



Great American Insurance Company

Real Estate Professional
Liability Insurance Policy

Real Estate Professional Liability Insurance Policy

Great American Insurance Company – Professional Liability Division:
Post Office Box 1178, Cincinnati, OH 45201

Table of Contents

I.	Insuring Agreement.....	Page 1
II.	Definitions.....	Page 1
III.	Exclusions.....	Page 5
IV.	Limits of Liability.....	Page 8
V.	Deductible.....	Page 8
VI.	Supplementary Payments.....	Page 9
VII.	Defense and Settlement.....	Page 10
VIII.	Extended Reporting Periods.....	Page 10
IX.	Notice of Claim.....	Page 13
X.	General Conditions.....	Page 14
(A)	Assistance and Cooperation.....	Page 14
(B)	Action Against the Company.....	Page 14
(C)	Bankruptcy.....	Page 14
(D)	Other Insurance.....	Page 14
(E)	Subrogation.....	Page 15
(F)	Changes.....	Page 15
(G)	Cancellation/Nonrenewal.....	Page 15
(H)	Territory.....	Page 17
(I)	Entire Contract.....	Page 17
(J)	Notices.....	Page 17
(K)	Assignment.....	Page 17
(L)	Liberalization.....	Page 17
(M)	Examination of Your Books and Records.....	Page 17
(N)	Reimbursement.....	Page 17
(O)	Transfer of Duties Upon Exhaustion of a Limit of Liability	Page 18
(P)	Named Insured Sole Agent.....	Page 19
(Q)	Innocent Insured.....	Page 19
(R)	Acquisitions and Mergers, and Other Material Changes.....	Page 19
(S)	Conformity to Law.....	Page 19
(T)	Representative of the Company.....	Page 19

GREAT AMERICAN INSURANCE GROUP®

Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD.

THIS POLICY PROVIDES THAT CLAIM EXPENSES MAY BE APPLIED AGAINST THE DEDUCTIBLE BY UP TO 50% OF THE DEDUCTIBLE AMOUNT FOR POLICIES WITH A LIMIT OF LIABILITY – EACH CLAIM OF \$500,000 OR GREATER.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company identified in the Declarations (a stock insurance company, hereinafter called the **Company**), and subject to all terms, conditions, and limitations of the Policy, the **Insured** and the **Company** agree as follows.

Section I. Insuring Agreement

The **Company** will pay on behalf of an **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 **Real Estate Professional Services** by the **Insured**, including any **Lock-box Claims** or **Open House Claims**, provided that:

- A. no such act or omission, or **Related Act or Omission**, was committed prior to the **Retroactive Date**;
- B. 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
- C. the **Claim** must be reported in accordance with Section IX. Notice of **Claims** and Potential **Claims**.

The **Company** has the right and duty to defend any **Claim** against an **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.

Section II. 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 any person, whether or not resulting from physical injury, sickness, disease or death of such person.
- B. “**Claim**” means:
 - (1) a written demand for money or services received by an **Insured**; or
 - (2) a civil proceeding in a court of law, or arbitration proceeding, against an **Insured**, commenced by the service of summons or receipt of an arbitration demand;

arising out of an act or omission in the performance of **Real Estate Professional Services**.

C. “**Claim Expenses**” means:

- (1) fees and costs charged by attorneys designated by the **Company** or designated by an **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 an **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 an **Insured**.

D. “**Company**” means the insurance company identified 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 monetary judgment or award which an **Insured** is legally obligated to pay. **Damages** also means a monetary settlement to which the **Company** agrees on an **Insured's** behalf; provided, however, **Damages** do not include:

- (1) the return, restitution, reduction, compromise or refund of fees, commissions, expenses or costs for **Real Estate Professional Services** performed or to be performed by an **Insured** and injuries that are a consequence of any fees, commissions, expenses or costs charged by an **Insured**;
- (2) fines, penalties, forfeitures or sanctions;
- (3) the multiplied portion of any multiplied awards;
- (4) the cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including services or injunctive relief; or
- (5) punitive or exemplary amounts;
- (6) any amounts uninsurable as a matter of law or public policy.

