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HOW CHANGING FIRMS MAY AFFECT YOUR ERRORS AND OMISSIONS COVERAGE

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 maintain continuous coverage and to have coverage on the date a claim is made. As discussed further below, 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. If you are not renewing your RISC policy for any reason, including going to a firm policy, you may want to consider purchasing an ERP endorsement (often called “tail coverage”) to protect against claims that arise after your policy’s expiration date. RISC offers ERP endorsements of one, two, and three years. These endorsements extend the policy’s reporting date, so that the policy applies to claims made during the ERP.

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 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.

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 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 made. 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. 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 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>Example: 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 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 April 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.

Example B1: On January 1, 2011, Mr. Licensee began working with Big City Real Estate. Big City Real Estate had coverage through another carrier's firm policy. Generally, firm policies cover the real estate firm and its agents for their professional services while they are with the insured firm. 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.

On June 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 firm policy would be the most likely to apply, because it was the policy in effect when the claim arose. Unfortunately, the 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 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.

Example B2: Instead of assuming he was adequately covered through Big City Real Estate's firm policy, Mr. Licensee purchased a one-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 one year to January 1, 2012. 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.

Protect Yourself

If you have had individual coverage and are moving to a firm with a firm policy, talk to your broker or your firm's insurance agent to determine if the firm policy will cover professional services you performed while at your former firm. If not, you can continue to purchase individual coverage 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 our administrative office at (800) 637-7319, extension 1.