RISC **R**ice **I**nsurance **S**ervices **C**ompany, LLC
• *We put the **E**xperience and **O**ptions in E&O programs* •
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ERRORS AND OMISSIONS COVERAGE CONSIDERATIONS AFTER A LICENSEE'S DEATH

Rice Insurance Services Company, LLC (RISC) administers real estate licensee errors and omissions (E&O) insurance policies issued by Continental Casualty Company in twelve states that require licensees to maintain such coverage. While the policies vary from state to state, all are claims-made-and-reported policies, which means the policy or an extended reporting period (ERP) must be in effect when a claim is made for there to be coverage for the claim (subject to all of the policy's terms and conditions).

Unfortunately, claims may arise even after a licensee passes away. We have seen claims against a licensee's personal representative and heirs, as well as claims against real estate firms with which a deceased licensee worked. Under RISC's policies, the licensee's heirs, executors, and administrators are considered insureds to the extent the policy would have provided coverage to the licensee. Additionally, a real estate firm that the licensee represents is considered insured for the firm's vicarious liability for negligent acts, errors, and omissions in the licensee's professional services (to the extent coverage would be available to the licensee).

If these types of claims are made after the licensee's policy expires and there is no ERP in place, then there would be no coverage to apply to the claims. Even if a claim is frivolous, attorneys' fees may be incurred to defend against it.

Accordingly, you may want to consider purchasing an ERP endorsement (often called "tail coverage") to protect against claims that arise after the licensee's policy expires. RISC offers ERP endorsements of one, two, and three years, which must be purchased within ninety days of the policy's termination date. These endorsements extend the policy's reporting date, so that the policy applies to claims made during the ERP.

Four dates are important in determining whether a claim will be covered under a claims-made-and-reported policy: (1) the policy's retroactive date, (2) the date of the professional services giving rise to the claim, (3) the date the claim is made, and (4) the date the insured reports the claim to the insurance company.

RISC's policies' retroactive dates are established separately for each insured licensee. The retroactive date is the date the licensee first obtained and, from which, has continuously maintained E&O coverage. Any gap in coverage will terminate the previously-established retroactive date and the new retroactive date will be the date the licensee reestablishes coverage.

Coverage is considered under the policy in effect the date the claim is made. If a claim arises after the licensee's policy expires and there is no ERP in effect, then there would be no applicable policy available to cover the claim. RISC's policies only cover claims that relate to professional services provided on or after the retroactive date. That means for a claim to be covered, the insured must have coverage or an effective ERP on the date the claim is made, have had coverage on the date of the professional services, and have continuously maintained coverage between the date of the professional services and the date of the claim. Further, the claim must be timely reported to the insurance company.

Example 1: Protect Your Heirs

Mr. Licensee worked in real estate from January 1, 1998 to December 31, 2010, during which time he maintained continuous E&O coverage through several carriers. Mr. Broker's last policy was a 2010 RISC policy with effective dates of January 1, 2010 to January 1, 2011. Mr. Broker retired on December 31, 2010 and deactivated his license. Mr. Broker passed away in July 2012. For purposes of the following examples, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Example 1A – No ERP Endorsement Purchased: Mr. Broker thought there was no reason to worry about E&O coverage for him or his heirs, since he retired from real estate. After Mr. Broker passed away, on October 1, 2012, Mr. Broker's estate was served with a lawsuit filed by a client he worked with in 2007. Mr. Broker's estate submitted the lawsuit to RISC. Unfortunately, there was no coverage for this claim, because Mr. Broker's policy expired on January 1, 2011, more than a year before the claim arose.

Example 1B – ERP Endorsement Purchased: Instead of not worrying about E&O as in the previous example, assume Mr. Broker purchased a three-year ERP endorsement within ninety days of the expiration of his 2010 policy. This endorsement extends the reporting period of Mr. Broker's 2010 policy to January 1, 2014, an additional three years after the policy's expiration date. Mr. Broker's estate is then served with the lawsuit on October 1, 2012 and timely reports it to RISC. Because the claim arose within the ERP, it is covered under Mr. Broker's 2010 RISC policy. Again, for purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Example 2: Claim Against the Personal Representative of the Licensee's Estate

From March 2006 to September 2013, Ms. Salesperson worked in real estate and maintained continuous E&O coverage through RISC during that time. Unfortunately, Ms. Salesperson passed away in October 2013. Her last E&O policy was a 2013 policy with effective dates of January 1, 2013 to January 1, 2014.

In June 2014, a seller Ms. Salesperson worked with in 2009 filed a lawsuit against the personal representative of Ms. Salesperson's estate, alleging damages based on negligence in Ms. Salesperson's professional services in connection with the transaction. For purposes of the following examples, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Example 2A – No ERP Endorsement Purchased: After Ms. Salesperson passed away, her policy expired and no ERP endorsement was purchased. When the personal representative of the estate submitted the lawsuit to RISC, he was disappointed to learn there was no coverage for the claim, because it arose after Ms. Salesperson's policy expired on January 1, 2014.

Example 2B – ERP Endorsement Purchased: A three-year ERP endorsement was purchased within ninety days after the expiration of the 2013 policy. The ERP endorsement extended the reporting period of Ms. Salesperson's 2013 policy by three years to January 1, 2017. When the personal representative received the lawsuit in June 2014, he timely submitted it to RISC. The claim was covered under Ms. Salesperson's 2013 policy, because it arose within the ERP. Again, for purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Example 3: Claim Against Firm with which the Licensee was Affiliated

Mr. Broker worked in real estate from August 2000 to February 2011, during which time he maintained continuous E&O coverage through several carriers. Mr. Broker passed away in March 2011. Mr. Broker's last policy was a 2011 RISC policy with effective dates of January 1, 2011 to January 1, 2012.

In May 2014, a client Mr. Broker worked with in November 2010 sent a demand letter to the real estate firm Mr. Broker had been affiliated with, alleging that the firm was liable for negligent acts, errors, and omissions in Mr. Broker's professional services in handling the transaction. For purposes of the following examples, assume the demand letter arose to a claim that would otherwise be covered under the policy.

Example 3A – No ERP Endorsement Purchased: No ERP endorsement was purchased for Mr. Broker's 2012 RISC policy. When the firm received the demand letter alleging it was vicariously liable for negligent acts, errors, and omissions in Mr. Broker's professional services, it submitted the letter to RISC. Unfortunately, there was no coverage for this claim under Mr. Broker's policy, because his policy expired on January 1, 2012, more than two years before the claim arose.

Example 3B – ERP Endorsement Purchased: A three-year ERP endorsement was purchased within ninety days of the expiration of the 2011 policy. This endorsement extends the reporting period of Mr. Broker's 2011 policy to January 1, 2015, an additional three years after the policy's expiration date. After the firm received the demand letter in May 2014, it was timely reported to RISC. Because the claim arose within the ERP, it is covered under Mr. Broker's 2011 RISC policy. Again, for purposes of this example, assume the demand letter arose to a claim that would otherwise be covered under the policy.

Take Away

Many E&O claims do not arise until years after the subject transaction. Additionally, even after death, claims may be made against licensees' heirs, personal representatives, and executors, as well as against real estate firms with which the licensee was affiliated. Accordingly, there are important reasons to consider purchasing an ERP endorsement for a licensee who has passed away. ERP endorsements may only be purchased within ninety days of the policy's termination date.

Insurance coverage is important. Please take the time to read and understand the policy's coverage provisions, conditions, and exclusions. To obtain sample copies of RISC's policies or get more information regarding ERP endorsements, visit our website, www.risceo.com, or call us at (800) 637-7319, extension 1.