

# NAVIGATORS SPECIALTY INSURANCE COMPANY

**THIS IS A CLAIMS MADE POLICY.  
CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY.  
PLEASE READ THE ENTIRE POLICY CAREFULLY.**



## **REAL ESTATE PROFESSIONAL ERRORS AND OMISSIONS INSURANCE POLICY**

Words and phrases that appear in **bold** print have special meanings that are defined in section III., **DEFINITIONS**.

### **I. INSURING AGREEMENTS**

#### **A. Coverage**

The **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** during the **policy period** or any applicable **extended reporting period** by reason of an act or omission, including **personal injury**, in the performance of **professional services** by the **Insured**, provided that:

1. No such act or omission, or **related act or omission**, was committed prior to the **retroactive date**;
2. Prior to the inception date of the first policy issued by the **Company**, and continuously renewed, no **Insured** had a basis to believe that any such act or omission, or **related act or omission**, might reasonably be expected to be the basis of a **claim**; and
3. The **claim** must be reported in writing to the **Company** during the **policy period** or within 60 days after the end of the **policy period** unless an **extended reporting period** applies.

#### **B. Defense**

The **Company** has the right and duty to defend any **claim** against the **Named Insured** even if any of the allegations of the **claim** are groundless, false or fraudulent. Defense counsel may be designated by the **Company** or, at the **Company's** option, by the **Insured** with the **Company's** written consent and subject to the **Company's** guidelines.

#### **C. Settlement**

The **Company** will have the right to make, with the consent of the **Named Insured**, any settlement of a **claim** under this policy. If the **Named Insured** refuses to consent to a settlement within the policy's applicable limit of liability that is recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability under this policy will be reduced to the amount of **damages** for which the **claim** could have been settled plus all **claims expenses** incurred up to the time the **Company** made its recommendation.

#### D. Exhaustion of Limits

The **Company** is not obligated to pay any **damages** or **claim expenses**, or to defend or continue to defend any **claim**, after the applicable limit of liability has been exhausted, or after the **Company** has deposited the remaining limit of liability into a court of competent jurisdiction or tendered the remaining limit of liability to the **Named Insured** or, if applicable, to the excess insurer(s) of the **Named Insured**.

## II. LIMITS OF LIABILITY AND DEDUCTIBLE

### A. Limit of Liability - Each Claim

Subject to paragraph B. below, the **Company's** limit of liability for **damages** and **claim expenses** for each **claim** first made and reported in writing to the **Company** during the **policy period** will not exceed the amount shown in Item 4A. in the Declarations for "Limit of Liability - Each **Claim**."

### B. Limit of Liability - Policy Aggregate

The **Company's** limit of liability for **damages** and **claim expenses** for all **claims** first made and reported in writing to the **Company** during the **policy period** will not exceed the aggregate amount shown in Item 4B. in the Declarations as the "Limit of Liability - Policy Aggregate."

### C. Deductible

1. The deductible amount shown in item 5. in the Declarations is the **Named Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to, and in excess of, the deductible.
2. The **Named Insured's** obligation to pay the deductible amount stated in item 5. in the Declarations will be reduced by 50% of the applicable deductible for each **claim**, but not to exceed a maximum amount of \$5,000, provided all of the following conditions are satisfied and evidence of such is provided to the **Company** when notice of **claim** is received:
  - a. A seller disclosure form was signed by the seller and acknowledged in writing by the buyer prior to closing;
  - b. A home warranty policy was purchased or waived in writing by the buyer between the time the **residential real property** was listed and up to and including 30 days after closing;
  - c. An accredited written property inspection report was performed on the property or waived in writing by the buyer prior to closing; and
  - d. A state or local board-approved standard sales contract was utilized.
3. If a **claim** is resolved by settlement, with the consent of the **Named Insured** and the **Company**, within one (1) year following the date that the **claim** is reported in writing to the **Company**, the **Named Insured** will be reimbursed or credited 50% of the applicable deductible, but not to exceed a reimbursement of \$5,000 each **claim**.

If both C. 2 and 3 above apply, only one reduction applies.

