



REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS POLICY – NEW YORK

THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MUST BE REPORTED IN ACCORDANCE WITH SECTION VII.B. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Throughout this Policy, the terms “we”, “us” and “our” refer to the Insurance Company listed on the Declarations as providing this Insurance. Other words and phrases that appear in bold have the meaning set forth in Section V. DEFINITIONS. Refer to Section V. DEFINITIONS.

I. INSURING AGREEMENT

A. Indemnity

We will pay on behalf of the **Insured** 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** by reason of an act or omission in the rendering of **professional real estate services** by the **Insured**, or by any person for whom the **Insured** is legally liable, provided that:

1. such act or omission in the rendering of **professional real estate services** 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 such act or omission, or **related acts or omissions**, 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**.

B. Defense

We shall have the right and duty to defend a **claim** even if any of the allegations of the **claim** are groundless, false or fraudulent. We shall have the right to appoint counsel and to make such investigation, settlement and defense of a **claim** as is deemed necessary by us. If a **claim** is submitted to arbitration or mediation, we shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of an arbitration or mediation proceeding.

We shall not settle a **claim** without the **Insured's** consent. If the **Insured** refuses to consent to a settlement or compromise recommended by us and acceptable to the claimant, then our 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 we made our recommendation, which amount shall not exceed the remainder of the limit of liability specified in Section III. LIMITS OF LIABILITY/DEDUCTIBLE, Paragraph B. Limit of Liability – each **claim**.

We are not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of our liability has been exhausted by payment of **damages**. In



such case, we shall have the right to withdraw from the further investigation, defense, or settlement of such **claim**.

If we conclude that the limit of liability applicable to a **claim** may become exhausted prior to the conclusion of any **claim**, we will notify **you**, in writing, to that effect. When the limit of liability applicable to a **claim** has actually been exhausted prior to the conclusion of the **claim**, we will notify **you**, in writing, as soon as practicable, that such limit has been exhausted and that our duty to defend such **claim** and any other **claim** has ended.

We will initiate, and cooperate in, the transfer of control to **you**, of any **claims** which were subject to that limit of liability and which were reported to us prior to the exhaustion of such limit. The **Insureds** must cooperate in the transfer of control of such **claims**.

We agree to take the necessary steps as we deem appropriate to avoid a default in, or continue the defense of, such **claims** until such transfer has been completed, provided that the **Insureds** are cooperating in completing such transfer. **You** must reimburse us for expenses we incur in taking those steps we deem appropriate to avoid a default in, or continuing the defense of, any **claim**.

We will not take any action with respect to any **claim** that would have been subject to such limit of liability, had it not been exhausted, if the **claim** is reported to us after that limit has been exhausted.

The exhaustion of any limit by payment of any **claim**, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the terms and conditions of this provision.

II. SUPPLEMENTARY PAYMENTS

Payments made under this section are not subject to the deductible and are in addition to the limit of liability shown on the Declarations.

A. Loss of Earnings

We will pay up to \$500 for loss of earnings to each **Insured** for each day or part of a day such **Insured** is in attendance, at our request, at a trial, hearing or arbitration proceeding involving a **claim** against such **Insured**. In no event shall the amount payable hereunder exceed \$15,000 per **policy period** regardless of the number of **Insureds** or **claims**.

B. Licensing Proceedings

We will pay on behalf of the **Insured** up to \$15,000 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 first received by the **Insured** 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 \$15,000 per proceeding and \$30,000 per **policy period** regardless of the number of **Insureds** or the number of such proceedings.



C. Subpoena Assistance

If during the **policy period**, the **Insured** receives a subpoena for documents or testimony arising out of **professional real estate services** and the **Insured** requests, in writing, our assistance in responding to the subpoena and provides to us a copy of the subpoena during the **policy period**, then we 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:

1. the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
2. 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.

D. Public Relations

We will reimburse **you** up to \$15,000 per **public relations event**, subject to a maximum of \$50,000 per **policy period**, for reasonable **public relations expenses** incurred by **you** for advisory services provided by a public relations firm to **you** as a result of a **public relations event** which occurs during the **policy period**.

E. Pre-claims Assistance

Until the date a **claim** is made, we may pay for all costs or expenses we incur, at our sole discretion, as a result of investigating a potential **claim** that the **Insured** reports in accordance with Section VII. CONDITIONS, Paragraph B. Notice of **claims** and potential **claims**, subparagraph 2.

