



*Great American Fidelity Insurance Company*

Real Estate Professional  
Errors & Omissions Insurance Policy

# Real Estate Professional Errors & Omissions Insurance Policy

Great American Fidelity 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 6
IV.	Limits of Liability.....	Page 8
V.	Deductible.....	Page 9
VI.	Supplementary Payments.....	Page 10
VII.	Defense and Settlement.....	Page 11
VIII.	Extended Reporting Periods.....	Page 12
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 15
	(D) Other Insurance.....	Page 15
	(E) Subrogation.....	Page 15
	(F) Changes.....	Page 15
	(G) Cancellation/Nonrenewal.....	Page 15
	(H) Territory.....	Page 16
	(I) Entire Contract.....	Page 16
	(J) Notices.....	Page 16
	(K) Assignment.....	Page 16
	(L) Liberalization.....	Page 16
	(M) Examination of Your Books and Records.....	Page 16
	(N) Reimbursement.....	Page 16
	(O) Named Insured Sole Agent.....	Page 17
	(P) Innocent Insured.....	Page 17
	(Q) Acquisitions and Mergers, and Other Material Changes.....	Page 17
	(R) Conformity to Law.....	Page 17
	(S) Representative of the Company.....	Page 17
XI.	Service of Suit.....	Page 18

# **GREAT AMERICAN INSURANCE GROUP®**

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

## **THIS IS A CLAIMS MADE POLICY. CLAIM EXPENSES MAY REDUCE THE LIMIT OF LIABILITY. 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 **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 writing to the **Company** during the **Policy Period** or within sixty (60) days after the end of the **Policy Period** unless an **Extended Reporting Period** applies.

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, including punitive or exemplary damages where insurable by law, and pre-judgment and post-judgment interest. **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) 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. “Fair Housing Claims”** means any **Claim** arising out of **Real Estate Professional Services** rendered on behalf of the **Named Insured**, alleging 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 any resulting **Personal Injury**.
- J. “Fungi”** means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by such fungus.
- K. “Fungi Claims”** means any **Claim** arising out of **Real Estate Professional Services** rendered on behalf of the **Named Insured**, resulting from an **Insured’s** failure to disclose the existence or presence of **Fungi**, mold or bacteria in **Residential Real Property** in which neither the **Insured** nor the **Insured’s** spouse had any ownership interest.
- L. “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.
- M. “Insured”** means:
- (1) the **Named Insured**;
  - (2) any person who is a past or present employee, 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**;
  - (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 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 **Real Estate Professional Services** performed by such partner, principal, shareholder, officer, director, member, employee or independent contractor on behalf of the **Named Insured**.
- N. “Lock-box Claims”** means any **Claim** arising solely out of any unauthorized or wrongful operation or use of a keyless entry system or similar device, distributed and maintained by an **Insured**, when used to gain access to properties not owned by the **Insured**.
- O. “Named Insured”** means the person or entity stated in Item 1. in the Declarations.
- P. “Open House Claims”** means any **Claim** alleging **Bodily Injury** or **Property Damage** that occurred as a result of an act or omission in the course of showing a property during an advertised and 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**.

**Q. “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**.

**R. “Policy Period”** means the period of time from the effective date stated in Item 1 in the Declarations to the earliest of the date of termination, expiration or cancellation of this Policy.

**S. “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. **Pollutants** also include asbestos.

**T. “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.

**U. “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**.

V. “**Public Relations Crisis**” means any:

- (1) death, incapacitation, or departure of an **Insured**;
- (2) potential dissolution of the **Named Insured**;
- (3) incident of workplace violence; or
- (4) other major event;

that the **Named Insured** reasonably believes will have a damaging effect on the **Named Insured’s** reputation.

W. “**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**.

X. “**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.

Y. “**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**.

Z. “**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.

AA. “**Residential Real Property**” means a one to four family dwelling.

BB. “**Retroactive Date**” means the date stated in Item 7. in the Declarations.

