



**AMERICAN INTERNATIONAL COMPANIES®**

70 Pine Street  
New York, NY 10270  
(212) 770-7000

National Union Fire Insurance Company of Pittsburgh, Pa.

(the above being a capital stock company)

**(This policy is issued only by the insurance company indicated above.)**

**KENTUCKY REAL ESTATE LICENSEE PROFESSIONAL LIABILITY INSURANCE**

**NOTICE: THIS IS A CLAIMS-MADE POLICY. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE PROVIDED UNDER THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST YOU AND REPORTED IN WRITING TO US DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.**

**DECLARATIONS**

**Policy Number:** 10330277

**Policyholder:** Kentucky Licensees who hold an active real estate license issued by the Kentucky Real Estate Commission (the "Commission") pursuant to Kentucky Real Estate License Law, Kentucky Revised Statutes Chapter 324, and Chapter 201 of the Kentucky Administrative Regulations; and who have paid the premium charged for this policy. Coverage is provided to any (a) real estate "broker" or "sales associate" who (1) holds an active real estate "broker" or "sales associate" license issued by the Commission and (2) has paid the premium charged for this policy or (b) any "real estate firm" that has paid the premium charged for this policy.

**Policy Period:** **Inception Date:** PER CERTIFICATE OF INSURANCE **Expiration Date:** April 1, 2010  
(12:01 a.m. standard time at the Policy Mailing Address stated below.)

**Policy Mailing Address:** PER CERTIFICATE OF INSURANCE

**Program Administrator:** Williams Underwriting Group, Inc  
P.O. Box 769  
Jeffersonville, Indiana 47131-0769  
Toll Free: 800-222-4035  
Phone: 812-284-2321  
Fax: 812-284-3252

Limits of Liability		Deductibles	
<b>Coverage A: Real Estate Licensee Professional Liability</b>			
Each wrongful act limit:	PER CERTIFICATE OF INSURANCE	Each wrongful act deductible:	\$ 0
Aggregate limit:	\$ 1,000,000	Each claim expenses deductible:	\$ 0
<b>Coverage B: Lock Box Property Damage Liability</b>			
Each occurrence limit:	\$ 5,000	Each occurrence deductible:	\$ 0
Aggregate limit:	\$ 10,000		

**Forms Numbers of Policy Provisions and Endorsements forming a part of this policy at inception:**

Title	Form Number
Kentucky Real Estate Licensee Professional Liability Insurance Policy	97122 (03/09)

Increased Limits of Liability – Specified Insureds Only Endorsement (APPLIES ONLY IF SHOWN ON CERTIFICATE OF INSURANCE)	97128 (03/09)
Licensed Appraisal Endorsement (APPLIES ONLY IF SHOWN ON CERTIFICATE OF INSURANCE)	97126 (02/08)
AIG Personal Identity Coverage (APPLIES ONLY IF SHOWN ON CERTIFICATE OF INSURANCE)	96280 (02/08)
Extended Reporting Period Endorsement (APPLIES ONLY IF SHOWN ON CERTIFICATE OF INSURANCE)	86553 (08/04)

PREMIUM IS \$ PER CERTIFICATE OF INSURANCE PER LICENSE.

Kentucky Municipal Tax: \$ PER CERTIFICATE OF INSURANCE

Kentucky Surcharge: \$ PER CERTIFICATE OF INSURANCE

**Retroactive Date:** To be determined separately for each licensee as defined in the policy, but in no case earlier than April 1, 1987.

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.



PRESIDENT



SECRETARY

This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.



AUTHORIZED REPRESENTATIVE

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# Kentucky Real Estate Licensee Professional Liability Insurance Policy

**THIS IS A CLAIMS-MADE POLICY. PLEASE READ ALL PROVISIONS AND CONTACT YOUR PROGRAM ADMINISTRATOR IF YOU HAVE ANY QUESTIONS. THIS POLICY APPLIES ONLY TO WRONGFUL ACTS AND LOCK BOX PROPERTY DAMAGE OCCURRENCES THAT OCCUR BETWEEN YOUR RETROACTIVE DATE AND THE END OF THE POLICY PERIOD. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO US ON OR AFTER THE INCEPTION DATE AND BEFORE THE END OF THE POLICY PERIOD. UPON TERMINATION OF THIS POLICY, AN EXTENDED REPORTING PERIOD MAY BE AVAILABLE.**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered.

Throughout this policy, the words "you" and "your" mean:

1. any person that (a) holds a valid license issued by the Kentucky Real Estate Commission (hereinafter referred to as the "Commission") pursuant to Kentucky Real Estate License Law, Kentucky Revised Statutes ("KRS") Chapter 324, and Chapter 201 of the Kentucky Administrative Regulations ("KAR") 11:011 (hereinafter collectively referred to as "Kentucky Real Estate License Law") and (b) has paid the premium charged for this policy; and
2. any "real estate firm" that has paid the premium charged for this policy.