F. Privacy Response

We will pay up to \$20,000 for expenses incurred by the **Insured** during the **policy period** to:

1. hire a computer forensics firm to investigate the existence and cause of any computer or **network security breach** and to determine the extent of any unauthorized release or use of **confidential commercial information** or **non-public personal information**; and
2. provide notification to individuals or entities whose **confidential commercial information** or **non-public personal information** may have been disclosed or used in an unauthorized manner; provided that:
 - a. the **Insured** first discovers such breach, unauthorized use or disclosure during such **policy period**;
 - b. the **confidential commercial information** or **non-public personal information** was gathered in the course of rendering **professional real estate services**; and
 - c. such notification is required to effect compliance with a **security breach notice law**.

III. LIMITS OF LIABILITY/DEDUCTIBLE

A. **Claim expenses** in addition to limits of liability

We shall pay **claim expenses** in connection with covered **claims**. **Claim expenses** are in addition to the limit of liability.



B. Limit of liability - each **claim**

Subject to paragraph C. below, our limit of liability for **damages** for each **claim** shall not exceed the amount stated in the Declarations for “each **claim**”.

C. Limit of liability - in the aggregate

Our limit of liability for **damages** for all **claims** shall not exceed the amount stated in the Declarations as the “aggregate”.

D. Discrimination Limit of Liability – **damages**

The Discrimination Limit of Liability, as set forth in the Declarations, is applicable to **damages** with respect to each **Discrimination Claim** and to all **Discrimination Claims**. The Discrimination Limit of Liability is a sublimit included within and not in addition to the limits of liability shown on the Declarations. Such sublimit is subject to the deductible.

E. Deductible

The deductible amount stated in the Declarations is the total amount of the **Insured's** obligation for each **claim** (other than a **lockbox claim**) and applies to the payment of **damages**. The deductible shall be paid by **you**, or upon **your** failure to pay, jointly and severally by all **Insureds**. 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.

F. Multiple **Insureds, claims** and claimants

The limit of liability shown in the Declarations is the maximum amount we will pay as **damages** regardless of the number of **Insureds, claims** made or persons or entities making **claims**.

G. **Related Claims**

If **related claims** are subsequently made against the **Insured** and reported to us during this **policy period** or any renewal policy period then all such **related claims** shall be considered a single **claim** first made within the **policy period** in which the earliest of the **related claims** was first made.

IV. RISK MITIGATION INCENTIVE

A. Consent Credit

If the **Insured** promptly consents to settle a **claim** when we first ask for their consent then, upon **your** written request, the deductible for which the **Insured** is then liable will be reduced by 25% up to a maximum of \$250 per **claim**. **Your** written request must be received within 90 days of such settlement.



B. Deductible Waiver

The **Insured's** obligation to pay the deductible amount stated in the Declarations shall be waived, for an amount not to exceed \$5,000, if the following conditions are met and evidence of such is provided to us when notice of a **claim** is received:

1. a seller disclosure form was signed by the seller and acknowledged by the buyer prior to closing;
2. a home warranty policy was purchased prior to closing;
3. either
 - a. a home inspection was completed and a copy was provided to the buyer prior to closing; or
 - b. if **you** act solely as the buyer's agent a statement outlining the reasons a home inspection should be completed and a list of at least three home inspection companies was provided to such buyer prior to the closing; and
4. a state or local board approved standard sales contract was utilized.

The obligation to pay the deductible will not be waived if any **Insured** individually acted as both the buyer's and seller's agent in the transaction which gives rise to the **claim**.

C. Mediation Incentive

If mediation of a **claim** takes place either without institution of arbitration proceedings or service of suit or within 180 days of the institution of such proceedings or service of suit, and such **claim** is ultimately resolved by the process of mediation, the deductible applying to the **claim** will be reduced by 50% or \$25,000, whichever is less.

In the event that one **claim** is eligible for more than one Risk Mitigation Incentive, then **you** shall receive the benefit of the highest deductible credit. In no way shall this section be construed to afford more than one Risk Mitigation Incentive per **claim**.

V. DEFINITIONS

Bodily Injury means bodily injury, sickness or disease and death and includes mental injury, mental anguish, mental tension, emotional distress, pain, suffering or shock sustained by any person, whether or not resulting from injury to the body.

Circumstance means an act or omission from which an **Insured** reasonably expects that a **claim** could be made.

Claim means a demand, including the service of suit or the institution of an arbitration proceeding received by the **Insured** for money or services, including a demand alleging **personal injury**, arising out of an act or omission in the rendering of **professional real estate services**. 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. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**;

Claim also means **privacy claims** and **client network damage claims**.

