



## REAL ESTATE INDUSTRY SERVICES Errors and Omissions Liability Policy

### NOTICE

**THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE BASIS AND ONLY APPLIES TO THOSE CLAIMS BOTH FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION VI. C. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER**

Throughout this Policy, the bold term “**Named Insured**” refers to the persons and entities designated as Named Insured in the Declarations. The bold term “**Company**” refers to the Company named in the Declarations.

Other words and phrases that appear in bold have special meaning. Refer to Section IV, Definitions.

#### I. INSURING AGREEMENT

##### A. Indemnity

The **Company** will pay all amounts in excess of the deductible, and within the limit of liability that the **Insured** becomes legally obligated to pay as **damages** as a result of a **claim** that is both first made against the **Insured** and reported in writing to the **Company** during the **policy period** by reason of an act or omission in the performance of **professional services** by the **Insured** or by any person for whom the **Insured** is legally liable, while acting on behalf of the **Named Insured** for clients of the **Named Insured**, provided that:

1. the **Insured** did not give notice to a prior insurer of such **claim** or a **related claim**;
2. prior to the First Coverage Date shown on the Declarations, no **Insured** had a basis to believe that any such act or omission, or **related act or omission**, might reasonably be expected to be the basis of a **claim**;
3. such act or omission happened on or subsequent to the **retroactive date** specified in the Declarations.

The **Company** shall also pay **claim expenses** in connection with such **claim**. **Claim expenses** are included within and reduce the limits of liability.

##### B. Defense and Settlement

The **Company** shall have the right and duty to defend a **claim** seeking **damages** covered by this policy even if any of the allegations of the **claim** are groundless, false or fraudulent. If a **claim** shall be subject to arbitration or mediation, the **Company** shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding.

The **Company** shall have the right to appoint counsel and to make such investigation, defense, and settlement of a **claim** as is deemed necessary by the **Company**. The **Company** shall not settle a **claim** without the **Named Insured's** consent, which consent shall not be unreasonably withheld. If the **Named Insured** refuses to consent to a settlement or compromise recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability shall be reduced to the amount for which the **claim** could have been settled plus **claim expenses** incurred up to the time the **Company** made its recommendation, which amount shall not exceed the remainder of the limit of liability specified in Section III.A.

### C. Exhaustion of Limits

The **Company** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of liability has been exhausted by payment of **damages** or **claim expenses** or any combination thereof, or after the **Company** has deposited the remaining available limits of liability into a court of competent jurisdiction. In such case, the **Company** shall have the right to withdraw from the further investigation, defense, or settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim** to the **Insured**.

## II. SUPPLEMENTARY PAYMENTS

Supplementary payments are subject to the exclusions set forth in Section V. Payments made under paragraphs 1 and 2 below are not subject to the deductible and are in addition to the limit of liability shown on the Declarations.

### 1. Loss of Earnings

The **Company** will pay up to \$500.00 for loss of earnings to each **Insured** for each day or part of a day such **Insured** is in attendance, at the **Company's** request, at a trial, hearing or arbitration proceeding involving a **claim** against such **Insured**. In no event shall the amount payable hereunder exceed \$10,000.00 per **policy period** regardless of the number of **Insureds** or **claims**.

### 2. Licensing Proceedings

The **Company** will pay up to \$5,000.00 to the **Insured** for attorney fees and other reasonable costs, expenses or fees resulting from the investigation or defense of a proceeding before a real estate licensing board incurred by the **Insured** as the result of a notice of proceeding both first received by the **Insured** and reported to us during the **policy period**, arising out of an act or omission in the rendering of **professional real estate services** by the **Insured**. In no event shall the amount payable hereunder exceed \$5,000.00 per proceeding and \$10,000.00 per **policy period** regardless of the number of **Insureds** or the number of such proceedings.

Payments made under this paragraph 3 will be made once the deductible is satisfied. However, such payments are in addition to the limits of liability.

### 3. Subpoena Assistance

In the event the **Insured** receives a subpoena for documents or testimony arising out of **professional real estate services** and the **Insured** would like our assistance in responding to the subpoena, the **Insured** may provide the **Company** with a copy of the subpoena and the **Company** will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony and to represent the **Insured** at the **Insured's** depositions, provided that:

- a. the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
- b. the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past.

