RISC **R**ice **I**nsurance **S**ervices **C**ompany, LLC
• *We put the **E**xperience and **O**ptions in E&O programs* •
4211 Norbourne Boulevard, Louisville, Kentucky 40207-4048
Phone: 502-897-1876 • Toll-Free: 800-637-7319 • Fax: 502-897-7174 • Website: www.risceo.com

## ARE YOU MOVING TO A REAL ESTATE FIRM WITH A FIRM ERRORS AND OMISSIONS POLICY? IS YOUR FIRM CHANGING TO A FIRM ERRORS AND OMISSIONS POLICY? IF SO, YOUR COVERAGE MAY BE AFFECTED

Rice Insurance Services Company, LLC (RISC) administers real estate licensee errors and omissions (E&O) insurance policies issued by Continental Casualty Company in twelve states that require licensees to maintain such coverage. While the policies vary from state to state, it is uniformly important to understand how your coverage applies and what professional services it insures.

There are two common types of real estate E&O policies: (1) Those issued to individual licensees and (2) those issued to real estate firms. RISC's policies are the first type. They are issued to individual licensees and insure the licensee and any real estate firm the licensee represents for the firm's vicarious liability for negligent acts, errors, or omissions in the licensee's professional services. RISC's policies follow the individual licensee, regardless of what real estate firm the insured licensee was associated with at the time of the professional services giving rise to a claim. On the other hand, real estate E&O policies issued to firms generally insure the firm and licensees affiliated with the firm, but only for their professional services performed on behalf of the firm. We will refer to this type of policy as a "traditional firm policy." Traditional firm policies may present coverage issues for licensees who were previously on their own or associated with a different real estate firm.

RISC's policies, like most real estate E&O insurance policies, are claims-made-and-reported policies. In considering potential coverage issues, it is important to remember that claims often arise years after the subject professional services occurred and to understand some distinctive characteristics of claims-made-and-reported insurance policies.

By way of background, four dates are important in determining whether a claim will be covered under a claims-made-and-reported policy: (1) The policy's retroactive date, (2) the date of the professional services giving rise to the claim, (3) the date the claim is made, and (4) the date the insured reports the claim to the insurance company. Under a claims-made-and-reported policy, the policy that applies to a particular claim is the one in effect when the claim is made. Additionally, RISC's policies only cover claims that involve professional services provided on or after the retroactive date. That means for a claim to be covered, the insured must have coverage or an effective ERP on the date the claim is made, have had coverage on the date of the professional services, and have continuously maintained coverage between the date of the professional services and the date of the claim. Further, the claim must be timely reported to the insurance company.

<u>Determining What Insurance Policy Applies to a Particular Claim:</u> Because most real estate E&O policies are claims-made-and-reported policies, the policy that is most likely to apply to a claim is the one in effect when the claim is first made, even if a different policy was in effect when the professional services were performed.

Under RISC's policies, the policy or an extended reporting period (ERP) must be in effect when a claim is made for there to be coverage for the claim. ERP endorsements extend the policy's reporting date, causing the policy to apply to claims made during the ERP. If you are not renewing your RISC policy for any reason, including because you are moving to a firm with a traditional firm policy or because your firm is changing to a traditional firm policy, you may want to consider purchasing an ERP endorsement (often called "tail coverage") to apply to claims that arise after your policy's expiration date and during the ERP. RISC offers ERP endorsements of one, two, and three years, which must be purchased within ninety days of the termination of your last RISC policy. If a claim arises after the licensee's policy expires and there is no ERP in effect, then there would be no applicable policy available to cover the claim. Additionally, the subject professional services must have been performed after the retroactive date (see below) and before the expiration of the last policy period.

<u>Determining What Professional Services are Insured:</u> Generally, E&O policies apply to professional services performed after the policy's retroactive date, which may be determined differently under different policies. Under RISC's policies, the retroactive date is established separately for each insured licensee. The retroactive date is the date the licensee first obtained, and since which has continuously maintained, uninterrupted real estate E&O coverage. Any gap in coverage (in other words, any break between policy periods) will terminate the previously-established retroactive date and the new retroactive date will be the date the licensee reestablishes coverage.

<u>Example I.: Changing Real Estate Firms</u>

Mr. Licensee worked with Happy Property Real Estate from the time he was first licensed on January 1, 2004 to May 1, 2006. On May 1, 2006, Mr. Licensee left Happy Property Real Estate and began working with Green Acres Realty, where he worked until December 31, 2010. Mr. Licensee maintained continuous coverage while he was with Happy Property Real Estate and Green Acres Realty by purchasing individual policies through RISC. Mr. Licensee's last RISC policy expired on January 1, 2011.