Claim Expenses means:

- A. fees charged by attorneys designated by us; and
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by us, or by the **Insured** with our written consent.

Claim expenses do not include fees, costs or expenses of independent adjusters or salaries of our officials or employees, other than fees, costs and expenses charged by our employed attorneys who may be designated to represent the **Insured**.

Claims-made Relationship means that period of time between the effective date of the first claims-made policy between us and **you** and the cancellation or nonrenewal of the last consecutive claims-made policy between us and **you**, where there has been no gap in coverage, but does not include any period covered by "extended reporting period" coverage.

Client Network Damage Claim means a demand, including the service of suit or the institution of an arbitration proceeding, received by the **Insured** for money or services alleging that a **security breach** or **electronic infection** caused **network damage** to a client's **network** in the rendering of **professional real estate services**.

Computer Virus means unauthorized computer code that is designed and intended to transmit, infect and propagate itself over one or more **networks**, and cause:

- A. a computer code or programs to perform in an unintended manner;
- B. the deletion or corruption of electronic data or software; or
- C. the disruption or suspension of a **network**.

Confidential Commercial Information means information that has been provided to the **Insured** by another, or created by the **Insured** for another where such information is subject to the terms of a written confidentiality agreement or equivalent obligating the **Insured** to protect such information on behalf of another.

Construction Manager means a person providing the following services in connection with the construction, reconstruction and renovation of real property:

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

Damages mean judgments, awards and settlements, provided any settlement is made with our 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; or
- G. plaintiff's attorneys fees associated with any of the above.

Denial of Service Attack means an attack executed over one or more **networks** or the **internet** that is specifically designed and intended to disrupt the operation of a **network** and render a **network** inaccessible to authorized users.

Discrimination Claim means a **claim** based on or arising out of **wrongful discrimination**.

Domestic Partner means any person qualifying as such under any federal, state or local laws or under **your** employee benefit plan or employee benefits program.

Electronic Infection means the transmission of a **computer virus** to a **network**, including without limitation, such transmission to or from **your network**.

Electronic Information Damage means the destruction, deletion or alteration of any information residing on the **network** of any third party.

Guaranteed Sale Listing Contract means a written agreement between **you** and the seller of a property, in which **you** agree 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 us 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 **you** and any of the persons or entities listed below but only while rendering **professional real estate services** on **your** behalf for others:

- A. any person who is or becomes **your** partner, officer, director, employee, member, or independent contractor during the **policy period**;
- B. any person previously affiliated with **you** as **your** partner, officer, director, employee, member or independent contractor;
- C. any personal assistant of an **Insured** as set forth in A or B., above, but only while rendering **professional real estate services** on behalf of such individual **Insured**;
- D. any **subsidiary** and **newly acquired subsidiary**.

Insured also means any real estate corporation of which **you** are a franchisee, but only as respects such real estate corporation's liability for acts or omissions of an **Insured** in the rendering of **professional real estate services**.



Internet means the worldwide public **network** of computers as it currently exists or may be manifested in the future, but **internet** does not include **your network**.

Lock Box means a keyless entry system or similar device used to gain access when showing properties.

Lock Box Claim means a **claim** alleging **property damage** or **bodily injury**, arising out of the **Insured's** maintenance, operation, or use of a **lock box** in providing **professional real estate services** on property not owned, occupied by, or leased to the **Insured**.

Mortgage broker means a person or entity that originates commercial or residential real estate mortgage loans in the primary or secondary market.

Network means a party's local or wide area network owned or operated by or on behalf of or for the benefit of that party; provided, however, **network** shall not include the **internet**, telephone company networks, or other public infrastructure network.

Network Damage means:

- A. the unscheduled and unplanned inability of an authorized user to gain access to a **network**;
- B. **electronic information damage**; or
- C. the suspension or interruption of any **network**;

Newly Acquired Subsidiary means any entity of which **you** acquire, through acquisition, merger or formation, during the **policy period**, more than a 50% interest in such entity, but only upon the conditions that:

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

On the date during the **policy period** that **your** 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.

Non-Public Personal Information means personal information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.

Open House means an advertised designated time period where multiple potential buyers have the opportunity to view the specific property that is listed for sale by the **Insured** while in the care, custody or control of the **Insured**.

Open House Claim means a **claim** alleging that **property damage** occurred as a result of an act or omission during an **open house**.

Personal Injury is 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 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.

