



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Commerce, Community,
and Economic Development**

DIVISION OF CORPORATIONS, BUSINESS AND
PROFESSIONAL LICENSING

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September 9, 2016

Dear Licensee and interested parties:

As you may know, SB158 was adopted this year, requiring licensees to show proof that they have obtained errors & omissions insurance (E & O) before renewing a real estate license in 2018 regardless of whether or not the Real Estate Commission has obtained a master E & O policy.

Last year, based on existing regulations, an Invitation to Bid (ITB) was issued to solicit interested insurance providers to bid on a master E & O policy. There was little to no interest shown and no actual bidders for the ITB. It is the desire and intention of both the Real Estate Commission and the division to have a master E & O insurance policy in place prior to the requirement for all licensees to be insured goes into effect. To that end, the Real Estate Commission formed a subcommittee that researched current policies and subsequently proposed amendments to the existing regulations to improve future Invitations to Bid.

This proposal is entering a public comment period. The division encourages all licensees and interested parties to comment on this proposal through the division's Regulations Specialist, whose contact information is enclosed on the public notice. In addition, the division will hear oral testimony at the next Real Estate Commission meeting on September 21, with testimony being taken at 10:30 a.m. in the Atwood Building in Anchorage.

After the comment period closes and the division reviews all comments received, the division may adopt the regulation as drafted, may amend the proposal, or may withdraw the regulations in part or in its whole. All comments received will be reviewed and taken into consideration prior to adopting the final regulations.

Follow the instructions enclosed to make written comments during the public comment period. Comments must be addressed to Jun Maiquis, Regulations Specialist, PO Box 110806, Juneau, AK 99811 or regulationsandpubliccomment@alaska.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janey Hovenden".

Janey Hovenden
Director

Encl.

**NOTICE OF PROPOSED CHANGES RELATING TO REAL ESTATE ERRORS AND
OMISSIONS INSURANCE IN THE REGULATIONS OF THE DEPARTMENT OF
COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT**

BRIEF DESCRIPTION: The Department of Commerce, Community, and Economic Development proposes to update regulations regarding real estate errors and omissions insurance requirements, including minimum standards, exceptions to coverage, standards for equivalent coverage, notification for cancellation, maximum amount of premium, method of adjustment, and definition of terms.

The Department of Commerce, Community, and Economic Development (Department) proposes to adopt regulation changes in Title 12, Chapter 02 of the Alaska Administrative Code, dealing with real estate errors and omissions insurance requirements, including the following:

1. **12 AAC 02.510, Minimum standards**, is proposed to be changed to alter the minimum standards for errors and omissions insurance policy coverage.
2. **12 AAC 02.520, Exceptions to coverage**, is proposed to be changed to alter the provisions related to exceptions to coverage for claims brought against the insured licensee.
3. **12 AAC 02.530, Standards for equivalent coverage**, is proposed to be changed to alter the minimum coverage standards, and providing that current certificates of insurance are current.
4. **12 AAC 02.540, Notification required for cancellation**, is proposed to be changed to alter the reporting requirements for all covered employed licenses.
5. **12 AAC 02.550, Maximum amount of premium**, is proposed to be changed to alter the maximum amount of premium to be charged a licensee annually.
6. **12 AAC 02.560, Method of adjustment**, is proposed to be changed to alter the timing of the method of adjustment in the limits of liability for errors and omissions insurance policy.
7. **12 AAC 02.590, Definitions**, is proposed to be changed to amend the definition of “errors and omissions insurance”.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806. Additionally, the Department will accept comments by facsimile at (907) 465-2974 and by electronic mail at RegulationsAndPublicComment@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system at <http://notice.alaska.gov/182768>, and using the comment link. **The comments must be received not later than 5:00 p.m. on October 13, 2016.** Comments received after this deadline will not be considered by the Department.

Oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, may be submitted at a hearing to be held on September 21, 2016, at the Atwood Building, 550 W. 7th Avenue, Suite 1270, Anchorage, Alaska. If you wish to give your comments via telephone during this meeting, please call 1-800-315-6338 access code 98168. The hearing will begin at 10:30 a.m. and will end when those who have signed up before 10:30 a.m. to give oral testimony have had the opportunity to comment. The chair of the Real Estate Commission may limit each participant’s length of oral testimony to a time limit, determined by the chair before the hearing begins, to allow enough time for all those present and timely registered to give testimony.

You may submit written questions relevant to the proposed action to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806 or by e-mail at jun.maiquis@alaska.gov. **The questions must be received at least 10 days before the end of the public comment period.** The Department will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and the Department's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/RealEstateCommission.aspx>. The Department may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jun Maiquis at (907) 465-2537 or jun.maiquis@alaska.gov not later than September 16, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Jun Maiquis at (907) 465-2537 or jun.maiquis@alaska.gov, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/REC-EO-Insurance-0916.pdf>.

After the public comment period ends, the Department will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.