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 **Real Estate Professional Services**; provided, however, **Disciplinary Action** does not include any 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 an **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** “**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 the time period specified in the agreement.
- J.** “**Insured**” means:
- (1) the **Named Insured**;
 - (2) any person who is a past or present partner, principal, shareholder, officer, director, member, or independent contractor and any of their employees, but only for **Claims** arising from **Real Estate Professional Services** performed on behalf of the **Named Insured**. Provided further that if such person has ceased to be employed or affiliated with the **Named Insured**, or any predecessor firm, such person shall continue to be an **Insured** hereunder with respect to **Real Estate Professional Services** performed on behalf of the **Named Insured** during such employment or affiliation;
 - (3) the estate, heirs, executors, administrators, assigns and legal representatives of any present or past partner, principal, shareholder, officer, director, member, employee or independent contractor in the event of such **Insured’s** death, incapacity, insolvency or bankruptcy, but only for **Claims** arising out of **Real Estate 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**; and
 - (5) the lawful spouse of any present or past partner, principal, shareholder, officer, director, member, employee or independent contractor, but only for liability arising out of **Real Estate Professional Services** performed by such partner, principal, shareholder, officer, director, member, employee or independent contractor on behalf of the **Named Insured**.
- K.** “**Lock-box Claims**” means any **Claim** arising out of an **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**.
- L.** “**Named Insured**” means the person or entity stated in Item 1. in the Declarations.
- M.** “**Open House Claims**” means any **Claim** arising out of the showing of a property during an advertised designated time period where multiple potential buyers have the opportunity to view the specified property that is listed for sale by an **Insured** while in the care, custody or control of the **Insured**.
- N.** “**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 an **Insured** in the performance of **Real Estate 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, if such eviction, entry or invasion is by or on behalf of its owner, landlord or lessor; or
 - (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**.

O. “**Policy Period**” means the period of time from the effective date stated in Item 3. in the Declarations to the earliest of the date of termination, expiration or cancellation of this Policy.

P. “**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.

Q. “**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.

R. “**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**.

S. “**Real Estate Professional Services**” means services performed for others in an **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) expert witness, real estate consultant or counselor, provided such services are limited to the areas specified in items (1) through (3) above;
- (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 of the act or omission giving rise to the **Claim**.

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

Real Estate Professional Services does not include any services as a **Construction Manager**.

- T. “**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.
- U. “**Related Claims**” means all **Claims** arising out of a single act or omission or **Related Act or Omission** in the performance of **Real Estate Professional Services**.
- V. “**Related Act or Omission**” means all acts or omissions that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- W. “**Residential Real Property**” means a one to four family dwelling.
- X. “**Retroactive Date**” means the date stated in Item 7. in the Declarations.
- Y. “**Security Incident**” means the unauthorized access to or use of data containing private or confidential information in connection with the performance of **Real Estate Professional Services**, which results in the violation of any privacy regulation.
- Z. “**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.

Section III. Exclusions

This Policy does not apply to any **Claim**:

- A. based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by an **Insured**;
- B. based on or arising out of **Bodily Injury** or **Property Damage**, except that this exclusion does not apply to **Lock-Box Claims** or **Open House Claims**;
- 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. Provided, however, that this exclusion shall not apply to an **Insured's** vicarious liability for discriminatory acts of others or an **Insured's** acts or omissions which result in disparate impact discrimination.
- D. based on or arising out of the insolvency or bankruptcy of an **Insured**;
- E. based on or arising out of:
 - (1) any disputes involving an **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 an **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**;

provided, however, this exclusion will not apply to any **Claim** based on or arising out of:

(a) the actual or attempted sale 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 the **Insured** under a written **Guaranteed Sale Listing Contract**, and the title is held by the **Insured** for 12 months or less and the property was listed for sale continuously by the **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 **Real Estate Professional Services** by an **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**;

unless and only to the extent, the **Claim** results from an **Insured's** failure to disclose the existence of **Pollutants** 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 asbestos on or within a building or structure, including its contents, regardless whether or not the asbestos was at any time airborne in the form of fibers, particles or dust or was contained in or formed part of a product; or any loss, costs 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 asbestos by an **Insured** or by any other person or entity;

M. based on or arising out of liability assumed by an **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 an **Insured** against any other **Insured** under this Policy unless such **Claim** arises out of **Real Estate Professional Services** rendered by such other **Insured** in a professional/client relationship with the **Insured** making the **Claim**;

O. based on arising out of actual or alleged 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, the failure to advise of the need for, or type of, insurance or failure to effect or maintain adequate levels of insurance;

Q. based on or arising out of the alleged notarized certification or acknowledgement by an **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 any actual or alleged anti-trust law violation or agreement or conspiracy to restrain trade; or

S. based on or arising out of any activity relating to:

- (1) right-of-way appraisals; or

- (2) proposed construction or land development appraisals, unless the appraisal is solely intended for **Residential Real Property**.

