

Errors and Omissions Statutes and Proposed Regulations

Sec. 08.88.172. Errors and omissions insurance. [Effective March 1, 2010]..

- (a) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson shall, as a condition of licensing, carry and maintain errors and omissions insurance to cover activities for which licensing is required under [AS 08.88.161](#).
- (b) The department shall establish by regulation the terms and conditions of the errors and omissions insurance required by this section, including
 - (1) coverage requirements;
 - (2) limits of coverage;
 - (3) the maximum amount of premium to be charged licensees under a master errors and omissions policy under (d) of this section; and
 - (4) the method for adjusting these amounts based on the Consumer Price Index.
- (c) A licensee may obtain the errors and omissions insurance required by (a) of this section by
 - (1) obtaining a master insurance policy that may be made available to licensees by the commission; or
 - (2) independently obtaining errors and omissions insurance that complies with the requirements established under (b) of this section.
- (d) The commission may
 - (1) solicit bids for a master errors and omissions insurance policy for licensees that meets the minimum terms and conditions established under (b) of this section using a competitive sealed bid process under AS 36.30 (State Procurement Code); and
 - (2) charge a licensee a reasonable administration fee to recover costs incurred in connection with the solicitation made under (1) of this subsection.
- (e) If the commission is unable to obtain a master errors and omissions insurance policy to insure licensees that meets the terms and conditions established under (b) of this section, the requirement that a real estate licensee carry and maintain errors and omissions insurance under [AS 08.88.172](#) is void during the period that the commission is unable to obtain the insurance.
- (f) A licensee seeking to obtain or renew a license shall certify to the commission that errors and omissions insurance has been obtained. A licensee who elects to independently obtain errors and omissions insurance shall provide a certificate of coverage with the application to obtain or renew a license.

Courtesy: Jerry Royse, Royse and Associates

For more Information and Forums:

<http://www.alaskayellowpages.com/Details.aspx?orgId=29659>

Chapter 64. Real Estate Commission.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not underlined.)

12 AAC 64 is amended by adding a new article to read:

Article 10. Errors and Omissions Insurance.

Section

- 600. Insurance required
- 610. Time for filing certification of equivalent coverage
- 620. Nonpayment of premium
- 630. Surrender of license for failure to provide proof of insurance
- 640. Proof of insurance required to activate license
- 650. Authenticity of coverage

12 AAC 64.600. Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of errors and omission insurance coverage through the group plan obtained by the commission under AS 08.88.172(d) or through certification of equivalent coverage. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.610. Time for filing certification of equivalent coverage. A licensee wishing to comply with AS 08.88.172 by obtaining equivalent coverage under AS

08.88.172(c)(2) must file a certification of equivalent coverage with the commission. A licensee wishing to replace coverage provide by the master insurance policy provided by the commission under AS 08.88.172(c)(1) or independent equivalent coverage with another policy shall file a certification of equivalent coverage with the commission by 5 p.m. on the date of expiration of coverage of the master insurance policy. If the certification is not filed as required by this section, the commission shall place the license on inactive status. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.620. Nonpayment of premium. If a licensee’s insurance company or group plan notifies the commission that a licensee has not paid a premium, the commission shall place any license required under AS 08.88.161 held by that licensee on inactive status as of the date of termination of coverage. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.630. Surrender of license for failure to provide proof of insurance.

When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender any licensed required under AS 08.88.161 to the commission. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.640. Proof of insurance required to activate license. A licensee whose license has been placed on inactive status for failure to provide proof of errors and omissions insurance may not conduct any activities for which a license is required until proof of obtaining such insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.650. Authenticity of coverage. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission that is false, fraudulent, or misleading. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

The article heading for Article 10 is amended to read:

Article 11 [10]. General Provisions.

**NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT**

The Department of Commerce, Community, and Economic Development proposes to adopt new regulations in Title 12, Chapter 02 of the Alaska Administrative Code, dealing with the regulation of real estate errors and omissions insurance in accordance with Alaska Statutes 08.88.172. The regulations deal with insurance requirements, including minimum standards, exceptions to coverage, group policy approval, equivalent coverage, standards for equivalent coverage, notification for cancellation, maximum amount of premium, method of adjustment, and definition of terms.

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 by mail, fax, or e-mail to:

Jun Maiquis, Regulations Specialist
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community, and Economic Development
P.O. Box 110806
Juneau, AK 99811-0806
Fax: (907) 465-2974
E-mail: jun.maiquis@alaska.gov

The written comments must be received no later than 4:30 p.m. on February 23, 2010.

If you are a person with a disability who needs a special accommodation in order to participate in the process for written comments, please contact Jun Maiquis at (907) 465-2537 no later than February 16, 2010 to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Jun Maiquis at the address or phone number above, or go to <http://www.commerce.state.ak.us/occ/pub/E&O-0110.pdf>

After the public comment period ends, the Department of Commerce, Community, and Economic Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 08.88.172

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

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

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, please send your request to the Division of Corporations, Business and Professional Licensing at the address above and include your name, address, and the occupational area in which you are interested.

DATE: 01/21/10

/s/
Cathy Mason, Administrative Officer
Division of Corporations, Business and
Professional Licensing

Chapter 02. General Occupational Licensing Functions.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not underlined.)

12 AAC 02 is amended by adding a new article to read:

Article 4. Real Estate Errors and Omissions Insurance.