The word "insured" means any person or organization qualifying as such under **WHO IS AN INSURED (SECTION III)** of this policy.

The words "we," "us" and "our" mean National Union Fire Insurance Company of Pittsburgh, Pa.

Other words and phrases that appear in quotation marks are defined in **DEFINITIONS (SECTION VI)** of this policy.

In consideration of the payment of the premium when due, and:

1. in reliance upon the statements made in the Program Declarations (the "Declarations"); and
2. subject to the applicable Limits of Liability, Deductibles, Exclusions, Definitions, Conditions and all other terms of this policy, including those modified, replaced by or added by endorsements we issue forming a part of this policy,

we agree with you as follows:

## **SECTION I - INSURING AGREEMENTS**

1. We will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as "damages" because of:
  - a. Real Estate Licensee Professional Liability  
A "wrongful act" in the rendering or failure to render "real estate services;" or
  - b. Lock Box Property Damage Liability  
"Lock box property damage" which occurs in the performance of your "real estate services."
2. If the insured refuses to consent to a settlement or compromise recommended by us and which is acceptable to the claimant, or continues legal, arbitration or mediation proceedings, or otherwise contests such "claim" or "suit," then our liability under this policy shall be limited to the amount for which the "claim" or "suit" could

have been settled, including all "claim expenses" incurred up to the time of such refusal or continuation of proceedings.

3. The amount we will pay for "damages" is set forth in **LIMITS OF LIABILITY AND DEDUCTIBLE (SECTION IV)** of this policy. We have no other obligations to pay anything unless explicitly provided for under **DEFENSE AND CLAIM EXPENSES (SECTION VII)** of this policy.
4. Our obligation to pay on behalf of the insured pursuant to paragraph 1 above will end when the applicable Limit of Liability is exhausted by the payment of judgments and/or settlements.
5. This policy applies to any "wrongful act" or "lock box property damage," but only if:
  - a. (1) the "wrongful act" occurs; or  
(2) the "lock box property damage" is caused by an "occurrence" that takes place in the "coverage territory;" and
  - b. (1) the "wrongful act" occurs; or  
(2) the "lock box property damage" is caused by an "occurrence" that takes place after "your retroactive date" and before the end of the "policy period;" and
  - c. prior to the earliest of (1) the inception date of this policy, (2) the inception date of the earliest continuously maintained real estate licensee professional liability policy issued to the Commission under which you were an insured, or (3) the inception date of the earliest continuously maintained real estate licensee professional liability policy issued in accordance with KRS 324.395(4) and 201 KAR 11:220 under which you were an insured, the insured had no knowledge of:
    - (1) the "wrongful act," "occurrence" or any resulting "claim" or "suit;" or
    - (2) any "wrongful act" or "occurrence" which could have reasonably been expected to result in a "claim" or "suit,"regardless of whether notice of any such "claim" or "suit" was furnished to any other insurer; and
  - d. A "claim" for "damages" because of the "wrongful act" or "occurrence" is first made against any insured and reported by you to us while your coverage is in effect or during any Extended Reporting Period we provide to you under **EXTENDED REPORTING PERIODS (SECTION VIII)**.
6. In the event that a judgment is rendered against more than one insured under this policy which exceeds the Aggregate Limit of Liability as stated in the Declarations, the amount of "damages" we will pay shall be calculated pro rata in relationship to that amount which is awarded against each such insured. In such case, the sponsoring "broker", shall reimburse us for all amounts paid for such "damages," notwithstanding any agreement(s) that may exist between such sponsoring broker and the "real estate firm," the "real estate broker" or "sales associate."
7. With respect to any "claim" or "suit" otherwise covered under this policy, we will pay on behalf of the insured "claim expenses" and "damages" based upon or arising out of any actual or alleged act of "fair housing discrimination," up to a maximum sum of \$25,000 for each "claim" and \$25,000 for all "claims," without regard to whether such act of "fair housing discrimination" is determined to be intentional by adjudication, notwithstanding Paragraphs 2(a) and 6(a) of **SECTION II - EXCLUSIONS**. Two or more "claims" arising from a single act of "fair housing discrimination" or a series of related acts of "fair housing discrimination" shall be considered one "claim," and shall be considered as first made and reported to us as soon as the earliest "claim" was first made and reported to us.

## SECTION II - EXCLUSIONS

This policy does not cover any "claim" or "suit":

