

NEW MEXICO REAL ESTATE COMMISSION'S GROUP ERRORS & OMISSIONS INSURANCE

Administered by Rice Insurance Services Company, LLC

January 1, 2012 - January 1, 2013

OVERVIEW OF RISC'S GROUP REAL ESTATE ERRORS AND OMISSIONS PROGRAM

All active New Mexico real estate licensees are required to carry errors and omissions (E&O) insurance as a condition of licensure. The New Mexico Real Estate Commission (the "NMREC") has contracted with Rice Insurance Services Company, LLC (RISC) to administer the group E&O insurance program for New Mexico licensees. Continental Casualty Company, a CNA insurance company, is the insurance carrier for the program. The CNA insurance group is one of the largest writers of commercial property casualty insurance in the United States and is rated "A (Excellent)" by A.M. Best.

This program is designed exclusively to provide professional liability insurance for New Mexico Real Estate licensees. Even the most careful professional may be the victim of a frivolous lawsuit or make an honest mistake. Under the group program, the carrier is responsible for defending and paying settlements or judgments on covered claims, up to the limits of liability. RISC provides all servicing, including claims handling, policy issuance, marketing mailings, and customer service, for the New Mexico account. RISC's team specializes in handling group programs for states that require real estate E&O coverage. The following is intended to address the most frequently asked questions about the group E&O insurance program.

1. What kinds of claims are covered?

- Written demands for money or services seeking damages and alleging a negligent act, error, or omission in professional services
- Service of lawsuits or institution of alternative dispute proceedings seeking damages and alleging a negligent act, error, or omission in professional services
- Written demands for money, service of lawsuits, and institution of alternative dispute proceedings alleging discriminatory conduct.
- To be covered, a claim must have been unknown and unforeseen at the inception of the policy period.
- To be covered, a claim must involve professional services provided after the policy's retroactive date and before the policy's termination date.

2. What kinds of claims are not covered? All insured licensees are urged to read the entire policy and examine the "Exclusions" section of the policy.

3. Who is covered?

- Individuals who hold an active license issued by the NMREC and who pay the required premium.
- Heirs, executors, administrators, and assigns of the insured licensee in the event of the licensee's death, incapacity, insolvency, or bankruptcy but only to the extent the licensee would have been covered under the policy.
- Support staff under the insured licensee's supervision and control who are assisting the licensee in the performance of the licensee's professional services. This does 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.
- The insured licensee's spouse or domestic partner, but only for claims arising out of such status and seeking damages from marital community property, jointly held property, or property transferred from insured to the spouse or domestic partner. No coverage is provided for conduct of the spouse or domestic partner. To be considered a domestic partner under the policy, the person must qualify as a domestic partner under any federal, state, or local laws or under the real estate firm's employee benefit plans.
- Real estate firms the insured licensee represents but only for the firm's vicarious liability for a negligent act, error, or omission arising out of the licensee's professional services.

4. What are the limits of liability?

- The per claim limit of liability is \$100,000, which is the most the insurance carrier will pay for all damages arising out of the same or related negligent acts, errors, or omissions per licensee.
- The aggregate limit of liability is \$500,000, which is the most the insurance carrier will pay for all damages combined during the individual policy period per licensee.
- Claim expenses are in addition to, and not within, the limits of liability.
- The limits of liability apply separately to each insured licensee.

5. Are higher limits available?

- Individual licensees may purchase an endorsement to increase the policy's limits of liability to \$250,000 per claim and \$750,000 in the aggregate. Licensees whose real estate activity is at least 75% residential sales and who have had no claims in the past 5 years may purchase this endorsement for an additional premium of \$110. Licensees whose real estate activity is less than 75% residential sales or who have had a claim in the past 5 years may purchase this endorsement for an additional \$165.
- Higher limits are available on an underwritten basis for real estate firms domiciled in New Mexico. This program is written by Continental Casualty Company and is not guarantee-issue. The firm's principal broker or officer must complete an excess application form to be considered for excess coverage. All licensees associated with the firm must be insured under the group policy. Please call us at (800) 637-7319 (ext. 3) if you have any questions.