Section IV. Limits of Liability

A. Limit of Liability - Each Claim

Subject to paragraph B. below, the **Company's** liability for all **Damages** from each **Claim** first made during the **Policy Period** will not exceed the amount stated in Item 4.A. in the Declarations as the "Limit of Liability - Each Claim".

B. Limit of Liability - Policy Aggregate

The **Company's** liability for all **Damages** from all **Claims** first made during the **Policy Period** will not exceed the aggregate amount stated in Item 4.B. in the Declarations as the "Limit of Liability – Policy Aggregate". The Policy Aggregate limit of liability is the maximum amount the **Company** will pay under this Policy for **Damages** regardless of the number of **Claims** or claimants.

Section V. Deductible

- A. The deductible amount stated 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** before the **Company** has any obligation under this Policy to pay any **Damages** or **Claim Expenses** as to any **Claim**.

Claim Expenses charged against the deductible amount stated in Item 5. of the Declarations for "Each **Claim**" may equal up to fifty percent (50%) of the deductible amount if the limit of liability shown in Item 4.A. in the Declarations for "Each **Claim**" is at least \$500,000. However, no deductible shall apply to **Lock-Box Claims**. The limits of liability are in addition to, and in excess of, the deductible (if any).

- B. **Related Claims** made against an **Insured** under this Policy or under any renewal of this Policy will be considered a single **Claim** first made when the earliest of the **Related Claims** was first made. A single deductible and a single Each **Claim** limit of liability shall apply to any such single **Claim**.

- C. The **Named Insured's** obligation to pay the deductible amount stated in Item 5. in the Declarations as to a **Claim** will be waived up to 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 the **Claim** is received:

- (1) a seller disclosure form was signed by the seller and acknowledged in writing by the buyer prior to closing;
- (2) 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;
- (3) a state or local board-approved standard sales contract was utilized;
- (4) an accredited, written property inspection report was performed on the property or waived in writing by the buyer prior to closing; and
- (5) the individual **Insured** did not act as both the buyer's and the seller's agent in the transaction;

provided, however, with respect to a **Claim** arising from a transaction in which the individual **Insured** acted as both the buyer's and the seller's agent, the **Named Insured** will not be entitled to the above waiver but the **Named Insured's** obligation to pay the deductible amount stated in Item 5. in the Declarations as to such **Claim** will be reduced by 50% of the applicable deductible, not to exceed a maximum amount of \$5,000, provided

conditions (1) through (4) listed above are satisfied and evidence of such is provided to the **Company** when notice of **Claim** is received.

- D.** If a **Claim** is resolved by settlement, with the consent of the **Named Insured** and the **Company**, as reflected in a settlement agreement, order, dismissal, or judgment, 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 deductible, but not to exceed a maximum reimbursement of \$5,000 each **Claim** resolved or concluded in accordance with this Section of the Policy.
- E.** If both paragraphs C. and D. above apply to reduce the deductible as to any **Claim**, the **Named Insured** shall be entitled only to the largest applicable reduction under either paragraph C. or D. above.

Section VI. Supplementary Payments

The following supplementary payments are not subject to the deductible and are in addition to the limits of liability.

A. Reimbursement for Loss of Earnings

The **Company** will pay up to \$500.00 for loss of earnings to an **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 per **Claim** and \$25,000 for all **Claims** during the **Policy Period**.

B. Disciplinary Action

The **Company** will pay on behalf of an **Insured** reasonable attorneys' fees, costs and expenses incurred in responding to a **Disciplinary Action** that is 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 **Real Estate Professional Services**, provided that no act or omission alleged in the **Disciplinary Action** is the same as, or is a **Related Act or Omission** with, an act or omission alleged in a **Claim** made prior to the **Retroactive Date** or a notice of circumstance or potential claim given to a prior insurer. The maximum amount payable shall be \$10,000 per **Disciplinary Action** and \$30,000 for all **Disciplinary Actions** during the **Policy Period**, regardless of the number of **Disciplinary Actions**. The **Company** shall not be obligated to defend any **Disciplinary Action**, or pay any fine, penalty or award resulting from any **Disciplinary Action**.