1. based upon, arising out of, or in any way connected to, directly or indirectly, "bodily injury," "property damage," "personal injury" or "advertising injury;" provided, however, that with respect to "property damage," this exclusion shall not apply to "lock box property damage;"
2. based upon, arising out of, or in any way connected to, directly or indirectly:
  - (a) dishonest, fraudulent, criminal, or malicious acts or omissions including concealment or intentional misrepresentation; provided, however, that this exclusion shall not apply to "fair housing discrimination;" or
  - (b) unfair competition, piracy, or any theft or wrongful taking of concepts or other intellectual property;provided, however, that this exclusion shall not apply to any insured who did not commit such acts or omissions;
3. based upon, arising out of, or in any way connected to, directly or indirectly any:
  - (a) conversion, misappropriation, commingling, or defalcation of funds or other property;
  - (b) failure to pay fees or commissions, including finder's fees or commissions;
  - (c) inability or failure to pay money held for others; or
  - (d) failure to collect money to be held for others;
4. based upon, arising out of, or in any way connected to, directly or indirectly any actual or alleged violations of:
  - (a) the Employee Retirement Income Security Act of 1974, Public Law 93-406, commonly referred to as the Pension Reform Act of 1974;
  - (b) the Securities Act of 1933;
  - (c) the Securities Exchange Act of 1934; or
  - (d) any state Blue Sky or Securities law;including any rules, regulations, or amendments issued in relation to the foregoing 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 regulations, as well as any amendments thereof;
5. based upon, arising out of, or in any way connected to, directly or indirectly the failure to purchase or maintain any insurance or bonds;
6. based upon, arising out of, or in any way connected to, directly or indirectly:
  - (a) unlawful discrimination, humiliation, harassment, or misconduct because of, but not limited to, race, creed, color, age, sex, national origin, religion, handicap, or marital status (except "fair housing discrimination"); or
  - (b) employment related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination, including, but not limited to, a refusal to employ a person or termination of any person's employment.

This exclusion shall also apply:

- (i) to the spouse, child, parent, brother or sister of a person as a consequence of any "damages" to a person at whom any of the employment related practices described in paragraph (2) above is directed; and
- (ii) to any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury,

without regard to whether the insured may be held liable as an employer or in any other capacity.

- 7. based upon, arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of "pollutants," or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants," or in any way respond to or assess the effects of "pollutants;" provided, however, that we will pay on behalf of the insured "claim expenses" incurred in the defense of such "claims" or "suits" otherwise covered under this policy up to a maximum sum of \$5,000 for each "claim" and \$10,000 for all "claims" in the aggregate for the "policy period;"
- 8. based upon, arising out of, or in any way connected to, directly or indirectly, the formation, syndication, operation or administration of any corporation, general or limited partnership, joint venture or real estate investment trust;
- 9. based upon, arising out of, or in any way connected to, directly or indirectly, liability assumed under any indemnity, hold harmless or similar provision or agreement; provided, however, that this exclusion shall not apply to liability you would have in the absence of such agreements;
- 10. based upon, arising out of, or in any way connected to, directly or indirectly:
  - (a) "real estate services" relating to property in which you or your spouse or any entity, corporation, partnership, or trust which you or your spouse have more than a twenty five percent (25%) financial or ownership interest, or
  - (b) "real estate services" relating to property that is constructed or developed by you or your spouse or any entity, corporation, or partnership in which you or your spouse have more than a ten (10%) financial or ownership interest;

provided, however, that this exclusion shall not apply to:

- (i) the management or sale of property acquired by you under a "guaranteed sale listing contract" within the first year you acquire such property, provided the property is listed for sale during the entire year;
  - (ii) the sale of an insured's real property by an insured who is not the property owner, builder or developer of such real property provided that the property owner, builder or developer was not the selling, listing or closing agent; or
  - (iii) the sale or listing of your primary or principle residence, provided further, however, that the sale or listing is performed under Kentucky Real Estate License Law and is not a "For Sale By Owner" sale or listing;
- 11. based upon, arising out of, or in any way connected to, directly or indirectly, any insured notarizing, certifying or acknowledging any signature not signed before such insured at the time of such notarization, certification or acknowledgment;
  - 12. made by an insured under this policy against any other insured; provided, however, that this exclusion shall not apply if the "claim" arises solely from the "real estate services" one insured performs for another;
  - 13. based upon, arising out of, or in any way connected to, directly or indirectly, any "wrongful act" committed by an insured while an "inactive licensee;" or
  - 14. based upon, arising out of, or in any way connected to, directly or indirectly, any services performed or advice given by an insured in connection with activities as a registered, licensed or certified real estate appraiser.

### SECTION III - WHO IS AN INSURED

Each of the following is an insured, but only with respect to the rendering or failure to render "real estate services":

1. You if you:
  - a. are a resident of the Commonwealth of Kentucky working for or representing a "real estate firm;"
  - b. hold an active license issued by the Commission pursuant to Kentucky Real Estate License Law; and
  - c. have paid the premium charged for this policy.
2. You if you:
  - a. are a non-resident of the Commonwealth of Kentucky working for or representing a "real estate firm" whose active place of business is located within the Commonwealth of Kentucky and also within a 50 mile radius of your home;
  - b. hold an active license issued by the Commission pursuant to "Kentucky Real Estate License Law"; and
  - c. have paid the premium charged for this policy.
3. You if you:
  - a. are not a resident of the Commonwealth of Kentucky and do not work for or represent a "real estate firm;"
  - b. hold an active real estate license issued by the Commission pursuant to Kentucky Real Estate License Law; and
  - c. have paid the premium charged for this policy.
4. Your unlicensed employees and assistants, but only while acting in the scope of their employment and relating to "real estate services" performed on your behalf.
5. The organization you work for or represent, including any "real estate firm," including its "principal broker," "broker," and "sales associate" or Franchise grantor, but only for its vicarious liability for the acts, errors, or omissions arising out of the conduct or provision of your "real estate services."
6. Your estate, heirs, executors, administrators, and legal representatives, in the event of your death, disablement, incapacity, insolvency, or bankruptcy, but only with respect to liability arising out of "real estate services" rendered prior to your death, disablement, incapacity, insolvency, or bankruptcy.