#### **D. Multiple Insureds, Claims and Claimants**

The limit of liability shown in the Declarations is the maximum amount the **Company** will pay under this policy for **damages** and **claim expenses** regardless of the number of **Insureds, claims** made or claimants. All **related claims**, whenever made, shall be considered a single **claim** first made when the earliest of the **related claims** was first made and first reported when the earliest of the **related claims** was reported in writing to the **Company**; provided, however, that the **Insured** must report all **claims** as soon as reasonable in accordance with Section V. CONDITIONS, paragraph A.1.

#### **E. Multiple Policies**

If this policy and any other policy issued by the **Company** provide coverage for the same **claim**, the maximum limit of liability under all the policies combined shall not exceed the highest remaining applicable limit of liability for the **claim** under any one policy.

#### **F. Supplementary Payments**

Supplementary payments are not subject to the deductible and are in addition to the limits of liability.

##### **1. Reimbursement of Expenses**

The **Company** will pay up to \$500.00 for loss of earnings to the **Insured** for each day or part of a day the **Insured** is in attendance, at the **Company's** request, at a trial, hearing, mediation or arbitration proceeding involving a **claim** against the **Insured**. The maximum amount payable, regardless of the number of trials, hearings, mediations or arbitration proceedings or the number of **Insureds** shall be \$7,500 each **claim** and \$25,000 per **policy period**.

##### **2. Disciplinary Actions**

The **Company** will reimburse the **Insured** for reasonable attorneys' fees, costs and expenses incurred resulting from the investigation or defense of a **disciplinary action** first received by the **Insured** and reported in writing to the **Company** during the **policy period** by reason of an act or omission in the performance of **professional services**. The maximum amount payable, regardless of the number of **disciplinary actions**, shall be \$10,000 each claim and \$30,000 per **policy period**. The **Company** shall not be obligated to defend any **disciplinary action**, or pay any fine, penalty or award resulting from any **disciplinary action**.

##### **3. Subpoena Expenses**

The **Company** will pay expenses incurred while assisting the **Insured** in responding to a subpoena which the **Insured** first receives and reports in writing to the **Company** during the **policy period** resulting from the performance of **professional services** by the **Insured**. The maximum amount payable for subpoena expenses is \$10,000 per subpoena; provided, however, that all subpoenas arising out of **related acts or omissions** shall be deemed to constitute a single subpoena.

#### 4. Reimbursement for Security Incident

The **Company** will reimburse the **Named Insured** for any **security incident** response expenses up to a maximum of \$5,000 per **security incident** and \$10,000 per **policy period**. **Security incident** response expenses are any expenses incurred by the **Insured** to:

- a. Hire cyber forensic analysts to determine the extent of an actual security breach that has occurred; or
- b. Comply with state or local privacy laws requiring that notification and credit monitoring services are to be provided to individuals when the security, confidentiality, or integrity of their personal information has been compromised.

#### G. Coverage Extensions

##### 1. Discrimination

The **Company** will provide a limit of liability up to \$250,000, for **damages** and **claim expenses** as a result of all **claims** reported to the **Company** during the **policy period** by reason of a civil lawsuit brought against the **Insured**, and arising out of **professional services** rendered on behalf of the **Named Insured**, for alleged violations of Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988 or any similar local, state or federal statute or regulation, including resulting **personal injury**.

This sub-limit is an aggregate limit of liability that is included within, and not addition to the Limit of Liability – Policy Aggregate stated in the Declarations.

##### 2. Lock-box

Subject to all other terms and conditions of this policy, this policy applies to **Lock-box**. **Lock-box** is not subject to the deductible stated in Section II. Limits and Deductible, item C.

##### 3. Open House

Subject to all other terms and conditions of this policy, this policy applies to **Open House**.

### III. DEFINITIONS

- A. **Bodily injury** means physical injury, sickness or disease sustained by any person including death resulting from any of these at any time. **Bodily injury** also means mental illness, mental anguish, emotional distress, pain, suffering, or shock sustained by that person, whether or not resulting from physical injury, sickness, disease or death of any person.
- B. **Claim** means a demand for money or services received by the **Insured** arising out of an act or omission in the performance of **professional services**. A **claim** also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

**C. Claim expenses** means:

1. Fees charged by attorneys designated by the **Company** or designated by the **Insured** with the **Company's** prior written consent;
2. All other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, mediation, defense or appeal of a **claim**, if incurred by the **Company** or by the **Insured** with the **Company's** prior written consent; and
3. Premiums on appeal bonds, attachment bonds or similar bonds; provided; however, the **Company** is not obligated to apply for or furnish any such bond.

