



**Don't Let Your Coverage Lapse:
 The Importance of Maintaining Continuous E&O Coverage**

While the policies RISC administers vary from state to state, it is uniformly important to maintain continuous coverage. That means having no gaps, not even one day, between when one policy period ends and the next begins. Having a gap in coverage has multiple ramifications, including:

1. violating the law in states that require real estate licensees to carry E&O insurance, which can result in regulatory penalties and fines and
2. loss of your retroactive date, which may lead to loss of prior acts coverage (loss of coverage for professional services performed before the new policy's effective date).

RISC's policies, like most E&O policies, are claims-made-and-reported policies. Four dates are important in determining whether a claim will be covered under a claims-made-and-reported policy:

1. the insured's retroactive date, which is the date from which the insured has maintained continuous E&O insurance with no gaps;
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.

RISC's policies' retroactive dates are established separately for each insured licensee. The retroactive date is the date the licensee first obtained and from which has continuously maintained uninterrupted E&O coverage. Any gap in coverage will terminate the previously-established retroactive date and the new retroactive date will be the date the licensee reestablishes coverage.

Coverage is considered under the policy in effect the date the claim is first made. RISC's policies only cover claims that relate to professional services provided on or after the retroactive date. That means for a claim to be covered, the insured must have coverage on the date the claim is made, have had coverage on the date of the professional services giving rise to the claim, and have continuously maintained coverage between the date of the professional services and the date of the claim. If there is even one day break in coverage during that time, then the policy's retroactive date would not go back to the date of the professional services, so there would be no coverage for the claim. Further, the claim must be timely reported to the insurance company.

Example: Ramifications of Failure to Timely Renew Coverage

Ms. Agent first purchased E&O coverage when she obtained her real estate license on May 1, 2015. The effective dates of her 2015 policy were May 1, 2015 to January 1, 2016. Ms. Agent timely renewed coverage in 2016 and 2017, which policies had effective dates of January 1, 2016 to January 1, 2017 and January 1, 2017 to January 1, 2018, respectively. The retroactive date of her 2016 and 2017 policies was May 1, 2015, because that was the first date Ms. Agent obtained E&O coverage and she had maintained it continuously from that time.

Ms. Agent forgot to timely renew her coverage in 2018 and did not pay her premium until April 1, 2018. Therefore, her 2018 policy's effective dates were April 1, 2018 to January 1, 2019. Due to the gap in coverage from January 1, 2018 to April 1, 2018, Ms. Agent's new retroactive date was April 1, 2018. Ms. Agent did purchase coverage timely in 2019. Because she renewed coverage timely, there have been no gaps since April 1, 2018. Her retroactive date under the 2019 policy is April 1, 2018 (the date from which she has maintained continuous coverage).

Summary of Ms. Agent's coverage dates:	<u>Policy Period</u>	<u>Retroactive Date</u>
	May 1, 2015 – January 1, 2016	May 1, 2015
	January 1, 2016 – January 1, 2017	May 1, 2015
	January 1, 2017 – January 1, 2018	May 1, 2009
Gap in coverage from January 1, 2018 to April 1, 2018 → Loss of previously established retroactive date		
	April 1, 2018 – January 1, 2019	April 1, 2018
	January 1, 2019 – January 1, 2020	April 1, 2018

Shortly after obtaining her license, Ms. Agent represented a buyer in a real estate transaction that closed August 1, 2015. On February 1, 2019, the client sued Ms. Agent alleging that Ms. Agent's professional services in the 2015 transaction were negligent and damaged the client. Ms. Agent timely submitted the complaint to her insurance company and asked the company to hire an attorney to represent her in the lawsuit. Ms. Agent was upset to learn the claim is not covered, because the professional services took place before her 2019 policy's April 1, 2018 retroactive date. For purposes of this example, assume the lawsuit would otherwise be covered under the policy.

In this example, the claim arose on February 1, 2019, so coverage is considered under Ms. Agent's 2019 policy, which has an individual policy period of January 1, 2019 to January 1, 2020 and a retroactive date of April 1, 2018, because that is the date from which Ms. Agent continuously maintained coverage. The transaction closed on August 1, 2015, which is before the retroactive date. Even though Ms. Agent had E&O coverage when the transaction closed and when the claim arose, the claim is not covered, because the applicable policy does not cover conduct that occurred before its retroactive date. Ms. Agent's failure to timely renew coverage in 2018 caused her to lose coverage for claims relating to any services provided before April 1, 2018.

In the example above, Ms. Agent had a three-month gap in coverage. However, the result would be the same if the gap was one day. Thus, it is important to timely renew your coverage each year.

Protect Yourself

In light of the serious consequences of even a one-day gap, the carrier may approve requests to backdate the inception date for licensees who fail to timely renew in certain situations. The carrier is not obligated to backdate coverage and reserves the right to deny requests to backdate, so do not rely on it. The best way to protect yourself from situations like Ms. Agent's is to always renew your coverage and pay your premium on time.

Further, real estate commissions in states that require E&O coverage may issue fines and penalties for a licensee's failure to timely renew even if coverage is backdated, because backdating does not change the fact that the licensee was without coverage for a period of time.

Your insurance coverage is important. Please take the time to read and understand your policy's coverage provisions, conditions, and exclusions.

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