THE POWER OF PREVENTION: AGENCY RISK MANAGEMENT ESSENTIALS

Essentials of Service

STUDENT GUIDE

BIG i PROFESSIONAL LIABILITY.

Swiss Re Corporate Solutions

www.independentagent.com/EO
www.eoguardian.com

COURSE OBJECTIVES

Power of Prevention: Agency Risk Management Essentials of Service is designed to help reduce E&O exposure in the agency and provide a better defense in the event of Errors & Omissions (E&O) allegations.

This three-hour class ***Essentials of Service*** specifically targets customer service functions in the agency. Customer service professionals may hold various titles, including Customer Service Representative (CSR), Customer Service Agent (CSA), Account Manager, Account Agent, or Account Executive, for example. In some agencies, producers may also perform customer service tasks. No matter what your title, if you interact with customers, this class provides valuable insights to help reduce your E&O exposure.

TABLE OF CONTENTS

6. **Servicing Customer Accounts**
    a. Importance of Good Customer Service
    b. New Business
    c. Policy Changes and Endorsements
    d. Renewals and Remarketing
    e. Cancellations
    f. Evidence of Insurance
    g. Claims Handling
    h. Working with Excess & Surplus Lines and Residual Markets

7. **Documentation**
    a. Documentation – The Agency's Best Defense
    b. What Qualifies as Documentation?
    c. Documenting Verbal Conversations
    d. What Type of Documentation is Best?

8. **Conclusion**

L/O 1. INTRODUCTION

There are three courses included in the ***Power of Prevention: Agency Risk Management Service Essentials*** series.

- Essentials of Sales
- Essentials of Service
- Essentials of Management

This three-hour class, Essentials of Service, specifically targets customer service functions in the agency. Please visit your Big "I" state association for information on how to access the other two classes which focus on either sales or management best practices.

An agency's success hinges on its people. Each individual contributes skills, expertise and knowledge to address the agency's work. Within agencies, management assigns certain individuals to develop new accounts, while others focus on customer service. In most cases within this series of trainings, we use the word "agent" in this material because most service representatives hold a license. Additionally, some may support the sales and service processes. Regardless of your role, errors you make may expose you to creating an errors and omissions (E&O) claim.

The operations of insurance agencies vary significantly based on factors such as size and the types of business written. In a large agency, an employee might focus on just a few specific tasks, whereas someone in a small agency may juggle multiple responsibilities across different lines of business. Some agencies specialize in personal lines, while others manage personal, commercial, benefits and life & health insurance.

As a result, the information in this material may be somewhat generic and may not fully reflect your agency's operations. However, the core message remains relevant—there are steps we can take to reduce E&O exposure in any agency.

We are all human and make mistakes. Whether it's forgetting to add coverage to a customer's policy, failing to document a phone conversation, or neglecting to attach an email, errors can happen. Even if we haven't experienced an E&O claim personally, we have likely heard chilling stories from colleagues or sat through E&O classes that made us briefly reconsider our career choice.

It's important to recognize that you could implement all the recommendations from this class and still find yourself facing E&O litigation. Sometimes errors occur. More often, suits arise even when agency members haven't done anything wrong. However, we do know that agencies that adopt strong internal practices tend to have fewer claims and are better equipped to defend against those that do occur.

Fostering a healthy E&O culture within the agency involves cultivating mindfulness among employees as they perform each task. This material includes numerous recommendations that you can take back to your office to help reinforce a healthy E&O culture.

Throughout this material there are references to the E&O Guardian Website, which offers an array of resources to help reduce an agency's E&O exposure. This material is available free of charge to Big "I" members, although some content may be accessible only by certain E&O policyholders.

Review the website at https://eoguardian.com and utilize any of these valuable resources.

L/O 2. WHAT YOU NEED TO KNOW ABOUT E&O

Errors & Omissions Facts

E&O claims often arise from uncovered losses. Generally speaking, uncovered losses are caused by the following.

- Lack of the appropriate type of coverage; or
- Inadequate values or limits to cover the full loss.

E&O claims don't discriminate by the size or location of agencies. All agencies, regardless of staff size, must proactively address E&O risk management. E&O claim statistics have fluctuated over the years and are often influenced by market cycles which drive changing behavior of insurance buyers, carriers, and agents. Catastrophic events such as tornados, hurricanes, flooding, earthquakes, and wildfires can be the catalyst for the discovery of uncovered losses that lead to E&O claims against agents.

Statistics show that, annually, one in seven insurance agencies will report a potential E&O claim. Of those claims, approximately 50% are closed without any defense reserves or indemnity payments.

Even when an E&O claim progresses, the agency may not have made an actual mistake. Often, allegations are made that the agency cannot disprove, and many E&O cases come down to a "he said, she said" scenario. In these situations, thorough documentation and strong E&O risk management procedures are critical defense tools.

It's important to note that E&O claims can be brought not only by customers but also by carriers and other third parties for various reasons. The chart below outlines some of the reasons these E&O claims may occur.

Carriers	Third Parties
▪ Exceeding binding authority ▪ Failing to comply with underwriting guidelines ▪ Providing inaccurate or incomplete information to the carrier ▪ Not adequately explaining policy provisions ▪ Failing to provide timely notice to the carrier of a claim	▪ Failure to add a loss payee or additional insured ▪ Misrepresentations or inaccurate information on a Certificate of Insurance ▪ Failing to procure coverage that a third party relied upon
	Regulatory/Government Entities
	▪ Fraud or intentional misconduct ▪ Failure to return premiums ▪ Unfair trade practices or claim practices

Any policy can generate an E&O claim but claims frequency in commercial lines is double that of personal lines. Why do you think that is the case?

At what point in the process of working with customers do you think a producer is most vulnerable or likely to make an error?

