

RISC Rice Insurance Services Company, LLC

4211 Norbourne Blvd.
Louisville, KY 40207
Phone: 502-897-1876
Fax: 502-897-7174

IMPORTANCE OF MAINTAINING CONTINUOUS 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. That means having no gaps, not even one day, between when one policy period ends and the next begins. Real estate commissions in states that require licensees to carry E&O coverage may issue fines and penalties if you do not maintain continuous coverage. Further, failure to maintain continuous coverage will cause you to lose coverage for professional services performed before the 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 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. 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, and have continuously maintained coverage between the date of the professional services and the date of the claim. If the licensee has not maintained continuous coverage during that time, then the policy's retroactive date would not go back to the date of the professional services, and there would be no coverage for the claim. Further, the claim must be timely reported to the insurance company.

Example: Failure to Timely Renew Coverage

Ms. Agent first purchased E&O coverage when she obtained her real estate license on May 1, 2006. The effective dates of her 2006 policy were May 1, 2006 to January 1, 2007. Ms. Agent timely renewed coverage in 2007 and 2008, which policies had effective dates of January 1, 2007 to January 1, 2008 and January 1, 2008 to January 1, 2009, respectively. The retroactive date of her 2007 and 2008 policies was May 1, 2006, 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 2009 and did not pay her premium until April 1, 2009. Therefore, her 2009 policy's effective dates were April 1, 2009 to January 1, 2010. Ms. Agent did purchase coverage timely in 2010 and 2011, so her policies' effective dates for those years were January 1, 2010 to January 1, 2011 and January 1, 2011 to January 1, 2012, respectively. Ms. Agent's retroactive date was no longer May 1, 2006, because she had not continuously maintained coverage since that time. The retroactive date of her 2009, 2010, and 2011 policies was April 1, 2009.

Shortly after obtaining her license, Ms. Agent represented a buyer in a real estate transaction that closed August 1, 2006. On February 1, 2011, the client sued Ms. Agent alleging that Ms. Agent's professional services in the 2006 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 policy's 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, 2011, so coverage is considered under Ms. Agent's 2011 policy. As discussed above, the 2011 policy's retroactive date is April 1, 2009, because that is the date from which Ms. Agent continuously maintained coverage. The transaction closed on August 1, 2006, more than two years 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 2009 caused her to lose coverage for any transactions that occurred prior to April 1, 2009.

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, RISC currently offers reinstatement of coverage for licensees who fail to timely renew in certain situations. Reinstatement means that the effective date of the licensee's individual coverage will be backdated and deemed to be the inception date of the applicable group policy. This helps licensees maintain continuous coverage and prior acts coverage. If you fail to timely renew, call RISC immediately to see if you qualify for reinstatement of coverage. Reinstatement is only allowed in certain situations, 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 regardless of reinstatement, because reinstatement 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. 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.

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.