CHAPTER 70-02-05
ERRORS AND OMISSIONS INSURANCE

Section
70-02-05-01 Definitions
70-02-05-02 Insurance Required
70-02-05-03 Minimum Standards
70-02-05-04 Exceptions to Coverage
70-02-05-05 Group Policy Approval Requirements
70-02-05-06 Equivalent Optional Coverage
70-02-05-07 Standards for Equivalent Optional Coverage
70-02-05-08 Time for Filing Certification of Optional Coverage
70-02-05-09 Nonpayment of Premium
70-02-05-10 Release of License for Failure to Provide Proof of Insurance
70-02-05-11 Notification Required for Cancellation
70-02-05-12 Proof of Insurance Required to Activate License
70-02-05-13 Authenticity of Coverage

70-02-05-01. Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as the policy term.

2. "Equivalent coverage" means coverage obtained independently of the group plan available from the commission and subject to the terms and conditions as set forth in this chapter.

3. "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.

4. "Licensee" means any active individual broker, broker associate, or salesperson.

5. "Prior acts coverage" means 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. "Proof of coverage" means the group plan carrier has submitted to the commission a list of all policyholders, or a licensee has submitted to the commission a certificate of equivalent coverage with a list of all licensees covered by the policy on a form prescribed by the commission.

7. "Qualified insurance carrier" means an insurance carrier:

   a. Which for the entire term of its contract shall provide the group plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best financial size category of class VI or higher;

   b. Which shall remain for the policy term authorized by the North Dakota insurance department to do business in North Dakota as an insurance carrier;

   c. Which is and will remain for the policy term qualified and authorized by the North Dakota insurance department to write policies of errors and omissions insurance in North Dakota of the type contemplated by these rules;

d. Which, after competitive bidding, has been notified by the commission that it is the successful bidder for the group plan to provide the errors and omissions insurance contemplated by these rules; and

e. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules, and the North Dakota license law.

The insurance carrier will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis and at no cost to the state.

8. "Retroactive date" means the date when the first real estate errors and omissions coverage was effective insuring the named insured on a claims-made basis and since which time the insured has been continuously insured.

9. "Single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

History: Effective February 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-02. 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 insurance coverage through the group plan or through certification of equivalent coverage.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-03. Minimum standards.

The group policy obtained by the commission 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, not including costs for investigation or defense;

2. An annual aggregate limit of not less than five 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 one thousand 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. Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, domiciled in North Dakota, holds a license;

6. Stacking of benefits;

7. Proration of premiums for coverage that is purchased during the course of a calendar year but with no provision for refunds of unearned premiums;

8. 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 determined by the carrier;

9. That coverage is individual and license-specific and will cover the licensee regardless of changes in employing broker; and

10. Prior acts coverage shall be offered to licensees with continuous past coverage.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-04. Exceptions to coverage.

Except as provided in this section, coverage 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, actual fraud, 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 failure to maintain any type or amount of insurance for managed property;

7. From bodily injury, personal injury, advertising injury, or property damage;

8. From related business activities for which a license is not required under this chapter;

9. From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;

10. From hazardous materials, nuclear materials, or pollutants;

11. From prior wrongful acts;

12. From management or sale of property in which the insured or spouse has more than a ten percent financial or ownership interest. This exclusion does not apply for one year from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;

13. From any violation of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of 1934, as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes; or

14. Other standard exclusions that are typical in the professional liability insurance industry may be permitted, subject to the approval of the North Dakota real estate commission.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-05. Group policy approval requirements.

Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the North Dakota insurance department.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-06. 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 established by section 70-02-05-07. The form must be signed by an authorized representative of the insurance company and must contain a cancellation notification clause as required by section 70-02-05-09.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-07. Standards for equivalent coverage.

A carrier issuing insurance coverage pursuant to North Dakota Century Code section 43-23-22 must be an admitted carrier in North Dakota or an approved surplus lines carrier in the state in which the licensee being certified resides. All activities contemplated under North Dakota Century Code sections 43-23-19 through 43-23-23 must be covered.

The insurance must provide a minimum, not less than one hundred thousand dollars single-limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of five hundred thousand dollars for each licensee, not including the cost of investigation and defense. A designated broker may comply with this requirement by certifying coverages of a minimum of five hundred thousand dollars/one million dollars, if all licensees associated with the broker are covered.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance and who is also licensed in North Dakota meets the requirements for errors and omissions insurance in North Dakota upon providing proof that the person meets the requirements of the person's state of residence.

History: Effective February 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-08. Time for filing certification of equivalent coverage.

Certification of equivalent coverage must be filed with the commission by five p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-09. Nonpayment of premium.

If a certifying insurance company that submitted certification of equivalent coverage or group plan notifies the commission that a licensee has not paid a premium, the commission shall place that licensee's license on inactive status as of the date of termination of coverage.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-10. Release 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 broker shall immediately destroy the license and the licensee's name and licensee's number must be removed from the broker's website.

History: Effective February 1, 2002; amended effective January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-11. Notification required for cancellation.

If insurance under equivalent coverage is to lapse or be nonrenewed, the providing company must notify the North Dakota real estate commission of its intent to lapse or nonrenew before the expiration date of the term.

History: Effective February 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-12. Proof of insurance required to activate license.

A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of 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.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-13. 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.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19