**Claim expenses** do not include fees, costs or expenses of employees or officers of the **Company**, or salaries, loss of earnings or other remuneration by or to the **Insured**.

**D. Company** means the insurance company named in the Declarations.

**E. Construction manager** means a person providing the following services in connection with the construction, reconstruction or renovation of real property:

1. Management of facility construction, reconstruction or renovation plans;
2. Development and management of construction, reconstruction or renovation contracts and subcontracts; or
3. Development of loss control and risk management plans in connection with the construction, reconstruction or renovation.

**F. Damages** means any compensatory sum and includes a judgment, award or settlement, provided any settlement is negotiated with the **Company's** written consent. **Damages** also includes punitive or exemplary amounts, to the extent such amounts are insurable under the applicable state law.

**Damages** do not include:

1. The return, reduction or restitution of fees, commissions, expenses or costs for **professional services** performed or to be performed by the **Insured** and injuries that are a consequence of any fees, commissions, expenses or costs charged by the **Insured**;
2. Fines, penalties, forfeitures or sanctions;
3. The multiplied portion of any multiplied awards; or
4. Injunctive or declaratory relief.

**G. Disciplinary action** means a proceeding before any state licensing board, local real estate board or other governmental body regulating professional conduct, alleging misconduct in providing **professional services**. **Disciplinary action** does not include criminal charges.

**H. Extended reporting period** means the period of time after the end of the **policy period** for reporting **claims** to the **Company** that are made against the **Insured** during the

applicable **extended reporting period** by reason of an act or omission, which was committed prior to the end of the **policy period** and on, or subsequent to, the **retroactive date** and is otherwise covered by this policy.

- I. **Fungi** means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
- J. **Guaranteed sale listing contract** means a written agreement between the **Named Insured** and the seller of property in which the **Named Insured** agrees to purchase the property if it is not sold under the listing agreement within time period specified in the agreement.
- K. **Insured** means:
  - 1. The **Named Insured**;
  - 2. Any past or present partner, principal, shareholder, officer, director, member, employee or independent contractor and their employees, but only for **claims** arising from **professional services** performed on behalf of the **Named Insured**;
  - 3. The estate, heirs, executors, administrators assigns and legal representatives of the **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only for **claims** arising out of **professional services** performed by or on behalf of the **Named Insured** prior to such **Insured's** death, incapacity, insolvency or bankruptcy;
  - 4. Any real estate franchise corporation of which the **Named Insured** is a franchisee, but only as respects to the real estate franchise corporation's liability for acts or omissions committed by an **Insured** on behalf of the **Named Insured**;
  - 5. The lawful spouse or a qualifying domestic partner of any present or past partner, principal, shareholder, officer, director, member employee or independent contractor, but only for liability arising out of **professional services** performed by such partner, principal, shareholder, officer, director, member employee or independent contractor on behalf of the **Named Insured**.
- L. **Lock-box** means any **claim** arising out of the **Insured's** distribution, maintenance, operation or use of a keyless entry system or similar device used to gain access when showing properties not owned by the **Insured**.
- M. **Named Insured** means the person or entity specified in item 1. in the Declarations.
- N. **Open House** means any **claim** arising out of the showing of a property during an advertised designated time period (up to 3 hours) where multiple potential buyers have the opportunity to view the specified property that is listed for sale by the **Insured** while in the care, custody or control of the **Insured**.
- O. **Personal injury** means injury other than **bodily injury** arising out of one or more of the following offenses by reason of an act or omission by the **Insured** in the performance of **professional services**:
  - 1. False arrest, detention or imprisonment;

2. Malicious prosecution;
3. 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;
4. Oral or written publication, in any manner, of material that:
  - a. Slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
  - b. Violates a person's right of privacy;

Except, in either case, oral or written publication in any manner which arises out of advertising, broadcasting or telecasting activities conducted by or on behalf of any **Insured**.

