

CHAPTER 276

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 96-1070

BY REPRESENTATIVES Kaufman, Chlouber, Leyba, Nichol, Prinster, Snyder, and Taylor;
also SENATORS Feeley, Matsunaka, and Tanner.

AN ACT

CONCERNING MANDATORY ERRORS AND OMISSION INSURANCE COVERAGE FOR ALL ACTIVE REAL ESTATE LICENSEES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 61 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect.

(1) COMMENCING JANUARY 1, 1998, EVERY LICENSEE UNDER THIS PART 1, EXCEPT AN INACTIVE BROKER OR SALESPERSON OR AN ATTORNEY LICENSEE WHO MAINTAINS A POLICY OF PROFESSIONAL MALPRACTICE INSURANCE WHICH PROVIDES COVERAGE FOR ERRORS AND OMISSIONS FOR THEIR ACTIVITIES AS A LICENSEE UNDER THIS PART 1, SHALL MAINTAIN ERRORS AND OMISSIONS INSURANCE TO COVER ALL ACTIVITIES CONTEMPLATED UNDER THIS ARTICLE. THE COMMISSION SHALL MAKE THE ERRORS AND OMISSIONS INSURANCE AVAILABLE TO ALL LICENSEES BY CONTRACTING WITH AN INSURER FOR A GROUP POLICY AFTER A COMPETITIVE BID PROCESS IN ACCORDANCE WITH ARTICLE 103 OF TITLE 24, C.R.S. ANY GROUP POLICY OBTAINED BY THE COMMISSION SHALL BE AVAILABLE TO ALL LICENSEES WITH NO RIGHT ON THE PART OF THE INSURER TO CANCEL ANY LICENSEE. ANY LICENSEE MAY OBTAIN ERRORS AND OMISSIONS INSURANCE INDEPENDENTLY IF THE COVERAGE COMPLIES WITH THE MINIMUM REQUIREMENTS ESTABLISHED BY THE COMMISSION.

(2) IF THE COMMISSION IS UNABLE TO OBTAIN ERRORS AND OMISSIONS INSURANCE COVERAGE TO INSURE ALL LICENSEES WHO CHOOSE TO PARTICIPATE IN THE GROUP PROGRAM AT A REASONABLE ANNUAL PREMIUM NOT TO EXCEED ONE HUNDRED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DOLLARS, THE ERRORS AND OMISSIONS INSURANCE REQUIREMENT OF THIS SECTION SHALL NOT APPLY DURING ANY YEAR FOR WHICH COVERAGE CANNOT BE OBTAINED.

(3) THE COMMISSION SHALL DETERMINE THE TERMS AND CONDITIONS OF COVERAGE REQUIRED UNDER THIS SECTION, INCLUDING THE MINIMUM LIMITS OF COVERAGE, THE PERMISSIBLE DEDUCTIBLE, AND PERMISSIBLE EXEMPTIONS. EACH LICENSEE SHALL BE NOTIFIED OF THE REQUIRED TERMS AND CONDITIONS AT LEAST THIRTY DAYS PRIOR TO THE ANNUAL PREMIUM RENEWAL DATE AS DETERMINED BY THE COMMISSION. EACH LICENSEE SHALL FILE A CERTIFICATE OF COVERAGE SHOWING COMPLIANCE WITH THE REQUIRED TERMS AND CONDITIONS WITH THE COMMISSION BY THE ANNUAL PREMIUM RENEWAL DATE, AS DETERMINED BY THE COMMISSION.

(4) IN ADDITION TO ALL OTHER POWERS AND DUTIES CONFERRED UPON THE COMMISSION BY THIS ARTICLE, THE COMMISSION SHALL ADOPT SUCH RULES AS IT DEEMS NECESSARY OR PROPER TO CARRY OUT THE PROVISIONS OF THIS SECTION.

SECTION 2. 12-61-302 (3), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-61-302. Limitation on payments out of the fund. (3) (a) No payment shall be made from the fund unless the order of judgment in the underlying civil action contains specific findings of fact and conclusions of law that the licensed real estate broker or salesperson committed negligence, fraud, willful misrepresentation, or conversion of trust funds.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3), NO PAYMENT FOR NEGLIGENCE SHALL BE MADE FROM THE FUND IF SAID LICENSED REAL ESTATE BROKER OR SALESPERSON, AT THE TIME OF THE NEGLIGENT ACT OR OMISSION, HAD IN EFFECT A COMPLYING POLICY OF ERRORS AND OMISSIONS INSURANCE COVERAGE PURSUANT TO SECTION 12-61-103.6 AT THE TIME OF THE NEGLIGENT ACT OR OMISSION.

SECTION 3. 12-61-303 (4) (d), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended, and the said 12-61-303 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-61-303. Simplified procedure - application for administrative order for payment from the fund. (4) The applicant shall also be required to show that:

(d) The judgment debtor committed ~~negligence~~, fraud, willful misrepresentation, or conversion of trust funds;

(d.5) THE JUDGEMENT DEBTOR COMMITTED NEGLIGENCE AND DID NOT, AT THE TIME OF THE NEGLIGENT ACT OR OMISSION, HAVE IN EFFECT A COMPLYING POLICY OF ERRORS AND OMISSIONS INSURANCE COVERAGE PURSUANT TO SECTION 12-61-103.6;

SECTION 4. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (28.5) THE FUNCTION OF THE REAL

ESTATE COMMISSION TO MAKE AVAILABLE ERRORS AND OMISSIONS INSURANCE TO LICENSEES PURSUANT TO SECTION 12-61-103.6, C.R.S., SHALL TERMINATE ON JULY 1, 1999.

SECTION 5. Effective date. This act shall take effect July 1, 1996.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1996