Any **claim** that is both made against the **Insured** and reported to the **Company** during any renewal policy period and that arises out of such subpoena shall be deemed to have been made at the time notice of the subpoena was given to the **Company**.

### III. LIMITS OF LIABILITY

#### A. Limit of liability - each **claim**

Subject to paragraph B below, the **Company's** limit of liability for **damages** and **claim expenses** for each **claim** shall not exceed the amount stated in the Declarations.

#### B. Limit of liability - in the aggregate

The **Company's** limit of liability for **damages** and **claim expenses** for all **claims** shall not exceed the amount stated in the Declarations as the aggregate.

#### C. Discrimination Limit of Liability – **claim expenses** only

The Discrimination Limit of Liability, as set forth in the Declarations, is in addition to and not included within, the “each **claim**” and the “aggregate” limit of liability and shall be considered as separate to such limits of liability;

#### D. Deductible

The deductible amount stated in the Declarations is the total amount of the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible shall be paid by the **Named Insured**. The deductible applies separately to each **claim**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

#### E. Multiple **Insureds, claims** and claimants

The limits of liability shown in the Declarations, and subject to the provisions of this **Policy**, are the amount the **Company** will pay as **damages** and **claim expenses** regardless of the number of **Insureds, claims** made or persons or entities making **claims**. If **related claims** are subsequently made against the **Insured** and reported to the **Company** under this Policy or any renewal of this Policy, all such **related claims** shall be considered a single **claim** first made and reported to the **Company** within the policy period in which the earliest of the **related claims** was first made and reported to the **Company**.

### IV. DEFINITIONS

“**Asbestos**” means the element in any form, whether or not the **asbestos** was at any time:

- A. airborne as a fiber, particle, or dust;
- B. contained in or formed a part of a product, structure or other real or personal property;
- C. carried on clothing;
- D. inhaled or ingested; or
- E. transmitted by any other means.

“**Bodily injury**” means injury to the body, sickness or disease sustained by any person, including death resulting from such injuries; or mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by any person whether or not resulting from injury to the body, sickness, disease or death of any person.

“**Claim**” means an oral or written demand received by the **Insured** for money or services arising out of an act or omission in the rendering of **professional services**. The service of suit or the institution of an

arbitration proceeding against the **Insured** will be considered a demand. Except as respects an **innocent insured**, a **claim**, other than a **claim** for **personal injury**, cannot arise from intentionally wrongful, dishonest, fraudulent, malicious, or criminal conduct committed by an **Insured** or at an **Insured's** direction or with the **Insured's** prior knowledge.

"**Claim expenses**" means:

- A. fees charged by attorneys designated by the **Company**;
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by the **Company**, or by the **Insured** with the **Company's** prior written consent, including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation on the **Company's** part to apply for or furnish any such bond.

"**Claim expenses**" shall not include fees, costs or expenses of the **Company's** employees or officers or independent claims adjusters. Nor shall **claim expenses** include salaries, loss of earnings or other remuneration by or to any **Insured**.

"**Construction management services**" means rendering opinion in connection with the construction of real property or providing the following services in connection with the construction of real property:

- A. management of facility construction, reconstruction and renovation plans;
- B. development and management of construction,;
- C. development of loss control and risk management plans in connection with the construction.

"**Damages**" mean judgments, awards and settlements, provided any settlement is made with the **Company's** prior written consent. **Damages** do not include:

- A. the return or restitution of fees, commissions, expenses or costs;
- B. civil or criminal fines, sanctions, penalties, or forfeitures, whether pursuant to law, statute, regulation or court rule;
- C. punitive or exemplary amounts;
- D. the multiplied portion of multiplied awards;
- E. injunctive or declaratory relief;
- F. any amount that is not insurable under any applicable law;
- G. amount of any capital gains taxes owed; or
- H. plaintiff's attorney's fees associated with any of the above.

"**Dwelling residence**" means housing purchased and used by the **Insured** as a place for such **Insured** to live in either as a primary or secondary residence.