Privacy Claim means a demand, including the service of suit or the institution of an arbitration proceeding, received by the **Insured** for money or services and alleging **privacy injury and identity theft** that occurred in the rendering of **professional real estate services**.

Privacy Injury and Identity Theft means any unauthorized disclosure of, inability to access, or inaccuracy with respect to **non-public personal information** in violation of any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity or accessibility of **non-public personal information**, including but not limited, to the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, or the EU Data Protection Act.

Professional Real Estate Services means those services rendered by an **Insured** for others as a:

- A. real estate agent;
- B. real estate broker;
- C. real estate personal assistant, real estate appraiser, **property manager**, real estate leasing agent, **short term escrow agent**, **mortgage broker** or auctioneer of real property, provided that all necessary licenses or certifications are held by the **Insured** at the time of the act or omission giving rise to the **claim**;
- D. expert witness or real estate consultant or counselor provided such services are limited to the areas specified in paragraphs A. through C. of this definition; or
- E. notary public; or member of a formal real estate accreditation, standards review or similar real estate board or committee.

Services as a **construction manager** are not **professional real estate services**.

Property Damage means:

- A. physical injury to tangible 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 or theft of tangible property that is not physically damaged.

Property Manager means a person or entity providing the following services in connection with the management of commercial or residential property:

- A. development and implementation of management plans and budget;
- B. oversight of physical maintenance of property by others, 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. development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of the property; or
- F. personnel administration and record keeping in connection with a managed property;

Property manager does not include a **construction manager**.

Public Relations Event means:

- A. departure, incapacitation, illness or death of a partner, member, officer, director, or sole proprietor-owner of **yours**;
- B. **your** dissolution for any reason other than bankruptcy;
- C. violent act, kidnapping, sexual assault, criminal firearm use, or workplace accident resulting in negative local or national media coverage of **you**.

Public Relations Expenses means reasonable fees and expenses incurred by **you** for advisory services provided by a public relations firm to **you** for up to 60 days following a **public relations event**.

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 real estate services**.

Related Acts or Omissions mean all acts or omissions in the rendering of **professional real estate services** that are logically or causally connected by any common fact, **circumstance**, situation, transaction, event, advice or decision.

Residential Property means a one to four family dwelling.

Security Breach means the failure of **your network** hardware, software, firmware, the function or purpose of which is to:

- A. identify and authenticate parties prior to accessing the **your network**;
- B. control access to **your network** and monitor and audit such access;
- C. protect against **computer viruses**;
- D. defend against **denial of service attacks** upon the **Insured** or unauthorized use of the **Insured's network** to perpetrate a **denial of service attack**; or,
- E. ensure confidentiality, integrity and authenticity of information on the **Insured's network**.

Security Breach Notice Law means any statute or regulation that requires an entity that maintains **confidential commercial information** or **non-public personal information** to provide notice to specified individuals of any actual or potential unauthorized disclosure or potential disclosure of such information.

Seller's Real Property Disclosure Statement means a written disclosure of the known condition of the **residential property** by the seller, including the existence of past or present environmental hazards.

Subsidiary means any entity in which **you** own, either directly or indirectly, more than a 50% interest, and such entity is listed on the application for this Policy. On the date during the **policy period** when **your** ownership interest in such entity 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 under this Policy will continue, but only with respect to acts or omissions committed prior to such date and in accordance with all other terms and conditions of this Policy.

Short Term Escrow Agent means an **Insured** who, in connection with the sale or purchase of real estate, receives or holds funds in, or distributes funds from, a separately held escrow or trust account where all such funds are to be fully distributed within twelve months from the date received.

Termination of Coverage means, whether made by us or **you** at any time:

- A. cancellation or nonrenewal of a policy; or
- B. decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Insured**.

Totally and Permanently Disabled means that an **Insured** is so disabled as to be wholly prevented from rendering **professional real estate services** provided that such disability:

- A. has existed continuously for not less than six (6) months; and
- B. is reasonably expected to be continuous and permanent.

Unauthorized Access means any accessing of information in the **Insured's** care, custody or control by unauthorized persons or by authorized persons accessing or using such information in an unauthorized manner. **Unauthorized access** also includes:

- A. theft from the **Insured** of any information storage device used by the **Insured** to:
 - 1. store and retrieve information on the **Insured's network**; or
 - 2. transport information between the **Insured** and authorized recipients;
- B. any unauthorized use by the **Insured** of information in the **Insured's** clients' care, custody or control if accessed by the **Insured** in the course of rendering **legal services**.

