

## PROFESSIONAL PROTECTION ERRORS & OMISSIONS LIABILITY POLICY

**THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO US IN ACCORDANCE WITH THE REPORTING REQUIREMENTS OF THIS POLICY. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMITS OF LIABILITY UNLESS OTHERWISE STATED.**

Throughout this policy the words “you” and “your” refer to the “named insured” and any other person qualifying as an “insured” under this policy. The words “we”, “us” and “our” refer to the Company providing this insurance. Headings are provided solely for convenience and are not part of the terms and conditions of coverage.

In consideration of the payment of the premium and subject to the statements in the Declarations and in the application submitted to us for this policy together with any written materials attached thereto and submitted to us, the parties agree as follows:

### COVERAGE AGREEMENTS

#### PROFESSIONAL LIABILITY COVERAGE

We will pay “defense costs” and “damages” because of a “claim” alleging a “wrongful act,” subject to the limits of liability and in excess of the deductible applicable under this policy. This policy applies only if:

- The “claim” is first made against you and reported to us during the “policy period” or any applicable “extended reporting period.”
- The alleged “wrongful act” first occurs on or after the “retroactive date” and before the end of the “policy period;” and
- Prior to the inception of the “policy period,” no “insured” knew or had a basis to know of any “wrongful act” or other circumstances that could reasonably be expected to give rise to such “claim.”

#### COVERAGE EXTENSIONS

##### Disciplinary Proceeding Expense Coverage

We will retain counsel and pay on your behalf all reasonable and necessary costs, expenses and fees incurred to represent you in connection with the investigation or defense of a disciplinary proceeding brought by an entity or organization authorized to regulate your professional conduct, provided that such proceeding is initiated against you and reported to us during the “policy period” and arises from a covered “wrongful act” first occurring after the “retroactive date” and before the end of the “policy period.”

All covered costs, expenses and fees payable under this coverage extension are not subject to the deductible and will be paid in addition to the Aggregate Limit of Insurance, subject to the Disciplinary Proceeding Sub-Limit of Insurance stated on the Declarations, regardless of the number of “insureds”. No “damages” or other costs are covered under this policy.



### **Wage Loss/Claim Attendance Expense Coverage**

We will reimburse you for actual lost wages and reasonable and necessary costs and expenses incurred by you to attend any deposition, trial, hearing, or arbitration proceedings at our request in connection with the defense of a covered "claim" against you.

All such covered amounts payable under this coverage extension are not subject to the deductible and will be paid in addition to the Aggregate Limit of Insurance subject to the daily Wage Loss Sub-Limit of Insurance stated on the Declarations, regardless of the number of "insureds".

### **DEFENSE AND SETTLEMENT**

We have the right and duty to defend, investigate, and settle any "claim," even if the "claim" is groundless, false or fraudulent. We will retain counsel to represent you in connection with such "claim."

Our obligation to defend and to pay "defense costs" or "damages" in connection with any "claim" or other amounts under this policy ends once the applicable Limit of Insurance has been exhausted.

We may negotiate and settle any "claim" on your behalf; however, we will not commit to any settlement without the written consent of the "named insured." If the "named insured" refuses to consent to a settlement we recommend that is acceptable to the claimant, then, subject to the applicable Limits of Insurance, we will not be obligated to pay more than the amount for which such "claim" could have been settled in "damages" plus "defense costs" up to the date the "named insured" refused to settle.

We have the right but not the duty to appeal any judgment.

### **LIMITS OF INSURANCE**

The Aggregate Limit of Insurance stated on the Declarations is the most we will pay for all "damages" and "defense costs" under this policy regardless of the number of "claims" made or insureds involved.

Subject to the Aggregate Limit of Insurance, the Each Claim Limit of Insurance stated on the Declarations is the most we will pay for all "damages" and "defense costs" under the policy for one "claim" or all "related claims."

### **DEDUCTIBLE**

Our obligation under this policy to pay "damages" or "defense costs" with respect to each "claim" applies only to the amount of "damages" and "defense costs" in excess of the deductible amount stated on the Declarations.

You shall promptly reimburse us for any "damages" or "defense costs" paid by us within the deductible amount. Reimbursement of such amounts shall apply towards and reduce the corresponding deductible amount.

### **REPORTING OF CLAIMS**

#### **Notice of a Claim; Circumstance Reporting**

You must notify us as soon as practicable after you first become aware of a "claim." In addition, you must promptly send us copies of any demands, notices, summons or legal papers received in connection with the "claim," authorize us to obtain records and other information, cooperate with us in the investigation or settlement of or defense against the "claim," and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of any "damages" to which this insurance may apply. To the

extent possible, notice should include: how, when and where the “wrongful act” took place and the names of any persons or entities involved in the facts underlying the “claim.”