- P. Policy period** means the period of time from the effective date shown in item 3. in the Declarations to the earliest of the date of termination, expiration or cancellation of this policy.
- Q. 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.
- R. Professional services** means services performed for others in the **Insured's** capacity as a(n):
1. Real estate agent or broker;
  2. Leasing agent or **property manager**;
  3. Appraiser or auctioneer of real property;
  4. Real estate consultant or counselor;
  5. **Short term escrow agent, referral agent** or notary public; or
  6. Member of a real estate accreditation, standards review or similar real estate board or committee,

Provided that all necessary licenses or certifications are held by the **Insured** at the time the act or omission giving rise to the **claim**.

**Professional services** shall also include services performed for others by the **Insured** on or via the **Insured's** internet, e-mail, telecommunications or similar system.

**Professional services** does not include services as a **construction manager**.

- S. Property damage** means:
1. Physical Injury to tangible property, including all resulting loss of use of that property; or

2. Loss of use of tangible property that is not physically injured.
- T. Property manager** means a person providing the following services in connection with the management of commercial or residential property:
1. Development and implementation of management plans and budget;
  2. Oversight of physical maintenance of property;
  3. Solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
  4. Development, implementation and management of loss control and risk management plans for real property;
  5. Development, implementation and management of contracts and subcontract (excluding property and liability insurance contracts) necessary to the daily functioning of the property; or
  6. Personnel administration and record keeping in connection with a managed property.

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

- U. Referral Agent** means a real estate agent whose services are limited to referring clients to an **Insured** for the purposes of commencing a real estate transaction, and do not include active solicitation or engagement in the sale of real property.
- V. Related claims** means all **claims** arising out of a single act or omission or **related acts or omissions** in the performance of **professional services**.
- W. Related acts or omissions** means all acts or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- X. Residential real property** means a one to four family dwelling.
- Y. Retroactive date** means the date shown in item 7. in the Declarations.
- Z. Security incident** means the unauthorized access to, or use of data containing private or confidential information in connection with the performance of **professional services** which results in the violation of any privacy regulation.

**AA. Short Term Escrow Agent** means an **Insured** performing the following services in connection with the sale or purchase of real property:

Receiving or holding funds in, or distributing funds from, an escrow or trust account when all such funds are received in the form of United States currency, certified or guaranteed check, or money order, held separately from **Insured's** funds and where such funds are to be fully distributed within twelve (12) months from date received.

#### IV. EXCLUSIONS

The **Company** will not defend or pay any **claim**:

- A. Based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by the **Insured**. The **Company** will provide the **Insured** with a defense of such **claim** unless and until such dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission has been determined by any final adjudication, finding of fact or admission by the **Insured**. Such defense will not waive any of the **Company's** rights under this policy. Upon establishment that the dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by the **Insured** was committed, the **Company** will have the right to seek recovery of the **claim expenses** incurred from the **Insured** found to have committed the acts or omissions;
- B. Based on or arising out of **bodily injury** or **property damage** except that this exclusion does not apply to **claims** arising out of **lock-box** or **open house**;
- C. Based on or arising out of discrimination, humiliation, harassment, or misconduct. Including, but not limited to, **claims** based on allegations relating to an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference; However this exclusion does not apply to any coverage afforded by Section II. Limit of Liability and Deductible, paragraph G.1. Coverage Extensions - Discrimination;
- D. Based on or arising out of the insolvency or bankruptcy of the **Insured**;
- E. Based on or arising out of:
  - 1. Any disputes involving the **Insured's** fees, commissions or charges;
  - 2. The conversion, misappropriation, commingling or defalcation of funds or other property;
  - 3. The gaining of any personal profit or advantage to which the **Insured** is not legally entitled; or
  - 4. The inability or failure to pay, collect or safeguard funds held for others, unless the **Insured** is acting in the capacity of a **short term escrow agent**;
- F. Based on or arising out of the 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;
- G. Based on or arising out of the actual or attempted purchase of property by any **Insured**;
- H. Based on or arising out of actual or attempted sale, leasing, appraisal, or property management of property developed, constructed or owned by:
  - 1. Any **Insured**;
  - 2. Any entity in which any **Insured** has a financial interest;
  - 3. Any entity which has a financial interest in the **Named Insured**; or

4. Any entity which is under the same financial control as the **Named Insured**, provided that such financial interest or control existed at the time of the act or omission giving rise to the **claim**.

