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ALASKA REAL ESTATE COMMISSION'S (AREC's) GROUP ERRORS AND OMISSIONS (E&O) PROGRAM

Administered by Rice Insurance Services Company, LLC (RISC) and Issued by Continental Casualty Company (Continental)

ANSWERS TO FREQUENTLY ASKED QUESTIONS

Why have real estate E&O insurance?

-] It's required by state law. Alaska law allows the AREC to contract for a group E&O policy as an option for real estate licensees to maintain E&O insurance. When a group program is in place, all licensees are required to carry E&O insurance, either through the group program or from another carrier whose coverage complies with Alaska minimum requirements.
-] It benefits the public, which relies on licensees for guidance through real estate transactions, including the purchase and sale of homes, which is many individuals' largest investment. When an insured licensee makes an honest mistake that leads to a claim, the insurance carrier will pay covered damages to the claimant on the insured's behalf.
-] It benefits insured licensees, who may face claims. Some frivolous claims still lead to thousands of dollars of defense costs, which would be paid by the insurance carrier if covered under an E&O policy. Other claims are the result of a licensee's honest mistake. If there is E&O insurance coverage available, then the insurance carrier would pay covered damages to the claimant on the insured's behalf.

Group Policy Coverage Options

What is the cost to enroll in the group program?

-] Basic policy coverage (for residential sales only) is offered at a discounted premium of \$450 per year per licensee
-] The expanded services option insures all professional services for which a real estate license is required and is offered at \$642 per year per licensee.

What is the difference between the two different policy options for the group program?

-] The options impact the coverage provided, not just the premium, so it's important to consider the differences.
-] Basic policy coverage is limited to claims involving the licensee's professional services in connection with residential sales, as defined in the policy.
-] The expanded services option includes the basic policy coverage (residential sales) and an expanded definition of professional services endorsement, which adds insurance for professional services that require a real estate license in addition to residential sales.

Why are there two different policy options for the group program?

-] To help keep costs down for licensees who have not had a claim and only do residential sales, as defined in the policy, we offer a policy option that only insures professional services for residential sales.
-] The licensees who fall within the following **must** purchase the expanded services option: (a) have had a Paid Claim in the past 5 years; (b) have ever done any activity other than residential sales, as defined in the policy, or (c) plan to do any activity other than residential sales, as defined in the policy, during the individual policy period.
-] Licensees who only do residential sales but would like the expanded services coverage **may** pay the higher premium for that coverage.

What are residential sales?

-] Residential sales are sales or listings for sale of real property whose primary purpose is to provide 1 or 2 single-family dwellings in one building.
-] Residential Sales do not include commercial sales; commercial listings; or renting, leasing, managing, or appraising any type of property.

What is a paid claim?

-] Whether or not reported to your insurer, (1) a written demand for money or services received by you or a real estate firm or (2) service of a lawsuit or institution of arbitration or mediation proceedings against you or a real estate firm that seeks damages and alleges a negligent act, error, or omission in your professional services as a real estate licensee, in which payment was made for damages (compensatory award or settlement) or defense costs by you, a real estate firm, or on your or a real estate firm's behalf.
-] Complaints to or disputes before a real estate regulatory board or commission are not claims.

What if I do mostly residential sales or have not done other activity for a long time?

-] You should still purchase the expanded services option. As a claims-made-and-reported policy, the policy that applies to a claim is the one in effect when the claim is first made, not the one in effect when the transaction occurred.
-] Claims are often made years after the transaction. For example, in his 10 years as a real estate licensee, Sam Sells has only handled one commercial sale, which closed in 2014. If he chooses the residential sales option for the January 1, 2017 to January 1, 2018 policy period, and a claim involving the 2014 commercial sale is made against Sam on June 1, 2017, it would not be covered, because the insurance in effect at the time of the claim only applies to claims involving residential sales. Note that coverage for any claim would be determined based on all of the policy's terms, conditions, and exclusions.

Group Policy Information

Do I have to purchase insurance through the group program?

-] No, you may purchase insurance from any carrier, as long as the coverage satisfies Alaska insurance requirements and proof of insurance is provided to the AREC in accordance with state law.

What is the policy period?

-] The group policy period runs on an annual basis from January 1 to January 1. Active Alaska licensees may purchase insurance at any time within the group policy period (note it is important to maintain continuous coverage and prevent gaps between policy periods). Each licensee's insurance expires concurrently with the group policy's January 1 expiration date.

When must a claim be made for the group program to apply?