C. Subpoena Expenses

Subject to an aggregate \$10,000 limit of liability per **Policy Period**, the **Company** will pay for all legal defense fees and expenses incurred in responding to a subpoena for documents or testimony first received by an **Insured** during the **Policy Period** by reason of an act or omission in the performance of **Real Estate Professional Services** by the **Insured** or by any person for whom the **Insured** is legally liable. The **Company** will at the **Insured's** request, and upon receipt of a copy of the subpoena, retain an attorney to provide advice regarding the production of documents, prepare the **Insured** for sworn testimony and represent an **Insured** at their deposition, provided that:

- (1) the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
- (2) the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past.

Any notice given to the **Company** of such subpoena shall be deemed notification under Section IX. of this Policy.

D. Security Incidents

The **Company** will reimburse the **Named Insured** for the following response expenses incurred by the **Named Insured** in responding to a **Security Incident** the **Named Insured** first discovers and reports in writing to the **Company** during the **Policy Period**. The maximum amount payable shall be \$10,000 per **Security Incident** and \$30,000 for all **Security Incidents** discovered and reported during the **Policy Period**, regardless of the number of **Security Incidents** or the number of **Insureds**. **Security Incident** response expenses are:

- (1) reasonable fees and expenses by cyber forensic analysts to determine the extent of the **Security Incident**; or
- (2) reasonable fees and expenses by attorneys or consultants to comply with federal, state or local privacy laws requiring that notification or credit monitoring services be provided to individuals when the security, confidentiality, or integrity of their personal information has been compromised by the **Security Incident**.

E. Non-Profit Director or Officer Coverage

The **Company** will reimburse any partner, principal, shareholder or member of the **Named Insured** for any **Damages** and **Claim Expenses** that such **Insured** becomes legally obligated to pay as a result of a **Claim** first made against such **Insured** and reported in writing to the **Company** during the **Policy Period** or **Extended Reporting Period** arising out of such **Insured's** acts or omissions in his or her capacity as a director or officer of a non-profit organization, as defined by the Internal Revenue Service, provided that such **Insured's** service on such non-profit organization has been disclosed to the **Company** in the application or other written notification which has been accepted in writing by the **Company**; provided that the maximum amount payable shall be \$15,000 per **Claim** and \$30,000 for all **Claims** during the **Policy Period**. Coverage shall be excess of all valid and collectible Director's and Officer's insurance which has been issued to the non-profit organization.

Section VII. Defense and Settlement

- A.** 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** maximum liability under this Policy for such **Claim** will be the sum of the **Damages** for which the **Claim** could have been settled and the **Claim Expenses** incurred up to the time the **Company** made such recommendation, subject at all times to the applicable limit of liability.
- B.** 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 for **Damages** has been exhausted by the payment of **Damages**.

Section VIII. Extended Reporting Periods

A. Automatic Extended Reporting Period

Upon termination of coverage by either the **Company** or by the **Named Insured**, or if the **Company** offers, or the **Named Insured** requests, any change in coverage less favorable to the **Named Insured**, including but not limited to a decrease in limits, reduction of coverage, increase in deductible or self-insured retention or new exclusion, the **Company** will provide to the **Named Insured** an automatic, non-cancelable **Extended Reporting Period** starting at the termination of the **Policy Period**. This automatic **Extended Reporting Period** will terminate after sixty (60) days.

B. Optional Extended Reporting Period

- (1) Upon termination of coverage by either the **Company** or by the **Named Insured**, or if the **Company** offers, or the **Named Insured** requests, any change in coverage less favorable to the **Named Insured**, including but not limited to a decrease in limits, reduction of coverage, increase in deductible or self-insured retention or new exclusion, then the **Named Insured** will have the right to purchase an optional **Extended Reporting Period** of one, two or three years. Within thirty (30) days after termination of coverage the **Company** will advise the **Named Insured** in writing of the automatic **Extended Reporting Period** coverage and the availability of, the premium for and the importance of purchasing optional **Extended Reporting Period** coverage. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **Policy Period** or thirty (30) days from the date of mailing or delivery of the advice required by paragraph (1) of this subdivision, whichever is greater, by providing:
 - (a) a written acceptance to the **Company**; and
 - (b) with the written acceptance, 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;
 - (b) for a two (2) year **Extended Reporting Period**, 135% of the annual premium for the Policy;
 - (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**.
- (4) If this Policy has been issued to a corporation, partnership or other entity, any individual covered under the policy may purchase additional **Extended Reporting Period** coverage pursuant to this section provided that:
 - (a) such entity has been placed in liquidation or bankruptcy or permanently ceases operation;
 - (b) the entity or its designated trustee does not purchase the optional **Extended Reporting Period** coverage that may be available pursuant to paragraph B. (1) above; and
 - (c) such individual **Insured** requests the **Extended Reporting Period** coverage and pays the appropriate premium within one hundred twenty (120) days of the termination of coverage.