Top Reasons for E&O Claims

Anyone in the agency can cause or contribute to an E&O claim, including managers and unlicensed administrative employees. The following are the most common areas that can lead to an E&O claim, with particular concern for Customer Service Representatives (CSRs), Customer Service Agents (CSAs) and Account Managers.

Application Errors

The application is a crucial document that clarifies the coverage the policy provides. It is important that each application is accurate and fully completed. Never guess or make assumptions—always contact the customer to verify the information. Ensure that you obtain the customer's signature on new business applications, even if the carrier does not require it.

Producers often rely on the service team to gather information and create a submission to the carrier. With larger accounts, it's easy to overlook small details, such as a location, piece of equipment, or an additional insured. It's a good practice to have a second person review the application and related documents to confirm everything is correct.

Policy Change Errors

Requesting endorsements may seem routine, but it's important to ask the right questions and consider potential issues that could arise from the change. These are some common policy changes that can generate E&O claims.

- When adding a vehicle, confirm the titleholder, driver and vehicle use.
- When adding a property location or a new vehicle, assess the potential liability exposure and ensure you notify the umbrella carrier if needed.
- If adding a new location out of state, always consider the impact on the workers' compensation policy.
- Always verify that the requestor is either the named insured or an authorized party to make changes and document the name of the person requesting the change.

Once the carrier processes a policy change, verify the endorsement against the original documentation and request. If something doesn't add up (e.g., an added vehicle resulting in a return premium), investigate further.

Misinformation to the Customer

CSRs and Account Managers often answer customer inquiries; many relate to coverage. It's important to educate customers about their policies but avoid answering speculative "what-if" questions, because the circumstances affecting a claim can be complex and unpredictable.

Failing to Provide Timely Notice of a Claim

When a customer or third party reports a claim to the agency, immediately forward the claim to the carrier. Claims are high-priority matters. Some carriers prefer customers to report claims directly to them, so assist the customer by providing the necessary contact details or route the call appropriately.

Problems can arise if a customer reports a claim but initially opts not to pursue it with the carrier. Since damages or injuries may surface later, it's essential to inform the customer that failing to report the claim could cause issues down the line. Also, agency contracts typically require disclosure of claims information.

It's vital to forward suit papers to the carrier immediately. Missing deadlines for responding to legal documents can result in default judgments against the insured.

Mishandling of Certificates of Insurance

E&O claims are often linked to certificate issuance. Use certificates only to provide basic information about policy forms and limits, never to paraphrase coverage terms. Be cautious when adding additional insureds—while some endorsements may include certain parties automatically, others may require specific action. For more details, refer to the section on certificates of insurance under **Section 6. Servicing Customer Accounts**.

Failing to Notify of Policy Cancellation

Cancellation notices are sent directly by the carrier to the customer, and agents should not interfere with the carrier's right to cancel. If a cancellation appears to be an error, the agent may contact the carrier on behalf of the customer to investigate further but should never instruct the customer to disregard a cancellation notice.

For direct-billed premiums, agents should avoid reminding customers about overdue payments. Taking on this responsibility increases the agency's standard of care, and if a loss occurs after a policy lapses for non-payment, the customer may hold the agency liable for not issuing a reminder. For more information, refer to the section on cancellations under Section VI. Servicing Customer Accounts.

L/O 3. UNDERSTANDING AN AGENT'S DUTIES

Introduction

Are you aware of the legal duties you owe to your customers? Understanding these minimum responsibilities is crucial in shaping how your agency operates. Legal duties provide a foundation for determining the level of service your agency will offer and helps develop procedures to minimize E&O risks.

It's important to note that just because an E&O claim is filed against an agency, it doesn't necessarily mean the agency's personnel breached their duties to the customer or that some type of negligence occurred.

Duties to Customers

In all states, agents and brokers can be held liable for negligence when providing services to customers. However, each state has different laws regarding an agent's duties and the standard of care owed to customers. Understanding these standards helps agencies define their operating procedures and decide whether to merely take customer orders, specialize in certain types of coverage, or conduct more thorough risk analyses to advise clients on available options.

Negligence

Negligence occurs when an agent's actions fall below the legal standard of care. Your state law and agency best practices set expectations that all personnel will act in a manner consistent with what a reasonably prudent person would do under similar circumstances.

To prove negligence, the incident must meet the following four conditions.

1. **A duty existed.**
2. **The duty was breached.**
3. **Proximate cause**—the breach of duty must directly lead to the loss.
4. **Actual damages occurred as a result of the breach**.

Example of Negligence - Customer

- The customer purchased an auto policy and requested collision coverage on the vehicle. **A duty existed.**
- The agent forgot to include a request for collision coverage on the application. The carrier issued the policy without it. **The agency personnel breached the duty.**
- An accident occurred that damaged the vehicle, but there was no collision coverage available to pay the loss. **This creates a loss where the proximate cause was the breach of duty.**
- The owner sustained uncovered damage. **Actual damage resulted from the breach.**

Example of Negligence - Carrier

- The carrier granted binding authority to the agency but prohibited the agent from binding coverage for any condominium association with waterfront property. **A duty existed.**
- The agent issued a policy and bound coverage for a condominium association on a large lake. **The duty was breached.**
- A condominium guest drowned in the lake and the guest's family sued the association. The carrier had to pay the loss since coverage was not excluded. **This creates a loss where the proximate cause was the breach of duty.**
- The insurance company sustained a loss by payment of the claim on a risk they did not intend to write. **Actual damage resulted from the breach.**

Courts may find agents or brokers liable for negligence, whether they owe the duty to the customer or to the insurance carrier. In some states, other interested parties may also seek damages for the agent or broker's negligence.

To Whom Does the Agency Owe a Duty?