### SECTION IV - LIMITS OF LIABILITY AND DEDUCTIBLES

1. The Limits of Liability shown in the Declarations are the most we shall pay for the sum of all "damages" under this policy and those "claim expenses" described in paragraph 2 of **DEFENSE AND CLAIM EXPENSES (SECTION VII)**, regardless of the number of:
  - a. "claims" made or "suits" brought; or
  - b. persons or organizations making "claims," "suits," or initiating proceedings.
2. Each of the Limits of Liability stated in the Declarations applies separately to each real estate licensee described as an insured in paragraphs 1 and 2 of **WHO IS AN INSURED (SECTION III)**. However, all persons or organizations qualifying as an insured in paragraphs 3, 4 and 5 of **WHO IS AN INSURED (SECTION III)** share in a single Limit of Liability with such real estate licensee, regardless of the number of:
  - a. "claims" made or "suits" brought; or
  - b. persons or organizations making "claims," "suits," or initiating proceedings.

3. The Real Estate Licensee Professional Liability Aggregate Limit of Liability stated in the Declarations is the most we will pay for the sum of all "damages" arising out of "wrongful acts" in the rendering or failure to render "real estate services" including any applicable Extended Reporting Period.
4. Subject to paragraph 3 of this Section, the Each Wrongful Act Limit stated in the Declarations is the most we will pay for any "wrongful act" for the sum of all "damages" arising out of any one "claim."

Two or more "claims" arising out of a single "wrongful act" or a series of related "wrongful acts" shall be considered one "claim." Any such "claim(s)," whenever made and reported to us:

- a. shall be considered as first made and reported to us as soon as the earliest "claim" arising out of such "wrongful acts" was first made and reported to us;
  - b. shall be subject to the Each Wrongful Act Limit stated in the Declarations; and
  - c. shall be subject to the Each Wrongful Act Deductible and the Each Claim Expenses Deductible stated in the Declarations.
5. The Lock Box Property Damage Liability Aggregate Limit of Liability stated in the Declarations is the most we will pay for all "damages" arising out of "lock box property damage" for any one "policy period," including any applicable Extended Reporting Period.
  6. Subject to paragraph 5 of this Section, the Each Occurrence Limit of Liability stated in the Declarations is the most we will pay for any "lock box property damage" for all "claims" or "damages" based upon or arising out of any one "occurrence."

Any such "claim(s)," whenever made and reported to us:

- a. shall be considered as first made and reported to us as soon as the earliest "claim" arising out of such "occurrence" was first made and reported to us;
  - b. shall be subject to the Each Occurrence Limit stated in the Declarations; and
  - c. shall be subject to the Each Occurrence Deductible stated in the Declarations.
7. Subject to the Limits of Liability and all other terms and conditions of this policy, our obligation to pay "damages" and "claim expenses" on your behalf applies only to the amount of "damages" and "claim expenses" in excess of the Each Wrongful Act Deductible, the Each Claim Expense Deductible and the Each Occurrence Deductible amounts stated in the Declarations.

You shall pay the full amount of the Each Wrongful Act Deductible, the Each Claim Expense Deductible and the Each Occurrence Deductible stated in the Declarations for each "claim" made against an insured. You shall make direct payments of "damages" and "claim expenses" within the applicable deductible amount to appropriate parties as designated by us. If we advance any such payments, you shall promptly reimburse us. If you fail to make direct payments or to reimburse us as required by this paragraph, all insureds against whom the "claim" has been made are jointly and severally liable for such amounts.

If a "claim" involves two or more insureds who are affiliated with the same "real estate firm", only one Each Wrongful Act Deductible and one Each Claim Expense Deductible or one Each Occurrence Deductible shall apply to such "claim."

## **SECTION V - CONDITIONS**

### **1. Cancellation**

- a. The Policyholder may cancel this policy by mailing to us advance written notice of cancellation or surrendering this policy to us at least ninety (90) days before the effective date of cancellation.
- b. We may cancel this policy by mailing to the Policyholder the following written notice stating when the cancellation shall be effective:

(1) One hundred and twenty (120) days advance notice is required;

(2) Fourteen (14) days advance notice is required if we cancel for non-payment of premium.

Notice of cancellation will state the effective date of cancellation. If notice is mailed to the Policyholder proof of mailing will be sufficient proof of notice. If this policy is canceled, the effective date of cancellation will become the end of the "policy period."

