

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:220. Errors and omissions insurance requirements.

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require[requires] the [Kentucky] Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395 requires all real estate licenses except those whose licenses are in inactive status to carry[(4) allows licensees the option of obtaining] errors and omissions insurance to cover all activities contemplated under KRS Chapter 324.[independently, and] KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395[procedures and standards for obtaining insurance independently].

Section 1. Minimum Coverage Requirements. (1) A licensee shall carry continuous errors and omissions coverage that, at a minimum includes:[(1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.]

(a) A[(2) The] limit of liability[shall] not[be] less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense; and

(b) An annual aggregate limit of liability of not[, nor] less than \$1,000,000 [annual aggregate limit of liability], excluding the cost of investigation and defense.

Section 2. Firm Coverage. (1) A principal broker who purchases[decides to purchase independent] errors and omissions "firm coverage" insurance shall have at least the following aggregate amounts:

(a) One (1) to forty (40) licensees shall carry a \$1,000,000 annual aggregate; or

(b) Forty-one (41) or more licensees shall carry a \$2,000,000 annual aggregate.

Section 3. Deductibles. All errors and omissions or professional liability insurance policies shall have maximum deductibles, which may be separate deductibles, which shall not exceed:

(1) \$2,500 for judgment or settlement and

(2) \$1,000 for the cost of investigation and defense.~~[(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.~~

~~(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.~~

~~Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020.]~~

Section 4. Exclusions Permitted~~[5]. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky, consistent with common custom in the market.]:~~

~~(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;~~

~~(2) Arising as a result of the insolvency of the insured;~~

~~(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow, or tax money;~~

~~(4) Brought about by any employee, or former employee arising out of the contract of employment with the insured and alleging breach thereof;~~

~~(5) Arising out of any injury or damage which the insured either expected or intended;~~

~~(6) Brought about by bodily injury, sickness, disease, or death of any person or physical injury to, or destruction of, or loss of use of tangible property;~~

~~(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry, [or] eviction, or other invasion of the right of private occupancy, publications or utterances in violation of an individual's right of privacy, or malicious prosecution;~~

~~(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;~~

~~(9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or securities law, or similar state or federal statutes;~~

~~(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;~~

~~(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;~~

~~(12) Arising out of unlawful discrimination;~~

~~(13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these agreements;~~

~~(14)(a) Arising:~~

~~1. Out of the insured's business; and~~

~~2. By or on behalf of an investor, shareholder, or partner in any corporation, limited or general partnership, real estate trust, or venture in which the insured has or had a participating in-~~

~~terest, directly or indirectly, in the profits or losses; or~~

~~(b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;~~

~~(15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed;~~

~~(16) Excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00-21-11-85;~~

~~(17)(a) Arising from the sale or property management of property developed, constructed, or owned by:~~

- ~~1. The insured;~~
- ~~2. Any firm or corporation in which the insured has a financial interest; or~~
- ~~3. Any firm coming under the same financial control as the insured.~~

~~(b) This exclusion shall not apply and coverage shall be extended to claims arising from the sale of real property, if all three (3) of the following conditions are met:~~

- ~~1. The property was acquired by the insured under a guaranteed sale listing contract;~~
- ~~2. The title to the property was only temporarily held by the insured during the transit period, not to exceed one (1) year, from acquisition to resale; and~~
- ~~3. The property is listed for sale during the entire transit period; or~~

~~(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.]~~

LOIS ANN DISPONETT, chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the terms and conditions of insurance coverage required under KRS 324.395.

(b) The necessity of this administrative regulation: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirements and application to be consistent with statute.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to eliminate unnecessary and inappropriate provisions from the former regulation and to clarify requirements for required insurance coverage going forward.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395.

(d) How the amendment will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and prospective licensees will be affected by this administrative regulation. Insurance providers will be affected to a lesser extent, as they may be required to provide new policies to satisfy the revised minimum terms and conditions of the required coverage.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by ei-

ther the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to ensure that their coverage complies with the revised minimum terms and conditions of the required coverage. Insurance companies will have to offer compliant insurance products.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The coverage limits, deductibles, and exclusions for individual policies are not changing. Therefore, the entities identified in question (3) should not incur significant costs to comply with this administrative regulation. Costs may vary depending on the insurer and the type of policy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amended administrative regulation, licensees will benefit from clear, consistent requirements for the required coverage.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increased fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. A principal broker who decides to purchase firm coverage is required to have aggregate coverage based on the number of licensees he or she employs to accurately account for risk.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, and KRS 324.395 require the Real Estate Commission to promulgate administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subse-

quent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.