This exclusion will not apply to any **claim** based on or arising out of:

- a. The actual or attempted sale or leasing of real property that the **Insured** did not construct or develop and in which the combined ownership interest of all **Insureds** was less than 20% at the time of sale or lease;
  - b. The actual or attempted sale of **residential real property**, owned by an **Insured** when all of the following conditions are met in connection with such sale:
    - i. A seller disclosure form was signed by the **Insured** and acknowledged in writing by the buyer prior to closing;
    - ii. An accredited written home inspection report was issued or waived in writing by the buyer prior to closing; and
    - iii. A state or local board-approved standard sales contract was utilized;
  - c. The actual or attempted sale, leasing or property management of the **Insured's residential real property** by another **Insured** who is not the owner of such **residential real property**;
  - d. The actual or attempted sale of real property owned by an **Insured** if the property was acquired by an **Insured** under a written **guaranteed sale listing contract**, and the title is held by an **Insured** for 12 months or less and the property was listed for sale continuously by an **Insured** from the date of acquisition to the date of resale; or
  - e. The management or leasing of real property in which an **Insured's** or all **Insureds'** controlling, legal or beneficial interest at the time property management services were performed is less than 50%;
- I. Based on or arising out of any 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; or
    4. Any state Blue Sky or Securities law;

Or any rules, regulations or amendments issued in relation to such acts, or similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability;
  - J. Based on or arising out of any guarantee or promise of future status, performance or valuation in the course of performing **professional services** by the **Insured**;

**K.** Based on or arising out of:

1. The actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants**;
2. Any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **pollutants**;
3. The installation, removal, disposal, handling, use or existence of, exposure to, contact with, or ingestion of lead paint or any substance or matter containing lead paint or the residue of lead paint; or
4. Contamination or radiation, including but not limited to radon, regardless of cause;

Unless and only to the extent, the **claim** results from the **Insured's** failure to disclose the existence of pollutants, asbestos, lead or radon;

- L.** Based on or arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any **fungi** or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to the injury or damage; or any loss cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, **fungi** or bacteria, by the **Insured** or by any other person or entity;
- M.** Based on or arising out of liability assumed by the **Insured** under any contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement;
- N.** By or on behalf of the **Insured** against any other **Insured** under this policy unless such **claim** arises out of **professional services** rendered by such other **Insured** in a professional /client relationship with the **Insured** making the **claim**;
- O.** Based on arising out of misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right or unauthorized use of confidential, privileged or non-public material or information;
- P.** Based on or arising out of the sale of insurance, or the failure to effect or maintain adequate levels of insurance;
- Q.** Based on or arising out of the alleged notarized certification or acknowledgement by the **Insured** of a signature on any document that the **Insured** did not witness being placed on the document;
- R.** Based on or arising out of actual or alleged any anti-trust law violation or any agreement or conspiracy to restrain trade.

## V. CONDITIONS

### A. Reporting of Claims and Potential Claims:

1. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** as soon as reasonable of any **claim** made against the **Insured**.
2. If during the **policy period**, any **Insured** becomes aware of any act or omission which may reasonably be expected to be the basis of a **claim**, including but not limited to any notice, advice or threat, whether written or verbal, that any person or entity intends to hold the **Insured** responsible for any alleged act or omission and gives written notice to the **Company** with full particulars, including:
  - a. The specific act or omission;
  - b. The dates and persons involved;
  - c. The identity of anticipated or possible claimants;
  - d. The circumstances by which the **Insured** first became aware of the possible **claim**; and
  - e. Potential damages or injury.

Then any **claim** that is subsequently made against the **Insured** arising out of such act or omission will be deemed to have been made on the date such written notice was received by the **Company**.

3. Notices pursuant to Conditions A.1 and A.2 must be mailed to the **Company** at the following address:

Navigators Pro – Claims Department  
One Penn Plaza, 32<sup>nd</sup> Floor  
New York, NY 10119  
212-613-4300 – Fax  
navproclaims@navg.com

### B. Assistance and Cooperation

1. The **Insured** will cooperate with the **Company** and upon the **Company's** request, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and proceedings in connection with a **claim**.
2. The **Insured** will assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to the **Named Insured** in connection with a **claim**.
3. The **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the prior written consent of the **Company**. The **Company** shall have no obligation to pay or reimburse any person or entity for sums expended to defend any **claim** otherwise covered under this Policy prior to written notice of such **claim** being received by the **Company**.

