



For All the Commitments You Make®

# REAL ESTATE AGENTS Errors and Omissions Liability Policy

## NOTICE

**YOUR INSURANCE IS WRITTEN ON A “CLAIMS-MADE” BASIS AND ONLY APPLIES TO THOSE CLAIMS FIRST MADE AGAINST YOU WHILE THIS INSURANCE IS IN FORCE. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST YOU BEFORE THE BEGINNING OR AFTER THE END OF THE POLICY PERIOD UNLESS AND TO THE EXTENT AN EXTENSION OF COVERAGE APPLIES.**

We are the stock insurance company named on the Declarations. We agree with **you** as follows:

## I. COVERAGE AGREEMENTS

- A. We will pay all amounts in excess of the deductible, up to our limit of liability, which **you** become legally obligated to pay as a result of a **wrongful act** by **you** or by an entity for whom **you** are legally liable, provided that on the First Coverage Date shown on the Declarations **you** did not know and could not have reasonably expected that **claim** would be made. We will also pay **claim expenses** in addition to our limit of liability.
- B. **Claim** must be first made during the **policy period**.
- C. We have the right and will defend any **claim**. We will:
  - 1. do this even if any of the charges of the **claim** are groundless, false or fraudulent;
  - 2. investigate any **claim** as we feel appropriate.
- D. We will not settle any **claim** without **your** consent. If we recommend a settlement to **you** which is agreeable to the claimant and **you** do not agree, our limit of liability is reduced to the total of the amount for which the **claim** could have been settled plus the amount of **claim expenses** up to the time we made the recommendation.
- E. Our payment of the limit of liability ends our duty to defend or pay **claims** or **claims expenses**.
- F. We have no duty to defend any **claim** not covered by this policy.

## II. EXCLUSIONS

We will not defend or pay under this policy for:

- A. any direct, consequential or vicarious injury;  
  
Injury means bodily injury, sickness, disease, mental or emotional distress sustained by a person. Also included is death at any time as a result.
- B. physical damage directly caused by **you** to tangible property, including all resulting loss of use. This exclusion does not apply to **claims** arising out of **your** distribution, maintenance, operation or use of a lockbox on property not owned by **you**. The limit of liability applicable for lockbox **claims** shall not exceed \$10,000 per **claim**. Lockbox **claims** shall be subject to the Deductible.
- C. any dishonest, fraudulent, criminal or malicious act or omission;
- D. any:
  - 1. conversion, misappropriation, commingling, or defalcation of funds or other property;
  - 2. failure to pay commissions, including finder's fees;
  - 3. inability or failure to pay money held for others;
- E. loss, under any circumstances, due to contamination, nuclear reaction, radiation, including but not limited to radon, regardless of cause;
- F. any fines, penalties, or the return or withdrawal of fees or commissions, or government payments imposed directly upon **you**;
- G. any punitive or exemplary amounts;
- H. any multiplication of amounts payable under this policy imposed by law;

- I. damage **you** expected or intended;
- J. any loss, cost or expense arising out of any:
  - 1. failure to detect, report, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of **pollutants**; or
  - 2. **claim** by or on behalf of a governmental authority for amounts because of **pollution**; or
  - 3. request, demand or order that **you** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollution**;
- K. any loss, cost or expense which would not have happened in whole or in part had there been no **pollution** at any time;
- L. unlawful discrimination;
- M. any **claim** brought by any of **your** past or present partners, officers, stockholders, joint venturers, employees or independent contractors;
- N. any **claim** brought by or on behalf of an investor, shareholder or partner in any corporation, limited or general partnership, real estate investment trust or venture in which **you** have or had a participating interest directly or indirectly in the profits or losses thereof;
- O. any **claim** arising from the purchase of property by, or the sale, leasing or property management of property developed, constructed or owned by:
  - 1. **you**; or
  - 2. any entity in which **you** have a financial interest or has a financial interest in **you**; or
  - 3. any entity coming under the same financial control as **you**.

