees that the policy and application are the total agreement between the **Insured** and the Company or its agents.

XXIII. TRANSFER

This policy is not transferable.

XXIV. TRADE AND ECONOMIC SANCTIONS

This policy does not provide coverage for **Insureds**, transactions, or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

IN WITNESS WHEREOF, we have caused this policy to be executed by our Chairperson and Secretary, but this policy shall not be binding upon us unless completed by the attachment of the Certificate of Coverage and executed by our duly authorized representative.

Chairman

Secretary