### C. Action against the Company

1. No action may be brought against the **Company** unless, as a condition precedent thereto:
  - a. The **Insured** has fully complied with all the terms of this policy; and,
  - b. Until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured**, the claimant and the **Company**.
2. Nothing contained in this policy will give any person or organization the right to join the **Company** as a defendant or co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability.

### D. Bankruptcy

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the **Company** of any of its obligations hereunder.

### E. Other Insurance

Such insurance as is provided by this policy shall be excess of any other valid and collectible insurance.

### F. Subrogation

In the event of any payment for any **claim** under this policy, the **Company** will be subrogated in the amount of such payment to all the **Insured's** rights of recovery against any person or organization. The **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

### G. Changes

Notice to any agent of the **Company** or knowledge possessed by any such agent or by any other person will not effect a waiver or a change in any part of this policy, and will not prevent or preclude the **Company** from asserting or invoking any right or provision of this policy. None of the provisions of this policy may be waived, changed or modified except by a written endorsement issued by the **Company** to form a part of this policy.

### H. Cancellation/Nonrenewal

1. This policy may be cancelled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this policy by giving written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel or non-renew this policy by sending written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least 60 days before cancellation or nonrenewal is to be effective. However, if the **Company** cancels this policy because the **Named Insured** has failed to pay a premium when due, this policy may be canceled by the **Company** by mailing to the **Named Insured** written notice stating when, not less than 10 days

thereafter, such cancellation will be effective. The time of surrender of the policy or the effective date and hour of cancellation stated in the notice will become the end of the **policy period**. Delivery of such written notice either by the **Named Insured** or by the **Company** will be equivalent to mailing.

3. If the **Company** cancels this policy, the earned premium will be computed pro rata. If the **Named Insured** cancels this policy, the **Company** will retain the customary short rate proportion of the premium. 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.
4. The offering of terms and conditions different from the expiring terms and conditions, including limits of liability, deductible or premium, shall not constitute a refusal to renew or a cancellation of this policy.

#### I. Territory

This policy applies to an act or omission taking place anywhere in the world provided that any suit is brought against the **Insured** within the United States of America, its territories or possessions, Puerto Rico or Canada.

#### J. Entire Contract

By acceptance of this policy the **Insured** attests that:

1. All of the information and statements provided to the **Company** by the **Insured**, including, but not limited to, the application and any supplemental information, are true, accurate and complete and will be deemed to constitute material representations made by the **Insured**;
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 the **Company**, embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**; and
4. Any material misrepresentation or concealment by the **Named Insured** or the **Insured's** agent will render the policy null and void and relieve the **Company** from all liability herein.

#### K. Notices

Other than **claims**, any notices required to be given by the **Insured** will be submitted in writing to the **Company** or its authorized representative. If mailed, the date of mailing of such notice will be deemed to be the date such notice was given and proof of mailing will be sufficient proof of notice.

#### L. Assignment

No assignment of interest of the **Insured** under this policy is valid, unless the **Company's** written consent is endorsed hereon.

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

The **Company** may examine and audit books and records of the **Insured**, as they relate to this policy, at any time during the **policy period** and up to three (3) years afterward.

#### **N. Reimbursement**

While the **Company** has no duty to do so, if the **Company** pays **damages** and **claim expenses**:

1. Within the amount of the applicable deductible, or
2. In excess of the applicable Limit of Liability, or
3. Under a reservation of rights to seek reimbursement, and it is determined that the **Company** is entitled to reimbursement,

All **Insureds's** shall be jointly and severally liable to the **Company** for such amounts. Upon written demand, the **Insured** shall repay such amounts to the **Company** within 30 days. Failure to pay any amount indicated may lead to policy termination.

#### **O. Named Insured Sole Agent**

The **Named Insured** will be the sole agent and will act on behalf of all **Insureds** for the purpose of giving or receiving any notices, any amendments to or cancellation of this policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy including the purchase of an **extended reporting period** under Section VI., paragraph B., C., or D. of this policy.

#### **P. Innocent Insured**

If coverage of this policy would not apply because of Section IV. EXCLUSIONS, paragraph A. or because of noncompliance with Section V. CONDITIONS, paragraph A.1., such exclusion or condition will not apply to any **Insured** who did not commit, participate in, or have knowledge of any of the acts described in Section IV. EXCLUSIONS, paragraph A. and whose conduct did not violate Section V. CONDITIONS, paragraph A.1.