CC. “**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.

**DD.** “**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**. The **Company** will provide the **Insured** with a defense of such **Claim** unless and until a final adjudication or finding of fact against, or admission by, such **Insured** establishes that such **Insured** committed such dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission. Such defense will not waive any of the **Company’s** rights under this Policy. Upon establishing that an **Insured** committed a dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission, the **Company** will have the right to seek recovery of any **Claim Expenses** incurred on behalf of any **Insured** that committed such acts or omissions;
- 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 mistreatment, 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, this exclusion does not apply to any **Damages** or **Claim Expenses** from any **Fair Housing Claims** up to the sublimit provided pursuant to Section IV. C. of the Policy;
- 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 by any individual or party, whether an **Insured** or not, whether the perpetrator is known or unknown, whether the **Insured’s** involvement was intentional or negligent and whether the conversion misappropriation, commingling or defalcation was effected through the use of electronic communication or not;
  - (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, or the 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 25% at the time of sale;
- (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 or leasing services were performed is less than 50%;

**H.** 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, The Securities Exchange Act of 1934 or any state Blue Sky or Securities law;
- (3) The Fair Credit Reporting Act (FCRA) and any amendment of or addition to such law including the Fair and Accurate Credit Transactions Act (FACTA);

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;

**I.** 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**;

**J.** 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 an **Insured's** failure to disclose the existence of **Pollutants**, lead or radon;

- K.** 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, 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, **Fungi** or bacteria by an **Insured** or by any other person or entity. However, this exclusion does not apply to **Damages** or **Claim Expenses** from any **Fungi Claims** up to the sub-limit provided pursuant to Section IV. D of the Policy;
- L.** 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;
- M.** 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**;
- N.** based on or 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;
- O.** 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;
- P.** based on or arising out of the alleged negated certification or acknowledgement by an **Insured** of a signature on any document that the **Insured** did not witness being placed on the document;
- Q.** based on or arising out of any actual or alleged anti-trust law violation or agreement or conspiracy to restrain trade; or
- R.** based on or arising out of any activity relating to 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 - Initial Claim Expense Aggregate**

Any payments by the **Company** of **Claim Expenses** in excess of the deductible will first reduce the "Initial **Claim Expense** Aggregate Limit", shown in Item 4.C. in the Declarations, and thereafter reduce the applicable Limit of Liability for "Each **Claim**" shown in Item 4.A. in the Declarations and the "Policy Aggregate" Limit of Liability shown in Item 4.B. in the Declarations.

The amount shown in Item 4.C. in the Declarations as the "Initial **Claim Expense** Aggregate Limit" applies solely to **Claim Expenses** from **Claims** first made against the **Insured**, and reported in writing to the **Company** during the **Policy Period**, and is in addition to and not part of the "Policy Aggregate" Limit of Liability shown in Item 4.B. in the Declarations.

**B. Limit of Liability - Each Claim**

Subject to paragraph C. below, the **Company's** liability in excess of the "Initial **Claim Expense** Aggregate Limit" for all **Claim Expenses** and **Damages** from each **Claim** first made against the **Insured**, and reported in writing to the **Company** during the **Policy Period**, will not exceed the amount shown in Item 4.A. in the Declarations as the Limit of Liability for "Each **Claim**".

**C. Limit of Liability - Policy Aggregate**

The **Company's** liability in excess of the "Initial **Claim Expense** Aggregate Limit" for all **Claim Expenses** and **Damages** from all **Claims** first made against the **Insured**, and reported in writing to the **Company** during the **Policy Period**, will not exceed the aggregate amount shown in Item 4.B. in the Declarations as the "Policy Aggregate".

**D. Limit of Liability – Fair Housing Claims**

The **Company's** liability for all **Damages** and **Claim Expenses** from all **Fair Housing Claims** first made and reported in writing to the **Company** during the **Policy Period** will not exceed the amount stated in Item 4.D. in the Declarations as the "Limit of Liability – **Fair Housing Claims**", which is within and not in addition to the Limit of Liability – Policy Aggregate stated in Item 4. B. in the Declarations.

**E. Limit of Liability – Fungi Claims**

The **Company's** liability for all **Damages** and **Claim Expenses** from all **Fungi Claims** first made and reported in writing to the **Company** during the **Policy Period** will not exceed the amount stated in Item 4.E. in the Declarations as the "Limit of Liability – **Fungi Claims**", which is within and not in addition to the Limit of Liability – Policy Aggregate stated in Item 4.B. in the Declarations.

**F. 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.

**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**. 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** and reported in writing to the **Company** 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 and first reported in writing to the **Company**. 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) an accredited, written property inspection report was performed on the property or waived in writing by the buyer prior to closing;
- (4) a state or local board-approved standard sales contract was utilized; 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 applicable 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 reimburse an **Insured** for 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 \$50,000 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

The **Company** will pay expenses incurred while assisting an **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 **Real Estate Professional Services** by the **Insured**, provided that the subpoena does not involve a circumstance or situation underlying or 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, regardless of the number of subpoenas shall be \$25,000.

#### **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 \$15,000 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**.

If the Cyber Extension endorsement (D43449) is added to this Policy, any supplementary payment under this Section VI.D. will no longer apply.