This exclusion does not apply to **claims** arising from:

  - 1. the sale of **your** primary residence when **you** are not the selling or listing agent; or
  - 2. the sale, leasing or property management of real property in which **your** ownership interest is less than 10%; or
  - 3. the sale of real property owned by **you** if all of the following conditions are met:
    - a. the property was acquired by **you** under a written Guaranteed Sale Listing Contract; and
    - b. from acquisition to resale:
      - (1) the title to the property was held by **you** for less than twelve (12) months; and
      - (2) the property was continually offered for sale by **you**;
- P. actual or alleged violation of:
  - 1. the Employee Retirement Income Security Act of 1974;
  - 2. the Securities Act of 1933;
  - 3. the Securities Exchange Act of 1934;
  - 4. any state Blue Sky or Securities law;

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;
- Q. the failure to purchase or maintain any insurance or bonds;
- R. any **claim** arising out of **your** interests, operations, or activities as a mortgage banker, escrow agent, construction manager or property developer;
- S. any **claim** based upon or arising out of the formation, syndication, operation or administration of any corporation, general or limited partnership, joint venture or real estate investment trust;
- T. any **claim** arising out of liability assumed by **you** under any indemnity, hold harmless or similar provisions or agreements, but this exclusion does not apply to liability **you** would have in the absence of such agreements.

### III. LIMIT OF LIABILITY

#### A. All Claims

The limit of liability shown on the Declarations for “All **Claims**” is the maximum we will pay for any one or more **claims** made during this **policy period**. The limit of liability is the maximum we will pay for all **claims** arising out of, or in connection with the same or related **wrongful acts**. This limit applies as excess over any deductible amount, and regardless of the number of **you** who are

insured under this policy or the number of claimants against **you**.

All **claims** whenever made, shall be considered first made during the **policy period** in which the earliest **claim** arising out of such same or related **wrongful act** was made, and all such **claims** shall be subject to the same limit of liability.

## B. Claim Expenses

**Claim expenses** are in addition to our limit of liability.

## C. Deductible

1. Our obligation to pay as a result of a **claim**, plus related **claim expenses**, is in excess of the applicable amount of the deductible. **You** shall pay all **claims** and **claim expenses** up to the amount of the deductible. The deductible applies separately to each **claim**.
2. The deductible amount shall be payable by the first of **you** named as **claim expenses** are incurred or a payment for **claim** is made.
3. The deductible applies to the total amount paid as a result of **claim** and **claim expenses** combined.

## D. Reimbursement

If at our option, we pay any part or all of the deductible amount or in excess of the limit of liability, **you** shall jointly and severally be liable to us for any and all such amounts and upon demand shall pay such amounts to us.

## E. Supplementary Payments

We will also pay, in addition to our limit of liability, **your** actual loss of earnings up to \$250 a day because of time off from work for attendance at our request, at a trial, hearing, mediation or arbitration proceeding involving a civil suit against **you** otherwise covered by this policy. These Supplemental Payments are not subject to the Deductible.

- F. The inclusion of one or more of **you** shall not operate to increase either the deductible or the limit of liability.

# IV. DEFINITIONS

“**Claim**” means the receipt by **you** of a demand for money or services, naming **you** and alleging a **wrongful act**.

“**Claim Expenses**” means:

- A. fees charged by an attorney we designate; and
- B. all other fees, costs and expenses which result from the investigation, adjustment, defense and appeal of a claim.

These expenses must be incurred by us, or by **you** with our prior written consent.

“**Claim Expenses**” does not include:

- A. salary charges of our regular employees or Company officials; or
- B. fees and expenses of independent adjusters.

“**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.

“**Hostile Fire**” means one which becomes uncontrollable or breaks out from where it was intended to be.

“**Policy Period**” means the time from 12:01 A.M. on the inception date of the policy to the earlier of 12:01 A.M. on the policy expiration date as set forth on the Declarations or the policy cancellation date.

“**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

“**Pollution**” means the actual, alleged or threatened discharge,

dispersal, seepage, migration, release or escape of **pollutants**:

- A. at or from any premises, site or location; or
- B. which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any of **you** or anyone for whom **you** may be legally responsible.

“**Pollution**” does not mean heat, smoke or fumes from a **hostile fire**.

“**Professional Services**” means services rendered in **your** capacity as a:

- A. real estate:
  1. broker, agent, employee, salesperson, or common law or statutory independent contractor;
  2. consultant or counselor;
  3. appraiser;
  4. property manager;
  5. leasing agent;
  6. mortgage broker;
  7. auctioneer;
- B. notary public; or
- C. member of a formal real estate accreditation, standards review or similar real estate board or committee.

