



DISCRIMINATION AND EMPLOYMENT PRACTICE LIABILITY CLAIMS LIMITS OF LIABILITY ENDORSEMENT

In consideration of the additional premium paid, it is agreed that the following amendments are made to the policy:

1. Section **I. INSURING AGREEMENT**, A. Indemnity is amended to add the following new coverage agreement:

We will pay all amounts in excess of the deductible and within the limits of liability applicable to this Policy, that the **Insured** becomes legally obligated to pay as **damages** as a result of a **claim** brought by or on behalf of:

- a. an **employee** for a **wrongful employment practice**; or
- b. a natural person customer or client for **wrongful discrimination**.

Provided that:

- 1. such **wrongful act** took place on or after the Prior Acts Date set forth on the Declarations; and
- 2. on the First Coverage Date shown on the Declarations, no **Insured** knew or could reasonably have expected that any **wrongful employment practice** or **wrongful discrimination** would result in a **claim**.

A **claim** must be first made during the **policy period** and must be promptly reported to us in accordance with Section **VII. CONDITIONS**, paragraph B. Notice of **claims** and potential **claims**.

2. For the purposes of the coverage provided by this Endorsement, Section **II. LIMITS OF LIABILITY/ DEDUCTIBLE**, D. Discrimination Limit of Liability – **damages** and **claim expenses** is deleted and replaced by the following:

Discrimination Limit of Liability – applicable to **Wrongful Discrimination Claims** and **Wrongful Employment Practices Claims**

The Discrimination Limit of Liability, as set forth in the Declarations, is applicable to **damages** and **claim expenses** with respect to all **wrongful discrimination claims** and to all **wrongful employment practices claims** made against an **Insured**. The Discrimination Limit of Liability is a sublimit included within, and not in addition to the limits of liability set forth in item 3.A. of the Declarations.

3. Solely as respects the coverage afforded under this endorsement, Section **V. DEFINITIONS** is amended as follows:

A. The definition of **Claim** is deleted in its entirety and replaced with the following:

Claim means:

- 1. a written demand for monetary damages;
- 2. a civil proceeding in a court of law or equity or an arbitration seeking monetary or non-monetary relief, or
- 3. an administrative or regulatory proceeding including an investigation by a regulatory or administrative agency, such as the Equal Employment Opportunity Commission or its state or local equivalent, against any **Insured** for a **Wrongful Act** and any appeal from such **Claim**.

However, **Claim** does not include any:

- a. labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement,
- b. audit conducted by the Office of Federal Contract Compliance Programs unless a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief has been issued.

B. The definition of **Damages** is amended by the addition of the following:

Damages also do not include:



- the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;
- the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws.
- compensation earned by the claimant in the course of employment but unpaid by the **Insured**, including salary, wages, commissions, bonus or incentive compensation, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days;
- any amounts for which an **Insured** is liable due to breach of any written contract of employment;
- amounts representing medical or insurance premiums or benefit claim payments;
- any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- future salary, wages or commissions of a claimant who is hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**; or
- **Stock Benefits or Employment Related Benefits.**
- any amounts owed under an express contract with or express assumption obligation of the **Insured**;

C. The following new definitions are added:

Employee means all past, present or future full-time or part-time employees of the **Named Insured**, applicants for employment with the **Named Insured**, and **Independent Contractor Sales Agents**.

Employment Related Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Employment related benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

Independent Contractor Sales Agents means licensed real estate agents and brokers who perform **professional real estate services** under an agency agreement with the **Named Insured** but only if: such independent contractor has a written contract with the **Named Insured**, entered into prior to the alleged **Wrongful Employment Practice**, designating him or her as an independent contractor, and under which the **Named Insured** is obligated to provide employment practices liability insurance or to indemnify for any **Wrongful Employment Practice**;

Interrelated Wrongful Acts means any **Wrongful Acts** which are logically or causally connected by reason of, in common fact, circumstance, situation, transaction or event.