Section

- 510. Minimum standards
- 520. Exceptions to coverage
- 530. Group policy approval requirements
- 540. Equivalent coverage
- 550. Standards for equivalent coverage
- 560. Notification required for cancellation
- 570. Maximum amount of premium
- 580. Method of adjustment
- 590. Definitions

12 AAC 02.510. Minimum standards. (a) The group policy obtained by the commission must be provided by an insurer with a certificate of authority issued under AS 21.09 and shall provide to each individual licensee, at a minimum, the following terms of coverage:

(1) not less than one hundred thousand dollars single-limit liability coverage for each licensee per occurrence or claim made, the claims and claims expenses shall be in addition to the limits of liability;

(2) an annual aggregate limit of not less than two hundred thousand dollars per

licensee;

(3) a deductible amount for each occurrence of not more than one thousand dollars for single-limit liability coverage and two thousand-five hundred dollars maximum additional deductible for defense and investigation;

(4) an extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provision for a premium not to exceed two hundred 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 or excess coverage or to purchase additional coverages from the group carrier as may be available from the insurer;

(6) the coverage provided under the group plan is individual and license-specific and shall cover the licensee regardless of changes in employing broker; and

(7) prior acts coverage shall be offered to licensees with continuous past coverage.

(b) The group policy obtained by the commission shall contain a provision requiring the consent of the insured to settle a claim.

(c) The insurance carrier which provides the group plan of errors and omissions insurance under these regulations 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 by the director of the Alaska Division of Insurance to transact insurance business in Alaska; and to be in compliance with Alaska insurance statutes;

(3) provide the errors and omissions insurance after notification by the commission that it is the successful bidder for the group plan, after the competitive bidding process;

(4) enter into contract to provide said group errors and omissions plan in conformity with said contract, these regulations, and the Alaska insurance law; and

(5) collect premiums, maintain records, and report the names of those insured and claims experience, date of claim, amount paid, nature of claim, claims information on annual or bi-annual basis. (Eff. ___/___/____, Register ____)

Authority: AS 08.88.172

12 AAC 02.520. Exceptions to coverage. Except as provided in this section, the group policy obtained under 12 AAC 02.510 and required by AS 08.88.172 may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a real estate license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

(1) out of claims or suits 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 contract or agreement, except for liability the insured would have had in the absence of such agreements;

(3) from any criminal, dishonest, fraudulent, or willful act or omission; this exclusion does not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;

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

(8) from hazardous materials, nuclear materials, or pollutants;
(9) from prior wrongful acts unless specific prior 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 may be permitted, subject to approval by the Alaska Division of Insurance under 12 AAC 02.530. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.172

12 AAC 02.530. Group policy approval requirements. Any group policy to be issued must conform to the standards and practices of the insurance industry and be filed with and for approval by the Alaska Division of Insurance. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.172

12 AAC 02.540. Equivalent coverage. An active licensee who chooses the option of obtaining errors and omissions insurance independently from a carrier other than the group carrier under contract with the commission must show evidence of coverage by providing

certification of coverage on a form prescribed by the commission. The form must show proof that the licensee has coverage in compliance with the minimum standards set out in 12 AAC 02.510. The form must be signed by an authorized representative of the insurance company and must contain language committing the providing company to notify the Alaska Real Estate Commission if the policy lapses or is not renewed in the matter provided by 12 AAC 02.560.

(Eff. ___/___/___, Register ____)

Authority: AS 08.88.172

12 AAC 02.550. Standards for equivalent coverage. A carrier issuing insurance coverage pursuant to AS 08.88.172(c)(2) must be an insurer with 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. However 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 two hundred thousand dollars per occurrence and one million dollars aggregate, if all licensees associated with the broker are covered. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.172

12 AAC 02.560. Notification required for cancellation. If equivalent coverage insurance obtained by a licensee under AS 08.88.172(c)(2) is to lapse or not be renewed, the providing company must notify the real estate commission of the intent to lapse or not to renew, a minimum of thirty days before the expiration date of the term. It is the responsibility of the employing broker or licensee as applicable, to instruct the providing company to provide this

notice to the commission. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.172

12 AAC 02.570. Maximum amount of premium. The maximum amount of premium to be charged a licensee under the group policy obtained under 12 AAC 02.510 is \$250. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.172

12 AAC 02.580. Method of adjustment. The terms of coverage under 12 AAC 02.510(a) and the maximum amount of the premium under 12 AAC 02.570 shall be adjusted annually by the department to reflect the change in the consumer price index for all urban consumers in the Anchorage metropolitan area, rounded to the nearest multiple of \$10. (Eff. ___/___/___, Register ____)

Authority: AS 08.88.081 AS 08.88.172

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) “equivalent coverage” means coverage obtained independently of the group plan available from the commission and which complies with the requirements, terms and conditions as set forth in this chapter;

(3) “errors and omissions insurance” means professional liability insurance that provides coverage to holders of active Alaska real estate brokers, associate brokers, and

salesperson licenses for negligent errors and omissions made during the course of real estate transactions, subject to the coverage's, limitations and exclusions of the specific insurance policy or policies in place;

(4) "extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period;

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

(6) "single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act. (Eff. ___/___/___, Register ___)

Authority: AS 08.88.081 AS 08.88.172

The article heading for Article 4 is amended to read:

Article 5 [4]. General Provisions.