#### **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 demand for money or services first made against the **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 for 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**. The maximum amount payable shall be \$15,000 per demand and \$30,000 for all demands made during the **Policy Period**, regardless of the number of demands or the number of **Insureds**. Coverage shall be excess of all valid and collectible Director's and Officer's insurance which has been issued to the non-profit organization.

#### **F. Public Relations Crisis Coverage**

The **Company** will reimburse the **Insured** for reasonable public relations consulting services provided to the **Named Insured** by a public relations consulting firm in response to a **Public Relations Crisis** which first occurs and is reported to the **Company** during the **Policy Period**. The maximum amount payable shall be \$15,000 per **Public Relations Crisis** and \$30,000 for all **Public Relations Crises** during the **Policy Period**, regardless of the number of **Public Relations Crises** or the number of **Insureds**.

### **Section VII. Defense and Settlement**

- A.** The **Company** is not obligated to pay any **Damages** or **Claim Expenses** or to defend or continue to defend any **Claim** after the applicable "Each **Claim**" or "Policy Aggregate" limit of liability has been exhausted by the payment of **Damages** or **Claim Expenses** or any combination thereof; or after the **Company** has deposited the remaining available "Each **Claim**" or "Policy Aggregate" limit of liability into a court of competent jurisdiction or tendered the remaining available "Each **Claim**" or "Policy Aggregate" limit of liability to the **Named Insured** or, if applicable, to the excess insurer(s) of the **Named Insured**. In such case, the **Company** shall have the right to withdraw from the further investigation, defense or settlement of such **Claim** by tendering control of said investigation, defense and settlement of the **Claim** to the **Insured**.

- B.** 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 "Each **Claim**" or "Policy Aggregate" limit of liability.

## **Section VIII. 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**

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:

- (1) a written request to the **Company**; and
- (2) with the written request, the following amount of non-refundable additional premium:
  - (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.

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 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 request to the **Company**; and
- (b) with the written request, 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**

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; or
- (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.

**Section IX. Notice of Claim**

- 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.** The **Company** further agrees that an **Insured** may have up to, but not to exceed, 60 days after the Policy expiration to report in writing to the **Company** a **Claim** made against the **Insured** during the **Policy Period**, if the reporting of such **Claim** is as soon as reasonably possible.

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, faxed or emailed to the **Company** at the following address:

- (1) Emailed to: [PLDClaims@gaig.com](mailto:PLDClaims@gaig.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

## 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** 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 an **Insured** to determine the **Insured's** liability.

**C. Bankruptcy**

Bankruptcy or insolvency of the **Insured** or of the **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) 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 sixty (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 ten (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.

#### **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;
- (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**; 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.

#### **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 Your 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, or

- (3) under a reservation of rights to seek reimbursement, and it is determined that the **Company** is entitled to such reimbursement,

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. Failure to pay any amount indicated may lead to termination of this Policy.

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

**P. 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.

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

- (1) The **Named Insured** must report to the **Company** any merger, acquisition, change in franchise relationship or other material changes in the **Named Insured's** operations at least thirty (30) days prior to the projected date of such change, but no later than sixty (60) days after such change. Except as noted in Q.2. below, the **Company** will have the right to decline additional coverage or to charge additional premium, where applicable.
- (2) If, during the **Policy Period**, the **Named Insured** acquires or forms an entity, the entity will be covered under this Policy for **Real Estate Professional Services** performed during a 90-day period following the acquisition or formation of the entity or until the end of the **Policy Period**, whichever is earlier, unless the **Company** endorses additional coverage to this Policy.

**R. 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.

**S. 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.

## Section XI. Service of Suit

Pursuant to any statute of any state or district of the United States of America that makes provision therefor, the Insurer hereby designates the commissioner, superintendent or director of insurance or other officer specified for that purpose in the statute and his or her successors in office and duly authorized deputies as the Insurer's true and lawful attorney for service of legal process in any action, suit or proceeding brought in the state where this Policy is issued by or on behalf of an insured or beneficiary against the Insurer arising out of the insurance issued under this Policy. Any legal process received by such attorney for service of legal process shall be forwarded, except as provided below, to the attention of: **Office of General Counsel, P&C Legal Group, Great American Insurance Group, 301 E. 4th Street, Cincinnati, Ohio 45202.**

In **California**, any legal process received by the Insurer's statutory attorney for service of process shall be forwarded to the attention of: **Sarah Clemens, United Agent Group Inc., 4640 Admiralty Way, 5<sup>th</sup> Floor, Marina del Rey, CA 90292.**

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

**GREAT AMERICAN FIDELITY INSURANCE COMPANY®**



*President*



*Secretary*

**SPECIMEN**