You may report any circumstance or alleged “wrongful act” you become aware of during the “policy period” if you have a reasonable basis to believe the circumstance may become a “claim”. Your report should contain all known details as to dates, persons, and entities involved. If a “claim” is subsequently made against you that arises from or is based on the reported circumstance, then such “claim” will be deemed made during the “policy period” in which you reported the circumstance.

### **Extended Reporting Periods**

If the first “named insured” cancels or does not renew this policy, or if we non-renew or cancel this policy for reasons other than for non-payment of premium, the first “named insured” may purchase an Optional Extended Reporting Period. The options available for purchase are stated on the Declarations of this policy, along with the required additional premium.

To exercise this right, the first “named insured” must provide written notice to us within 60 days of the end of the “policy period” stating which Extended Reporting Period option is selected along with full payment of the additional premium required. The premium for the Extended Reporting Period is non-refundable, and the Extended Reporting Period is not cancellable.

If the first “named insured” does not elect to purchase an Optional Extended Reporting Period, an Automatic Extended Reporting Period of 60 days beginning the day after the end of the “policy period” will be provided at no additional premium.

The following conditions apply to any applicable Extended Reporting Period:

- The Extended Reporting Period does not increase or reinstate the Limits of Insurance, nor does it extend the “policy period” stated on the Declarations.
- An Extended Reporting Period applies only to “claims” first made during the Extended Reporting Period alleging “wrongful acts” first occurring on or after the “retroactive date” and before the end of the “policy period.”
- Extended Reporting Periods do not apply to provide coverage for “claims” that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the limit of insurance applicable to such “claims.”
- All “claims” under Extended Reporting Periods must be reported to us in accordance with the **Notice of Claims; Circumstance Reporting** provision herein and are deemed made on the last day of the “policy period.”

### **EXCLUSIONS**

This policy does not apply to any “claim”:

#### **Anti-Trust or Unfair Business Practices; False Advertising**

based upon or arising from any actual or alleged:

1. unfair competition or violation of any consumer protection or antitrust laws, including allegations of any antitrust violation, restraint of trade, or violation of the Sherman Anti-Trust Act, the Clayton Act, or Robinson-Patman Act, or any similar federal, state, local or foreign laws or statutes;

2. violation of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations Act, also known as “RICO”);
3. false, deceptive or unfair business practices, including false advertising regarding the quality or scope of your services, or false or misleading statements by you regarding the quality or scope of the goods and services of others providing similar services to yours.

### **Bodily Injury and Property Damage**

for, based upon, or arising from any actual or alleged “bodily injury” or “property damage”; however, this exclusion does not apply to “bodily injury” in the form of mental illness, mental anguish, emotional distress, or shock that arises from an otherwise covered “claim” alleging “personal injury.”

### **Conduct**

based upon or arising from any actual or alleged dishonest, fraudulent, criminal, malicious or intentional act committed by or at the direction of any “insured”, including the knowing or reckless violation of any statute, regulation, or other law. This exclusion will not apply to a “claim” unless or until such conduct has been determined by judgment, final ruling, or admission in any judicial proceeding, administrative or alternative dispute resolution proceeding. Providing a defense until the conduct is adjudicated does not mean we waive any of our rights under this policy.

### **Confidential or Personal Information Disclosure and Electronic Data Exclusion**

based upon or arising from any actual or alleged unauthorized or improper access to, collection, use or disclosure of, or the failure to protect non-public, confidential, corporate or personal information in any form, including electronic data, whether committed by a third party or by an “insured” acting within or outside the scope of his or her duties.

### **Contractual Liability**

based upon or arising from any actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; however, this exclusion shall not apply to your liability that exists in the absence of such contract or agreement.

### **Conversion of Funds**

based upon or arising from any actual or alleged conversion, unauthorized transfer, commingling, misappropriation, or improper use of funds or other property, or the gaining of any personal profit or advantage to which an insured is not legally entitled.

### **Discrimination or Harassment**

based upon or arising from allegations of discrimination, harassment, or humiliation, including sexual discrimination, harassment, humiliation, abuse, or misconduct.

### **Employment Matters**

based upon or arising from any actual or alleged employment obligations, decisions, practices or policies as an employer.

### **ERISA, Workers’ Compensation and Similar Laws**

based upon or arising out of any of the following:

- The Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), or any amendment or revision thereto;
- Any workers' compensation, disability benefits or unemployment compensation law; or
- Any other statute, regulation, or law similar to those stated above.