Standard of Care

Standard of care refers to the expected level of caution owed when providing services to customers. This standard varies based on circumstances and reflects how a reasonable agent would react in similar situations. Failing to meet this standard of care can lead to claims of negligence against the agent. The EOGuardian.com website for Big "I" members furnishes a link titled "Review Standard of Care," which provides resources you can use to determine each state's care standard.

Generally, all agents and brokers across the country must exercise the care and skill of a reasonable agent in similar circumstances. The basic standard of care includes the following.

- Procuring the coverage requested by the customer.
- Notifying the customer if the agency cannot obtain the requested coverage.

It is essential to understand the applicable standard of care in the states where you write business.

Non-Professional vs Professional Standard of Care

Although there are many variations, the standard of care can generally be divided into two categories. 1) ***Non-Professional Standard of Care*** and 2) ***Professional Standard of Care***.

1. Non-Professional Standard of Care

Most states do not hold insurance agents to a professional standard of care. In these states, the agent's only responsibility is to procure the coverage requested by the customer and to let the customer know if that is not possible. Agents operating under this standard of care are often referred to as "order-takers." Effective communication with customers is key to minimizing risk. Whenever possible, it is advisable to obtain written confirmation from customers regarding specific coverage requests. When reducing or removing coverage, it is essential that you obtain and preserve this written confirmation.

2. Professional Standard of Care

A few states impose a more stringent standard of care. The professional standard recognizes that licensed agents serve a professional advisory role similar to attorneys or accountants. In these states, that standard may require agents to inform the customer about additional types or limits of coverage and act as advisors to the customer in making insurance decisions.

SPECIAL RELATIONSHIP

In all states, courts will assess the nature of the relationship between the customer and the agent to determine whether a "special relationship" exists. Depending on the state, there are varying degrees of how easily courts can establish a special relationship. Once courts establish that special relationship, the court would apply a professional standard of care.

Courts generally define special relationships to include one or more of the following factors.

- The agent agrees to advise the customer;
- The agent receives additional compensation beyond the commission paid by the insurer;
- A long-term relationship exists in which the customer relies on the agent's advice;
- The agent holds themselves out as an expert, and the customer relies on that expertise;
- The customer specifically requests advice; or
- The customer relies on the agent's representations about coverage.

It is important to know that presenting yourself as an expert or advisor beyond the scope of a typical agent can create an expectation of a special relationship, which may increase your exposure to E&O risk. This includes statements you may make on the agency website, in marketing collateral, or even on your business card.

Does simply having additional designations or a higher level of education with a deeper knowledge of insurance products create a greater standard of care?

Agency Practices vs. Legal Duties

While it's important to understand the legal requirements in your state, meeting only the minimum legal standards may not align with your agency's operational practices. Typically, it takes an uncovered customer loss to create an E&O claim. By proactively identifying customer exposures, offering additional coverages and suggesting higher limits, you not only improve service to your clients but also increase agency revenue and reduce E&O exposure.

Creating a Duty Where None Previously Existed

Agents and brokers must be cautious not to unintentionally create additional duties during their interactions with customers. Here are a few key practices to avoid.

- **Contacting Customers with Past-Due Premiums:** Avoid reaching out to customers who are chronic late-payers of direct-billed premiums. While this may seem like a "value-added" service, customers should rely on the billing notices from their insurer or premium finance company. If a customer depends on your reminder and a loss occurs after the policy lapses, courts may hold you responsible for not following your agency's established procedures.
- **Making Promises Before You Act:** Do not assure customers that coverage is in place for risks that fall outside your binding authority. A loss could occur before you find an appropriate market. Similarly, avoid advising a customer to disregard a cancellation notice from the carrier, because you cannot override the carrier's decisions. Instead, inform the customer that you will investigate the situation and follow up with them once more information is available.
- **Promising Coverage After a Loss:** You do not have the authority to guarantee that the insurer will pay or deny a loss. Always refer claims to the carrier and inform the customer that an adjuster will contact them. This ensures the customer understands that the carrier managed the claim process, not by you.

Familiarize yourself with the standard of care for producers in the states in which you do business. Understand what creates a special relationship in those states. Swiss Re Corporate Solutions provides a helpful guide under the Big I Risk Management E&O Guardian at https://eoguardian.com/standard-of-care/ Swiss Re policyholders can download the guide free of charge. It is available for purchase if not a policyholder.

L/O 4. COMPLIANCE WITH STATE AND FEDERAL LAWS

Introduction

An agent's primary obligation is compliance with both state and federal laws, including relevant statutes and regulations. Understanding these legal requirements is crucial, as non-compliance can lead to serious consequences, such as the following.

- Fines
- Loss of license
- Potential criminal penalties
- Damage to reputation
- Loss of customers

State Laws

Licensing Laws

To sell insurance products, an individual must be licensed as a producer in every state in which they do business. Each state has specific requirements, typically involving a combination of experience or education and successful completion of an examination.

Once licensed, carriers appoint agents to represent them. However, even if the carrier contracts with an agency, the carrier may authorize only certain producers within the agency to represent that carrier. All individuals must ensure they are authorized by the carrier to bind coverage on their behalf before doing so.

Unfair Trade Practices

While state laws vary, most are based on the National Association of Insurance Commissioners (NAIC) model act and prohibit the following practices.

- **Defamation** – Making false statements about carriers, customers, or other agents that damage their reputation.
- **Misrepresentation** – Providing inaccurate information about coverage or services, or misstating material facts to a carrier that affect a policy or claim.
- **False advertising** – Using misleading statements in marketing the agency's services.
- **Unlawful rebating** – Offering inducements to purchase insurance that are not part of the insurance contract. The laws can vary slightly by state.

Unfair Claims Practices

These laws address the unfair handling of claims. Although primarily aimed at insurance carriers, agents must also comply with requirements that include the following.

