

FAQ's

E&O Insurance – Not all Policies are the Same

Q What are the requirements for errors and omissions (“E&O”) insurance for real estate brokers in Colorado?

A Commission Rule D-14 states: Every active real estate licensee, including real estate companies, shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

The insurance carrier must maintain an A.M. Best rating of “B” or better.
The broker must maintain a minimum of \$100,000 coverage per covered claim and an annual aggregate limit of \$300,000.

Q Does the Colorado Real Estate Commission (“Commission”) endorse a particular E&O policy?

A The Commission enters into a contract with a qualified carrier to make a group policy available to all licensees which provides for the minimum insurance coverage required. They do not endorse or recommend any particular policy or coverage. They simply provide a qualifying option to licensees as required by law.

Q Who are the primary providers of broker E&O insurance in Colorado?

A Rice Insurance Services Company (RISC) and Williams Underwriting Group (Williams) are the two primary carriers in Colorado. There are other independent brokers who offer E&O insurance in our state, but these are the primary two companies.

Q What is the cost of the base minimum E&O policy in Colorado with Williams and RISC?

A The annual premium for the base minimum Williams policy endorsed by CAR is \$295.00.
The annual premium for the base minimum RISC policy is \$255.00.

Q Why did the Colorado Association of REALTORS® endorse the Williams policy?

A CAR worked with E&O insurance experts to review our members' options and create the best possible coverage for Colorado REALTORS® at a reasonable price. We worked with Williams to design a special endorsement package for REALTORS® that is part of the basic policy at no additional cost to our members (*Non-Realtors pay an additional \$40.00 for the same endorsement package*). This package provides members with additional coverages or higher limits that are either not available in the RISC policy or are available for an additional premium.

Q. What happens to my coverage of prior acts if I switch my current insurance company to a new company?

A. You may move from insurance carrier to insurance carrier with zero risk to your prior acts coverage, so long as you never let your coverage lapse. You can switch back and forth between carriers and it does not impact (1) your ability to retain your prior acts coverage and (2) whether a claim will be covered. Your prior acts coverage will go with you as you move between carriers, so long as the coverage never lapses.

However, not all policies are the same! Different providers offer different coverage limits and different endorsement packages. Your coverage is only as good as your current policy. Additional coverage purchased in previous years will not continue unless your current policy includes those same coverages.

Q. What if I have reported a claim to my current carrier, and would like to switch companies...will it impact how that claim is handled or covered?

A. If you file a claim with an insurance provider, the moment it's filed, that particular insurer is on that claim. Now, the insurer may deny coverage under the terms of the policy or they may provide coverage. Regardless, once it's reported to the insurer, they are on that claim. You may move from insurance carrier to insurance carrier with zero risk to your prior acts coverage, so long as you never let your coverage lapse.

Q. Do you need to purchase an Extended Reporting Period Endorsement "ERP" or "Tail Coverage" if you switch insurance companies?

A. Simply switching insurance companies does not usually create the need to purchase "Tail Coverage". As stated above, so as long as you do not allow any gaps in coverage there should not be a need to purchase "Tail Coverage".

If you have any concerns about whether "Tail Coverage" is needed you should speak with your agent. The need for "Tail Coverage" typically occurs if a licensee is retiring, goes inactive or does not renew coverage in a timely basis. If a need for "Tail Coverage" does arise you will need to contact the provider of your expiring policy for their terms and conditions. Please keep in mind that there is a limited amount of time after your policy expires that you can purchase "Tail Coverage". Once that time is up, you will not be able to purchase any additional coverage to protect you for your prior acts.

Policy Coverage Questions

Q What is Disciplinary Proceedings or Regulatory Complaints Coverage?

A This is coverage for the legal defense of complaints or investigations brought against the insured by The Colorado Real Estate Commission or other regulatory body.

Q What is Conformity Coverage?

A If the insured has a real estate license in another state that has mandatory requirements for E&O insurance, the policy includes Conformity Coverage that allows the policy to conform to the insurance requirements of the other state.

Q What is Environmental Hazards coverage?

A This is coverage for the legal defense of claims that arise from failure to advise of lead, radon, asbestos, mold, etc.

Q What is Subpoena Response Coverage?

A If during the policy period, the insured receives a subpoena for documents or testimony in relation to professional real estate services, the insured may request assistance in responding to such subpoena. The insurance company will retain an attorney to provide advice regarding the production of documents, prepare you for sworn testimony, and represent the insured at the deposition.

Q What is a "Hammer Clause"?

A Often called a *Consent to Settle clause*, this protects the insurance company in the event the insured has a claim and there is an offer to settle. Should the insured choose to continue to fight the claim, the insurance company is only liable for the settlement amount. The insured is responsible for the difference of the payout should it exceed the original settlement amount.

A Sample "Hammer Clause"

"If the Insured refuses to consent to a settlement or compromise recommended by the Insurer and elects to contest or continue to contest a Claim, the Insurer's liability shall not exceed the amount for which the Insured would have been liable for Loss if the Claim had been so settled when and as recommended, and the Insurer shall have the right to withdraw from the further defense of the Claim by tendering control of the defense thereof to the Named Insured. The operation of this subsection shall be subject to the Limits of Liability and Retention provisions of this Policy"

A Modified Hammer Clause or a liberal Consent to Settle, as is included in the Williams policy, agrees that the insurer and insured will split the difference in liability (beyond the original settlement amount) in the event the insured chooses to refuse a settlement and continue to fight a claim. The 50/50 split pertains to the costs in excess of the original settlement amount. **For example:** an insured files a claim and there is an offer to settle for \$25,000. The insured chooses to continue to fight the claim. After litigation, the claim pays \$100,000. If the insured's policy includes a modified hammer clause, the insurer pays \$25,000 and the insurer and insured split the remaining \$75,000.

Q What is Innocent Party Coverage and Final Adjudication wording?

A Professional liability policies often exclude coverage for certain conduct of the insured - such as criminal, intentional, malicious, fraudulent acts – but provide that the exclusion is not applicable and legal defense will be provided until it is established that such conduct has occurred. Additionally, non-impute fraud wording states that exclusion of such acts does not apply to any insured who did not commit, did not participate in committing, or who did not remain passive after learning about the act described in the exclusion.