#### **Government Actions**

brought by or on behalf of any federal, state, local, or foreign government entity or authority, provided, however, that this exclusion does not apply to a "claim" by such entity in its capacity as a client of the "insured".

#### **Intellectual Property**

based upon or arising from any actual or alleged infringement of copyright, patent, slogan, title, trademark, trade secret, or any other intellectual property rights.

#### **Licensing or Other Professional Designations**

based upon or arising from any actual or alleged any services you provide without the required valid and active license, credentials, certification, or other form of authorization to the extent required by applicable state, federal or local law, rule or regulation. This exclusion also applies to any medical, healthcare, legal, architect, engineer, or accounting services, whether or not you are licensed to perform such services.

#### **Mechanical and Power Failures**

based upon or arising from any:

- electrical or mechanical failure of infrastructure not under your control, including but not limited to, any electrical power interruption, surge, brownout or blackout;
- failure of any satellite, telephone or data transmission or other telecommunication or network infrastructure not under your control; or
- lightning, wind, water, earthquake, volcanic eruption, tidal wave, landslide, or any other physical or natural event not under your control.

#### **Pollution**

based upon or arising from any discharge, dispersal, seepage, migration, release or escape of "pollutants" anywhere at any time, including any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants," or any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages concerning testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of "pollutants."

#### **Price or Outcome Guarantees**

based upon or arising out of any representations or guarantees made with respect to contract price or cost guaranty, return on investment, cost savings, profitability, or time of delivery that commit you to a standard of care higher than the applicable industry standard.

#### **Related Entities Claims**

brought or maintained by or on behalf of:

- any “insured”, or any associated entity of an “insured”; except, however, an “additional insured” will not be considered an “insured” if the entity makes a “claim” solely in its capacity as a client of the “named insured”.
- any person who, at the time of the “wrongful act” giving rise to the “claim”, is a family member;
- any entity operated or controlled by any “insured”, or any employee, partner or trustee of any “insured”; or
- any person or entity in which any “insured” has a direct or indirect financial interest or is advised or induced by the “insured” to invest in or lend money to any person, firm, company or entity referred to above or to the “insured”.

#### **Securities Law**

based upon or arising from the actual or alleged purchase, sale, offer or solicitation of an offer to purchase or sell securities, or the violation of any securities law, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any state “Blue Sky Laws” or any similar federal, state, local or foreign law.

#### **Unauthorized Communications**

based upon or arising from the unauthorized or unlawful collection, recording, disclosure, dissemination, or communication by an “insured” of material or information to third parties in any form.

#### **War**

based upon or arising from strike or similar labor action, war, invasion, act of foreign enemy or warlike operation (whether declared or not), civil war, or mutiny.

### **CONDITIONS**

#### **Assignment**

Your rights and duties under this policy may not be transferred or assigned without our written consent. If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative.

#### **Assistance and Cooperation**

You must cooperate with us and provide us all information which we reasonably request, including, but not limited to, attending hearings, depositions, and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any “claim” covered by this policy. You must do nothing that may prejudice our position.

No “insured” will, except at that “insured’s” own cost, voluntarily make a payment, settle any “claim,” assume any obligation, or incur any expense without our consent.

#### **Authorization; Changes to Policy**

All “insureds” agree that the “named insured” first listed on the Declarations is authorized to act on behalf of all “insureds” with respect to the giving and receiving of any notice provide for in this policy, including notices of cancellation and requests to purchase an Extended Reporting Period, the payment of premiums and the receipt of any return premiums that may become due, and the agreement to and acceptance of endorsements and other changes to the policy.

By acceptance of this policy, all “insureds” and the insurer agree that this policy and any written endorsements attached hereto constitute the entire agreement between the parties. This policy can be changed only by endorsement to this policy.

## **Cancellation and Nonrenewal**

### **1. Cancellation**

- a. The “named insured” may cancel this policy by sending us notice of cancellation at the address on the Declarations. Such notice must indicate the effective date of cancellation.
- b. We may cancel this policy for any reason allowable by state law. If we cancel, we will provide notice of cancellation to the “named insured” at the address stated on the Declarations. If we cancel because of non-payment of premium, we will notify the “named insured” at least ten days before the effective date of cancellation when the cancellation is to take effect. If we cancel for any other reason, we will notify the “named insured” at least 60 days before the effective date of cancellation when the cancellation is to take effect.
- c. We will send the “named insured” any applicable refund of premium at the “named insured’s” address on the Declarations as soon as practicable thereafter. We will retain a *pro rata* portion of the premium reflecting the period of coverage prior to the effective date of cancellation, minus any applicable minimum premium or short rate cancellation penalty stated on the Declarations. Cancellation will be effective even if no premium refund is available.