- Timeframes for communications with claimants and insureds
- Timeframes to deny or affirm a claim
- Timeframes for making claim payments
- Misrepresentation of coverage or policy provisions

Federal Laws

Although the **McCarran-Ferguson Act** (Public Law 15) delegates insurance regulation to the states, several federal laws also impact insurance agency operations.

Fair Credit Reporting Act (FCRA)

While not specific to the insurance industry, FCRA applies to any entity accessing personal financial information or "consumer reports."

A common concern for agencies is ordering **Motor Vehicle Records (MVRs)** for drivers employed by commercial insureds. The act protects consumers against improper handling of their information and establishes procedures for safeguarding it. FCRA establishes procedures for safeguarding consumer data and differentiates between using MVRs for underwriting versus employment purposes. Agencies should only order MVRs to assess a driver's eligibility for coverage. Only disclose to your insureds if a driver is "eligible" or "ineligible" for coverage. Do not furnish the MVR itself to your clients.

Gramm-Leach-Bliley Act (GLBA) – *Financial Services Modernization Act of 1999*

The GLBA imposes strict requirements for handling **Non-Public Personal Financial Information (NPFI)** such as Social Security numbers, driver's license numbers and bank account details. Agencies must implement security measures to protect this information and restrict its sharing. Additionally, GLBA requires agencies to send an **annual privacy notice** to customers, specifically for personal life and health insurance policies.

Both federal and state laws impose responsibilities on agents to protect personally identifiable information, often referred to as PII.

- What are your state requirements?
- What type of private information does your agency collect?

Electronic Signature in Global and National Commerce Act (ESIGN)

The ESIGN Act provides federal guidelines for intrastate commerce, ensuring that courts do not consider contracts or signatures invalid due solely to their electronic form. Most states also have laws concerning electronic signatures.

Telephone Consumer Protection Act (TCPA)

The TCPA establishes a national **Do Not Call** list, preventing telemarketers from contacting parties without an established business relationship. It also prohibits most unsolicited fax marketing and advertisements.

CAN-SPAM Act

The CAN-SPAM Act prohibits sending unwanted commercial email messages to wireless devices and computers without prior consent. It applies to any email primarily intended to promote products or services.

Health Insurance Portability and Accountability Act (HIPAA)

HIPAA mandates the protection of health data and non-public health information. It ensures that any party in possession of sensitive health information handles it securely, particularly when dealing with insurance policies that involve medical coverage.

The Health Information Technology for Economic and Clinical Health Act (HITECH) promotes the adoption of electronic health records and enhances the security of that information. There are many other state and federal laws and regulations not listed here that apply to agencies. Review industry publications to stay abreast of any changes in the laws. Visit IIABA's Government Affairs page at https://www.independentagent.com/GovernmentAffairs for up-to-date information about Big "I" advocacy on behalf of independent agents and brokers.

L/O 5. THE ROLE OF AGENCY PROCEDURES

Introduction

No two agencies operate in exactly the same way—just ask anyone who has ever worked at more than one agency. Factors like agency culture, carrier mix and the use of technology all influence how tasks employees complete tasks. Employees with experience working at different agencies may find it difficult to abandon old work habits. Therefore, written standards and procedures must be clear, easy to use, easy to understand and beneficial for both new and seasoned employees.

While many employees have developed effective work practices over time, these may not be memorialized in writing. Without written guidelines, there is a risk of misinterpretation. Training new employees can be more time-consuming and labor-intensive. In addition, when two employees do the same tasks differently, this can make some E&O claims harder to defend if juries hear that information.

Consistency

Well-defined written procedures support consistent practices. When all employees follow the same processes, no matter what their position in the agency, it increases operational efficiency and strengthens the agency's defense against E&O allegations. Consistent practices provide a strong defense when questions arise regarding all staff's adherence to procedures.

CONSISTENCY
Everyone doing work the same way, for every customer, every time.

Speedy Delivery, LLC, owned a fleet of delivery trucks and vans insured under a commercial auto policy. The insured reported that one of the trucks struck another vehicle and the accident was the Speedy's driver's fault. Speedy's van was damaged, there was damage to the other vehicle, and an injury to the passenger in the other vehicle. When the account manager checked the policy, she did not find the van listed as a covered vehicle. "I'm sure I told you to add that van to the policy last year when I bought it," said the owner to the agent.

The agency had no record of a request to add the van. But they did have a consistent practice of sending the insured a schedule of all insured vehicles at renewal, requesting the insured review and update the vehicle list. The agency file clearly showed that they had sent the request to update the vehicle schedule to the insured. He did not respond. This evidence was central to avoiding a potential E&O claim.

Procedures Manual

When an agency sets out clearly defined procedures and ensures employees follow them consistently, agency operations run more smoothly. Even if one person fails to properly follow a procedure, that failure may weaken the agency's defense in the event of an E&O claim. This highlights the importance of keeping procedures accurate and up to date.

Benefits of written standards and procedures include the following.

- **Sets clear expectations:** Clearly outlined steps and procedures allow management to communicate clear expectations for each task.
- **Provides employee guidance:** They serve as a practical tool for employees, ensuring that all employees complete each function correctly.
- **Offers training support:** They are invaluable in training new employees, regardless of their prior experience.
- **Improves and standardizes operational efficiency:** They help reduce operating costs by eliminating redundancies and optimizing the use of agency resources.
- **Offers performance evaluation measures:** They provide a basis for employee evaluations and assessments.
- **Assists in monitoring compliance:** They play a critical role in audits, providing guidelines for measuring employee adherence to procedures.
- **Provides consistency:** They ensure that all employees perform tasks consistently and correctly, every time. Taking shortcuts can cause E&O claims.
- **Supports the defense of E&O claims:** They offer essential documentation in the event of an E&O claim.