- c. We will mail or deliver our notice of cancellation to the Policyholder at the last mailing address known to us.
- d. If we cancel this policy, we will send you any premium refund due. If we cancel this policy, the premium refund will be calculated pro rata.
- e. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## **2. When We Do Not Renew**

If we decide not to renew this policy, we will mail through first-class mail to the Policyholder written notice of the nonrenewal at least one hundred and twenty (120) days before the expiration date of this policy. Such notice to the Policyholder shall include loss run information for the period this policy was in force within, but not to exceed, the last three (3) years.

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

If we offer to renew this policy and you do not accept our offer during the current "policy period," this policy shall expire at the end of such "policy period."

## **3. Changes**

This policy contains all agreements between you and us concerning the insurance coverage afforded herein. If the terms or conditions of this policy are changed, the changes will be shown in an endorsement issued by us and made a part of this policy.

## **4. Conformity to Other States' Mandatory Programs**

Any part of this policy which conflicts with any law provided by an "other state's mandatory program" shall be automatically amended to conform with the law of such "other state's mandatory program," provided the insured:

- a. holds a valid real estate license issued under the laws of such "other state's mandatory program;"
- b. is not a resident in the state of such "other state's mandatory program;" and
- c. conducts his or her "real estate services" in the state of such "other state's mandated program."

The "other state's mandatory program" means a program requiring the purchase of primary real estate licensee professional liability or primary real estate licensee errors and omissions liability insurance as mandated by the statutes and/or regulations of a state other than the Commonwealth of Kentucky .

## **5. Duties In the Event of a Proceeding, "Claim" or "Suit"**

- a. If a "claim" is made or "suit" is brought against any insured, you must notify us in writing of such "claim" or "suit" as soon as practicable after the "claim" is made or "suit" is brought, but in no event more than ninety (90) days after you become aware of such "claim" or "suit." To the extent possible, such notice shall include:

(1) your name;

(2) how, when and where the "wrongful act" or "occurrence" took place;

(3) the names and addresses of any injured persons and witnesses; and

(4) the nature and location of any "damages" arising out of the "wrongful act" or "occurrence."

b. Such written notice of a "claim" or "suit" shall be delivered to:

**U.S. Mail Delivery**

Attn: C-Claim Department  
175 Water Street, 9<sup>th</sup> Floor  
New York, NY 10038

**Overnight Delivery**

Attn: C-Claim Department  
175 Water Street, 9<sup>th</sup> Floor  
New York, NY 10038

**Fax**

Attn: C-Claim Department  
(866) 227-1750

c. If a "claim" is made or "suit" is brought against any insured, you must immediately record the specifics of the "claim" or "suit" and the date received.

d. If you give us notice of a "claim" made or a "suit" brought against any insured, you and any other insured must:

(1) immediately send us copies of any demands, notices, summons or legal papers received in connection with the "claim" or "suit;"

(2) authorize us to obtain records and other information;

(3) cooperate with us in the investigation, settlement and/or defense of the "claim" or "suit;" and

(4) assist us, upon our request, in the enforcement of any right against any person or organization, which may be liable to the insured because of "damages" to which this policy may also apply.

e. No insured may, except at his or her own cost, make a payment, assume any obligation, or incur any expense without our prior consent. Such consent shall not be unreasonably withheld.

**6. Reporting of "Wrongful Acts" or "Occurrences" That May Give Rise to a Claim**

a. If during the "policy period" you become aware of a specific "wrongful act" or "occurrence" that could reasonably be expected to give rise to a "claim" or "suit" against you, you may report such specific "wrongful act" or "occurrence" to us in writing during the "policy period," then any "claim" subsequently arising from such specific "wrongful act" or "occurrence" duly reported in accordance with this paragraph shall be deemed under this Policy to be a "claim" made during the "policy period." Such written notice to us shall include:

(1) particulars as to the reasons for anticipating such a "claim;"

(2) the nature and dates of the alleged "wrongful act" or "occurrence;"

(3) the alleged "damages" sustained;

(4) the names of potential claimants, if available; and

(5) the manner in which you first became aware of the specific "wrongful act" or "occurrence."

**7. Duties in the Event of a Dispute or Complaint Before a Real Estate Board or Commission**

If, during the "policy period," you become aware that you are the subject of a complaint or dispute brought by a Real Estate Regulatory Board or Commission (hereinafter referred to as a "regulatory complaint"), you must give written notice to us prior to the expiration of your "policy period." Such notice must state:

(1) the specific acts that are the subject of the complaint or dispute;

(2) the dates and persons involved; and

(3) the circumstances by which you first became aware of the complaint or dispute.

If such notice is given, then any "claim" that is subsequently made against you and reported to us shall be deemed to have been made at the time such written notice was received by us.

Further, we will pay on behalf of the insured all (1) "claim expenses" incurred in the defense of and (2) "damages" arising out of "regulatory complaints," up to a maximum sum of \$2,500 for each "regulatory complaint" and \$5,000 for all "regulatory complaints" in the aggregate for the "policy period," provided such "regulatory complaints" are otherwise covered under this policy.