### **2. Nonrenewal**

The “named insured” may decide not to renew this policy by notifying us in writing any time before the policy renewal effective date. If we decide not to renew this policy, we will notify the “named insured” of our decision with 60 days prior notice, or a minimum of the state-required length of time for notice, whichever is greater. At policy expiration, the “named insured” may either purchase an Optional Extended Reporting Period, if applicable, or purchase a new policy.

If notice of non-renewal is mailed, proof of mailing will be sufficient proof of notice.

### **Coverage Territory and Currency**

This policy provides coverage for “claims” made in the United States based upon or arising out of “wrongful acts” occurring anywhere in the world.

All premiums, limits, retentions, loss and other amounts under this policy are payable in United States dollars. If any covered amounts are expressed in any other currency, payment of such amounts will be made at the prevailing rate of exchange on the date our obligation to pay such loss is established (as published in *The Wall Street Journal*).

### **Legal Actions Against Us**

No person or entity has a right under this policy to join us as a party or otherwise bring us into a suit seeking “damages” from you or to sue us under this policy unless all its terms have been fully complied with. A person or entity may sue us to recover on an agreed settlement or on a final judgment against you, but we will not be liable for “damages” that are not payable under this policy or that are in excess of the applicable Limits of Insurance of this policy.

### **Merger, Acquisition, and Other Changes in Ownership**

#### **1. Merger with another company**

If during the policy period, another person or entity gains more than 50% financial control or management control over the “named insured,” then coverage will continue under this policy until it expires or is otherwise terminated, but only for those “wrongful acts” first occurring prior to the effective date of such transaction. The entire premium for this policy shall be deemed earned as of the date of such transaction.



## 2. Your subsidiaries; new acquisitions

If the “named insured” first listed on the Declarations acquires a new “subsidiary” during the policy period, this policy will cover the “subsidiary” for the same “professional services” stated in the Declarations that are first performed by the “subsidiary” for a 90-day period beginning on the acquisition date at no additional premium. However, in order for coverage to continue to apply to the new “subsidiary,” the “named insured” must request that we add the “subsidiary” to the policy by endorsement, provide us with the information necessary to add the new entity and coverage for any additional or new services to be performed, and pay any additional required premium, before the 90-day period ends.

In all cases, coverage for all “subsidiaries” under this policy does not apply to activities performed prior to the date an entity becomes your “subsidiary” nor to activities performed after the date an entity is no longer considered your “subsidiary.”

### Other Insurance

All amounts payable under this policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance. This policy will not be subject to the terms of any other insurance policy.

### Representations

By accepting this policy, you agree that the statements you provided in connection with the underwriting of this policy are representations made to us with the intention that we rely upon their accuracy and thoroughness, and you acknowledge that we have issued this policy in reliance upon your representations.

This policy can be cancelled in the case of fraud or misrepresentation or concealment of a material fact relating to your application or to a “claim.” We also reserve the ability to decline coverage for any “claim” involving any material facts that were misrepresented by you, whether at the time of notice of such “claim” or in your application to us for this insurance. Nothing in this provision affects any other remedies we may have available to us under applicable state law, including the right to seek rescission or avoidance of the policy.

### Severability

As respects the application for this policy and the application of policy provisions where the “insured’s” knowledge or conduct is relevant:

- the conduct or knowledge of a natural person “insured” will not be imputed to any other natural person “insured”;
- the conduct or knowledge of a natural person “insured” who is an owner, principal, or partner of an “insured” organization, or who is the person who signed the application for this insurance, will be imputed to the organization.

### Subrogation and Transfer of Rights of Recovery

If we make any payment under this policy, we shall be subrogated to all your rights against any person or entity, including the right to participate with you in the exercise of all your rights of recovery. You shall deliver instruments and papers to us and do whatever else is necessary to secure such rights.



## DEFINITIONS

"Additional insured" means any person or entity for whom the "named insured" is contracted in writing to provide "professional services," if and to the extent such contract requires the "named insured" to add the client as an "additional insured," but only for "claims" based upon or arising from the named insured's "wrongful acts" in the performance of the contracted "professional services," and provided that such contractual requirement was in force before the alleged "wrongful act" first occurred.

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. Bodily injury also means mental illness, mental anguish, emotional distress, or shock whether or not resulting from physical injury, sickness, or disease.

"Claim" means:

- a written demand against an "insured" for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or to engage in arbitration or mediation, which shall be deemed first made upon receipt by the "insured" of such demand; or
- a civil proceeding against an "insured" for monetary or non-monetary (including injunctive) relief which shall be deemed first made upon the service of a complaint or similar pleading upon the "insured".