Procedures can quickly become outdated as carrier processes and technology evolve. If you notice that the procedure manual is outdated in any process, bring it to management's attention and offer to recommend the necessary updates.

As agents increasingly turn to technology, this tech reliance may create the need for more frequent procedural updates.

If your agency does not have written procedures, now is the perfect time to create one. A framework for creating a procedures manual is available to IIABA members at https://eoguardian.com/sample-agency-procedures-manual/. Begin by assigning small teams to work on documenting one process at a time.

Are there some people in your office who don't always follow the written procedures? How does that affect your work? How does that affect the customer?

What steps can your agency take to ensure *everyone* is on board with agency procedures?

Operational Audits

Having well-defined written procedures does not guarantee that everyone will follow them. It is essential to regularly monitor work to ensure compliance and identify inefficiencies—this is the agency's *quality control* mechanism. Just like any business, agencies need assurance that the quality of their service meets corporate standards. Instituting operational audits is a best practice. What better measurement of quality is there than ensuring that all employees, no matter their positions in the agency, complete all tasks correctly?

In the event of an E&O claim, one of the agency's strongest defenses is the ability to demonstrate that all employees consistently follow these precise practices. Implementing a regular internal audit process shows management's commitment to upholding standards and ensuring compliance. It's important that employees understand the audit process. It is not punitive; it is an integral part of agency operations, not as an occasional check-up, but as a continuous effort to improve and maintain quality.

L/O 6. SERVICING CUSTOMER ACCOUNTS

Importance of Good Customer Service

Good customer service is vital for any agency because it directly impacts customer retention, loyalty and the agency's reputation. Providing excellent service not only increases customer satisfaction but also generates positive word-of-mouth, helping to attract new clients. In today's competitive market, outstanding customer service can be a key differentiator and play a significant role in influencing customers' decision-making.

Building trust and rapport with customers is essential for fostering loyalty and encouraging referrals. Educating customers about their policies and coverage options helps them make informed decisions, ensuring they have the protection they need for both their families and businesses.

Following agency procedures and maintaining good documentation not only ensures high-quality customer service but also supports the agency's E&O (Errors and Omissions) loss control efforts.

New Business Process

Agencies employ various approaches when writing new accounts. These processes can differ greatly between personal lines and commercial accounts. In some agencies, service staff (such as CSRs or account managers) handle the new business process, while in others, they may assist producers or not be involved.

The process of writing a new policy or account typically involves several steps, which can vary by carrier. This process is crucial as it finalizes coverage decisions and lays the groundwork for a continuing relationship between the customer and the agency.

Carefully reviewing the policy ordered from the carrier helps to ensure the carrier provided the correct coverage for the customer. Many E&O claims arise from errors or miscommunications during this new business process. To mitigate these risks, we recommend taking the specialized training for producers and others involved in the sales process, such as the ***Power of Prevention: Agency Risk Management Sales Essentials*** and ***Power of Prevention: Agency Management Essentials***

The following guidelines are primarily intended for account managers or CSRs who support the new business process.

Gathering Information

Using a checklist to identify exposures and gather underwriting information is highly recommended. A checklist serves several purposes.

- **Identifies customer risk exposures** and fills coverage gaps
- **Documents necessary information** for the customer file
- **Creates cross-selling opportunities**, helps increase premium production
- **Reduces E&O claims** by identifying and addressing uninsured exposures

Various checklists are available, including risk-specific checklists for certain industries. Agencies should adopt a general checklist that is applicable to most accounts. IIABA members can access checklists for both **Commercial** and **Personal Lines** at the E&O Guardian website.

The Application Process

The application process can vary depending on the carrier and type of risk being written. Many carriers offer digital portals that allow agents to obtain quotes and complete applications electronically, especially for personal lines and smaller commercial accounts. For larger commercial accounts or specialty markets, agents may need to complete an **ACORD** or carrier-specific application.

Here are key guidelines to minimize E&O exposure during the application process.

- **Ensure accuracy:** Always provide truthful and accurate information on the application.
- **Complete all fields:** Ensure the completion of every field on the application.
- **Avoid guessing:** If you're unsure about any information, contact the applicant for clarification.
- **Applicant signature:** Always require the applicant's signature, even if not explicitly required by the carrier. Either a physical or digital signature is acceptable. When sending the application for signature, remind the applicant to review the details for accuracy.
- **Producer authority:** If the agent binds coverage, confirm that the producer signing the application is appointed with the relevant carrier. Maintain an up-to-date list of carriers that you and the producers are authorized to represent.
- **Submission process:** Send completed applications securely via the carrier's portal or encrypted email.
- **Complete submission package:** Ensure the full submission package includes all necessary supporting documents, such as risk assessments and required forms.
- **Follow Up:** Set a suspense item to track and follow up on quotes and binding confirmations.

PROPOSALS AND QUOTES

Proposals and quotes are key tools for helping customers make informed insurance purchasing decisions. However, inaccuracies or misstatements in these documents can significantly increase the agency's E&O exposure.

The use of formal written proposals or quotes may vary depending on the size and complexity of the account. For most personal lines and smaller commercial accounts, agents often provide a printout of the quote directly from the carrier's website. Even in these cases, it's advisable to include a cover page with the agency's information, the next steps for securing coverage and important disclaimer language (see below). This professionalism reinforces the agency's brand.

For larger commercial accounts, agencies typically use customized proposal templates. These proposals can address the unique aspects of the account and offer a more comprehensive presentation. It's preferable to use the proposal generated from the agency management system or software that integrates since it populates the proposal based on actual information in the app. A well-structured proposal may include the following.

- Agency information
- Profiles of the producer and assigned staff members
- Detailed coverage information and comparisons
- Available coverage options
- Risk management recommendations
- Carrier financial ratings
- Pricing details
- Subjectivities (conditions that may affect coverage)
- Disclaimers

To further protect the agency, consider including a section where the customer acknowledges coverage options they do not wish to purchase or any changes they requested that differ from the proposal.