The premium charge for coverage to such an individual **Insured** shall be commensurate with such coverage. The **Company** shall have no obligation to provide notice to any individual **Insured** of the availability of the additional **Extended Reporting Period** coverage pursuant to this subparagraph.

C. Death or Disability Extended Reporting Period

In the event that a 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 **Named Insured** an unlimited **Extended Reporting Period** will be granted at no additional premium, provided that within ninety (90) days of the death or permanent and total disability:

- (1) the **Named Insured** or the estate of the principal, partner or owner of the **Named Insured** requests the unlimited **Extended Reporting Period**; and
- (2) The estate of the principal, partner or owner of the **Named Insured** furnishes written evidence and proof of the principal, partner or owner of the **Named Insured's** death or the 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 Extended Reporting Period

- (1) If a 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 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 **Named Insured**, an unlimited **Extended Reporting Period** will be granted at no additional premium; or
- (2) If a 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 **Named Insured**, 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) a written acceptance to the **Company**; and
- (b) with the written acceptance, the amount of additional premium described in item D. (2) above, if applicable.

There shall be no right to the retirement **Extended Reporting Period** if the license of the principal, partner or owner of the **Named Insured** has been suspended, revoked or surrendered at the request of any regulatory authority.

E. Extended Reporting Period Limits of Liability

- (1) The limit of liability of the **Company** for all **Claims** reported during the automatic **Extended Reporting Period** will be part of and not in addition to the limits of liability for the **Policy Period** set forth in Item 4. in the Declarations.
- (2) The limit of liability of the **Company** for all **Claims** reported during an optional **Extended Reporting Period** shall be:
 - (a) equal to one hundred percent (100%) of the Policy's annual aggregate limit where the **Named Insured** has been continuously insured by the **Company** for three years or more; or
 - (b) if the **Named Insured** has been continuously insured by the **Company** for less than three years, the limit liability shall be at least equal to the greater of:
 - i. the amount of coverage remaining in the Policy's annual aggregate limit of liability or
 - ii. fifty percent (50%) of such Policy's annual aggregate liability limit.

F. Elimination of Right to Any Extended Reporting Period

There is no right to any optional **Extended Reporting Period** if the **Named Insured** has been insured by the **Company** for less than one (1) year and this Policy has been terminated due to nonpayment of premium or fraud.

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.

Section IX. Notice of Claims or Potential Claims

A. An **Insured**, as a condition precedent to the obligations of the **Company** under this Policy, will give written notice to the **Company** as soon as reasonably possible of any **Claim** made against the **Insured**.

B. Failure to give any notice required by this Policy within the time prescribed shall not invalidate any **Claim** made by an **Insured**, an injured person or by any claimant, if it shall be shown that it was not reasonably possible to give such notice within the time prescribed and that notice was given as soon as was reasonably possible thereafter. Moreover, failure to give any notice required to be given within the time prescribed shall not invalidate any **Claim** made by an **Insured**, or any other claimant, unless the failure to provide timely notice has prejudiced the **Company**, provided that the notice shall have been made during the **Policy Period** or any applicable **Extended Reporting Period**.

C. 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:

- (1) the specific act or omission;
- (2) the dates and persons involved;
- (3) the identity of anticipated or possible claimants;
- (4) the circumstances by which the **Insured** first became aware of the possible **Claim**; and
- (5) 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**.

D. Notices pursuant to the foregoing paragraphs must be mailed or emailed to the **Company** at the following address:

- (1) Emailed to: PLDClaims@gaic.com;
- (2) Fax to: 855-806-8402; or
- (3) Mailed to: Great American Insurance Group Professional Liability Division
Attn: Claims Department
P.O. Box 1178
Cincinnati, OH 45201

Under this Section, written notice to any licensed agent of the **Company** in the State of New York shall be deemed notice to the **Company**.