"**Fungi**" means any form of fungus including but not limited to yeast, mold, mildew, rust, smut or mushroom.

"**Guaranteed sale listing contract**" means a written agreement between the **Named Insured** and the seller of a property, in which the **Named Insured** agrees to purchase the property if it is not sold under the listing agreement in the time frame specified by the agreement.

"**Innocent Insured**" means an **Insured** who, upon request, affirmatively states under oath to the **Company** that they did not commit or have prior knowledge of the intentionally wrongful, dishonest, fraudulent, malicious or criminal acts or omissions alleged in a **claim**. A person who fails to take affirmative steps to mitigate loss upon learning of an intentionally wrongful, dishonest, fraudulent, malicious or criminal act or omission, or who is found by a court of competent jurisdiction to have committed such acts or omission, is not an **innocent insured**.

"**Insured**" means the **Named Insured** and any of the persons or entities listed below but only while rendering **professional services** on behalf of the **Named Insured** for clients of the **Named Insured**:

- A. any **subsidiary** and any **newly acquired subsidiary**
- B. any person who is or becomes a partner, officer, director, member, manager or employee of the **Named Insured**, a **subsidiary** or **newly acquired subsidiary** during the **policy period**;
- C. any person previously affiliated with the **Named Insured**, a **subsidiary** or **newly acquired subsidiary** as a partner, officer, director or employee of such entity;
- D. any independent contractor, but only if, prior to the date a **claim** is made:
  1. the **Named Insured** had agreed to provide insurance for the independent contractor's **professional services**;
  2. a **fee** inured to the **Named Insured**;
- E. the **Insured's** estate, heirs, executors, administrators, assigns and legal representatives in the event of death, incapacity, insolvency or bankruptcy of the **Insured**, but only to the extent that the **Insured** would have been provided coverage under this Policy.

“**Lead**” means the mineral in any form, whether or not the **lead** was at any time:

- A. airborne as a fiber, particle, or dust;
- B. contained in or formed a part of a product, structure or other real or personal property;
- C. carried on clothing;
- D. inhaled or ingested; or
- E. transmitted by any other means.

“**Microbes**” means any non-fungal microorganism or non-fungal colony-form organism that causes infection or disease.

“**Mortgage broker services**” means origination of commercial or residential real estate mortgage loans in the primary or secondary market.

“**Named Insured**” means the persons and entities designated as Named Insured in the Declarations.

“**Newly acquired subsidiary**” means any entity of which the **Named Insured** acquires, through acquisition, merger or formation, during the **policy period**, more than a 50% interest in such corporation, but only upon the conditions that:

- A. within 60 days of such acquisition, the **Company** shall have been provided with full particulars of such **newly acquired subsidiary**;
- B. the **Company**, after receipt of such notice has agreed in writing to insure such newly **acquired subsidiary**; and,
- C. the **Named Insured** has paid any additional premium and has agreed to any amendment of the provisions of this Policy.

On the date during the **policy period**, that the **Named Insured's** direct or indirect ownership interest in such corporation becomes less than 50% of the issued and outstanding voting stock, such corporation shall cease to be a **newly acquired subsidiary** under the terms of this Policy.

“**Personal Injury**” means an injury, other than **bodily injury**, arising out of one or more of the following offenses:

- A. false arrest, detention, or imprisonment;
- B. malicious prosecution;
- C. wrongful entry into, wrongful eviction from, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- D. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- E. oral or written publication of material that violates a person's right of privacy.

“**Policy period**” means the time from 12:01 A.M. on the inception date of this Policy shown in the Declarations, to the earlier of 12:01 A.M. of the expiration, termination or cancellation date of this Policy.

**"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**"Professional services"** means the following services performed by an **Insured** for others provided such **Insured**, if required, is appropriately licensed or certified by the state in which such **Insured** is doing business:

- A. services as a real estate agent, real estate broker or real estate personal assistant;
- B. services as an escrow agent, title agent, title abstractor, leasing agent; real estate auctioneer and real estate appraiser;
- C. **mortgage broker services**;
- D. **property management services**;
- E. services as a real estate consultant or counselor or as an expert witness provided such services are limited to the areas specified in paragraphs A through C of this definition;
- F. services as a notary public or member of a formal real estate accreditation, standards review or similar real estate board or committee.