<u>Example I.A.:</u> While Mr. Licensee was with Happy Property Real Estate, he worked with a seller in a transaction that closed on December 1, 2004. On June 1, 2006, just a month after Mr. Licensee left Happy Property Real Estate, the seller made a claim against him. Mr. Licensee timely reported the claim to RISC. For purposes of this example, assume the claim would otherwise be covered under the policy.

Mr. Licensee's 2006 RISC policy, with effective dates of January 1, 2006 to January 1, 2007 applied to the claim, because it was in effect when the claim arose. That policy's retroactive date was January 1, 2004, because that was the first date Mr. Licensee obtained E&O coverage and he continuously maintained coverage since that time. The professional services giving rise to the claim occurred on December 1, 2004, after the policy's retroactive date.

Because RISC's individual policies are sold to individual licensees, the fact that Mr. Licensee changed real estate firms between the date of the transaction and the date of the claim does not affect coverage. Because Mr. Licensee had coverage with RISC when the claim was made, had E&O coverage at the time of the transaction, and maintained continuous coverage between those dates, the claim was covered.

<u>Example I.B.1.:</u> On January 1, 2011, Mr. Licensee began working with Big City Real Estate. Big City Real Estate had coverage through another carrier's traditional firm policy. Mr. Licensee chose not to purchase a RISC policy in 2011, because he believed he was adequately insured under Big City Real Estate's firm policy, which had effective dates of January 1, 2011 to January 1, 2012.

It is not Continental Casualty Company's position to issue blanket coverage determinations based on hypothetical fact patterns or general concerns. Because it is impossible to know in advance how a specific claim would be presented, please accept this information only as general guidance regarding interpretation of the policies. When a claim is made, each coverage situation is evaluated on its own merits, based upon the facts and allegations. These allegations, when reviewed with the applicable policy's terms, conditions, and exclusions, determine the nature and extent of Continental Casualty Company's response. Therefore, Continental Casualty Company is not in a position to determine coverage prospectively. Additionally, this information does not, in any way, amend any policy. Continental Casualty Company believes the policies speak for themselves and specifically reserves all of its rights with respect to the policies, anything contained herein notwithstanding.

On September 1, 2011, a buyer that Mr. Licensee worked with while he was with Green Acres Realty made a claim against Mr. Licensee relating to a transaction that closed on January 1, 2008. Big City Real Estate's traditional firm policy would be the most likely to apply, because it was the policy in effect when the claim arose. Unfortunately, the traditional firm policy only covered Mr. Licensee's professional services performed while he was with Big City Real Estate. Because the claim involved services performed while Mr. Licensee was with Green Acres Realty, Big City Real Estate's traditional firm policy did not cover this claim. Disappointed, Mr. Licensee submitted the claim to RISC, thinking it may be covered because he had a policy with RISC at the time of the transaction. However, the RISC policy did not apply to the claim, because it expired before the claim was made. Therefore, Mr. Licensee had no coverage for this claim.

<u>Example I.B.2.:</u> Instead of assuming he was adequately covered through Big City Real Estate's traditional firm policy, Mr. Licensee purchased a three-year ERP endorsement from RISC within ninety days after the expiration of his last RISC policy. The endorsement extended the policy's reporting period by three years to January 1, 2014. When Mr. Licensee received the buyer's claim on June 1, 2011, he submitted it to both Big City Real Estate's insurance carrier and RISC. Although there was no coverage under Big City Real Estate's firm policy, there was coverage under Mr. Licensee's last RISC policy, because the claim arose during the ERP. For purposes of this example, assume the claim would otherwise be covered under the policy.

## <u>Example II.: Firm Changing to Traditional Firm Policy</u>

Ms. Agent started her career with Lots of Land Realty on January 1, 2009. On April 1, 2011, Ms. Agent moved from Lots of Lands Realty to Backwoods Real Estate, where she still works. While with Lots of Land Realty, Ms. Agent maintained uninterrupted insurance through RISC. When Ms. Agent first moved to Backwoods Real Estate, its licensees also maintained insurance though RISC, so Ms. Agent continued to renew her RISC policy. Shortly before the RISC policy was set to expire on January 1, 2013, Backwoods Real Estate told its licensees that they no longer needed insurance through RISC, because Backwoods Real Estate was going to purchase a traditional firm policy with individual effective dates of January 1, 2013 to January 1, 2014. Ms. Agent's last RISC policy expired January 1, 2013.

<u>Example II.A.:</u> Ms. Agent closed her first listing on March 1, 2009, while she was with Lots of Land Realty, and believed everyone was happy with the transaction. However, on July 4, 2012, after she had moved to Backwoods Real Estate, Ms. Agent was served with a lawsuit alleging that she negligently represented her very first client. Ms. Agent timely submitted the claim to RISC.

