

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

**Proposing rulemaking related to mandatory errors and omissions insurance
and providing an opportunity for public comment**

The Real Estate Commission hereby proposes to rescind Chapter 19, “Requirements for Mandatory Errors and Omissions Insurance,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 543B.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C and 543B.

Purpose and Summary

These proposed rules provide definitions and requirements for licensees to carry errors and omissions (E&O) insurance. The rules specify the minimum amount of insurance that is required and the minimum deductible required for each policy. The rules also set the guidelines for compliance with E&O insurance requirements.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Renee Paulsen
Real Estate Commission
6200 Park Avenue
Des Moines, Iowa 50321
Email: renee.paulsen@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024
11 to 11:20 a.m.

6200 Park Avenue
Des Moines, Iowa

January 31, 2024
11 to 11:20 a.m.

6200 Park Avenue
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 193E—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19

REQUIREMENTS FOR MANDATORY ERRORS AND OMISSIONS INSURANCE

193E—19.1(543B) Insurance definitions.

“Aggregate limit” is 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.

“Claims-made” means policies written under a claims-made basis will cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today's incident regardless of when a claim is filed even if it is one or more years later.

“Extended reporting period” is 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 had been made during the policy period.

“Licensee” is any active individual broker, broker associate, or salesperson; any partnership; or any corporation.

“Per claim limit” means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

“Prior acts coverage” applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims which 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.

“Proof of coverage” means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.

“Retroactive date” is a provision found in many claims-made policies. The policy will not cover claims for injuries or damages that occurred prior to the retroactive date even if the claim is first made during the policy period.

“Umbrella type coverage” means a policy that provides insurance coverage for the broker or firm and all licensees assigned.

193E—19.2(543B) Insurance criteria—general. The group coverage insurance policy selected by the commission is approved by the Iowa insurance division. As a condition of licensure, all active real estate licensees follow Iowa Code section 543B.47(1) regarding mandatory errors and omissions insurance.

19.2(1) Who submits plan of coverage. The following persons submit proof of insurance when needed or when requested:

- a.* Any active individual broker, broker associate, broker sole proprietor or salesperson.
- b.* Any active firm.

19.2(2) Inactive status. Individuals whose licenses are on inactive status as defined in Iowa Code section 543B.5(12) do not need to carry errors and omissions insurance as authorized by Iowa Code section 543B.47(1).

19.2(3) Territory. All resident Iowa licensees are covered for activities contemplated under Iowa Code chapter 543B both in and out of the state of Iowa. Nonresident licensees participating under the state plan are not covered both in and out of the state of Iowa unless the state plan selected by the commission will cover participating nonresidents when involved in real estate activities in the nonresident state.

19.2(4) Insurance form. Licensees may obtain errors and omissions coverage through the insurance carrier selected by the commission to provide the group policy coverage. The following are minimum criteria of the group policy to be issued to the Iowa real estate commission including, as named insureds, all licensees who have paid the necessary premium:

- a.* All activities contemplated under Iowa Code chapter 543B are included as covered activities;
- b.* A per claim limit is not less than \$100,000;
- c.* An annual aggregate limit is not less than \$100,000;
- d.* Limits are to apply per licensee, per claim;
- e.* Defense costs are to be payable in addition to damages;
- f.* The contract of insurance pays, on behalf of the insured person(s), liabilities owed.

19.2(5) Contract period. The contract between the insurance carrier or program manager and the commission may be written for a one- to three-year period with the option to renew or renegotiate each year thereafter. The commission reserves the right to terminate the contract after written notice to the carrier at least 120 days prior to the end of any policy term and place the contract out for bid.

- a.* Policy periods are not less than 12-month policy terms.
- b.* The policy provides full and complete prior acts coverage.

(1) If the licensee purchased full prior acts coverage on or after July 1, 1991, that licensee continues to be guaranteed full prior acts coverage if insurance carriers are changed in the future.

(2) The retroactive date of the master policy is never later than July 1, 1991, for those that can provide proof of continuous coverage to that date.

(3) The retroactive date for each licensee is individually determined by the inception date of coverage and proof of continuous coverage to that date.