**"Professional services"** do not include **construction management services**, mortgage banking services or **renovation management services**.

**"Property damage"** means:

- A. physical injury to real or personal property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- B. loss of use of real or personal property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.

**"Property management services"** means the following services provided in connection with the management of commercial or residential property:

- A. development of management plans and budget;
- B. oversight of physical maintenance of property except if such physical maintenance is performed by an **insured** or by an entity owned by an **Insured** in whole or in part;
- C. solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
- D. development, implementation and management of loss control and risk management plans for real property;
- E. solicitation and negotiation of contracts for sale and leasing of real property;
- F. development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of the property
- G. personnel administration;
- H. record keeping.

**"Property management services"** do not include **construction management services**, **renovation management services** or analysis or evaluations of, or recommendations concerning environmental hazards or exposures.

**"Radon"** means a radioactive, largely inert gaseous element formed by the radioactive decay of radium.

**"Renovation management services"** means the following services provided in connection with the renovation and reconstruction of commercial or residential property:

- A. management of facility renovation and reconstruction plans;
- B. development and management of renovation and reconstruction contracts and subcontracts;
- C. development of loss control and risk management plans in connection with the reconstruction or renovation of such commercial or residential properties.

“**Retroactive date**” if any, is indicated on the Declarations. This Policy excludes from coverage all **claims** by reason of acts or omissions that happened before the **retroactive date**.

“**Related claims**” means all **claims** arising out of a single act or omission or arising out of **related acts or omissions** in the rendering of **professional services**.

“**Related acts or omissions**” means all acts or omissions in the rendering of **professional services** that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

“**Subsidiary**” means any entity of which the **Named Insured** owns, either directly or indirectly, more than a 50% interest in such corporation and that is listed on the application for this Policy. On the date during the **policy period** that the **Named Insured’s** direct or indirect ownership interest in such corporation becomes less than 50% of the issued and outstanding voting stock, such corporation shall cease to be a **subsidiary** under the terms of this Policy. In such event, coverage will be provided under the Policy but only with respect to acts or omissions committed prior to such date in accordance with all other terms and conditions of this Policy. No coverage will be afforded under the Policy with respect to **claims** made against an **Insured** based on any act or omission committed or allegedly committed on or subsequent to such date.

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## V. EXCLUSIONS

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This Policy does not apply to any **claim**:

A. based on or arising out of:

1. **bodily injury**, regardless of cause;
2. **personal injury**, regardless of cause. However, notwithstanding the foregoing and subject to the limits of liability and deductible set forth in Section III above, the **Company** shall provide the **Insured** with a defense of such **claim**, unless or until it has been determined by any final, non-appealable adjudication that the **Insured** has engaged in such conduct. Such defense will not waive any of the **Company’s** rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against the **Insured**;
3. **property damage**, regardless of cause;

B. based on or arising out of whether suddenly or over a long period of time:

1. nuclear reaction, contamination or radiation, regardless of cause;
2. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or
3. the actual or alleged failure to detect, report, test for, monitor, clean-up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of;

any **fungi** or **microbes**, or of any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of **fungi** or **microbes**;

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **damages** claimed.

C. based on or arising out of whether suddenly or over a long period of time:

1. the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants, asbestos, radon** or **lead**; or

2. the actual or alleged failure to detect, report, test for, monitor, clean-up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of **pollutants, asbestos, radon or lead**.

