

SOUTH DAKOTA REAL COMMISSION'S REAL ESTATE ERRORS & OMISSIONS INSURANCE PROGRAM

January 1, 2012 to January 1, 2013

Group Program administered by Rice Insurance Services Company, LLC

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

RISC provides all servicing, including administrative duties, claims handling, issuance of Certificates of Coverage, marketing, mailings, and customer service, for the group policy. RISC's management team specializes in handling group programs in states that require real estate E&O insurance coverage and has been servicing the South Dakota group program since January 1, 1994.

This program is designed exclusively to provide professional liability insurance to South Dakota licensees. Even the most careful professional may be the victim of a frivolous claim or make an honest mistake. Under the group program, the carrier is responsible for defending covered claims, as well as paying a covered judgment or settlement, up to the limits of liability.

The following is intended to address the most frequently asked questions about the group program.

1. What kinds of claims are covered?

- Claims involving a written demand for money or services seeking damages and alleging a negligent act, error, or omission in the performance or failure to perform professional services.
- Claims involving 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.
- 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 termination date.

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

3. Who is covered?

- Individuals who hold an active license issued by the SDREC and have paid the required premium.
- Heirs, executors, administrators, or assigns of the insured licensee in the event of such licensee's death, incapacity, insolvency, or bankruptcy but only to the extent the licensee would have been covered under the policy.
- Unlicensed employees of and under the direct supervision of the insured licensee, while acting in the course and scope of their employment in rendering professional services on behalf of the licensee.
- A real estate firm that the insured licensee represents, but only for its 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 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 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? Higher limits are available on an underwritten basis for real estate firms domiciled in South Dakota. The firm's principal broker or officer must complete an application form to be considered for excess coverage. To qualify for excess coverage, all the firm's licensees must be insured under the group policy. This program is written by Continental Casualty Company and is not guarantee-issue; however, most South Dakota firms qualify. Please call us at 1 (800) 637-7319, ext. 3, if you have any questions.

6. How much is the premium? The fully earned premium, including all taxes, is \$182. Payment must be included with the policy enrollment form. The premium is fully earned at 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 16 - 18 for information about additional coverages.

7. How do I obtain coverage? Send an enrollment form and your premium payment, made payable to the SDREC, to the SDREC at 221 W Capitol, Suite 101, Pierre, SD 57501. Each firm's principal broker should make certain that all of the firm's licensees submit their premium checks and enrollment forms to the SDREC prior to the deadline to ensure a January 1, 2012 inception date.

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

- South Dakota law requires all active real estate licensees to carry and maintain E&O insurance. If you do not pay your premium timely, the SDREC 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?

- The per claim deductibles are \$1,000 for damages and \$500 for claim expenses.
- The carrier's obligation to pay damages and claim expenses begins only after the insured pays the applicable deductible.
- If a covered claim is made against more than one member of the same real estate firm, only one deductible for damages and one deductible for claim expenses will apply.

10. Where does coverage apply?

- If you are domiciled in South Dakota, then the policy applies to errors and omissions committed anywhere in the world.
- If you are domiciled outside of South Dakota, then the policy only applies to errors and omissions committed in South Dakota. However, you will be treated as domiciled in South Dakota if your principal real estate license is affiliated with a real estate office in South Dakota and you reside within 50 miles of the South Dakota 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 only to claims first made and reported to the Company during the individual policy period or any applicable extended reporting period (see item 13 below). Further, the negligent act, error, or omission must have taken place 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 in coverage. Accordingly, it is important to pay your premium timely to prevent a gap in 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 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 not made until 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 policy's termination date, provided the negligent act, error, or omission is committed after the policy's 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. 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 negligent 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. What if I currently have notice of a claim or a potential claim? You should report the claim or potential claim immediately to your current carrier or you may jeopardize any potential coverage for the claim.

16. Is appraisal activity covered? An endorsement is available to include services performed by an Insured Licensee as a licensed real estate appraiser to the policy's definition of professional services for an additional premium (fully earned and inclusive of taxes) of \$200.

17. Is property management covered? The policy applies to professional services performed pursuant to the licensee's South Dakota real estate license and for which the licensee is required to have a real estate license. The policy excludes activities as a property manager that do not require a real estate license. An endorsement is available to add specific property management services to the policy's definition of professional services for an additional premium (fully earned and inclusive of taxes) of \$150.

18. Are other coverages available? In addition to the optional coverages discussed in items 16 and 17, the following endorsements are available, each for an additional premium (fully earned and inclusive of taxes) of \$15. To purchase additional coverages, indicate your selections on your enrollment form and submit the completed enrollment form with payment to the SDREC.

- Conformity Endorsement conforms the policy to the requirements of other states where you have an active real estate license that require licensees to maintain real estate E&O coverage.
- Limited Claim Expenses Coverage Environmental Endorsement provides coverage for claim expenses of \$2,500 per claim, up to \$5,000 in the aggregate, for claims alleging the insured failed to detect, report, assess the effects of, or advise of the existence of pollutants, fungi, or microbes.
- Limited Claim Expenses Coverage Fair Housing Act Endorsement provides coverage for claim expenses of \$2,500 per claim, up to \$5,000 in the aggregate, for claims alleging the insured violated Title VII of the Civil Rights Act of 1968 or the Fair Housing Amendments Act of 1988.
- Limited Claim Expenses Coverage Regulatory Complaints Endorsement provides coverage for claim expenses of \$2,500 per complaint, up to \$5,000 in the aggregate, for complaints to a real estate regulatory board or commission that arises from a negligent act, error, or omission in the rendering of professional services that would otherwise be covered by the policy.

19. What if I have additional questions? Read the sample policy, which is available on our website, www.risceo.com, or by calling us at (800) 637-7319, ext. 1. If you have further questions, feel free to call our administrative office at (800) 637-7319, ext. 1.

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