"Damages" mean a monetary judgment, award or settlement, including punitive and exemplary damages that an "insured" becomes legally obligated to pay because of a "claim" (but only to the extent insurable by law). "Damages" includes pre-judgment and post-judgment interest awarded against you on that part of the judgment we pay. "Damages" does not include:

- taxes, fines or penalties;
- costs incurred to comply with any order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- costs incurred to correct, complete or re-perform any "professional services;"
- any amount which constitutes disgorgement, restitution, the return of fees, accounting of profits, commissions, charges or other compensation paid to an "insured;"
- claimant attorney fees, costs or expenses;
- liquidated damages in excess of the "insured's" liability; or
- any amount not insurable under applicable state law.

"Defense costs" means those reasonable and necessary fees, costs and expenses incurred by us or by the "insured" at our request in the defense or investigation of any "claim", including the costs of an appeal bond, attachment bond or similar bond (although we are not obligated to apply for or furnish such bond). "Defense costs" do not include any salaries, wages, overhead, benefits, benefit expenses or internal charges associated with any "insured", or any fees, costs or expenses incurred by an "insured" prior to the time that the "claim" is first made.

"Insured" means:

- the "named insured";
- any officer, director, trustee, or employee (including leased or temporary) of the "named insured";
- any principal of the "named insured" which is a partnership, limited liability partnership or limited liability company, when acting in their capacity as such;
- any "additional insured"; and

- any independent contractor of the “named insured”, but only while acting within the scope of their duties performed on behalf of “named insured”.

In the event of the death, disability, bankruptcy, or financial insolvency of a natural person “insured,” “insured” will also include such “insured’s” heirs, executors, administrators, trustees in bankruptcy, assignees or legal representatives, legal spouse or legal domestic partner if a “claim” is made against any of the foregoing persons or entities in their capacity as such.

“Named insured” means the person or organization listed as such in Item 1. of the Declarations and those “subsidiaries” listed by endorsement.

“Personal injury” means any of the following conduct:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- 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, committed by or on behalf of its owner, landlord or lessor;
- Oral, written, or electronic publication of material that slanders or libels a person or entity or disparages a person's or entity's goods, products, or services, provided that the “claim” is made by a person or entity that claims to have been slandered or libeled, or whose goods, products, or services have allegedly been disparaged;
- Oral, written, or electronic publication of material that appropriates a person's likeness, unreasonably places a person in false light, or gives unreasonable publicity to a person's private life.

“Policy period” means the time period beginning on the inception date stated on the Declarations and ending on the earlier of the expiration date stated on the Declarations or the effective date of policy termination.

“Pollutants” means any solid, liquid, biological, gaseous, radiological or thermal contaminant or irritant, including, but not limited to, chemicals, acids, alkalis, soot, fumes, germs, spores, fungi, fibers, vapor, dust, mold, smoke, waste, and any nuclear materials. Waste includes materials to be recycled, reconditioned or reclaimed.

“Professional services” means those services as set forth in the Declarations, or as amended by endorsement to this policy, that are performed by or on behalf of the “named insured” for a fee or other compensation for a client. “Professional services” does not include the “insured’s” activities conducted in the ordinary course of business operations or solely for the purpose of promoting or advertising the “insured’s” own goods and services.

“Property damage” means damage to, loss of use of or destruction of any tangible property.

“Related claim” means any “claim” that is based upon or arises from the same “wrongful act” or “related wrongful act.” All “related claims” will be deemed a single “claim” first made and reported during the “policy period” in which the first such “related claim” was made and reported.

“Related wrongful act” means all “wrongful acts” logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes. All “related wrongful acts” will be deemed to be one “wrongful act” under this policy.

“Retroactive date” means the date shown as such in the Declarations.

“Subsidiary” means an entity in which the “named insured” first listed on the Declarations owns an interest representing more than 50% of the financial assets, or more than 50% of the power to manage or control such entity, including the power to elect, appoint, or designate a majority of the board of directors or equivalent executives for such entity.

“Wrongful act” means any negligent act, error, or omission, or “personal injury” in the performance or failure to perform “professional services.”

SAMPLE

## REAL ESTATE PROFESSIONAL SERVICES ENDORSEMENT FOR FRANCHISEES

It is agreed that, solely as respects the coverage afforded by this endorsement:

1. The following Coverages are added to the policy.

### PROFESSIONAL LIABILITY COVERAGE ENHANCEMENTS

The following liability coverage enhancements are added to the **PROFESSIONAL LIABILITY COVERAGE** section of the policy, subject to all other terms and conditions of coverage applicable to “claims” arising from your “professional services.”