You, Your and **Yours** refer to the persons and entities designated as Named Insured in the Declarations.

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.

VI. EXCLUSIONS

We will not defend or pay any **claim**:

A. **Bodily Injury**

based on or arising out of any actual or alleged **bodily injury**, except that this exclusion shall not apply to a **lock box claim**;

B. **Property Damage**

based on or arising out of any actual or alleged **property damage**, except that this exclusion shall not apply to:

- 1. a **lock box claim**;



2. an **open house claim**;

C. Conversion

based on or arising out of any actual or alleged failure to pay or collect money held for others or any conversion, commingling, defalcation, misappropriation or improper use of funds or other property;

D. Misappropriation of ideas

based on or arising out of any actual or alleged misappropriation of ideas, information or materials; improper gaining or misuse of confidential or proprietary information, materials or trade secrets; interference with actual or prospective business relationships, contracts or contractual relationships or unfair competition;

E. **Pollutants**

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

1. any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or
2. any actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of; or
3. any 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 or assess the effects of;

pollutants.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **damages** claimed. However, this exclusion does not apply to any **claim** against an **Insured** based on or arising out of the **Insured's** failure, in any way, to advise of the existence of **pollutants**;

F. Sale of business

based on or arising out of any actual or alleged sale or purchase or attempted sale or purchase of a business, except that this exclusion does not apply to that portion of a **claim** which relates to the purchase, sale or leasing of real property;

G. Value of business or future value of property

based on or arising out of:

1. any promises, warranties, or guarantees made by an **Insured** as to the future value or future income of any property; or
2. the valuation or performance of a business in conjunction with any property that is sold;

H. **Insured vs. Insured**

by or on behalf of any **Insured** against any other **Insured**;

I. Property Syndication or Real Estate Investment Trust



based on or arising out of any actual or alleged formation, syndication, operation or administration of any property syndication, real estate investment trust or any other form of corporation, general or limited partnership or joint venture formed for the purpose of investing in, buying, selling, or maintaining real property;

J. Owned, constructed, developed and purchase of property

based on or arising out of any actual, alleged or attempted: purchase by; sale, leasing, or appraisal of property developed, constructed or owned by:

1. any **Insured**;
 2. any entity in which the **Insured** had a financial or a contemplated financial interest;
 3. any entity with a financial interest or contemplated financial interest in **you**; or
 4. any entity under the same financial control as **you**;
- provided that such financial interest, contemplated financial interest, or financial control existed at the time of the act or omission giving rise to the **claim**;

This exclusion does not apply to:

- a. the actual or attempted sale of real property that the **Insured** did not construct or develop and in which the combined ownership interest of all **Insureds** at the time of such sale was less than 25%; or
- b. the leasing of real property in which the combined ownership interest of all **Insureds** was less than 50% at the time of the **professional real estate services** rendered; or
- c. the actual or attempted sale, leasing, or property management of the **Insured's residential property** by another **Insured** who is not the owner of such residential property; or
- d. the sale of **residential property** by an **Insured** who is the owner of such **residential property** and all of the following conditions are met in connection with such sale:
 - (i) a written Home Inspection Report is issued by a licensed or accredited home inspector, or was waived in writing by the buyer prior to closing;
 - (ii) a home warranty policy was purchased prior to or at closing;
 - (iii) a seller disclosure form was signed by the **Insured** and acknowledged in writing by the buyer prior to closing;
 - (iv) the **insured's** ownership interest in the property was disclosed in writing; and
 - (v) a state or local board approved standard sales contract was utilized; or
- e. the actual or attempted sale of real property 100% owned by **you** if the property was acquired by **you** under a written **guaranteed sale listing contract**, and from acquisition to resale the title to the property was held by **you** for less than twelve months, and the property was continually offered for sale by **you**;

K. Securities **Claims**

based on or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;



L. Failure to maintain insurance

based on or arising out of any actual or alleged:

1. failure to effect or maintain any insurance, financing or bond;
2. failure to advise of the need for adequate amount or type of insurance, financing or bond;

M. Other interests, operations or activities

based on or arising out of the **Insured's** actual or alleged interests, operations, or activities as an insurance agent, insurance broker, lawyer, mortgage banker, asset manager, investment manager, title agent, title abstractor, **construction manager**, property developer or any other profession for which a license is required;

N. Violation of Law

based on or arising out of any:

1. charges of price fixing, restraint of trade, monopolization or unfair trade; or
2. actual or alleged violation of:
 - a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust law, monopoly, price fixing, price discrimination, predatory pricing, or restraint of trade;
 - b. Telephone Consumer Protection Act (TCPA) 47 U.S.C. Section 227 Federal Communications Commission (FCC) rules prohibiting facsimile, electronic mail or any other means of communication;
 - c. any rules or regulations promulgated under or in connection with the above statutes; or
 - d. any similar provision of any state, federal or local statutory law or common law;

O. Contractual Liability

based on or arising out of an **Insured's** alleged liability under any oral or written contract or agreement, unless such liability would have attached to any **Insured** in the absence of such agreement.