-] The group policy is a claims-made-and-reported policy. It applies to claims that are both first made against the insured and reported to RISC during the individual policy period or any applicable extended reporting period (ERP, commonly known as "tail coverage"). The group policy does not apply to claims made before the beginning of the individual policy period. Nor does it apply to claims made after the end of the individual policy period, unless an ERP is in place.
-] Automatic ERP: For licensees who do not renew coverage through the group policy because their license is retired, inactivated, or allowed to expire, the policy provides a 90-day ERP.
-] Optional ERP Endorsement: Licensees who do not renew coverage through the group policy for any reason may purchase a 1, 2, 3, or 5 year ERP endorsement for 100%, 150%, 200%, or 300%, respectively, of the expiring premium, including any endorsement premium. Optional ERP endorsements can only be purchased within 90 days after the licensee's policy ends.
-] For an applicable ERP to apply to a claim, (a) the claim must be first made and reported during the ERP and (b) the negligent act, error, or omission must have occurred after the retroactive date and before the effective date of cancellation or non-renewal.

Does the group policy insure professional services performed the policy's effective date?

- For a claim to be covered under the group policy, the professional services must have occurred after the insured licensee's retroactive date. The retroactive date is the date from which the licensee has maintained continuous, uninterrupted real estate E&O insurance on a claims-made basis.
- If there is even a one-day gap in coverage between the date of the professional services and the claim, the policy will not apply, even if insurance was in effect at the time of professional services and again when the claim is made.

What are the basic policy's limits of liability for each licensee?

- \$100,000 for damages per claim, up to a \$300,000 aggregate. The aggregate is the most the carrier will pay for damages during the individual policy period, regardless of the number of claims. There is no limit on the amount the carrier will pay for defense costs for covered claims (note are limits on defense costs under some sublimits of liability, which provide limited coverage for claims that were not traditionally covered at all under most E&O policies).
- Discrimination claim sublimits of liability of \$5,000 for damages and claim expenses, combined, per discrimination claim, up to a \$10,000 aggregate
- Environmental claim sublimits of liability of \$5,000 for damages and claim expenses, combined, per environmental claim, up to a \$10,000 aggregate
- Escrow claim sublimits of liability of \$5,000 for damages and claim expenses, combined, per escrow claim, up to a \$10,000 aggregate

Is there a deductible?

- There is a \$2,500 damage deductible. Damages include covered settlements and judgments. No deductible applies to defense costs.

Are regulatory complaints covered?

- There is coverage up to \$2,500 for fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal for each complaint to a real estate regulatory board or commission, under certain conditions, up to a \$5,000 aggregate.

Are subpoenas covered?

- There is coverage up to \$2,500 for an attorney to represent the insured in connection with a subpoena, under certain conditions, up to a \$2,500 aggregate.

Who is insured under the group policy?

- The licensee who pays the required premium
- The insured licensee's unlicensed employees, as defined in the policy. (Support staff employed by the licensee, under the licensee's supervision and control, assisting the licensee in the performance of the licensee's professional services. Unlicensed employees do not include an owner, officer, or director; any other staff member who is not under the licensee's direct supervision or assisting the licensee in the performance of the licensee's professional services; or appraisal trainees or anyone who manages property, even if under the licensee's supervision and control.)
- The insured licensee's heirs, executors, administrators, or assigns in the event of the licensee's death, incapacity, or bankruptcy but only to the extent coverage would be available to the licensee.
- The insured licensee's spouse or domestic partner but only for claims (a) arising solely out of such status and (b) seeking damages from certain types of property. No coverage is provided for any act, error, or omission of a spouse or domestic partner.
- Any real estate firm or real estate franchisor that the insured licensee represents but only for its vicarious liability for negligent acts, errors, or omissions in the licensee's professional services and only to the extent coverage would be available to the licensee.

What about claims made against my firm for licensees who are no longer affiliated with the company?

- Many Alaska real estate licensees have been insured through traditional firm policies (policies purchased by the real estate firm to insure the firm and its affiliated licensees for claims involving professional services while affiliated with the insured firm). The group policy is written on an individual licensee basis, instead of a firm basis, and insures the individual licensee and any real estate firm for the firm's vicarious liability for negligent acts, errors, or omissions in the licensee's professional services. Claims sometimes arise years after the underlying transaction occurred, so a claim may be made against a firm for a licensee who is no longer affiliated with the firm (for example, the licensee may be retired or deceased). To help protect real estate firms in this situation, we offer a Firm Vicarious Liability for Professional Services of Former Licensee Endorsement to brokers at no additional charge. This endorsement amends the broker's insurance to apply to claims made against the firm during the policy period for professional services performed by a former licensee if certain conditions are met, including (1) the firm has been continuously insured from the date of the professional services (under any type of real estate E&O policy) to the date the claim arose, (2) the professional services occurred while the former licensee was affiliated with the firm, (3) all licensees affiliated with the firm on the date the claim is first made are insured through the group policy, and (4) there is no other policy that applies to the claim.