## 8. Fraud and Misrepresentation

No oral or written misrepresentation or warranty made by you prior to the inception of this policy shall be deemed material or defeat or void this policy or prevent it attaching, unless the misrepresentation or warranty was made with the intent to deceive.

## 9. Legal Action Against Us

No person or organization has any rights under this policy to:

- a. join us as a party or otherwise bring us into a "suit" seeking "damages" from an insured; or
- b. sue us on this policy, unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; provided, however, that we will not be liable for "damages" that are not payable under the terms of this policy or that are in excess of any applicable Limit of Liability. For purposes of this paragraph, an agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

## 10. Other Insurance

This insurance is primary insurance except if the "claim" or "suit" is brought when the **EXTENDED REPORTING PERIOD (SECTION VIII)** applies. If this insurance is primary and there is other valid and collectible insurance, we will pay the portion of "damages" and "claim expenses" in excess of the Each Wrongful Act Deductible and Claim Expense Deductible, which equals our percentage of the total of all limits that apply.

All insurance afforded by the **EXTENDED REPORTING PERIOD (SECTION VIII)** is excess over any other insurance, whether primary, excess, contingent or on any other basis, (except when purchased specifically to apply in excess of this insurance); including insurance that is effective prior to the beginning of the "policy period" shown in the Program Declarations and applies to "wrongful acts" or "occurrence" on other than a claims-made basis, if the other insurance has a policy period which continues after "your retroactive date."

When this insurance is excess over other insurance we have no duty to defend any "claim" or "suit."

We will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- a. the total amount that all such other insurance would pay for "damages" in the absence of this insurance; and
- b. the total of all applicable deductible and self-insured amounts under all that other insurance.

## 11. Pro Rata Premium Calculation

Real estate licensees that apply for coverage under this insurance after the beginning of the "policy period" will be charged a proportional premium amount, computed on a quarterly basis. The premium for short-term coverage will be calculated as of the 1st day of the quarter during which the real estate licensee becomes an insured, regardless of their actual effective date of coverage.

## 12. Separation of Insureds

Except as provided in paragraph 2 of **LIMITS OF LIABILITY AND DEDUCTIBLE (SECTION IV)**, and subject to any and all rights and duties provided herein, this policy applies:

- a. as if each insured were the only insured; and
- b. separately to each insured against whom a "claim" is made or "suit" is brought.

### 13. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or a part of any payment(s) we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and cooperate with us to enforce them.

We shall not exercise any such rights against any person, firms, or other entities included as insureds under **WHO IS AN INSURED (SECTION III)**; provided, however, that we may exercise any and all rights of recovery against an insured with respect to any "claim" based upon, arising out of, or attributable to the intentional, dishonest, fraudulent, criminal, or malicious act or omission of such insured.

### 14. Transfer of Your Rights and Duties Under This Policy

Your rights, interests, and duties under this policy may not be transferred or assigned without our prior written consent.

### 15. Headings

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

## SECTION VI - DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following "offenses" committed in the course of advertising your goods, products or services:
  - a. 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;
  - b. oral or written publication of material that violates a person's right of privacy;
  - c. misappropriation of advertising ideas or style of doing business; or
  - d. infringement of copyright, title or slogan.
2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including, but not limited to, mental anguish or death resulting from any of these at any time.
3. "Broker" means any person defined as such under Kentucky Real Estate License Law.
4. "Claim" means a written demand received by any insured for "damages," including, but not limited to, the institution of a "suit" arbitration proceeding against any insured; provided, however, that "claim" shall not include proceedings seeking injunctive relief, other non-monetary relief, or rescission or administrative proceedings other than a "regulatory complaint."
5. "Claim expenses" means all reasonable and necessary fees charged by attorneys appointed by us and 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 you with our prior written consent; provided, however, that "claim expenses" shall not include salary, charges or expenses incurred by you or salary, charges or expenses of our employees or officials.
6. a. "Coverage territory," as respects a resident licensee as described in paragraph 1 and a non-resident licensee as described in paragraph 2 of **WHO IS AN INSURED (SECTION III)**, means all parts of the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America if the insured's responsibility to pay "damages" is determined in a "suit" on the merits in the United States of America (including its territories and possessions), Puerto Rico or Canada.

We may, however, elect, where permitted by law, at any time to investigate, settle, or defend "claims" made anywhere other than the United States of America, its territories, possessions, Puerto Rico or

Canada. If we do not make such election, then the insured agrees to make, or cause to be made, under our supervision, such investigation and defense as is reasonably necessary.