P. Lead

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

1. any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of;
2. any actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of; or
3. any 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 or assess the effects of;

lead.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **damages** claimed. However, this exclusion does not apply to any **claim** against an **Insured** based on or arising out of the **Insured's** failure, in any way, to advise of the existence of lead.



Q. Discrimination other than vicarious liability or disparate impact

based on or arising out of any actual or alleged **wrongful discrimination**; provided, however, that this exclusion shall not apply to:

1. an **Insured's** vicarious liability for the **wrongful discrimination** of others; or
2. an **Insured's** acts or omissions which result in disparate impact **wrongful discrimination**.

R. Asbestos

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

1. any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or
2. any actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of; or
3. any 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 or assess the effects of;

asbestos.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **damages** claimed. However, this exclusion does not apply to any **claim** against an **Insured** based on or arising out of the **Insured's** failure, in any way, to advise of the existence of asbestos.

S. Radon

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

1. any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of; or
2. any actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of; or
3. any 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 or assess the effects of;

radon.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **damages** claimed. However, this exclusion does not apply to any **claim** against an **Insured** based on or arising out of the **Insured's** failure, in any way, to advise of the existence of radon.

VII. CONDITIONS

A. Territory



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

B. Notice of **claims** and potential **claims**

1. The **Insured**, as a condition precedent to our obligations, must give written notice to us or our licensed agent as soon as reasonably practicable of any **claim** made against the **Insured** during the **policy period** or any subsequent renewal policy period, or prior to the expiration of the “extended reporting period”, if applicable. This condition will not be a barrier to coverage for those **Insureds** who do not have personal knowledge of a **claim**.

Failure of the **Insureds** to give timely notice shall not prevent the **Insureds** from exercising their rights under this policy if such notice is given as soon as reasonably possible, and unless such failure has prejudiced us.

With respect to a **claim** arising out of the **bodily injury** of any person, if we disclaim liability or deny coverage based upon the **Insured’s** failure to provide timely notice, then the injured person or other claimant may maintain an action directly against us, in which the sole question is our disclaimer or denial based on the failure to provide timely notice, unless within sixty (60) days following such disclaimer or denial, the **Insured** or the Insurer:

- a. initiates an action to declare the rights of the parties under the policy; and
- b. names the injured person or other claimant as a party to the action.

2. If during the **policy period**, the **Insured** gives us or our licensed agent notice of a **circumstance** 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**,then any **claim** that is both made against the **Insured** and reported to us 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 us.

C. Assistance and Cooperation

1. The **Insured** shall cooperate with us and upon our 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 **Insureds** 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.

D. Legal Action Limitation

1. The **Insureds** agree not to bring a legal action against us concerning this Policy unless they have fully complied with all the provisions of this Policy; and the **Insured’s** obligation to pay shall have



been determined either by judgment against the **Insured** or by written agreement of the **Insured**, the claimant and us.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join us as a party to any action against an **Insured**, nor shall we be impleaded by the **Insured** or his legal representative.

2. If, after the final adjudication or settlement of a **claim**, there is any dispute concerning tort allegations against us regarding the handling or settlement of any **claim**, we and the **Insureds** agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should we 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.

E. Changes to **your** business, Acquisitions and Mergers

1. **You** must provide prior notice to us of the following events:
 - a. material or significant changes to the type or volume of the **professional real estate services** reported to us in **your** application.
 - b. acquisition of **you** by another entity;
 - c. **your** merger with another entity;
 - d. the acquisition of all or substantially all of **your** assets by another entity; or
 - e. the acquisition of all or substantially all of the assets of another entity by **you**.
2. Upon receipt of such notice, we may:
 - a. adjust the premium to reflect the added exposure; or
 - b. 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.

F. Other insurance

This Policy shall be specifically 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.

G. Subrogation

In the event of any payment, we shall be subrogated to all of the **Insured's** rights of recovery against any person or organization. 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.