“**Wrongful Act**” means a negligent act, error or omission in the rendering of or failure to render **professional services**.

“**Wrongful Act**” also means:

- A. false arrest, detention or imprisonment;
- B. malicious prosecution;

- C. the wrongful eviction from, wrongful entry into, 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; or
- E. oral or written publication of material that violates a person's right of privacy.

"**You**" or "**Your**" means:

- A. the entity named on the Declarations of this policy as the Named Insured;

- B. any of **your**:
  1. partners, if **you** are a partnership; or
  2. executive officers, directors, administrators, or stockholders if **you** are a corporation;
  3. brokers, agents, employees, personal assistants, salespersons, or common law or statutory independent contractors;
  4. any person who would qualify as **you** except that their relationship with **you** has terminated;
  5. heirs, executors, administrators and assigns;
 but only while acting within the scope of their duties for **you**.

## V. CONDITIONS

### A. **Policy Period**; Coverage Territory

We are providing insurance under this policy:

1. during the **policy period** shown on the Declarations; and
2. anywhere in the world. **Claim** and suit must be made against **you**, however, in the United States of America, including its territories and possessions or Puerto Rico or Canada.

### B. **Your** Duties As The First Named On The Declarations

When there are more than one of **you** named in this policy, the first of **you** named, on behalf of all others, will be:

1. authorized to make changes in the terms of this policy with our consent;
2. the payee of any premiums we refund;
3. responsible for:
  - a. the payment of all premiums due;
  - b. keeping records of the information we need for premium computation, and sending us copies at such times as we may request;
  - c. notifying us that **you** want to cancel this policy.

### C. **Your** Duties If There Is A **Claim**

If there is a **claim**, **you** must do the following:

1. notify us in writing as soon as possible through:  
 Victor O. Schinnerer & Company, Inc.  
 Two Wisconsin Circle  
 Chevy Chase, Maryland 20815-7022  
  
 The notice must be given to us immediately and within the policy period or within 60 days after its expiration or termination.

2. specify the names and addresses of the persons making **claim** against **you**, and any witnesses. Provide us with information on the time, place and nature of the **claim**;
3. immediately forward all documents which **you** receive in connection with the **claim** to us;
4. fully cooperate with us or our designee in the making of settlement, the conduct of suits or other proceedings, enforcing any right of contribution or indemnity against another who may be liable to **you** because of a **wrongful act**. **You** shall attend hearings and trials, assist in securing and giving evidence, and obtaining the attendance of witnesses;
5. refuse, except at **your** own cost to voluntarily make any payment, assume any obligation or incur any expense.

### D. Waiver of Exclusions and Breach of Conditions

If coverage under this policy would not apply because of Exclusion C or because of non-compliance with Condition C, such Exclusion or Condition will not apply to each of **you** who did not commit, participate in, or have knowledge of any of the acts described.

### E. Inspections and Surveys

We have the right but are not obligated to:

1. make inspections and surveys at any time;
2. give **you** reports on the conditions we find;
3. recommend changes; or
4. conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relate only to insurability and the premiums to be charged.

We do not:

1. make safety inspections;
2. undertake to perform the duty of any entity to provide for the health or safety of workers or the public; nor
3. warrant that conditions:
  - a. are safe or healthful; or
  - b. comply with laws, regulations, codes or standards.

This provision applies not only to us, but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, reports, recommendations, or gives loss control or prevention advice.

#### F. Examination of **Your** Books and Records

We may examine and audit **your** books and records as they relate to this policy at any time during the **policy period** and up to 3 years afterward.

#### G. Changes

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 issued to form a part of this policy.

#### H. Transfer of Interest

**You** must first obtain our written consent to transfer or assign this policy. If **you** die, the policy will continue for the remaining part of the **policy period**; first, for the benefit of **your** legal representative while acting within their duties as such, and second, for the benefit of anyone having proper temporary custody of **your** property until a legal representative is appointed.

#### I. Concealment, Misrepresentation, Fraud

This policy is void in any case of fraud by **you** relating to it. It is also void if **you** intentionally conceal or misrepresent a material fact or circumstance concerning this policy.

#### J. Other Insurance

If **you** have other insurance which applies to the **claim**, the other insurance must pay first. This policy applies to the amount of **claim** which is more than the limit of liability of the other insurance.