Where does coverage apply / What if I am also licensed in another state?

- For insured licensees domiciled in Alaska, the group policy applies to professional services performed anywhere the licensee has an active real estate license, provided the professional services would otherwise be covered under the policy if they had been performed in Alaska.
- For insureds not domiciled in Alaska, the group policy only applies to professional services performed in Alaska.
- The following states also mandate real estate E&O coverage and have a group program: Colorado, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, New Mexico, North Dakota, Rhode Island, South Dakota, Tennessee, and Wyoming. Licensees who are actively licensed in Alaska and one of these states, may purchase a conformity endorsement to confirm their insurance under the Alaska group policy to meet the other state's minimum E&O requirements, so long as the licensee (a) is domiciled in Alaska and (b) purchases the expanded professional services coverage option.
- Domicile is the place where a person has his/her permanent home to which he/she returns or intends to return. A person may have more than one residence but only one domicile. The group policy only applies to claims brought within the United States of America, its territories or possessions

Does the group policy provide coverage for claims involving the insured's own property?

- The basic policy excludes coverage for claims involving professional services relating to property (a) purchased by the following, (b) attempted to be purchased by the following, or (c) in which the following had more than a 10% ownership interest: (i) the insured; (ii) the insured's spouse or domestic partner; or (iii) an entity, partnership, or trust in which the insured or insured's spouse or domestic partner owned or controlled more than 10% ownership or financial interest.
- One of the most commonly reported claims is failure to disclose a hidden defect. There is more inherent risk exposure when the licensee had an ownership interest in the property, because of the licensee's increased knowledge of the property's history and the (real or perceived) financial motivation to downplay defects or needed repairs.
- Licensees may purchase an optional residential personal interest coverage endorsement for an additional premium. This endorsement adds insurance for claims relating to the sale or listing for sale of residential property, as defined in the endorsement, owned by the insured licensee, insured licensee's spouse or domestic partner, or an entity owned or controlled by the licensee or licensee's spouse or domestic partner, under certain conditions.

Does the group policy provide coverage for claims involving property developed or constructed by the insured?

- No, there is an exclusion for claims involving professional services developed or constructed by the following: (a) an insured; (b) insured's spouse or domestic partner; or (c) an entity, partnership, or trust in which an insured or insured's spouse or domestic partner owned or controlled more than 10% ownership or financial interest.

Does the group policy provide coverage for property damage or loss of use of property?

- The group policy excludes coverage for claims alleging, arising from, or related to physical injury to, destruction of, or loss of use of tangible property.

- ⌋ Licensees may purchase an optional limited coverage lock box endorsement for an additional premium that provides insurance for \$5,000 for damages and claim expenses, combined per lock box claim for property damage or loss of use of property, up to a \$10,000 aggregate. A lock box claim is a claim arising from the licensee's use of a lock box in the course of rendering professional services, provided the subject property was not owned by, occupied by, or leased to the insured.

Can I cancel my insurance through the group policy and get a refund of my premium?

- ⌋ Once the insurance goes into effect, it cannot be cancelled by the licensee. The insurance will continue to remain in effect through the end of the individual policy period. If your license is inactivated or retired, the insurance will continue to apply to claims made during the individual policy period, provided the professional services at issue were provided before your license was inactivated or retired.

Enrollment

How do I purchase insurance through the group policy?

- ⌋ You may enroll on our website at www.risceo.com with a MasterCard or Visa or by mailing us an enrollment form with a check or money order for your premium.

Why do you ask for the last four digits of my social security number?

- ⌋ This helps us verify and maintain insureds' records, because it is not unusual for us to have more than one insured with the same name.

What should I select as the effective date?