Section X. General Conditions

A. Assistance and Cooperation

- (1) An **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) An **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) An **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment of **Claim Expenses** or **Damages**, assume or admit any liability or incur any **Claim Expenses** or other expense without the prior written consent of the **Company**.

B. 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** 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 an **Insured** to determine the **Insured's** liability.
- (3) If the **Company** denies coverage for a **Claim** or does not admit liability because an **Insured** or the injured person, someone acting for the injured person or other claimant fails to give the **Company** written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against the **Company**, provided the sole question is whether the denial of coverage or non-admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after the **Company** denies coverage or does not admit liability, the **Company** or the **Insured**:

- (a) brings an action to declare the rights of the parties under the Policy; and
- (b) names the injured person, someone acting for the injured person or other claimant as a party to the action.

C. Bankruptcy

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

D. Other Insurance

This Policy shall apply only as excess over, and shall not contribute with, any other valid and collectible policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise. This Policy will not be subject to the terms of any other insurance.

E. 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.

F. Changes

Notice to any agent of the **Company** or knowledge possessed by any such agent or by any other person will not affect 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.

G. 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) During the first 60 days this Policy is in effect, the **Company** may cancel this Policy by sending written notice to the **Named Insured** at the address shown in Item 2. in the Declarations and to the **Named Insured's** authorized agent or broker. The **Company** will provide such written notice at least twenty (20) days before such cancellation is to be effective if the cancellation is for any reason included in paragraph (3) below, or thirty (30) days before such cancellation is to be effective if such cancellation is for any reason not included in paragraph (3) below.
- (3) After this Policy has been in effect for 60 days, the **Company** may cancel this Policy by mailing to the **Named Insured** at the address shown in Item 2. in the Declarations and to the **Named Insured's** authorized agent or broker written notice stating when, not less than fifteen (15) days thereafter, such cancellation will be effective. Cancellation by the **Company** shall be limited to the following reasons:
 - (a) non-payment of premium provided that a notice of cancellation on this ground shall inform the **Named Insured** of the amount due; or,
 - (b) failure of the **Named Insured** to comply with the terms or conditions of this policy in a manner that substantially increases the hazard insured against; or
 - (c) revocation or suspension of the **Named Insured's** license to offer the professional services; or
 - (d) discovery of fraud or material misrepresentation in the obtaining of this policy or in the presentation of a claim.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) If the **Company** elects not to renew this Policy, the **Company** shall send notice as provided in paragraph (9) below.
- (8) The **Company** shall send notice as provided in paragraph (9) below if the **Company** conditions the renewal of this Policy upon:
 - (a) change in limits;
 - (b) change in type of coverage;
 - (c) reduction of coverage;
 - (d) increased deductible;
 - (e) addition of exclusion;
 - (f) increased premiums in excess of ten percent (10%), exclusive of any premium increase due to and commensurate with added or increased exposure; or as a result of experience rating, loss rating, retrospective rating, or audit.
- (9) If the **Company** decides not to renew this Policy or conditionally renew this Policy as provided in paragraphs (7) or (8), the **Company** shall mail or deliver written notice to the **Named Insured** at least sixty (60) days, but not more than one hundred twenty (120) days before:
 - (a) the expiration date; or
 - (b) the anniversary date if this is a continuous policy.

Notice will be mailed or delivered to the **Named Insured** at the address shown in the Declarations and to the **Named Insured's** authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice will include the specific reason or reasons for nonrenewal or conditional renewal. The **Company** will not send the **Named Insured** notice of non-renewal or conditional renewal if the **Named Insured**, or its authorized agent or broker, or another insurer of the **Named Insured** mails or delivers notice that this Policy is replaced or no longer desired.

- (10) If the **Company** violates any of the provisions of paragraphs (7), (8) or (9) by sending the **Named Insured** an incomplete or late notice of nonrenewal or conditional renewal:
 - (a) coverage will remain in effect at the same terms and conditions of this Policy at the lower of the current rates or the prior period's rates until sixty (60) days after such notice is mailed or delivered, unless the **Named Insured**, during this sixty (60) day period, has replaced the coverage or elects to cancel.
 - (b) on or after the expiration date of this Policy, coverage will remain in effect at the same terms and conditions of this Policy for another **Policy Period**, at the lower of the current rates or the prior period's rates, unless the **Named Insured**, during the additional **Policy Period**, has replaced the coverage or elects to cancel.

The limit of liability of this Policy shown in the Declarations will be increased in proportion to any policy extension provided by this paragraph (10).