- **Real Estate Showings Liability Coverage**

The exclusion entitled **Bodily Injury and Property Damage** will not apply “claims” for “bodily injury” and “property damage” that result from your “wrongful act” in showing residential real estate properties not owned by you, including open houses and in the use or failure to use a lock box securing such property. However, the most we will pay in “damages” and “defense costs” for all such “claims” is the amount stated in the Declarations as the Real Estate Showings Liability Sub-Limit. This Sub-Limit is part of, and not in addition to, the policy limit of liability.

- **Failure to Disclose Pollutants Liability Coverage**

The exclusion entitled **Pollution** will not apply to “claims” alleging you failed to disclose the existence of “pollutants,” fungi, or bacteria at real property to buyers or sellers of such property in your capacity as a real estate broker or agent. However, we will not pay for the cost to remediate, clean up, or remove “pollutants,” whether directly by you or in the form of “damages” paid to the claimant.

- **Fair Housing Act Violation Coverage Extension**

The exclusion entitled **Discrimination or Harassment** will not apply to “claims” alleging you violated the Fair Housing Act of 1968, 42 USCS §3601, as amended, including any similar federal, state or local laws, in the performance of “professional services.”

### ADDITIONAL COVERAGES

The following additional coverages are added to the policy, subject to all terms and conditions of coverage applicable under the policy. If a Sub-Limit of Liability is stated on the Declarations for any coverage stated below, the amounts payable under such coverage will not exceed the stated Sub-Limit of Liability, regardless of the number of subpoenas, “reputation risks,” or “insureds.” Payments thereof are part of, and not in addition to, the policy limit of liability.

- **Subpoena and Witness Testimony Expense Coverage**

If you receive a subpoena compelling you to provide testimony or to produce documents in connection with a lawsuit regarding “professional services,” we will retain counsel and pay on your behalf all reasonable and necessary costs, expenses, and fees incurred to provide advice regarding the production of documents, to prepare you for testimony required, and to represent you at your deposition or trial testimony. This coverage only applies if:

1. You receive the subpoena during the policy period;
2. You provide us notice of the subpoena in accordance with the REPORTING OF CLAIMS section of the policy;
3. You are not a party to the lawsuit; and
4. You have not been engaged to provide testimony in the lawsuit in exchange for a fee.

- **Public Relations Expense Coverage**

We will reimburse you for those “public relations expenses” you incur to respond to a “reputation risk” that first occurs and is reported to us during the policy period. To be covered, the expenses must be incurred within six months after the “reputation risk” first occurs.

2. The definition of “professional services” is deleted and replaced by the following:

“Professional Services” means services performed by an insured for or in the name of the “named insured” in exchange for a fee or other compensation in the capacity as a:

- real estate agent or broker; and
- any of the following ancillary services required to facilitate the real estate sales or lease transactions for such agent or broker, provided that the “insured” performing the services is an employee of the “named insured”:
  - Auctioneer;
  - Notary public; or
  - Witness closer.

3. The definition of “insured” is deleted and replaced by the following:

“Insured” means any “insured individual,” the “named insured,” or “franchisor.”

4. The following definitions are added to the policy:

“Insured individual” means any natural person who:

- is the sole owner of the “named insured”;
- is or was a partner or principal of the “named insured”;
- is or was an employee (including leased or temporary employee) of the “named insured”; or
- is or was an “independent contractor” for the “named insured.”

“Franchisor” means an entity that was a franchisor of the “named insured” at the time the “wrongful act” was committed. The “franchisor” will only be considered an “insured” for its vicarious liability for the “wrongful acts” committed by the “named insured” or an “insured individual.”

“Independent Contractor” means any independent contractor and its employees that perform “professional services” under contract with, and at the direction and control of, the “named insured,” and no other insurance applies to such “independent contractor” for “claims” to which this policy applies.

“Public relations expense” means reasonable fees, costs, and expenses incurred by the “named insured” to engage a public relations firm to assist in responding to a “reputation risk.”

“Reputation risk” means any of the following events if reasonably be expected to have a material adverse impact on the “named insured’s” reputation in its marketplace:

- “wrongful act;”
- workplace violence event;
- death, departure, or major illness or disability of a partner or owner of the “named insured;”
- dissolution or potential dissolution of the “named insured; or
- any other event of similarly adverse expected impact.