6. How much is the premium? The fully-earned annual premium, including all taxes, is \$252. After the inception date of the group policy, the premium will be prorated by month of enrollment. The premium is fully earned upon the policy's inception, and no refunds are permitted after that date. After the group policy's inception date, the premium will be prorated by month of enrollment. Additional coverages are available by endorsement to the policy for an additional premium. Please see items 13, 15, and 25 of this brochure for additional coverages. Individuals with multiple New Mexico real estate licenses are only required to pay one premium. Please list all license numbers for each individual on the enrollment form.

7. How do I obtain coverage? You may enroll online at www.risceo.com and download your certificate of coverage immediately. There is a \$5 fee for online enrollment. You may also enroll by mail by sending us a completed enrollment form, along with your premium payment made payable to RISC, and we will send you a certificate of coverage once we process your enrollment. Qualifying brokers should make certain their firms' licensees enroll prior to the deadline to ensure a January 1 inception date.

8. What if I don't pay my premium on time?

- New Mexico law requires that all active real estate licensees carry and maintain E&O insurance. If you do not pay your premium timely, the NMREC may inactivate your license.
- Additionally, you may lose prior acts coverage, a valuable feature of the policy. See item 12 for more information regarding prior acts coverage. If you fail to purchase coverage timely, call RISC immediately to see if you qualify for reinstatement back to January 1, 2012, which may avoid a gap in coverage and loss of your retroactive date. However, curing a gap in coverage will not remedy noncompliance with mandatory insurance requirements. Always pay your premium on time to protect yourself from uncovered claims and to avoid a gap in coverage and penalties.

9. What is the deductible? There is \$1,000 deductible for damages and no deductible for claim expenses.

10. Where does coverage apply?

- If you are domiciled in New Mexico, the policy applies to errors and omissions committed anywhere in the world.
- If you are not domiciled in New Mexico, the policy only applies to New Mexico transactions. However, you will be treated as domiciled in New Mexico if your principal real estate license is affiliated with a real estate office located in New Mexico and you reside within 50 miles of the New Mexico state line.