H. Cancellation/Nonrenewal

The Cancellation/Nonrenewal provisions are as set forth in the Cancellation/Nonrenewal Endorsement attached to this Policy.



I. Changes to Policy

Notice to any of our agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this Policy. It also will not prevent us from asserting any rights under the provisions of this Policy. None of the provisions of this Policy will be waived, changed or modified except by written endorsement to this Policy.

J. Examination of **Your** Books and Records

We may examine, audit and make copies of **your** books and records at any time during the **policy period** and up to three years afterward.

K. Transfer of Interests

For a transfer of interest or an assignment of this Policy to be effective, the first of **you** named on the Declarations must obtain our written consent.

L. Entire Contract

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

1. all of the information and statements provided to us by the **Insured** are true, accurate and complete;
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 us (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and us and shall constitute the entire contract between the **Insured** and us; 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 us 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. A misrepresentation or omission shall be deemed material if knowledge by us of the facts misrepresented or omitted would have led to a refusal by us to issue this Policy.

M. Sole Agent/Notices

The first of **you** named on the Declarations shall be the sole agent of all **Insureds** for the purposes of effecting or accepting any notices hereunder, any amendments to or cancellation of this policy, for the completing of any applications, for the payment of any premium and the receipt of any return premium that may become due, and the exercising or declining to exercise any right under this policy.

Any notices required to be given by the **Insured** shall be submitted in writing to us or our authorized agent at the address specified in the Declarations. 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.

N. Bankruptcy

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

O. Estates, Legal Representatives and Spouses



The estates, heirs, legal representatives, assigns, spouses and any **domestic partners** of the **Insured** shall also be insured under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **domestic partners** only for **claims** arising solely out of their status as such and, in the case of a spouse or **domestic partner**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from the **Insured** to the spouse or **domestic partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or **domestic partner**. All terms and conditions of this Policy, including without limitation the retention, applicable to **damages** and **claim expenses** incurred by the **Insured**, shall also apply to **damages** and **claim expenses** incurred by such estates, heirs, legal representatives, assigns, spouses and **domestic partners**.

P. Trade and Economic Embargoes

This policy does not provide coverage for **Insureds**, transactions or that part of **damages** or **claims expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

Q. Liberalization

If we adopt any revision that would broaden coverage under this policy form without additional premium at any time during the **policy period**, the broadened coverage will immediately apply to this Policy except that it will not apply to **claims** that were first made against the **Insured** prior to the effective date of such revision.

VIII. EXTENDED REPORTING PERIODS

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

- A. The provisions of the "extended reporting period" coverage will not apply, except for the sixty (60) day automatic "extended reporting period", if the **claims-made relationship** has been less than one year and this Policy has been terminated for nonpayment of premium or fraud.
- B. In the event of **termination of coverage**, or if this Policy is renewed under terms and conditions less favorable to **you** than those contained in the preceding policy, a sixty (60) day automatic "extended reporting period" will be granted to **you** at no charge in which any **claim** reported will be considered as having been made before the termination date of this Policy. Upon **termination of coverage**, the aggregate limit of liability for this automatic "extended reporting period" shall be equal to the amount remaining in this Policy's annual aggregate liability limit.
- C. Within thirty (30) days after termination, we will notify **you**, in writing, of the automatic sixty (60) day "extended reporting period". We will also notify **you** of the availability of, the premium for, and the importance of purchasing, an additional "extended reporting period". If the **claims-made relationship** has been in effect for one year or more, and if this Policy has been terminated for nonpayment of premium or fraud, we shall not be required to provide a premium quotation unless requested by **you**.
- D. **You** shall have the greater of sixty (60) days from the effective date of **termination of coverage** or thirty (30) days from the date of mailing or delivery of the advice of the availability to purchase additional "extended reporting period" coverage, to submit written acceptance of the "extended



reporting period" coverage. The premium for such additional "extended reporting period" must be paid promptly when due. The premium shall be fully earned at the inception of this endorsement.