Notwithstanding anything to the contrary in paragraphs C.1. and C.2., above, it is agreed that the **Company** will provide a defense and pay **claim expenses** for **claims** based on or arising out of an **Insured's** failure to advise of the existence of **pollutants, asbestos, radon or lead** in connection with the sale of real property;

- D. based on or arising out of:
  1. the **Named Insured's** failure to repurchase any loans, or
  2. any transaction involving a loan funded in whole or in part with any **Insured's** own funds.
- E. based on or arising out of the sale of a business, except that this exclusion does not apply to **claim expenses or damages** relating solely to the purchase or sale of real property;
- F. based on or arising out of:
  1. any conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
  2. the gaining of any personal profit or advantage to which the **Insured** is not legally entitled;
  3. any inability or failure to pay, collect or safeguard funds held for others;
  4. the disposition, management, or investment of any funds, except to the extent these **professional services** are performed by an escrow agent;
- G. based on or arising out of any advice or recommendation concerning the disposition, management or investment of any funds;
- H. based on or arising out of any representation as to:
  1. the present value of any business or
  2. the present value of any property (except to the extent these **professional services** are performed by a real estate appraiser) or
  3. the future value of any property or business;
- I. based on or arising out of discrimination, humiliation, harassment, or misconduct that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference. Subject to the Discrimination Liability Limit set forth in Section III, Limits of Liability/Deductible and in the Declarations, we shall provide the **Insured** with a defense of such **claims** unless or until it has been determined by any final, non-appealable adjudication that the **Insured** has engaged in such conduct. Such defense will not waive any of our rights under this Policy. This Discrimination Liability Limit is applicable to **claim expenses** only and is in addition to the "each **claim**" and the "aggregate" limit of liability set forth in the Declarations. Criminal proceedings are not covered under this Policy regardless of the allegations made against the **Insured**;
- J. by or on behalf of any **Insured** under this Policy against any other **Insured** hereunder;
- K. based on or arising out of the formation, syndication, operation or administration of any property syndication, real estate investment trust or any corporation, general or limited partnership or joint venture formed for the purpose of investing in, buying, selling, or maintaining real property including, but not limited to, those syndications, trusts, real estate investment trusts, corporations, partnerships or joint ventures in which the **Insured** has, had or intended to have a participating interest directly or indirectly in the profits or losses thereof;



- L. based on or arising out of:
1. the actual or attempted purchase of property by any **Insured**;
  2. property developed or constructed by an **Insured** or by a member of the **Insured's** immediate family;
  3. the actual or attempted sale, leasing (other than in connection with **property management services**) or appraisal of property by any **Insured** if at the time of the act or omission giving rise to such **claim**, such **Insured** owned such property. This exclusion does not apply to:
    - a. the actual or attempted sale or leasing of real property in which the combined ownership interest of all **Insureds** at the time of sale or lease was less than 10%;
    - b. the actual or attempted sale of an **Insured's dwelling residence** provided that only those **Insureds** who are not the owners of such **dwelling residence** will be provided coverage and provided further that the **dwelling residence** owner is not the selling, listing or closing agent; or
    - c. the actual or attempted sale of real property 100% owned by the **Named Insured** if all of the following conditions are met:
      - i. the property was acquired by the **Named Insured** under a written **guaranteed sale listing contract**; and
      - ii. from acquisition to resale:
        - (1) the title to the property was held by the **Named Insured** for less than twelve months; and
        - (2) the property was continually offered for sale by the **Named Insured**;
    - d. the sale of residential property by an **Insured** who is the owner of such residential property for more than 180 days and all of the following conditions are met in connection with such sale:
      - i. a written Home Inspection Report is issued by a home inspector provided that all necessary licenses or certifications are held by such inspector;
      - ii. a home warranty policy was purchased prior to closing;
      - iii. a seller disclosure form was signed by the **Insured** and acknowledged by the buyer prior to closing; and
      - iv. a state or local board approved standard sales contract was utilized.
- M. based on or arising out of the actual or attempted purchase of property by, or the actual or attempted sale, leasing or appraisal of property developed, constructed or owned by:
1. any entity in which any **Insured** has a financial interest;
  2. any entity which has a financial interest in the **Named Insured**; or
  3. any entity which is under the same financial control as the **Named Insured**,
  4. provided that such financial interest existed at the time of the act or omission giving rise to the **claim**;
- N. based on or arising out of actual or alleged violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 or any rules, regulations or amendments issued in relation to such acts, or any similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability if made in connection with an actual or alleged violation of any such statute or regulation;
- O. based on or arising out of the failure to purchase or maintain any property or casualty insurance, other than title insurance or bonds;
- P. based on or arising out of any anti-trust law violation or any agreement or conspiracy to restrain trade;
- Q. based on or arising out of rendering of or failure to render an opinion on the financial condition of any individual or entity;