A proposal is not a legal contract and is not meant to replace all of the details found in a policy. Using disclaimers is essential to minimize the agency's E&O exposure. Here are some examples.

- **General Disclaimer**: State that the proposal is not a legal contract and is provided for illustration purposes only.
- **Property Valuation Disclaimer**: Clarify that the insured is responsible for ensuring the adequacy of property limits.
- **Liability Limits Disclaimer**: State that "higher limits may be available," encouraging the customer to request a quote for higher coverage if desired.

Depending on the type of business written, you may need to include additional disclaimers to further clarify coverage and options. A signed proposal can serve as evidence in an E&O claim, but it may not be considered as critical as a signed application.

SAMPLE DISCLAIMERS

General Disclaimer #1

We provide this proposal for illustration purposes only and as an aid to explaining your proposed insurance program. This does not replace, supersede, extend, or restrict the coverage provided under existing or future insurance policies. Please refer to your specific insurance contract for details of coverage, conditions, and exclusions.

General Disclaimer #2

We provide this proposal (or summary) for illustration purposes only; it is not a legal contract. We provide it to facilitate your understanding of your insurance program. Please refer to the actual policies for specific terms, coverage, conditions, limitations and exclusions that will govern the event of a loss. Specimen copies of all policies are available for review prior to the binding of coverage. In assisting you with your insurance needs we have been dependent upon information provided to us by you. If there are other areas that require evaluation before binding coverage, please alert us. Should any of your business operations or exposures to loss change after coverage is bound, it is your responsibility to let us know promptly so that we can discuss proper coverage(s).

Property Valuation Disclaimer:

The agency makes no assurances that the policy limits shown will be adequate to rebuild any structure or replace personal property. The customer is ultimately responsible for ensuring that limits are adequate. If in doubt, obtain the services of a qualified builder or professional appraiser who can furnish replacement cost estimates.

Liability Limits Disclaimer:

Higher liability limits may be available. If securing higher liability limits interests you, please request a quote.

E&O Tip

Never make coverage decisions on behalf of the customer. Your role as an agent is to present the requested coverage solutions and let the customer decide. It stands to reason that you may know more about a policy than your customer does. Use your knowledge to help educate them about the coverage and available options, which will result in them making more informed choices.

Binding Coverage

With the rapid issuance of policies today, agencies have reduced the use of binders. Many policies are now generated quickly and are available directly through a carrier's website. However, binders remain central to several legal disputes. If the agency personnel issue one, it is crucial to ensure they do not increase the agency's E&O exposure. In most cases, if another form of evidence of coverage (such as a certificate) is sufficient, it is advisable to avoid issuing an **ACORD** binder.

It may be necessary to issue other evidences of coverage prior to the receipt of a new policy. This could include Auto ID cards, Evidence of Property Insurance forms or certificates of insurance. Additional information on the use of these forms is presented later in this class.

Are binders issued in your agency? If so, for what situations?

- New business?
- Renewals?
- New locations added to a policy?
- For a mortgagee when a new home or building is being purchased?

Explain any alternative methods used to provide evidence of coverage.

Key Cautions When Binding Coverage

- **Avoid relying on verbal binders:** If coverage is verbally bound, immediately follow up with written confirmation, including a copy to the carrier.
- **Binders create coverage:** If coverage is no longer needed, the agency must cancel the binder must be canceled, just like a policy, to avoid potential liabilities.
- **Understand binder laws and time limits:** Familiarize yourself with state laws regarding binders and any time restrictions for their use. Track the receipt of the policy. If a policy has not been received by the expiration date, a new binder must be issued.
- **Don't repeat policy language:** Avoid including detailed policy language in the binder. Instead, provide only enough information to outline the coverage.
- **Know your binding authority:** Be clear on your agency's binding authority with each carrier. Some carriers restrict binding on certain risks or policies. If in doubt, contact the carrier for clarification before binding coverage.
- **Licensing requirements:** Only issue a binder or application for a carrier you or the producer are appointed with.
- **Surplus lines and residual policies:** The agency and its employees have no binding authority for surplus lines or residual policies (e.g., National Flood Insurance Program or other subsidized programs). For these types of policies, request binders from the wholesale broker placing the coverage.
- **Property coverage:** In lieu of a binder for property coverage, use an **ACORD Evidence of Property** form to confirm coverage for a mortgagee or additional insured.
- **Liability coverage:** In lieu of a binder for liability coverage, an **ACORD Evidence of Liability** form or use a **Certificate of Insurance** to confirm coverage for interested parties.

Policy Issuance and Delivery

Agencies have adapted their workflows to accommodate the expanded methods of policy delivery. While these methods may streamline the process and provide cost savings, they can present challenges because all carriers may not follow the same procedures.

Most carriers send personal lines policies and many commercial policies directly to the insured. Some customers may have authorized the carrier to send policy documents electronically. For other policies, carriers may expect the agency to handle policy delivery. Instead of sending hard copies to the agency, many carriers provide a method for the agency to access the policy digitally. If the agency is responsible for policy delivery, the customer file should confirm how the agency completed delivery. Additionally, when delivering policies in person, ensure you provide the policy *only* to the person authorized by that client to receive insurance information.

While digital delivery is becoming more common, it's important to recognize that not all states have adopted the same rules regarding electronic delivery. Most states have enacted some version of the **Uniform Electronic Transactions Act (UETA)**, but the laws can differ from state to state. For instance, some states may still require that certain insurance documents be "mailed or delivered" to the insured in hard copy. If in doubt, contact your state association for more detailed information.