(4) The retroactive date for any new licensee who first obtains a license after July 1, 1991, is individually determined by the effective date of the license, the inception date of coverage, and proof of continuous coverage to that date.

19.2(6) Any licensee insured in the state selected program whose license becomes inactive will not be charged an additional premium if the license is reinstated during the policy period.

19.2(7) Any licenses issued other than at renewal and insured by the state selected program are subject to a pro-rata premium.

193E—19.3(543B) Other coverage. Licensees are not mandated to purchase insurance coverage through the group policy selected by the commission and may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following:

19.3(1) For active individual licensees, all provisions of Iowa Code section 543B.47 apply.

If the other coverage is an individual policy, it is each licensee's responsibility to provide proof of independently carried insurance coverage to the Iowa real estate commission when needed.

19.3(2) For all active partnerships and corporations, otherwise known as firms, all provisions of Iowa Code section 543B.47 apply.

a. If the other coverage is an individual policy covering the firm, it is the designated broker's responsibility to provide proof of the firm's independently carried insurance coverage to the Iowa real estate commission when needed.

b. If the other coverage is an umbrella type policy covering the firm and all licensees assigned that perform real estate activities, it is the responsibility of the designated broker of the firm to provide a list of licensees assigned to the firm that are covered under the firm's insurance policy to the Iowa real estate commission when needed.

19.3(3) For sole-proprietor single license brokers, all provisions of Iowa Code section 543B.47 apply.

a. If the broker's other coverage is an individual policy, it is each licensee's responsibility to provide proof of the independently carried insurance coverage to the Iowa real estate commission when needed, as provided in subrule 19.3(1).

b. If the other coverage is an umbrella type policy covering the broker and all licensees assigned that perform real estate activities, it is the responsibility of the broker to provide a list of licensees assigned to the broker that are covered under the broker's insurance policy to the Iowa real estate commission when needed.

19.3(4) For independently carried individual type coverage, the following apply:

a. All activities contemplated under Iowa Code chapter 543B are included as covered activities.

b. A per claim limit is not less than \$100,000.

c. The maximum deductible for an individual policy for damages and defense, each licensee, and each claim is not more than the deductible of the commission group policy for the current policy term.

19.3(5) For firms and sole-proprietor brokerages with independently carried firm umbrella type coverage, the following apply:

a. All activities contemplated under Iowa Code chapter 543B are included as covered activities.

b. A per claim limit is not less than \$100,000.

c. An aggregate limit is:

(1) Not less than \$250,000 for a broker or firm with two through ten licensees;

(2) Not less than \$500,000 for a broker or firm with 11 through 40 licensees;

(3) Not less than \$1,000,000 for a broker or firm with 41 or more licensees.

d. There is no maximum deductible limit for firm umbrella type coverage policy.

e. If a firm size change or a sole-proprietor brokerage size change results in a higher aggregate minimum criteria, that firm or broker corrects the deficiency within one year, or the next renewal term of the insurance policy, whichever comes first.

19.3(6) To comply with the provisions of the Iowa errors and omissions law, if other independently carried insurance is provided, as proof of errors and omissions coverage for individual or firm umbrella type coverage, the other insurance carrier agrees to either a noncancelable policy, or provides a letter of commitment to notify the Iowa real estate commission 30 days prior to the intention to cancel the policy.

19.3(7) Whenever commission criteria, coverage, or limits change, the commission provides a reasonable transition period to allow the licensee or firm with other coverage the opportunity to change carriers or coverage to comply with all criteria and limits, providing the present policy was in effect and in compliance with all prior criteria. The licensee or firm corrects the deficiency within one year, or not later than the next renewal term of the insurance policy, whichever comes first.

19.3(8) It is the responsibility of each individual licensee to notify the commission when changing insurance status, coverage, or provider when necessary or when requested.

19.3(9) It is the responsibility of the designated broker of the firm to notify the commission when changing insurance status, coverage, or provider when necessary or when requested.

19.3(10) Self-insurance does not comply with the provisions of the Iowa errors and omissions insurance law.

193E—19.4(543B) Administrative criteria—general.

19.4(1) It is the responsibility of the insurance carrier or program manager to obtain approval from the Iowa division of insurance for the group policy before inception of the program or policy period.