5. The DEDUCTIBLE section of the policy is amended to add the following provision at the end thereof:

Notwithstanding the foregoing, we will waive your deductible (up to a maximum waiver of \$5,000) for each “claim” based upon or arising from a “wrongful act” in the performance of “professional services” on behalf of a buyer or seller of a specific residential real estate property, provided that:

- A property inspection was performed on the property (or waived by the buyer in writing) prior to closing;
- A home warranty policy was purchased for the property (or waived by the buyer in writing) prior to closing;
- A property disclosure was made to the property buyer prior to closing; and
- The parties to the real estate sales transaction used a state or local board-approved standard purchase and sales agreement.

Evidence of each of these items must be reviewed and accepted by us before we will waive the deductible.

6. In addition to the exclusions stated in the EXCLUSIONS section of the policy, the following exclusions are added and will supersede any other provision to the contrary:

This policy does not apply to any “claim” based upon or arising from:

- an “insured’s” referral of a client or potential client to another service provider if:
  - the insured holds a controlling financial interest (individually or collectively with other insureds) in such service provider;
  - the insured receives any profit, benefit, or advantage from making the referral; or
  - the service provider holds any financial interest in any “insured”;

however, this exclusion does not apply if the “insured” gives the client or potential client written notice of such relationship prior to or at the time of the referral.

- construction management activities, including:
  - managing construction plans and construction activities
  - developing construction contracts; or
  - developing loss control plans for construction activities.
- return of fees, deposits, or commissions.
- any online or virtual auction activities.
- certification of authenticity of antiques or fine art.
- sale of goods or real estate not sold at public auction.
- verification of the ownership of the goods sold at auction.
- 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.
- defect in title of which any "insured" had actual or constructive knowledge at the time of issuance of insurance of such title.
- notarization, certification or acknowledgment of a signature without the physical appearance of the person making such signature at the time of said notarization, certification or acknowledgment.
- property that was developed or constructed by you.
- sales and purchase or attempted sale and purchase of commercial real estate property in which any “insured” has any direct or indirect ownership interest of more than 10%.
- sales and purchase or attempted sale and purchase of residential real estate or land in which any “insured” has any direct or indirect ownership interest of more than 10%; however, this exclusion does not apply if the property is a residential property or land, and:
  - a written property inspection report for the property was issued in connection with the transaction (or waived in writing by the buyer);
  - a home warranty policy for the property was purchased or provided in connection with the transaction (or waived in writing by the buyer in writing); and
  - the following disclosures were properly made to the parties to explain:
    - i. who each agent or broker represents in the transaction;
    - ii. the ownership interest held in the property by any insured or a related person or entity; and
    - iii. the known condition of the property, including all structures situated on the property, all appliances and mechanical equipment in the property,



and the existence of past or present environmental hazards, easements, zoning violations, flooding, earthquake damage, deed restrictions, pending zoning changes, noise problems, or other nuisances.

- formation, growth, presence, release, dispersal, containment, removal, testing for or detection or monitoring of any molds, fungi, spores or other similar growths or organic matter, including but not limited to aspergillus, penicillium, legionella or any strain or type of Stachybotris, commonly and collectively referred to as the 'Black Molds'; except, however, this exclusion will not apply to "claims" otherwise covered under the **Failure to Disclose Pollutants** Coverage.
- underwriting, placement or servicing of sub-prime mortgage loans. For purposes of this exclusion, "sub-prime mortgage loans" shall mean that type of mortgage loan that is offered at a rate above prime to individuals who do not qualify for conventional or prime rate loans;
- commingling, misappropriation, conversion, or other misuse or illegal use of funds, money, or property.
- failure or insolvency of any financial institution, including but not limited to savings and loans companies, banking institutions or insurance companies; or sponsor, developer or builder.
- over-redemption, giving or rewarding of price discounts, prizes, awards, rebates, coupons or any other valuable consideration in excess of the total contracted or expected amount.

All other terms and conditions remain unchanged.



# Terms & Conditions

I further represent that the statements and particulars made in any and all information provided to Berxi, including information provided on the [berxi.com](http://berxi.com) web site, or in documents, supplemental pages, verbal statements, or other attachments for the purposes of my initial or renewal application (collectively, the “Application”), are true, and that I have not knowingly suppressed or misstated any material facts. I acknowledge that Berkshire Hathaway Specialty Insurance Company (BHSI) has relied on the accuracy and completeness of the Application in its decision to issue the policy. I agree to notify BHSI if there are any future material changes in any answer to this Application, including without limitation, any change in professional specialty, affiliation, services, or working arrangement.

Where allowed by state law, I understand that material misrepresentations or omissions made by me on this Application may render my insurance contract null and without effect, or may give BHSI the right to rescind the policy or to deny coverage.