H. Territory

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

I. Entire Contract

By acceptance of this Policy, an **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; and
- (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** (all of which are deemed to be incorporated herein), embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**.

J. Notices

Other than **Claims**, any notices required to be given by an **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.

K. Assignment

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

L. Liberalization

If the **Company** obtains approval for any state filing in the jurisdiction in which this Policy is issued that would expand coverage under this Policy without additional premium at any time during the current **Policy Period**, the expanded coverage will immediately apply to this Policy, except that it will not apply to **Claims** that were first made against an **Insured** prior to the effective date of such approval.

M. Examination of an Insured's Books and Records

The **Company** may examine and audit books and records of an **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,

all **Insureds** 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 thirty (30) days.

O. Transfer of Duties Upon Exhaustion of a Limit of Liability

- (1) If the **Company** concludes that, based on any **Claims** which have been reported and to which this insurance may apply, the insurance afforded by this Policy is likely to be exhausted by the payment of **Damages**, the **Company** shall provide written notice to that effect to the **Named Insured** at the address shown on the Declarations.
- (2) In the event either the “Limit of Liability - Each **Claim**” or the “Limit of Liability - Policy Aggregate” stated on the Declarations has actually been exhausted by the payment of **Damages**:
 - (a) The **Company** shall notify the **Named Insured** in writing as soon as reasonably possible that:
 - i. such limit has actually been exhausted; and
 - ii. the **Company’s** duty to defend **Claims** and suits seeking **Damages** subject to that applicable limit of liability has also ended.
 - (b) The **Company** shall initiate, and cooperate in, the transfer of control to any appropriate **Insured** of all **Claims** and suits seeking **Damages** which are subject to that limit and which have been reported to the **Company** before the limit was exhausted. The **Insured** must cooperate in the transfer of control of said **Claims** and suits.

The **Company** agrees to take such steps, as the **Company** deems appropriate, to avoid a default in, or continue the defense of, any **Claims** or suits until such transfer is completed, provided the appropriate **Insured** is cooperating in such transfer.

The **Company** will take no action whatsoever with respect to any **Claim** or suit seeking **Damages** that would have been subject to the applicable limit of liability if the **Claim** or suit is reported to the **Company** after that limit has been exhausted.
 - (c) The **Named Insured** and any other **Insured** involved in a **Claim** or suit seeking **Damages** subject to the limit of liability must arrange for the defense of such **Claim** or suit within such time period as agreed to between the appropriate **Insured** and the **Company**. Absent any such agreement, arrangements for the defense of such **Claim** or suit must be made as soon as reasonably possible.
- (3) The **Insured** shall reimburse the **Company** for expenses incurred by the **Company** in taking these steps it deems appropriate in accordance with paragraph (2)(b) above. The duty of the **Insured** to reimburse the **Company** will begin on:
 - (a) the date on which the applicable limit of liability is exhausted, if the **Company** sent notice in accordance with paragraph (1) above; or
 - (b) the date on which the **Company** sent notice in accordance with paragraph (2)(a) above, if the **Company** did not send notice in accordance with paragraph (1) above.
- (4) The exhaustion of any limit of liability by the payment of judgment or settlements, and the resulting end of the **Company’s** duty to defend, will not be affected by the **Company’s** failure to comply with any of the provisions of this paragraph.

P. 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 VIII., paragraph B., C., or D. of this Policy.

Q. Innocent Insured

Whenever coverage under this Policy would not apply because of Section III. A. or noncompliance with Section IX., such exclusion or condition will not apply to any **Insured** who did not commit, participate in, or have knowledge of any act in which Section III. A. applies and who did not participate in and was not aware of the noncompliance of Section IX. of this Policy.

R. Acquisitions, Mergers and Other Material Changes

The **Named Insured** must report to the **Company** in writing any merger, acquisition, change in franchise relationship or other material change in the **Named Insured's** operations within sixty (60) days of such change. The **Company** will have the right to decline additional coverage, charge additional premium and/or amend the provisions of this Policy accordingly.

S. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

T. Representative of the Company

Great American Insurance Group, Professional Liability Division, Post Office Box 1178, Cincinnati, OH, 45201 shall act on behalf of the **Company** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

In witness whereof the **Company** has caused this Policy to be signed by its President and Secretary.

GREAT AMERICAN INSURANCE COMPANY®


President


Secretary