- b. "Coverage territory," as respects a non-resident licensee as described in paragraph 3 of **WHO IS AN INSURED (SECTION III)**, means real estate located in the Commonwealth of Kentucky if the insured's responsibility to pay "damages" is determined in a "suit" on the merits in the United States of America (including its territories and possessions), Puerto Rico or Canada.
7. "Damages" means any monetary damages which an insured becomes legally obligated to pay because of judgments, settlements, arbitration awards or the like rendered against the insured; provided, however, that "damages" shall not include fines, sanctions or penalties against any insured, the return or reimbursement of fees for "real estate services" or punitive, exemplary and multiple damages. "Damages" also do not include the return or restitution of fees, commissions, expenses or costs or any amounts awarded by a Real Estate Regulatory Board or Commission.
8. "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.
9. "Inactive licensee" means any currently licensed person whose license has transferred to inactive status or placed in escrow and who is not authorized to act in the capacity of a real estate "broker" or "sales associate" under Kentucky Real Estate License Law.
10. "Lock box property damage" means "property damage" to tangible property arising out of your distribution, maintenance, operation or use of a lock box or keyless entry system on property not owned by you which:
- a. is in your care, custody and control;
  - b. you have shown or listed for sale; and
  - c. is protected by a lock box, keyless entry system or similar device.
11. "Occurrence" means, with respect to "lock box property damage," an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
12. "Offense" means, with respect to:
- a. "advertising injury," an offense described in the definition of "advertising injury;" and
  - b. "personal injury," an offense described in the definition of "personal injury;"

Any "advertising injury" or "personal injury" arising out of the repeated publication of the same or similar material, regardless of the mode in which such material is communicated, shall be considered as arising solely out of one "offense."

13. "Personal injury" means injury, other than "bodily injury" or "advertising injury," based upon or arising out of one or more of the following "offenses:"
- a. false arrest, detention or imprisonment;
  - b. malicious prosecution;
  - c. 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.
14. "Policy period" means each annual period beginning with the inception date shown in the Declarations and ending with the earlier of:

- a. the effective date of cancellation of this policy; or
- b. the expiration date stated in the Declarations.

The "policy period" for licensees who become "insureds" under this policy after its inception date begins on the date on which they become "insureds." If this policy is replacing a licensee's policy that ended at 12:01 p.m. (instead of 12:01 a.m.), the "policy period" for such licensee begins at 12:01 p.m. of such licensee's expiring policy. Notwithstanding the foregoing, such licensee's policy period shall end in accordance with subparagraphs (a) and (b) above, as applicable.

15. "Pollutants" means any substance exhibiting hazardous characteristics as, is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign equivalent. "Pollutants" also means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
16. "Principle broker" means any person defined as such under Kentucky Real Estate License Law.
17. "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 of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
18. "Property improvement services" means any one or more of the following services provided in connection with the renovation and reconstruction of real property:
  - a. managing facility renovation and reconstruction plans;
  - b. developing and managing renovation and reconstruction contracts and subcontracts; and
  - c. developing loss control and risk management plans in connection with reconstruction or renovation.
19. "Property management services" means any one or more of the following services provided in connection with the management of real property:
  - a. developing management plans and budgets;
  - b. overseeing the physical maintenance of real property;
  - c. tenant relation services, including the collection of rent and processing evictions;
  - d. soliciting and negotiating contracts for the sale or leasing of real property;
  - e. developing, implementing and managing contracts and subcontracts necessary to the daily functioning of real property; and
  - f. record-keeping.

Provided, however, that "property management services" shall not include and we will not cover:

- a. "property improvement services;"
- b. analyzing, evaluating or making recommendations concerning environmental hazards or exposures; or
- c. obtaining, maintaining or negotiating property and liability insurance contracts.

20. "Real estate firm" means a legal entity with which real estate "brokers" or "sales associates" are affiliated and which employs licensees.

21. "Real estate services" means services performed or advice given by the insured as described and required in the Kentucky Real Estate License Law, including, but limited to, "property management services," as well as the following services performed or advice given by the insured in connection with such services: consultant, counselor, notary public, and escrow agent services (subject to **SECTION VII - DEFENSE AND CLAIMS EXPENSES**, Paragraph (g)).

Provided, however, that "real estate services" shall not include services performed or advice given by an insured in connection with activities as a(n):

- a. registered, licensed or certified real estate appraiser;
- b. mortgage banker, mortgage broker or correspondent;
- c. construction manager;
- d. property developer;
- e. lawyer;
- f. insurance agent;
- g. title agent; or
- h. title abstractor.

22. "Sales associate" means any person defined as such under Kentucky Real Estate License Law.

23. "Suit" means a civil proceeding in which "damages" to which this policy applies are sought, including, but not limited to:

- a. an arbitration proceeding in which such "damages" are claimed and to which you must submit or do submit with our consent; or
- b. any other alternative dispute resolution proceeding in which such "damages" are claimed and to which you submit with our consent.

24. "Your retroactive date" means the retroactive stated in your Certificate of Insurance. If no retroactive date is stated therein, then your retroactive date means the earlier of the following dates:

- a. the date your coverage began under this policy;
- b. the date your coverage began under a previous claims-made policy, but only if such previous claims-made policy (i) provided professional liability coverage similar to that which is provided under this policy and (ii) had been in continuous effect up to the date on which your coverage under this policy became effective; provided, however, that "your retroactive date" shall not be earlier than April 1, 1987.