- If the claim results in or from a lawsuit, the lawsuit must be brought within the United States, its territories or possessions.
- 11. What is the coverage period?** This is a claims made and reported policy. It applies to claims first made and reported to the Company during the individual policy period or any applicable extended reporting period (see item 13). Further, the act, error, or omission must have occurred on or after the retroactive date. The retroactive date is the date when the licensee first obtained, and since which has continuously maintained, real estate E&O coverage, with no gaps.
- 12. Do I have coverage for prior acts?** Your policy applies to acts, errors, and omissions that occurred after the retroactive date of your policy. The retroactive date is the date you first obtained real estate E&O coverage and since which have continuously maintained such coverage, with no gaps. If you have a gap in coverage, you will lose coverage for any acts, errors, or omissions that occurred prior to and through the last day of the gap. Accordingly, it is important to pay your premium timely to prevent a gap. If you fail to purchase coverage timely, call RISC immediately to see if you qualify for reinstatement back to January 1, 2012, which may avoid a gap and loss of your retroactive date. Please note that curing a gap in coverage will not remedy noncompliance with mandatory insurance requirements.
- 13. What happens if a claim is made after the policy expires?**
- This is a claims made and reported policy. The claim must be made and reported to the Company during the individual policy period or any applicable extended reporting period (ERP).
 - An **automatic ERP** applies if the insured licensee's license is retired, placed on inactive status, or allowed to expire. The automatic ERP allows the policy to apply to claims first made and reported up to 90 days after the effective date of the cancellation or non-renewal, provided the act, error, or omission is committed after the retroactive date and prior to the effective date of cancellation or non-renewal.
 - An **Optional ERP Endorsement** (ERP Endorsement), commonly known as "Tail Coverage," may be purchased within 90 days after the policy's expiration date if you are not renewing coverage under the group policy for any reason. ERP Endorsements are available to cause the policy to apply to claims first made and reported 1, 2, or 3 years after the effective date of the cancellation or non-renewal so long as the act, error, or omission occurred after the policy's retroactive date and prior to the effective date of cancellation or non-renewal. Tail Coverage is important because many professional liability claims are not made until years after the subject transaction occurs.
- 14. How are claims handled?**
- Claims must be reported in writing to the Company as soon as possible after the claim is first made but in no event more than 90 days after the insured becomes aware of the claim. To protect the insured's interests and assure coverage conditions are not violated, it is essential to properly report claims. Immediate action is required by the real estate licensee and/or broker.
 - To report a claim, submit a completed Notice of Claim form, along with other pertinent documents. You can download a Notice of Claim form from our website, www.risceo.com, or call us at (800) 637-7319 (ext. 2) and we will send you one. Cooperate fully with the appointed defense attorney and your own company's management. RISC will be happy to answer questions regarding the claim and coverage thereof, provided the claim has been submitted in writing.
- 15. Is appraisal activity covered?** The policy excludes activities as an appraiser if the appraisal activity requires licensing or certification other than a real estate license. Licensees who have an active real estate license and an active appraisal license may purchase an endorsement to add coverage for services performed as a licensed real estate appraiser for an additional premium of \$200 (fully earned and inclusive of taxes).
- 16. Are rental, leasing, and property management covered?** Yes, the policy's definition of professional services includes property management services.
- 17. Are any other services covered?** In addition to property management services and the licensee's services as a real estate broker or salesperson that require a real estate license, professional services also include auctioning real property and services performed or advice given as a real estate consultant or counselor, notary public, or escrow agent in connection with services as a licensee.
- 18. Is there coverage for transactions involving my primary residence?** The policy includes coverage for the sale or listing of the licensee's primary residence, so long as it is not a for sale by owner sale or listing.
- 19. Is there coverage for fair housing/discrimination claims?** The policy includes sublimits of liability of \$25,000 per claim, up to \$25,000 in the aggregate, for damages for covered fair housing/discrimination claims.
- 20. Is there coverage for environmental claims?** The policy includes sublimits of liability of \$10,000 per claim, up to \$20,000 in the aggregate, for damages for covered environmental claims.
- 21. Is there coverage for escrow/earnest money deposit claims?** The policy includes sublimits of liability of \$5,000 per claim, up to \$10,000 in the aggregate, for damages for covered escrow/earnest money deposit claims.
- 22. Is there coverage for lock box claims?** The policy includes sublimits of liability of \$5,000 per claim, up to \$10,000 in the aggregate, for damages relating to covered lock box claims.
- 23. Is there coverage if I receive a subpoena?** The policy includes coverage for attorneys' fees up to \$2,500 in connection with covered subpoenas arising out of professional services. The most the company will pay for all subpoenas during the policy period is \$2,500.
- 24. Is there coverage for regulatory complaints?** The policy includes coverage for claim expenses up to \$2,500, up to \$5,000 in the aggregate, for covered complaints filed with a regulatory board or commission.
- 25. Are other coverages available?** In addition to the optional coverage discussed in items 13 and 15, we offer the optional coverages listed below. If the optional coverage requires an additional premium, licensees may purchase the same when enrolling online or by mail. Endorsements become effective the later of the policy's effective date or the date we receive the endorsement premium.
- Conformity Endorsement conforms your New Mexico policy to meet the requirements of another state that requires real estate E&O coverage where you have an active real estate license. You must be a resident of New Mexico to be eligible for this endorsement. (\$15 additional premium required.)
 - Franchise Endorsement adds a franchise group with which you are affiliated to the definition of real estate firm, since some franchise groups require specifically tailored language. Please contact us if you need a franchise endorsement. (No additional premium required.)
- 26. What if I have additional questions?** Read the sample policy, a copy of which is available on our website, www.risceo.com, or by calling us at (800) 637-7319 (ext. 1). Please retain a copy of the policy for your records. If you have any additional questions, feel free to contact us at (800) 637-7319 (ext. 1).

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