

RISC Rice Insurance Services Company, LLC

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ERRORS AND OMISSIONS COVERAGE CONSIDERATIONS IF YOU ARE CONSIDERING INACTIVATING YOUR LICENSE OR RETIREMENT

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 inactive or retiring, 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.

Example 1: Changing Careers

From March 12, 2002 to December 31, 2009, Ms. Salesperson worked in real estate and maintained continuous E&O coverage through RISC during that time. Her last E&O policy was a 2009 policy with effective dates of January 1, 2009 to January 1, 2010. For several years, Ms. Salesperson made extra money by selling pottery at art fairs. By 2009, Ms. Salesperson's pottery was so popular she decided to do that full time, so she did not renew her real estate license in 2010. RISC policies are only available to active licensees; thus, Ms. Salesperson was not eligible to purchase a 2010 RISC policy.

Example 1A: Ms. Salesperson was so busy with her pottery business that she did not consider her E&O coverage. On November 1, 2010, Ms. Salesperson was served with a lawsuit filed by a seller she worked with in 2008. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy. Ms. Salesperson submitted the lawsuit to RISC and asked that a lawyer be hired to represent her. Ms. Salesperson was disappointed to learn there is no coverage for the claim, because it arose after her policy's expiration date of January 1, 2010.

Example 1B: Instead of not considering E&O as in the previous example, Ms. Salesperson purchased a one-year ERP endorsement within ninety days after the expiration of her 2009 policy. The ERP endorsement extended the reporting period of her 2009 policy by one year to January 1, 2011. When Ms. Salesperson was served with the lawsuit on November 1, 2010, she timely submitted it to RISC. The claim was covered under Ms. Salesperson's 2009 policy, because it arose within the ERP. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Example 2: Retirement

Mr. Broker worked in real estate from January 1, 1998 to December 31, 2010, during which time he maintained continuous E&O coverage through several carriers. Mr. Broker's last policy was a 2010 RISC policy with effective dates of January 1, 2010 to January 1, 2011. Mr. Broker retired on December 31, 2010 and deactivated his license. RISC policies are only available to active licensees; therefore, Mr. Broker was not eligible to purchase a 2011 RISC policy.

Example 2A: Mr. Broker thought there was no reason to worry about E&O coverage, since he retired from real estate. On October 1, 2012, Mr. Broker was served with a lawsuit filed by a client he worked with in November 2007. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy. Mr. Broker submitted the lawsuit to RISC. Unfortunately, there was no coverage for this claim, because Mr. Broker's policy expired on January 1, 2011, more than a year before the claim arose.

Example 2B: Instead of not worrying about E&O as in the previous example, assume Mr. Broker purchased a two-year ERP endorsement within ninety days of the expiration of his 2010 policy. This endorsement extends the reporting period of Mr. Broker's 2010 policy to January 1, 2013, an additional two years after the policy's expiration date. Mr. Broker is then served with the lawsuit on October 1, 2012 and timely reports it to RISC. Because the claim arose within the ERP, it is covered under Mr. Broker's 2010 RISC policy. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Protect Yourself

Many E&O claims do not arise until years after the subject transaction. Accordingly, if you are inactivating your license for any reason, including retirement, you may be interested in purchasing 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.

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.