25. "Wrongful act" means any negligent act, error, omission, breach of duty, misstatement or misleading statement committed solely in the performance of "real estate services."

Provided, however, that "wrongful act" shall not include "claims" brought against an insured pursuant to 201 KAR 11:220, Section 5.

26. "Fair housing discrimination" means the violation of Title VIII of the Civil Rights Act of 1968 (as amended), the Fair Housing Amendment Act of 1998 (as amended), or any other similar federal, state or local law or ordinance.

## **SECTION VII - DEFENSE AND CLAIMS EXPENSES**

With respect to any "claim" or "suit" otherwise covered under this policy, we will pay on behalf of the insured the following amounts stated in subparagraphs (a) through (g) below, which payments shall not be subject to the Limits of Liability; provided, however, that our duty to make such payments will terminate when our payment of "damages" has exhausted the applicable Limits of Liability:

- a. all "claim expenses" incurred by the insured in excess of the Each Claim Expenses Deductible, provided such "claim expenses" are incurred an attorney approved by us;
- b. the cost of bonds to release attachments; provided, however, that we shall have no obligation to furnish such bonds;
- c. an insured's actual loss of earnings, up to \$250 per day, up to a maximum of \$5,000, resulting from time off from work because of our request for assistance in the investigation or defense of a "claim" or "suit;"
- d. all taxed costs against the insured in the "suit;"
- e. all prejudgment interest awarded against an insured on that part of the judgment we pay; provided, however, that if we make a settlement offer to pay the available Limit of Liability, we shall have no obligation to pay any pre-judgment interest that accrues after the date of such offer;
- f. all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited into court that part of the judgment within the applicable Limit of Liability; and
- g. all "claim expenses" incurred, in excess of the Each Claim Expenses Deductible, in the defense of any "claim" or "suit" based upon, arising out of, or in any way connected to, directly or indirectly, any services performed by an insured as an escrow agent; provided, however, that our limit of liability for such "claims expenses" shall not exceed \$25,000 per "claim" or "suit" and \$25,000 in the aggregate.

## **SECTION VIII - EXTENDED REPORTING PERIOD**

### **1. Automatic Extended Reporting Period**

- a. If this policy is cancelled or non-renewed for any reason (other than cancellation for non-payment of premium), you shall have the right following the effective date of such cancellation or non-renewal to a period of ninety (90) days (herein referred to as the "Automatic Extended Reporting Period") in which to give written notice to us of any "claim" first made against you during the "policy period" for any "wrongful act" occurring prior to the end of the "policy period" and otherwise covered by this policy.
- b. The Automatic Extended Reporting Period does not apply to any "claims" that are covered under any subsequent insurance you purchase or which is purchased for your benefit, or that would otherwise be covered by such subsequent insurance but for (1) the exhaustion of the amount of insurance applicable to such "claims" or (2) any applicable retention or deductible.
- c. The Automatic Extended Reporting Period does not extend the "policy period," change the scope of coverage provided under this policy, or reinstate or increase the Limits of Liability of this policy.

### **2. Additional Extended Reporting Period**

- a. If this policy is cancelled or non-renewed for any reason (other than cancellation for non-payment of premium), you shall have the option to purchase, for an additional premium, an additional extended reporting period (the "Additional Extended Reporting Period").
- b. The Additional Extended Reporting Period Option begins at the termination of the "policy period" and continues for a period of one (1), two (2) or three (3) years thereafter.
- c. The additional premium for the Additional Extended Reporting Period Option shall be one hundred percent (100%) for a (1) year period, one hundred fifty percent (150%) for a (2) year period, and two hundred percent (200%) for a (3) year period of your full expiring annual premium.

- d. If you purchase the Additional Extended Reporting Period, we will issue an Additional Extended Reporting Period endorsement, but only if:
  - (1) you request the Additional Extended Reporting Period and pay the additional premium within ninety (90) days of the end of the "policy period;" and
  - (2) you have paid all premiums due under this policy at the time you request an Additional Extended Reporting Period Endorsement.
- e. During the Additional Extended Reporting Period, coverage under this policy applies as excess over any valid and collectible insurance available under policies in force after such Extended Reporting Period starts.
- f. The Additional Extended Reporting Period only applies to "claims" for "wrongful acts" committed prior to the expiration of the "policy period" and after "your retroactive date."
- g. The Additional Extended Reporting Period does not extend the "policy period," change the scope of coverage provided under this policy, or reinstate or increase the Limits of Liability of this policy.
- h. The Additional Extended Reporting Period may not be renewed upon its expiration.
- i. The premium paid for the Additional Extended Reporting Period is fully earned when paid. We will not return any part of the premium paid for the Additional Extended Reporting Period for any reason whatsoever.
- j. The Additional Extended Reporting Period cannot be cancelled if you pay the premium required to purchase the Additional Extended Reporting Period.

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