- E. If **you** have been placed in receivership, liquidation or bankruptcy, or permanently cease operations, then anyone qualifying as an **Insured** has the right to an "extended reporting period" coverage issued in the name of **you** for the benefit of all **Insureds**. The request for such "extended reporting period" coverage must be made within one hundred and twenty (120) days of the **termination of coverage**.
- F. Only one such "extended reporting period" coverage endorsement shall be issued and the "extended reporting period" for such coverage shall be one year or three years. This period includes the automatic sixty (60) day period specified in Item C. above.
- G. The additional premium for the additional "extended reporting period" shall be based upon the rates for such coverage in effect on the date this Policy was issued or last renewed and shall be for one (1) year at 50% of such premium; or three (3) years at 130% of such premium.
- H. Upon **termination of coverage**:
 - 1. any return premium due **you** shall be credited toward the premium for the additional "extended reporting period" coverage if **you** elect such coverage.
 - 2. where premium is due to us for coverage during the **claims-made relationship**, any monies received by us from **you** as payment for the "extended reporting period" coverage shall first be applied to such premium owing for this Policy.
- I. Limits of liability for such additional "extended reporting period" shall be:
 - 1. at least equal to 100 percent of the policy's annual aggregate limit where a **claims-made relationship** has continued for three years or more; or
 - 2. if the **claims-made relationship** has continued for less than three years, the limit of liability shall be at least equal to the greater of:
 - a. the amount of coverage remaining in such policy's annual aggregate liability limit, or
 - b. 50 percent of such policy's annual aggregate liability limit.
- J. Death or Disability "extended reporting period"
 - 1. If an **Insured** dies or becomes **totally and permanently disabled** during the **policy period**, then upon the latter of the expiration of: the **policy period**; any renewal or successive renewal of this policy; or any automatic or optional "extended reporting period", such **Insured** shall be provided with a death or disability "extended reporting period" as provided below.
 - a. In the event of death, such **Insured's** estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the **policy period**, provide us with written proof of the date of death. This death or disability "extended reporting period" is provided to the estate, heirs, executors and administrators of such **Insured**.
 - b. If an **Insured** becomes **totally and permanently disabled**, such **Insured** or **Insured's** legal guardian must, within sixty (60) days of the expiration of the **policy period**, provide us with written proof that such **Insured** is **totally and permanently disabled**, including the date the disability commenced, certified by the **Insured's** physician. We retain the right to contest the certification made by the **Insured's** physician, and it is a condition precedent to this coverage that the **Insured** agree to submit to medical examinations by any physician designated by us at our expense.



- c. This death or disability “extended reporting period” is provided until such **Insured** shall no longer be **totally or permanently disabled** or until the death of such **Insured**, in which case subparagraph a. hereof shall apply.
2. No additional premium will be charged for any death or disability “extended reporting period”.
3. There is no right to exercise the death or disability “extended reporting period” if, prior to the **Insured’s** death or disability, the **Insured’s** license to perform **professional real estate services** has been revoked, suspended or surrendered at the request of any regulatory authority, or if the **Insured** is the subject of a disciplinary investigation or proceeding during the **policy period**.

K. Non-practicing “extended reporting period”

1. If a designated principal, partner, or owner of **you** retires or otherwise voluntarily ceases, permanently and totally, performing **professional real estate services** during the **policy period** and has been continuously insured by us for at least five consecutive **policy periods**, then such **Insured** shall be provided with a Non-practicing “extended reporting period” commencing upon the latter of the expiration of: the **policy period**; any renewal or successive renewal of this Policy; or any automatic or optional “extended reporting period”.
2. This “extended reporting period” is provided until such **Insured** shall resume performing **professional real estate services** or until the death of such **Insured** in which case subparagraph J.1.a. hereof shall apply.
3. We will issue a Non-practicing “extended reporting period” only if:
 - a. **you** request, in writing from us, an endorsement providing such Non-practicing “extended reporting period” no more than sixty (60) days after the date of retirement or sixty (60) days after the end of the **policy period**, whichever is earlier. Such request must include a written confirmation of retirement of such designated principal, partner, or owner of **you**; and
 - b. **you** have paid all premium and deductibles due for this policy at the time the designated principal, partner or owner requests a Non-practicing “extended reporting period” endorsement.
4. No additional premium will be charged for any Non-practicing “extended reporting period”.
5. There shall be no right to the Non-practicing “extended reporting period” if the **Insured’s** license to practice **professional real estate services** has been revoked, suspended or surrendered at the request of any regulatory authority, or if the **Insured** is the subject of a disciplinary investigation or proceeding during the **policy period**.

L. Death or Disability “extended reporting period” and Non-practicing “extended reporting period” limits of liability

Our limit of liability for all **claims** reported during any Death or Disability “extended reporting period” or Non-practicing “extended reporting period” 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/DEDUCTIBLE of this Policy.



IX. HEADINGS

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IN WITNESS WHEREOF, we have caused this Policy to be executed by our Chairperson and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations and executed by our duly authorized representative.

Chairman

Secretary

SPECIMEN