19.4(2) It is the responsibility of the insurance carrier or program manager to handle administrative duties relative to operation of the program selected by the commission, including billing and premium collection, toll-free access for questions, and claim processing and general informational mailings.

19.4(3) It is the responsibility of the insurance carrier or program manager to send a billing notice to each licensee.

19.4(4) It is the responsibility of the insurance carrier or program manager to collect all premiums due and verify proper payment.

A schedule of licensees who have paid the proper premium and who have coverage in force is provided electronically to the commission at agreed time intervals.

19.4(5) It is the responsibility of the insurance carrier or program manager to issue individual certificates to each licensee and a master policy to the commission.

19.4(6) It is the responsibility of the insurance carrier or program manager to market its program and to develop and distribute informational brochures about the coverages provided, services available and criteria of Iowa Code section 543B.47.

a. The content of any brochures or other literature provided is the responsibility of the insurance carrier or program manager.

b. Advertising materials may be reviewed by the executive officer for the commission or appropriate staff person for content only and not for a legal determination of compliance with Iowa law or division of insurance criteria.

19.4(7) It is the responsibility of the insurance carrier or program manager to provide educational seminars in the state of Iowa at the request of the commission and subject to terms and conditions agreeable to each party involved.

193E—19.5(543B) Commission responsibilities. The commission provides the insurance carrier or program manager an electronic schedule of all active licensees approximately three months in advance of inception (or renewal), or as otherwise agreed upon, which the insurance carrier or program manager may use to issue billing notices.

19.5(1) The insurance carrier or program manager provides the commission with a schedule of insured licensees. The commission will be responsible for comparing this schedule against its own records to determine which licensees elected not to participate in the state program and those that have failed to furnish the commission with acceptable proof of insurance necessary for continued licensure.

19.5(2) It is the responsibility of the commission to review proof of other insurance received from licensees not participating in the state program and to confirm that the other insurance meets the minimum criteria of these rules.

19.5(3) The commission may mandate that an approved standard form be used to submit proof of other insurance coverage for review.

193E—19.6(543B) Compliance.

19.6(1) The commission needs receipt of proof of errors and omissions insurance from new licensees before the license is issued.

19.6(2) The commission needs receipt of proof of errors and omissions insurance from the applicant before reinstating an expired license.

19.6(3) The commission needs receipt of proof of errors and omissions insurance before reactivating an inactive status license to active status.

19.6(4) Applicants for license renewal attest and certify that they have current errors and omissions insurance in effect that meets Iowa insurance criteria.

a. The commission will verify by random audit or on a test basis the insurance compliance attested to by the licensee.

b. Licensees participating in the state group program cannot be audited if commission records indicate the insurance carrier or program manager has submitted current proof of coverage.

c. Licensees with other insurance coverage cannot be audited if commission records indicate the current proof of coverage has been submitted.

d. The commission may random audit by any factor as will provide a reasonable sampling given the volume, purpose and scope of audit.

e. The commission may random audit as the result of any complaint filed with the commission whether or not adequate insurance coverage was questioned in the complaint.

f. The commission may audit compliance with insurance coverage at any time the commission has reasonable cause to question a licensee's compliance.

19.6(5) A licensee is needed to carry insurance on an uninterrupted basis and cannot avoid discipline simply by acquiring insurance after receipt of an audit notice.

19.6(6) Failure to comply with Iowa Code section 543B.47(6) within 20 calendar days of the commission's request is prima facie evidence of a violation of Iowa Code sections 543B.15(5) and 543B.47(1) and is grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

19.6(7) Submitting false documentation of insurance coverage, or falsely claiming to have or attesting to having insurance coverage, is prima facie evidence of violation of Iowa Code sections 543B.29(1) and 543B.34(1).

19.6(8) Failure to provide required proof of insurability within 30 days of written notice by the commission results in the placement of the license on inactive status. A license that has been placed on inactive status pursuant to this provision is not reactivated until satisfactory evidence has been provided verifying that coverage is current and in full force and effect.

193E—19.7(543B) Records and retention. It is the responsibility of the licensee to maintain records which support the validity of the insurance. Documentation is retained by the licensee for a period of three years after the license renewal date or the anniversary of the license renewal date.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.