I further understand that BHSI must receive my premium payment as a condition precedent to coverage under my insurance policy. If I have enrolled in an installment payment plan, each payment due must be received by the due date or my policy may be subject to cancellation under the terms of the policy, and I agree to update BHSI with my payment information if it changes during the policy period. Failure to update my payment information may result in a failed payment, which can affect the continuation of coverage. In addition, I understand that any premium payment must be honored by my bank to be considered “received” by BHSI.

If my policy was purchased on my behalf by my employer or any other party, I acknowledge that I must complete the attached form to indicate my authorization for such party to access my account information and to make certain changes affecting my policy. It is important that if my employment status changes I inform Berxi immediately so as to avoid any interruption in coverage.

I also understand that BHSI may wish to contact persons, hospitals, schools, employers, insurance agents, professional liability insurers or other entities to verify and/or ascertain information regarding my credentials and background both prior to and if issued, after the issuance of a contract of insurance. Therefore, I hereby authorize any such person,

hospital, school, employer, insurance agent, professional liability insurer, or other entity to release to BHSI any information pertaining to my application for insurance and, if issued, the contract of insurance issued hereunder.

## Fraud Notice to Applicants

**Notice:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and may subject the person to criminal and civil penalties.

**AL Applicants:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution, fines, or confinement in prison, or any combination thereof.

**AR, NM and WV Applicants:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit, or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**CO Applicants:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the insurance company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory authorities.

**DC Applicants:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

**FL Applicants:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**KS Applicants:** Any person who knowingly and with intent to defraud, presents, causes to be presented or prepared with knowledge or belief that it will be presented to or by an



insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto, or who conceals, for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act.

**KY Applicants:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.

**LA Applicants:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**ME Applicants:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or denial of insurance benefits.

**MD Applicants:** Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**MN Applicants:** Any person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**NJ Applicants:** Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

**NY Applicants:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**OH Applicants:** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer,

submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

**OK Applicants:** Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

**OR Applicants:** Any person who makes an intentional misstatement that is material to the risk may be found guilty of insurance fraud by a court of law.

**PA Applicants:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**TN, VA and WA Applicants:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**VT Applicants:** Any person who knowingly presents a false statement in an application for insurance may be guilty of a criminal offense and subject to penalties under state law.

### **Electronic Communications Consent**

Berkshire Hathaway Specialty Insurance (“BHSI”) and its affiliates and third party service providers may need to provide you with certain communications, notices, agreements, billing statements, or disclosures in writing (“Communications”) regarding our products or services (“Services”). Your agreement to this Electronic Communications Consent confirms your ability and consent to receive Communications electronically, rather than in paper form, and to the use of electronic signatures in our relationship with you (“Consent”). If you choose not to agree to this Consent or you withdraw your consent, you may be restricted from using the Services.

### **Electronic Delivery of Communications and Use of Electronic Signatures**

Under this Consent, BHSI may provide all Communications electronically by email, by text message, or by making them accessible via BHSI websites or applications. Communications include, but are not limited to, (1) agreements and policies required to use the Services, (2) payment authorizations and transaction receipts or confirmations, and (3) account statements and history. We may also use electronic signatures and obtain them from you.



## System Requirements

To access and retain the electronic Communications, you will need the following:

- A computer or mobile device with Internet or mobile connectivity.
- For website-based Communications, a current web browser that includes 128-bit encryption. Minimum recommended browser standards are Microsoft Internet Explorer version 8.0 and above (see [www.microsoft.com/ie](http://www.microsoft.com/ie) for current version), Mozilla Firefox current version (see [www.mozilla.com](http://www.mozilla.com) for current version), Apple Safari current version (see [www.apple.com/safari](http://www.apple.com/safari) for current version), or Chrome current version (see [www.google.com/chrome](http://www.google.com/chrome) for current version). The browser must have cookies enabled.
- For application-based Communications, a mobile phone operating system that supports text messaging, downloads, and applications from the Apple App Store or Google Play store.
- Access to the email address used to create an account for Berxi or BHSI Services.
- Sufficient storage space to save Communications and/or a printer to print them.
- If you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add to your email address book.

## Paper Delivery of Communications

You have the right to receive Communications in paper form. To request a paper copy of any Communication at no charge, please write to the address below specifying in detail the Communication you would like to receive.

### Address for Paper Delivery of Communications:

Berxi  
c/o Berkshire Hathaway Specialty Insurance  
1 Lincoln Street, 23rd Floor  
Boston, MA 02111

## Withdrawal of Consent to Electronic Communications

You may withdraw your consent to receive electronic Communications at any time, by writing to the BHSI Address. Any withdrawal of your consent will be effective as soon as practicable.

## Updating Your Email Address

You can change your email address by logging into [berxi.com](http://berxi.com) and updating your account profile.