- R. based on or arising out of:
1. an appraisal of real property prepared on behalf of any real estate syndication, or any securities related activity, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the Securities and Exchange Commission or any state regulatory agency which regulates investment made as a public offering;
  2. any activity relating to-a-Right-of-Way Appraisal; Proposed Construction/Land Development appraisal or Vacant Land appraisal; however, this paragraph S.2 does not apply to a Proposed Construction/Land Development appraisal or Vacant Land appraisal performed by a residential Real Estate Appraiser wherein the construction or development of land is solely intended for use as a private residential dwelling (one-to-four family home);
  3. inspection or appraisal of property to determine compliance with a construction loan covenant;
- S. based on or arising out of any defect in title or deed not disclosed in the public record or any opinion of title or deed;
- T. based on or arising out of any notarized certification or acknowledgment of a signature without the physical appearance before the **Insured** of the person who is, or claims to be, the person signing the instrument;
- U. based on or arising out of a cease and desist order, the insolvency, bankruptcy, licensing, liquidation or inability to pay of any insurer, trust, bank or other entity directly or indirectly in which any **Insured** has placed or obtained insurance coverage or placed the funds of a client;
- V. based on or arising out of:
1. an **Insured's** alleged liability under any oral or written contract, agreement, guaranty, warranty, promise or representation; or
  2. the liability of others an **Insured** assumes under any oral or written contract or agreement, except that coverage otherwise available to an **Insured** shall apply to an **Insured's** liability that exists in the absence of such contract, agreement, guaranty, warranty, promise or representation;
- W. brought by or on behalf of any federal, state or local regulatory agency or office, whether such **claim** is brought in the name of such regulatory agency or office or by or on behalf of such regulatory agency or office or in the name of any other entity. Except that this exclusion shall not apply to the coverage granted by section II, Supplementary payments, item 2. licensing proceedings;
- X. based on or arising out of any actual of alleged:
1. violation of the Real Estate Settlement Procedures Act, any of its amendments, or any similar federal, state or local law; or
  2. receipt by any **Insured** of any fee, kickback, or item of value for the referral of a mortgage loan to any person or organization.

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## VI. CONDITIONS

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### A. Territory

This Policy applies to acts or omissions which happen anywhere in the world provided that **claim** is made or suit is brought against the Insured in the United States of America, its territories or possessions, Puerto Rico or Canada.

**B. Named Insured sole agent**

The **Named Insured** shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellation of this Policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this Policy, for the payment of the deductible and the exercising or declining to exercise any right under this Policy.

**C. Notice of claims and potential claims**

1. The **Insured**, as a condition precedent to the **Company's** obligations, must promptly give written notice to the **Company** during the **policy period**:
  - a. of any **claim** made against the **Insured** during the **policy period**;
  - b. of any notice, advice or threat, whether written or verbal, that any person or organization intends to hold the **Insured** responsible for any alleged breach of duty or other act or omission.
2. If during the **policy period**, the **Insured** becomes aware of a circumstance that may reasonably be expected to be the basis of a **claim** against the **Insured**, the **Insured** must give written notice to the **Company** prior to the expiration of the **policy period**. Such notice must state the reasons for anticipating a **claim**, with full particulars, detailing:
  - a. the specific act or omission;
  - b. the dates and persons involved;
  - c. the identity of anticipated or possible claimants; and
  - d. the circumstances by which the **Insured** first became aware of the possible **claim**.

If such notice is given, then any **claim** that is both made against the **Insured** and reported to the **Company** during any renewal policy period and that arises out of such circumstance shall be deemed to have been made at the time such written notice was given to the **Company**.

This condition will not be a barrier to coverage for those **Insureds** who do not have personal knowledge of a **claim** or potential **claim**. However all **Insureds** must promptly comply with this condition upon obtaining such knowledge.