To facilitate electronic policy delivery, complete the **ACORD Electronic Delivery Supplement** form and obtain the customer's signature on the form. This form confirms that the insured agrees to receive documents electronically, ensuring the agency's compliance with legal and regulatory requirements. Ensure document security to guarantee the integrity and security of the documents, use only the agency's or the carrier's portals or transfer systems when available.

Regardless of the delivery method, it is essential to verify the accuracy of newly issued policies. The policy should be meticulously compared to the original application to ensure consistency. Review all policy forms carefully, and investigate any unfamiliar or unexpected endorsements or provisions. For larger commercial accounts, it is highly recommended to use a checklist to ensure that the producer has overlooked no detail and that all aspects of coverage are properly accounted for.

Who is responsible for checking all new policies in your office? What type of errors do you find? Once found, do you request correction and set a diary for receipt of the correction?

Do you think it is necessary to check personal lines policies, which are automatically issued from the information you input into their system? Why or why not?

Policy Changes and Endorsements

Policies may need changes at the effective date, renewal date, or at any time during the policy term. It is the agency's responsibility to ensure that the policy accurately reflects the coverage requested by the insured. Having well-defined standards and procedures in place helps ensure that employees communicate all changes to the carrier and allows the agency to confirm the accuracy of the resulting endorsements. Be sure to set a diary date to ensure you receive any endorsements.

Policy change requests can arise from various sources, such as auto dealerships or loss payees. For commercial accounts, always specify in the customer profile if the insured has authorized any of their internal employees to make changes or receive policies on behalf of the insured.

E&O claims can arise when business owners state they did not personally receive the policy, nor did they authorize any person at the business to receive the policy in their absence. In a recent E&O case, the agent delivered the policy to an office administrator. When a coverage dispute arose, the business owner claimed he had not reviewed the policy because he was the only person authorized to receive the policy, and that he had never received the policy.

For personal lines accounts, do not honor change requests from family members who are not the named insured without written authorization or a power of attorney. Confirm with the insured any requests for policy changes by third parties before processing any change endorsement.

Coverage Reductions or Eliminations

Do not process coverage reductions or eliminations without receiving a signed declination form or written request from the insured. If a reduction or elimination could create a potential coverage gap, the agency should send a written explanation of the possible consequences. As a best practice, confirm and document every policy change request with the insured, for example, by sending an email summarizing the requested changes.

Family Changes (Divorce or Separation)

Use open-ended questions that a customer might not volunteer to uncover sensitive situations, such as divorce or separation. Never remove spousal/partner coverage without that spouse/partner explicit knowledge. In cases of divorce or separation, require that the other spouse contact the agency directly to secure coverage or acknowledge that the spouse has replaced coverage elsewhere before making any changes.

What are some of the policy changes you see requested by third parties, other than the customer? How do you handle those requests?

Examples can include auto dealerships, mortgagees, additional insureds, or others.

Documentation

If an *email* requests a policy change, attach the email to the customer record as documentation. If you receive a *verbal* request, document the conversation, including the name of the person who requested the change and all relevant details. It is always best to follow up with an email to the requestor documenting the requested change. For vehicle changes under an auto policy, always ask and document the name of the titleholder or leaseholder on the vehicle. For verbal requests, *always* send and retain a confirming email that outlines the requested change.

Endorsement Processing

For most policies, request endorsements by entering information into the carrier's system. If the carrier integrates with the agency's system, download the digital endorsement to the customer's record automatically.

If the agency does not have access to the carrier's system to make policy changes, forward the policy change request to the carrier. Immediately update the policy details in the agency's system to reflect the amended coverage. Create an open suspense item and follow up until you receive the endorsement.

Once the carrier issues the endorsement, carefully review it for accuracy. Compare it with the policy change memo and any related notes or activities. Check even downloaded endorsements for accuracy. Communicate any errors discovered to the carrier for correction and inform the insured of the status. If the agency is responsible for endorsement delivery, confirm in your customer file how the agency completed the delivery.

One of the most common policy change requests is a vehicle addition or change under the policy. Because this occurs frequently, it is easy to overlook the importance of gathering sufficient underwriting information. First and foremost, always confirm the titleholder of the vehicle. Too many customers assume it is no problem to insure their business-titled vehicle under their personal auto policy, or their personal auto under their business auto policy.

Also, people often attempt to insure vehicles owned by their adult children, partner, brother-in-law, friend, etc., under their own personal policy. At the time of any loss, the adjuster will confirm the titleholder (or leaseholder). Any discrepancy in ownership or residency could result in an uncovered claim.

Also ask about the vehicle use: who will drive it and how they will use it. Many people use their vehicles for ridesharing or deliveries. Include all of the questions you asked in your system documentation and save the answers. This could be extremely helpful after a loss when the insured claims that they told you it was their sister's car, or that they currently deliver for Wal-Mart.

Risk Management Tips for Policy Changes and Endorsements:

- **Priority for coverage increases:** Handle any requests that add or increase coverage as high-priority items.
- **Verify requests from third parties:** If the policy change request comes from anyone other than the insured, verify the information with the insured before making changes.
- **Accurate documentation:** Always document the name of the party requesting the policy change and include any relevant details. Avoid generic language like "the insured requested"—always use the requester's name.
- **Caution with divorce/separation:** If you suspect that an insured couple is separating or divorcing, be cautious before removing a vehicle or person from the policy. Ask open-ended questions about drivers, vehicle use and coverage. Never remove coverage for a spouse or vehicle without confirming the spouse has secured coverage elsewhere.
- **Adding vehicles:** When adding a vehicle to any policy, always confirm how the client has titled the vehicle (or if it's leased, under whose name it is leased?). Verify driver information, vehicle use and the garaging location. Do not assume that this information is the same as other vehicles on the policy.
- **Surplus lines or residual market policies:** Be cautious when processing policy changes for business written through surplus lines or residual markets (e.g., National Flood Insurance, property pools, assigned risk auto). The agency does not have binding authority and cannot guarantee that the requested coverage is in effect.

