

HOW TO REDUCE THE RISK OF HAVING AN UNCOVERED CLAIM

Rice Insurance Services Center (RISC) manages group real estate errors and omissions (E&O) insurance programs in a number of states that require real estate licensees to maintain E&O insurance. This type of policy typically applies to claims alleging negligent acts, errors, or omissions in the insured licensee's services under their real estate license and for which a license is required, subject to all the policy's terms, conditions, and exclusions.

For an E&O policy to potentially apply to a claim, the professional services must have been provided after the licensee's retroactive date, the claim must first be both made against the insured and first reported to the insurer during the licensee's individual policy period or any applicable extended reporting period, and the insured must comply with any reporting deadlines in the policy.

Policies generally contain exclusions to coverage and everyone should read this section of the policy. Additional coverages (such as appraisal services and otherwise excluded coverages) may be available by endorsement. Licensees should submit anything that constitutes a claim for coverage consideration, as there may be available coverage of which the licensee is not aware.

It is very important to recognize when a claim is made. Below is an example of the definition of a claim under one of the group policies we administer:

Claim means:

1. a written demand for money or services received by the **Insured**; or
2. 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**. Complaints to or disputes before a real estate regulatory board or commission are not **Claims**. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

If a claim has been made against you, there are duties set forth in the policy that you must follow. Below is an example of insured duties under one of the group policies we administer:

THE INSURED'S DUTIES IF THERE IS A CLAIM

- A. The **Insured** shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the **Claim** is first made but in no event more than ninety (90) days after the **Insured** becomes aware of such **Claim**. Such written notice shall include the name of the **Licensee** and shall include the time, place, and details of the **Claim**. Notice shall be delivered to:

U.S. Mail Delivery Claims Department P.O. Box 6709 Louisville, KY 40206-0709	Overnight Delivery Claims Department 4211 Norbourne Blvd. Louisville, KY 40207-4048	Electronic Delivery Fax: (502) 896-6343 Email: claims@risceo.com
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- B. The **Insured** shall not admit any liability, make any settlement, pay any **Damages**, or assume any duty or obligation for any **Claim** without the prior written consent of the Company. The **Insured** shall not incur any **Claim Expenses** for any **Claim** without the prior written consent of the Company.
- C. The **Insured** shall immediately forward to the Company every demand, notice, summons, or other process about any **Claim** received by the **Insured** or the **Insured's** representative.
- D. The **Insured** shall cooperate with the Company and, at the Company's request, the **Insured** shall assist the Company in responding to the **Claim** and making settlements. The **Insured** shall attend hearings and trials and help in securing and giving evidence at the Company's request.

If you fail to comply with the policy provisions, your claim may not be covered. Common reasons an E&O policy may not provide any coverage include:

- Failure to maintain continuous coverage from date of the subject professional services through the date the claim is made.
- Failure to report the claim in writing to the insurer during the same policy period in which the claim was first made against the insured.
- Failure to comply with the insured's duties under the policy.
- The licensee's acts fall outside the policy's definition of "professional services."
- A policy exclusion applies. These vary, but may include:
 - Fraudulent, dishonest, intentional, and criminal conduct.
 - Bodily injury, sickness, disease, mental anguish, pain or suffering, emotional distress, or death.
 - Property damage.
 - Property owned, developed, or constructed by the insured, insured's spouse, or insured's company.

Often a claim will assert both covered and uncovered allegations. For example, many claims make a covered negligence allegation and an allegation of fraud, which is excluded from coverage under most E&O policies. Under the group policies we administer, when the applicable policy provides coverage for even one allegation and the claimant seeks potentially covered damages, the insurer has a duty to defend the insured against all allegations in the claim. In such instances, the insurer defends the claim under a reservation of rights, meaning the insurer will defend the insured against all allegations, but there would be no coverage for damages relating to any uncovered allegations or uncovered damages.

If you receive a claim, what steps can you take to preserve any coverage that may potentially be available?

- ☐ Notify your insurer of the claim in writing and follow up to make sure they received the claim. Most E&O policies require timely written notice of a claim. Failure to timely report the claim to your insurer in writing may jeopardize coverage.
- ☐ Don't admit liability. Licensees may be unaware of available legal defenses. Admitting fault can prejudice the insurer's ability to defend, may violate the insured's duties, and may jeopardize coverage.
- ☐ Don't try to settle the claim yourself. Licensees work hard to help clients and maintain a good reputation. However, if an insured assumes responsibility, such as offering to pay money or repair/replace an item, coverage could be jeopardized.

E&O insurance is important but does not cover all risks real estate licensees face. It is important to understand the policy provisions and follow your listed duties. We also recommend you investigate other types of insurance, such as general liability, business owners, and cyber insurance, which provide different types of coverage than E&O insurance.