#### **Q. Acquisitions and Mergers, and Other Material Changes**

In the event of any merger, acquisition, or change in a franchise relationship, involving the **Named Insured**, or other material changes in the **Named Insured's** operations, there will be no coverage under this policy for any merger, acquisition, or material change until the change has been accepted in writing by the **Company** and the appropriate premium has been determined by the **Company**. Premium will be calculated in accordance with the **Company's** rules, rates, rating plans, premiums, and minimum premiums applicable to the insurance afforded herein.

## VI. EXTENDED REPORTING PERIODS

### A. Automatic Extended Reporting Period

If this policy is cancelled or non-renewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of real estate professional errors and omissions insurance within sixty (60) days of the termination of the **policy period**. This automatic **extended reporting period** will terminate after sixty (60) days.

### B. Optional Extended Reporting Period

1. If this policy is cancelled or non-renewed by either the **Company** or by the **Named Insured**, then the **Named Insured** will have the right to purchase an optional **extended reporting period** of one, two or three years. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing:
  - a. Written notice to the **Company**; and
  - b. With the written notice, the amount of additional premium described below.
2. The non-refundable additional premium for the optional **extended reporting period** shall be:
  - a. For a one (1) year **extended reporting period**, 100% of the annual premium for the policy; or
  - b. For a two (2) year **extended reporting period**, 135% of the annual premium for the policy; or
  - c. For a three (3) year **extended reporting period**, 150% of the annual premium for the policy.
3. The first sixty (60) days of the optional **extended reporting period**, if it is purchased, shall run concurrently with the automatic **extended reporting period**.

### C. Death or Disability Reporting Period Option

In the event that a designated principal, partner or owner of the **Named Insured** dies or becomes permanently and totally disabled during the **policy period**, and the **Named Insured** cancels or fails to renew this policy due to dissolution of the firm an unlimited **extended reporting period** will be granted at no additional premium, provided that:

1. Within ninety (90) days of the death or permanent and total disability, the **Named Insured** or the estate of the designated principal, partner or owner of the **Named Insured** requests the unlimited **extended reporting period**; and
2. The estate of the designated principal, partner or owner of the **Named Insured** furnishes written evidence and proof of the designated principal, partner or owner of the **Named Insured's** death; or

3. The designated principal, partner or owner of the **Named Insured** provides evidence and proof of the permanent and total disability, including the date of the actual disability and written certification by the attending physician.

#### **D. Retirement Reporting Period Option**

1. If a designated principal, partner or owner of the **Named Insured** reaches the age of 65, and having been continuously insured by the **Company** on a claims-made basis for a minimum of 5 years, the designated principal, partner or owner of the **Named Insured** retires and the **Named Insured** cancels or fails to renew this policy due to dissolution of the firm, an unlimited **extended reporting period** will be granted at no additional premium; or
2. If a designated principal, partner or owner of the **Named Insured** retires from active business during the **policy period** and the **Named Insured** cancels or fails to renew this policy due to dissolution of the firm, an unlimited **extended reporting period** can be purchased for a non-refundable additional premium of 160% of annual premium.

Such right must be exercised by the **Named Insured** within sixty (60) days of the retirement by providing:

- a. Written notice to the **Company**; and
- b. With the written notice, if applicable, the amount of additional premium described in Item D.2. above.

#### **E. Extended Reporting Period Limits of Liability**

The limit of liability of the **Company** for all **claims** reported during any **extended reporting period** will be part of, and not in addition to, the limit of liability for the **policy period** set forth in item 4. in the Declarations.

#### **F. Elimination of Right to Any Extended Reporting Period**

There is no right to any **extended reporting period** if the **Company** cancels or refuses to renew this policy due to:

1. Nonpayment of amounts due under this policy;
2. Noncompliance by any **Insured** with any of the terms and conditions of this policy;
3. Any material misrepresentation or omission in the application or the supplementary information and statements provided by the **Named Insured** for this policy.

#### **G. Extended Reporting Period - Not a New Policy**

The **extended reporting period** will not be construed to be a new policy and any **claim** submitted during such period will otherwise be governed by this policy.