Professional real estate services claim means a **claim** by reason of any act or omission in the rendering of **professional real estate services**.

Stock Benefits means

1. any offering plan or agreement between the **Named Insured** and any employee which grants stock, stock warrants or stock options of the **Named Insured** to any such employee, including but not limited to grants of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive granted in the form of securities of the **Named Insured**; or
2. any payment or instrument the amount or value of which is derived from the value of securities of the **Named Insured**, including but not limited to stock appreciation rights or phantom stock plans or arrangements.

Stock Benefits shall not include employee stock ownership plans or employee stock purchase plans.

Wrongful Act means a **wrongful employment practice** or **wrongful discrimination**.



Wrongful Discrimination means any act or omission constituting or relating to discrimination, humiliation, harassment, or misconduct that includes but shall not be limited to an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference, whether committed directly, indirectly, intentionally or unintentionally.

Wrongful Discrimination Claim means a claim by reason of wrongful discrimination. A wrongful discrimination claim does not include a professional real estate services claim.

Wrongful Employment Practice means any act or omission constituting or relating to:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866 and the Sarbanes-Oxley Act of 2002;
4. sexual harassment or other unlawful harassment;
5. wrongful deprivation of career opportunity, failure to grant tenure, demotion, or failure to employ or promote;
6. wrongful discipline;
7. retaliation.
8. negligent evaluation of **employees**;
9. failure to adopt adequate workplace or employment policies and procedures;
10. employment-related libel or slander, humiliation or invasion of privacy; or
11. with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights.

Wrongful Employment Practice Claim means a **claim** based on or arising out of a **wrongful employment practice**. A **wrongful employment practices claim** does not include a **professional real estate services claim**.

4. Solely as respects a **Wrongful Employment Practices Claim**, Section **VI. EXCLUSIONS**, is amended as follows:

A. Exclusions A. is amended by the addition of the following:

except that this exclusion shall not apply to allegations of emotional distress, humiliation or mental anguish.

B. Exclusion H. is deleted in its entirety.

C. The following new exclusion is added:

- based on, arising out of, or in any way related to, failure of the claimant to be afforded partnership status or any other equity participation in **you**.
- for any actual or alleged violation of:
 - a. i) ERISA or any similar Act, (ii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, or (iii) any other federal, state or local statutory law or common law anywhere in the world governing any employee benefit program, policy, plan or arrangement of any type, including but not limited to laws governing retirement or pension benefit programs, welfare plans, insurance plan, employee stock option ownership or employee stock purchase plans or deferred compensation programs;



- b. any law governing workers' compensation, unemployment insurance, social security, disability benefits or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
- c. the Occupational Safety and Health Act of 1970 (OSHA), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing workplace safety and health;
- d. the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies;
- e. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing an employer's obligation to notify or bargain with others in advance of any facility closing or mass layoff.
- f. the National Labor Relations Act, as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing employees' rights and the employers duties with respect to unions, bargaining, strikes, boycotts, picketing, lockouts or collective activities.

However, this exclusion shall not apply to any **claim** alleging retaliation or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of a claimant's exercise of a right pursuant to any such laws;

- based on or arising out of disputes over commissions or the ownership or maintenance of client lists, real estate listings or websites.
- based upon or arising out of:
 - a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event, notice of which was given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
 - b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute an **Interrelated Wrongful Act**;
- based upon or arising out of or resulting from:
 - a. civil proceedings in a court of law or equity or arbitration;
 - b. administrative or regulatory proceeding including an investigation by a regulatory or administrative agency;
 - c. any notice of violation or order to show cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs;
 against any of the **Insureds** which was pending on or prior to _____ or any fact, circumstance, situation, transaction or event underlying or alleged in such demand, proceeding, investigation, order or arbitration;

5. For the purposes of the coverage provided by this Endorsement, whenever the words "act or omission" appear in Section **VIII. EXTENDED REPORTING PERIODS** they shall be deemed to include a **wrongful employment practice**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.