#### K. Transfer of Rights of Recovery

If any of **you** for whom we make payment under this policy has rights to recover amounts from another, those rights are transferred to us to the extent of our payment. **You** must do everything necessary to secure our rights and must do nothing after **claim** to impair them.

#### L. Legal Action Limitation

**You** may not bring any legal action against us concerning this policy until:

1. **you** have fully complied with all the provisions of this policy; and
2. the amount of **your** obligation to pay has been decided. Such amount can be set by judgment against **you** after actual trial or by written agreement between **you**, us and the claimant.

Any entity, or their legal representative, is entitled to recover under this policy after they have secured a judgment or written agreement. Recovery is limited to the extent of the insurance afforded by this policy. No entity has any right under this policy to include us in any action against **you** to determine **your** liability, nor will we be brought into such action by **you** or **your** representative.

If **you** or **your** estate becomes bankrupt or insolvent, it does not change any of our obligations under this policy.

#### M. Premium

All premium charges under this policy will be computed according to our rules and rating plans which apply at the inception of the current **policy period**. Premiums for this policy are payable to us in advance. They may be paid to us or our authorized representative. The first premium is due on the inception date of the policy.

**You** must keep accurate records of the information we will need to compute **your** premium. **You** agree to send us these records at the end of each **policy period**, or any other time, we request them.

#### N. Non-renewal

We can non-renew this policy by giving written notice to the first of **you** named on the Declarations, at **your** last known address, at least 45 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### O. Cancellation

This policy can be canceled by either the first of **you** named on the Declarations or us.

1. The first of **you** named can cancel this policy at any time. To do so, **you** must:
  - a. return the policy to us or any of our authorized representatives; or
  - b. mail a written notice to us, telling when the cancellation is to be effective. We must receive the policy or written notice before the cancellation date.

2. We can cancel this policy by giving written notice to the first of **you** named on the Declarations, at **your** last known address at least:
  - a. 10 days, if we cancel for non-payment of premium; or
  - b. 45 days, if we cancel for any other reason; before the effective date of cancellation.
3. Notice of cancellation will state the effective date of cancellation. The policy will end on that date.
4. If we cancel, the refund will be pro-rata. If **you** cancel, the refund may be less than pro-rata. The cancellation will be effective even if we have not made or offered a refund.
5. If notice is mailed, proof of mailing will be sufficient proof of notice.

**P. Your Right to Claims Information**

We will provide **you** with the following information relating to this and any preceding policy we have issued to **you** during the previous three years:

1. a list or other record of each **claim**, not previously reported to any other insurer, of which we were notified in accordance with these policy Conditions. We will include the date and brief description of the **claim** if that information was in the notice we received.
2. a summary by policy year, of payments made and amounts reserved.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

**You** must not disclose this information to any claimant or their representative without our written consent.

If we cancel for any reason other than for non-payment of premium, or elect not to renew this policy, we will provide

such information no later than 30 days before the date of policy termination. In other circumstances, we will provide this information only if we receive a written request from **you** within 60 days after the end of the **policy period**. In this case, we will provide this information within 45 days of receipt of the request

We compile **claim** information for our own business purposes and exercise reasonable care in doing so. In providing this information to **you**, we make no representations or warranties to insureds, insurers, or others to whom this information is furnished by or on **your** behalf. Cancellation or non-renewal will be effective even if we inadvertently provide inaccurate information.

**Q. Extended Reporting Period**

1. If this policy is terminated for any reason other than:
  - a. expiration followed by renewal; or
  - b. failure to pay the premium or repay to us any deductible when due;

**you** have the right to purchase a three year extended reporting period covering **claims** first made during the extended reporting period on **wrongful acts** occurring prior to the end of the **policy period**, and otherwise covered by the policy.

2. To use this right, **you** must:
  - a. write to us within 60 days of the termination telling us **you** want the extension; and
  - b. pay the premium to us promptly when due. The premiums will be developed from the rules, rates, and rating plans in effect at the inception of the current **policy period**.
3. The limit of liability stated under this policy at the time of termination will apply to the extended reporting period.

This policy shall not be valid unless countersigned on the Declarations by a duly authorized representative of this Company.

Chairman of the Board

Secretary