**D. Assistance and Cooperation**

1. The **Insured** shall cooperate with the **Company** and upon the **Company's** request, shall attend hearings, depositions and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and assist in the conduct of suits and proceedings in connection with a **claim**.
2. The **Insured** shall assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim**.
3. No **Insured** shall voluntarily assume or admit any liability or incur any expense, except at its own cost, without our written consent.

**E. Legal Action Limitation**

1. The **Insured** agrees not to bring a legal action against the **Company** concerning this Policy unless they have fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a **claim**, there is any dispute concerning tort allegations against the **Company** regarding the handling or settlement of any **claim**, the **Company** and the **Insureds** agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Company** and the **Insureds** be unable to

agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration by the American Arbitration Association, under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

F. Changes to the **Named Insured's** business, Acquisitions and Mergers

1. The **Named Insured** must provide prior notice to us of the following events:
  - a. acquisition of the **Named Insured** by another entity;
  - b. the **Named Insured's** merger with another entity;
  - c. the acquisition of all or substantially all of the **Named Insured's** assets by another entity; or
  - d. the acquisition of all or substantially all of the assets of another entity by the **Named Insured**.
2. Upon receipt of such notice, the **Company** may:
  - a. adjust the premium to reflect the added exposure; or
  - b. solely with respect to item 1. above, deem this Policy to have ceased with respect to **claims** made against the **Insured** based on any act or omission committed or allegedly committed on or subsequent to the time and date of said event. In such case, the **policy period** shall remain unaltered and coverage will continue but only with respect to acts or omissions committed prior to the time and date of any such events in accordance with all other terms and conditions of this Policy.

G. Assignment

No assignment of the **Insured's** interest under this Policy shall be valid, unless the **Company's** written consent is endorsed hereon.

H. Entire contract

By acceptance of this Policy the **Insured** agrees that:

1. all of the information and statements provided to the **Company** by the **Insured** are true, accurate and complete and shall be deemed to constitute material representations made by the **Insured**;
2. this Policy is issued in reliance upon the **Insured's** representations;
3. this Policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the **Company** (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**; and,
4. the misrepresentation of any material matter by the **Insured** or the **Insured's** agent will render the Policy null and void and relieve the **Company** from all liability herein. This Policy is void in any case of fraud by the **Insured** relating to it. It is also void if the **Insured** intentionally conceals or misrepresents a material fact or circumstance concerning this Policy.

I. Other insurance

This policy shall be excess over any other valid and collectible insurance, self-insurance or indemnification agreement available to the **Insured**, whether such other insurance or indemnification agreement is stated to be primary, contributory, excess contingent, self-insured retention or otherwise.

J. Subrogation

In the event of any payment under this Policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery against any person or organization, including any rights the **Insured** may have against any other of the **Insured** involved in dishonest, fraudulent, criminal or malicious conduct. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. In the event of any recovery, the **Company** shall first be reimbursed for **damages** and **claim expenses** paid by the **Company**.

#### K. Cancellation and Nonrenewal

1. This Policy may be canceled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this Policy by written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel or non-renew this Policy by written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least 60 days before cancellation or non-renewal is to be effective. However, if the **Company** cancels this Policy because the **Insured** has failed to pay a premium when due or has failed to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible, this Policy may be canceled by the **Company** by mailing to the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The time of surrender of the Policy or the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery of such written notice either by the **Named Insured** or by the **Company** shall be equivalent to mailing.
3. If the **Company** cancels this Policy, the earned premium shall be computed pro rata. If the **Named Insured** cancels this Policy, the **Company** shall retain the customary short rate proportion of the premium. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. The offering of terms and conditions different from the expiring terms and conditions shall not constitute a refusal to renew.

#### L. Notices

Any notices required to be given by the **Insured** shall be submitted in writing to the **Company** or the **Company's** authorized representative at the address specified in the Declarations page. If mailed, the date of mailing of such notice shall be deemed to be the date such notice was given and proof of mailing shall be sufficient proof of notice.

#### M. Bankruptcy

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the **Company** of its obligations under this Policy.

### VII. EXTENDED REPORTING PERIODS

As used herein, "**extended reporting period**" means the period of time after the end of the **policy period** for reporting **claims** made against the **Insured** during the applicable **extended reporting period** by reason of a act or omission which occurred after the **retroactive date** and prior to the end of the **policy period** and which is otherwise covered under this Policy.