Ms. Agent's 2012 RISC policy, with effective dates of January 1, 2012 to January 1, 2013 applied to the claim, because it was in effect when the claim arose. That policy's retroactive date was January 1, 2009, because that was the first date Ms. Agent obtained E&O coverage and she continuously maintained coverage since that time. The professional services giving rise to the claim occurred on March 1, 2009, after the policy's retroactive date.

Because RISC's individual policies are sold to individual licensees, the fact that Ms. Agent changed real estate firms between the date of the transaction and the date of the claim does not affect coverage.

It is not Continental Casualty Company's position to issue blanket coverage determinations based on hypothetical fact patterns or general concerns. Because it is impossible to know in advance how a specific claim would be presented, please accept this information only as general guidance regarding interpretation of the policies. When a claim is made, each coverage situation is evaluated on its own merits, based upon the facts and allegations. These allegations, when reviewed with the applicable policy's terms, conditions, and exclusions, determine the nature and extent of Continental Casualty Company's response. Therefore, Continental Casualty Company is not in a position to determine coverage prospectively. Additionally, this information does not, in any way, amend any policy. Continental Casualty Company believes the policies speak for themselves and specifically reserves all of its rights with respect to the policies, anything contained herein notwithstanding.

Because Ms. Agent had coverage with RISC when the claim was made, had E&O coverage at the time of the transaction, and maintained continuous coverage between those dates, the claim was covered. For purposes of this example, assume the lawsuit arises to a claim that would otherwise be covered under the RISC policy.

Example II.B.1.: On November 1, 2013, Ms. Agent receives a demand letter from another client she worked with while she was associated with Lots of Land Realty. The most likely policy to apply to the claim would be Backwoods Real Estate's traditional firm policy, because it is the policy in effect at the time the claim is made. However, there is no coverage under that policy, because it only applies to professional services performed on behalf of Backwoods Real Estate. It does not cover claims involving the professional services Ms. Agent rendered while she was associated with Lots of Land Realty.

Ms. Agent then submits the claim to RISC, hoping there will be coverage, since she had insurance with RISC at the time of the transaction. Unfortunately, there is no policy or ERP in effect to apply to the claim.

Example II.B.2.: When Backwoods Real Estate informs Ms. Agent that it is purchasing a traditional firm policy, Ms. Agent asks her broker and the firm's insurance agent whether the policy will apply to professional services she provided before she joined Backwoods Real Estate. When she learns it will not, Ms. Agent calls RISC to see if she has any options for individual coverage. She is informed that she may continue to purchase insurance through RISC as long as she has an active real estate license or that she may purchase a one, two, or three-year ERP endorsement within ninety days of the expiration of her last RISC policy. Within 90 days of the expiration of Ms. Agent's last RISC policy, she decides to purchase a three-year ERP endorsement, which extends the policy's reporting date to January 1, 2016.

After receiving the demand letter on November 1, 2013, Ms. Agent timely submits it to RISC. Although there was no coverage under Backwoods Real Estate's traditional firm policy, there was coverage under Ms. Agent's last RISC policy, because the claim arose during the ERP. For purposes of this example, assume the claim would otherwise be covered under the policy.

## Protect Yourself

(1) If you have had individual coverage and are moving to a firm with a traditional firm policy or (2) if you have had individual coverage and are considering relying on the coverage provided by your firm's traditional firm policy, talk to your broker or your firm's insurance agent to determine if the traditional firm policy will cover professional services you performed while with another real estate firm. If not, you may continue to purchase individual coverage (as long as you have an active real estate license) or you may be interested in an ERP endorsement.

Your insurance coverage is important. Please take the time to read and understand your policy's coverage provisions, conditions, and exclusions. To obtain sample copies of RISC's policies, visit our website, www.risceo.com, or call us at (800) 637-7319, extension 1.

It is not Continental Casualty Company's position to issue blanket coverage determinations based on hypothetical fact patterns or general concerns. Because it is impossible to know in advance how a specific claim would be presented, please accept this information only as general guidance regarding interpretation of the policies. When a claim is made, each coverage situation is evaluated on its own merits, based upon the facts and allegations. These allegations, when reviewed with the applicable policy's terms, conditions, and exclusions, determine the nature and extent of Continental Casualty Company's response. Therefore, Continental Casualty Company is not in a position to determine coverage prospectively. Additionally, this information does not, in any way, amend any policy. Continental Casualty Company believes the policies speak for themselves and specifically reserves all of its rights with respect to the policies, anything contained herein notwithstanding.