- ⌋ If you have current E&O insurance that will expire after January 1, 2018: If possible, you should request an effective date that will allow you to maintain continuous coverage with no gap between policy periods (for example, if your current coverage expires January 1, you should request an effective date of January 1). If there is even a one-day gap in coverage (in other words, a break between policy periods), the policy will not apply to any professional services rendered before and through the last day of the gap, even if insurance was in place when the services were provided and again when the claim is made. You may not choose an effective date before January 1, 2018 or more than 30 days before the date of online enrollment. Requests to backdate the inception of your policy period up to 90 days will be considered, but the carrier reserves the right to refuse to backdate your individual inception date. If you failed to purchase coverage before your prior policy expired, call RISC immediately to see if you may qualify to backdate your individual policy period to January 1, which may avoid a gap in coverage and loss of your retroactive date. However, this procedure does not remedy noncompliance with mandatory insurance laws, so the Commission may still assess penalties.
- ⌋ If you have current E&O insurance that will expire before January 1, 2018: If there is a gap in coverage (in other words, a break between policy periods), the policy will not apply to any professional services rendered before and through the last day of the gap, even if insurance was in place when the services were rendered and again when the claim is made. January 1, 2018 is the earliest effective date available under this new program. If your current policy expires before then, you should consider renewing your current policy, obtaining an extended reporting period on your current policy, or obtaining insurance from another carrier. We would love for you to consider enrolling in the group program January 1, 2018 or after but understand the importance of maintaining continuous coverage may not make the transition the best choice right now.
- ⌋ If you do not have current E&O insurance: January 1, 2018 is the earliest effective date available under this new program. You can go ahead and enroll with a January 1 effective date, but the policy will not apply to any claims involving professional services prior to the date you established continuous E&O coverage with no gaps. Therefore, you should consider obtaining insurance from another provider through the date you transition to the group program.

What should I put for the license number if my licensee has not yet been issued?

- ⌋ You can check the "Pending" box instead of inserting a license number. This way, we can verify your insurance with the AREC as part of its application review process. You will not have coverage for any activities unless and until an active Alaska license is issued to you.

Claims

What is a claim under the group policy?

- ⌋ A written demand for money or services received by the insured or 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, as defined in the policy (see **Group Policy Coverage Options**, above, about the differences between the residential coverage option and the expanded services coverage option). Some licensees think only lawsuits are claims. That is not necessarily the case. We often see emails meeting the definition of a claim.
- ⌋ Complaints to or disputes before a real estate regulatory board or commission are not claims.
- ⌋ Not all claims will be covered by the group policy. It's important to review the entire policy, including the exclusions, to understand the coverage provided.

What do I do if a claim is made against me?

- ⌋ Immediately provide written notice of the claim to your E&O provider. This is critical, because most E&O policies only apply to claims that are both first made against the insured and reported to the insurance company during the individual policy period. Additionally, most E&O policies require the insured to report a claim within a certain time period. Failure to provide timely notice of the claim could jeopardize any coverage that may otherwise be available.
- ⌋ Cooperate with the insurance company and any defense counsel retained on your behalf.
- ⌋ Don't admit liability, make a settlement offer, pay damages, or assume any duty or obligation for any claim without your insurer's consent or risk jeopardizing any coverage that may otherwise be available.

What happens after a claim is reported to RISC in writing?

- ⌋ It is assigned to one of RISC's in-house adjusters, who will request any additional information needed and review the claim for coverage. Once a coverage determination has been made (either no coverage available, covered under the policy terms, or covered subject to reservations of rights for issues that may limit or preclude coverage), the adjuster will send the insured a written explanation of the decision. Our adjusters focus exclusively on real estate E&O claims. If a covered claim involves a lawsuit, the adjuster will retain local counsel to defend the insured. If a covered claim is not in litigation, the adjuster may work with the insured to respond to the claim without retaining local counsel. Regardless of whether local counsel is retained, the adjuster will continue to be involved with covered claims through final resolution.

RISC and Continental

What is the difference between the insurance program provider and the insurance carrier?

- ⌋ RISC is the provider for the group insurance program. We handle all aspects of the program, including mailings, enrollment and renewals, reporting, and answering questions from licensees. We are the point of contact for the AREC and licensees.
- ⌋ Continental is the insurance carrier. Its underwriters determine the appropriate premium and it issues the policy. Any damage or defense cost payments are made by Continental.

Do RISC and Continental have real estate E&O experience?

- ⌋ Yes, the Rice family formed RISC in 2002 exclusively to administer state-mandated real estate E&O programs. The Rice family and their colleagues have been operating as a business unit specializing in these types of programs since 1989. The vast majority of states with mandatory real estate E&O group programs have selected RISC as their program provider. We have a wealth of knowledge that helps us identify trends impacting real estate licenses.
- ⌋ Continental, a CNA company, is rated "A (Excellent)" by A. M. Best. CNA provides insurance protection to more than 1,000,000 businesses and professionals in the United States and internationally, including more real estate agents in the nation than any other insurance carrier. CNA has over 50 years experience writing professional liability coverage, including over 30 years in real estate E&O.