#### A. Automatic **extended reporting period**

If this Policy is canceled or non-renewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of real estate agents professional liability insurance within sixty (60) days of the termination of this Policy. This automatic **extended reporting period** will terminate after sixty (60) days.

**B. Optional extended reporting period**

If this Policy is canceled or non-renewed by either the **Company** or by the **Named Insured**, then the **Named Insured** shall have the right to purchase an optional **extended reporting period**. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing:

1. written notice to the **Company**; and
2. with the written notice, the applicable additional premium which will be calculated in accordance with the rates and rules in effect on the inception date of this Policy.

The first sixty (60) days of the optional **extended reporting period**, if it is purchased, shall run concurrently with the automatic **extended reporting period**.

**C. Extended Reporting Period Limits of liability**

The **Company's** limit of liability for all **claims** reported during the automatic and optional **extended reporting periods** shall be part of and not in addition to the limits of liability for the **policy period** as set forth in the Declarations and Section III, Limits of Liability of this Policy.

**D. Elimination of right to any extended reporting period**

There is no right to any **extended reporting period** if the **Company** shall cancel or refuse to renew this Policy due to:

1. non-payment of any amounts due under this Policy; or
2. non-compliance by the **Insured** with any of the terms and conditions of this Policy; or
3. any misrepresentation or omission in the application for this Policy.

**E. Extended reporting period not a new policy**

It is understood and agreed that the **extended reporting period** shall not be construed to be a new policy and any **claim** submitted during such period shall otherwise be governed by this Policy.

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**VIII. ECONOMIC AND TRADE SANCTIONS CONDITION**

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In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void from its inception with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any **Insureds**, or any person or entity claiming the benefits of an insured, who is or becomes a **Specially Designated National** or **Blocked Person** or who is otherwise subject to U.S. economic or trade sanctions;
2. Any **claim** that is brought in a **Sanctioned Country** or by a **Sanctioned Country** Government, where any action in connection with such **claim** is prohibited by U.S. economic or trade sanctions;
3. Any **claim** that is brought by any **Specially Designated National** or **Blocked Person** or any person or entity who is otherwise subject to U.S. economic or trade sanctions;

4. Property that is located in a **Sanctioned Country** or that is owned by, rented to or in the care, custody or control of a **Sanctioned Country** Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody or control of a **Specially Designated National** or **Blocked Person**, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used herein a **Specially Designated National** or **Blocked Person** is any person or entity that is on the list of **Specially Designated Nationals** and **Blocked Persons** issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used herein a **Sanctioned Country** is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

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## IX. SERVICE OF SUIT

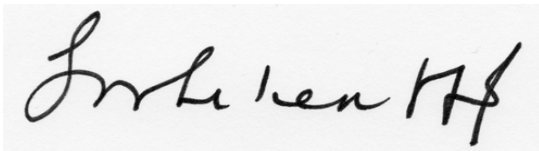
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In the event of the failure of the **Company** to pay any amount claimed to be due hereunder, the **Company**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

Service of process in such suit may be made upon the General Counsel, CNA Plaza, Chicago Illinois 60685 and that in any suit instituted against such person upon this Policy, the **Company** will abide by the final decision of such court or of any appellate court in the event of an appeal.

The General Counsel is authorized and directed to accept service of process on behalf of the **Company** in any such suit and, upon the request of the **Insured**, to give a written undertaking to the **Insured** that he will enter a general appearance upon the **Company** in the event such suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, provided the **Insured** shall first notify the **Company** of its intention to sue, the **Company** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer as designated in such statute, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy of insurance, and hereby designates the above-named as the person to whom the said officer is authorized and directed to accept service of process on behalf of this **Company** in any such suit.



**Chairman**



**Secretary**

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IN WITNESS WHEREOF, the **Company** has caused this Policy to be executed by the **Company's** Chairperson and Secretary, but this Policy shall not be binding upon the **Company** unless completed by the attachment of the Declarations and executed by the **Company's** duly authorized representative.