Statutory Authority: AS 08.88.081; AS 08.88.172

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.88.081; AS 08.88.172

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 9/9/16

_____/s/
Jun Maiquis, Regulations Specialist
Division of Corporations, Business and
Professional Licensing

For each occupation regulated under the Division of Corporations, Business and Professional Licensing, the Division keeps a list of individuals or organizations who are interested in the regulations of that occupation. The Division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, send your request to the Division at the address above, giving your name, either your e-mail address or mailing address (as you prefer for receiving notices), and the occupational area in which you are interested.

Chapter 02. General Occupational Licensing Functions.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

12 AAC 02.510 is amended to read:

12 AAC 02.510. Minimum standards. (a) The master errors and omissions insurance policy must provide to each **active** individual licensee **or former licensees who have purchased coverage in accordance with (a)(4) of this section**, at a minimum, the following terms of coverage:

(1) not less than \$100,000 limit of liability for each licensee per covered wrongful act or per covered claim depending on the policy form used by the insurer; claims expenses including the cost for investigation or defense must be in addition to the limit of liability; if the limit of liability is on a

(A) covered wrongful act basis, two or more claims arising out of a single wrongful act or a series of related wrongful acts may be considered one claim;

(B) covered claim basis, two or more related wrongful acts may be considered one claim;

(2) an annual aggregate limit of liability of not less than **\$300,000** [\$200,000] per licensee;

(3) a deductible amount for each covered wrongful act of not more than **\$5,000** [\$2,000] for every **\$300,000** [\$200,000] annual aggregate limit of liability; an additional deductible for investigation and defense costs may be considered [IF NECESSARY TO MEET THE MAXIMUM PREMIUM AMOUNT UNDER 12 AAC 02.550, BUT IT IS NOT REQUIRED];

(4) an extended reporting period of 90 days and an option to purchase an additional **one year** [THREE YEARS] extended reporting period for a premium not to exceed **200** [150] percent of the premium charged for the last year of the terminating coverage;

(5) the ability of a licensee, upon payment of an additional premium, to obtain higher limits of coverage or to purchase additional coverages from the group insurer as may be available from the insurer;

(6) the coverage provided under the master errors and omissions insurance policy must be individual and specific to the licensee and must cover the licensee regardless of changes in real estate broker **or relationship with a real estate broker and** [EMPLOYING] the licensee; and

(7) prior acts coverage must be offered to a licensee who has maintained the same or similar coverage, continually in-force until the date and the time that coverage begins under the master errors and omissions insurance policy coverage.

(b) The master errors and omissions insurance policy must contain a provision requiring the consent of the insured to settle a claim except that the insured may not unreasonably withhold consent.

(c) The insurer that is selected to provide the master errors and omissions insurance policy shall

(1) maintain an A.M. Best rating of "B+" or better and financial size category of class VI or higher;

(2) maintain a certificate of authority issued under AS 21.09 by the director of insurance to transact insurance business in this state and be in compliance with AS 21;

(3) provide the master errors and omissions insurance policy after notification by

the Real Estate Commission that it is the successful bidder of a competitive bidding process under AS 36.30;

(4) enter into contract to provide the master errors and omissions insurance policy in conformity with AS 08.88.172, 12 AAC 02.510 - 12 AAC 02.590, and AS 21; and

(5) collect premiums, maintain records, and report to the Real Estate Commission the names of those insured and **prior** claims experience **if known**, date of claim, amount paid, nature of claim, and claims information on **a quarterly basis or** an annual [OR A BI-ANNUAL] basis or on request by the Real Estate Commission. (Eff. 12/4/2011, Register 200; am ___/___/___, Register ___)

Authority: AS 08.88.172

12 AAC 02.520 is amended to read:

12 AAC 02.520. Exceptions to coverage. Except as provided in this section, the master errors and omissions insurance policy may not exclude coverage for claims brought against the insured licensee arising out of a wrongful act by the licensee when performing a professional service for which a real estate license is required. The policy may limit or exclude coverage for claims brought against a licensee that arise as follows:

(1) out of claims or lawsuits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;

(2) out of loss assumed under a contract or an agreement, except for liability the insured would have had in the absence of the agreements;

(3) from a criminal, dishonest, fraudulent, or intentional act or omission; this exclusion does not apply to an insured person who did not personally participate in committing

the act or omission and who, upon having knowledge of the act or omission, reported it to the Real Estate Commission, or appropriate law enforcement authorities;

- (4) from unlawful discrimination committed by or for the insured person;
- (5) from fines or penalties imposed by a tribunal or other governmental agency;
- (6) from bodily injury, personal injury, advertising injury, or property damage;
- (7) from related business activities for which a license is not required under

AS 08.88;

(8) from the presence of or the actual, alleged, or threatened discharge, dispersal, release, or escape of hazardous materials, nuclear materials, or pollutants;

(9) from prior wrongful acts unless specific prior wrongful acts coverage is provided;

(10) from any violation of 15 U.S.C. 77a - 77aa (Securities Act of 1933) or 15 U.S.C. 78a - 78mm (Securities Exchange Act of 1934) or any state blue sky or securities law or similar state or federal statutes; [OR]

(11) other standard exclusions that are typical in a professional liability insurance policy and that have been approved by the director of insurance under AS 21.42;

(12) from the insolvency of an insured person;

(13) from any injury or damage which the insured either had reason to expect; or

(14) from the conversion, misappropriation, commingling or defalcation of funds or other property. (Eff. 12/4/2011, Register 200; am ___/___/___, Register ___)

Authority: AS 08.88.172

12 AAC 02.530 is amended to read:

12 AAC 02.530. Standards for equivalent coverage. An insurer issuing equivalent coverage under AS 08.88.172(c)(2) shall hold a certificate of authority issued under AS 21.09. All activities contemplated under AS 08.88.172 must be covered. The insurance must meet the minimum coverage standards of 12 AAC 02.510, except that

(1) a policy with a higher deductible amount or self-insured retention will qualify as equivalent coverage for purposes of AS 08.88.172(c)(2) if the insured licensee provides the Alaska Real Estate Commission with an affidavit certifying that the insured licensee has the financial resources **in dedicated funds** to pay the higher deductible amount or self-insured retention **and provide a certificate of insurance from their insurer at each renewal period;** and

(2) a broker employing other real estate licensees may comply with the requirements of 12 AAC 02.510(a)(1) and (2) by obtaining insurance with coverage of a minimum of **\$300,000** [\$200,000] per wrongful act and \$1,000,000 aggregate, if all **employed** licensees associated with the broker are covered. (Eff. 12/4/2011, Register 200; am ___/___/___, Register ___)

Authority: AS 08.88.172

12 AAC 02.540 is amended to read:

12 AAC 02.540. Notification required for cancellation. If equivalent insurance coverage obtained by a licensee under AS 08.88.172(c)(2) is to lapse or not be renewed, the insurer shall notify the Real Estate Commission of the intent to lapse or not to renew a minimum of 30 days before the expiration date of the term. It is the responsibility of the [EMPLOYING]

broker or licensee, as applicable, to instruct the insurer to provide the notice required by this section to the Real Estate Commission **with named licensees covered**. (Eff. 12/4/2011, Register 200; am ___/___/____, Register ____)

Authority: AS 08.88.172

12 AAC 02.550 is amended to read:

12 AAC 02.550. Maximum amount of premium. The maximum amount of premium to be charged a licensee annually under the master errors and omissions insurance policy **shall not exceed \$2,500** [IS \$300]. (Eff. 12/4/2011, Register 200; am ___/___/____, Register ____)

Authority: AS 08.88.172

12 AAC 02.560 is amended to read:

12 AAC 02.560. Method of adjustment. Every **three** [FIVE] years after the initial procurement of the master errors and omissions insurance policy, the department may adjust the amount of coverage under 12 AAC 02.510(a) [AND THE MAXIMUM AMOUNT OF THE PREMIUM UNDER 12 AAC 02.550 TO REFLECT THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS IN THE ANCHORAGE METROPOLITAN AREA USING THE STANDARDS SET OUT IN THIS SECTION]. The department will not make an adjustment if the department finds the adjustment will significantly reduce the number of insurers willing to bid on a contract to offer the master errors and omissions insurance policy. An adjustment in the limits of liability under 12 AAC 02.510(a) must be an increment of no less than \$25,000. [AN ADJUSTMENT IN THE AMOUNT OF THE PREMIUM MUST BE IN AN INCREMENT OF NO LESS THAN \$25.] The department will give notice of the adjustments

under this section by posting the amounts on its Internet Website. An adjustment under this section does not take effect until the renewal or the issuance of a new master errors and omissions insurance policy. (Eff. 12/4/2011, Register 200; am ___/___/___, Register ____)

Authority: AS 08.88.172

12 AAC 02.590 is amended to read:

12 AAC 02.590. Definitions. In this chapter, unless the context requires otherwise,

(1) "aggregate limit" means the maximum liability of an insurer regardless of the number of claims during the policy term;

(2) "director of insurance" means the person appointed under AS 21.06.010 to head the division of insurance of this state;

(3) "equivalent coverage" means errors and omissions insurance coverage obtained independently of the master errors and omissions insurance policy available from the Real Estate Commission and that complies with the requirements, terms, and conditions as set out in 12 AAC 02.510 - 12 AAC 02.590;

(4) "errors and omissions insurance" means professional liability insurance that provides coverage to holders of active real estate brokers, associate brokers, and **salespersons licensed** [SALESPERSON LICENSES] in this state for wrongful acts made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of one or more specific insurance policies in place;

(5) "extended reporting period" means a designated period of time after an errors and omissions insurance policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period;

(6) "master errors and omissions insurance policy" means the policy obtained by the Real Estate Commission under AS 08.88.172 that meets the requirements of 12 AAC 02.510 - 12 AAC 02.590;

(7) "prior acts coverage" means the insurance policy provides coverage for claims that are made during a current policy period, but one or more acts causing the claim or injuries for which the claim is made occurred before the inception of the current policy period;

(8) "wrongful act" means a negligent act, error, or omission. (Eff. 12/4/2011, Register 200; am ___/___/___, Register ___)

Authority: AS 08.88.081 AS 08.88.172