Renewals and Remarketing

Although today most policies renew automatically, it does not mean that the renewal process is free from E&O risk. Depending on the policy, carriers issue some renewals without agency intervention, while others may involve the completion of multiple steps before the carrier issues a renewal policy.

Automatic Downloaded Renewals

Carriers automatically download personal lines renewals and many commercial renewals directly into the agency's management system, sending the renewal policy and premium invoice directly to the customer. This convenient renewal process can lead to complacency. It is important to remember that *all* renewals require attention.

All Other Renewals

For larger commercial accounts or more complex renewals, the process often involves a team of agency employees working together under expiration date deadlines. There are many steps in renewing a large commercial policy, so it is important to address renewal procedures in your written procedures.

Start early: The expiration list usually triggers the beginning of the renewal process, usually 90 to180 days prior to the renewal date. Timing depends on the size of the account and the time needed to remarket. Of course, hard markets require longer timelines.

Understand carrier procedures: Familiarize yourself with each carrier's procedures. Some may automatically provide a renewal quote, while others may require updated information before issuing the quote. Many large accounts include multiple policies with the same renewal date. This could involve several different carriers.

Update account information: Prior to renewal, furnish larger accounts with the following.

- Equipment schedules
- Vehicle information
- Driver lists
- Certificate holders
- Property locations

Ask the insured to review and update all of the above. Obtain any supplemental applications the carrier may now require. For certain lines of business, it may be necessary to obtain the insured's signature on a renewal application.

Confirm that your commercial insureds have not started any type of new endeavors, such as a contractor adding a new service offering.

Provide pre-renewal summaries: For simple renewals, a letter or email outlining any changes may be adequate. For larger or more complex accounts, a renewal proposal can provide a more detailed summary.

Higher Liability Limits: When sending a renewal letter to a customer, always state that they should check their various liability policies to ensure they are correct. This is a good opportunity to suggest they consider higher limits of liability by stating, *"Higher limits of liability may be available. Please contact our office if you should consider increasing your liability limits."*

Policy Verification: Once you receive the renewal policy, review it thoroughly for accuracy. This is especially critical when the policy has been rewritten with another carrier. Check it against the application and proposal. Check all endorsements to ensure the carrier has added no additional, unagreed upon endorsements. If you receive the policy in the agency, send the policy with an appropriate renewal letter to the appropriate insured representative and invoice if it is agency billed. Note in the agency management system when, to whom, and how you delivered the policy.

Key Practices for Handling Renewals

- **Regular customer contact:** Use the renewal as an opportunity to contact the customer to review their exposures and coverage needs. While some agencies only contact customers if premiums increase significantly, it's best to ensure that every client receives periodic reviews, even if contact does not coincide with the renewal.
- **Educational touchpoints:** Consider sending a letter or email to clients with each renewal, reminding them to review their coverage and asking questions about any new exposures. A renewal questionnaire (especially digital ones) can be a great tool to gather updated information from the insured**.**
- **Verify accuracy:** Always verify that the carrier processed the renewal correctly. Compare it to the previous policy to identify any discrepancies or changes. This ensures there are no unintended gaps in coverage or coverage overlaps. Pay special attentions to endorsements, especially new endorsements or any that limit or exclude coverage such as new depreciation schedules on roof replacements.
- **Remarketing:** If the insured's renewal premium has risen significantly, has been non-renewed, or markets offering broader coverage become available, remarketing the policy with a different carrier can be a valid option. However, remember that this introduces E&O risks similar to writing new business.

Remarketing Policies

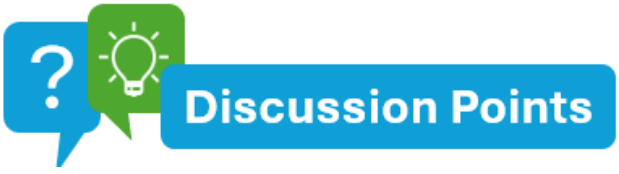
Many agencies have guidelines for triggers that require the remarketing of the policy such as premiums increase or non-renewal. It is not always in the best interest of the insured to frequently move their business to different carriers. Remarketing also presents E&O exposures similar to writing a new piece of business.

A chief concern is ensuring that all information is current and correct. Check that the information in the agency management system reflects *current* information and that there are no outstanding endorsements in process. If you are moving the coverage to another carrier, handle it in the same manner as new business. Bring all information up to date with the customer and ensure they sign the new application.

If you need to re-market the policy, here are several risk management tips to mitigate potential E&O exposures.

- **Contact the Insured**: Always **verify all information** with the insured before rewriting the policy. **Don't assume** nothing has changed.
- **Reapply as New Business**: Treat the remarketing of the policy the same as writing a new policy. This includes **completing a new application**, gathering updated information and obtaining the insured's **signature**.
- **Review Coverage Enhancements**: When comparing the original policy to the proposed one, pay particular attention to any **broadening endorsements** (e.g., in homeowners or businessowners policies). Ensure that the new policy maintains the same level of coverage. If not, such as when placing coverage in surplus lines, inform your insured of any reductions or limitations in coverage.

Even if you don't have a better market to offer a customer, it is still a good idea to contact your clients to discuss premium increases. You may be able to offer some options to help keep their policy more affordable. An informed client is a more satisfied client.



How often do you need to renew business with a surplus lines market since the standard carrier is no longer willing to write it?

How does the fact that you have no binding authority change the way you service a surplus lines policy?

Premium Audits

Depending on the type of policy, the carrier may base the premium on a projected figure that estimates what premium basis (payroll or annual receipts) applies to the business. This "provisional" premium is later compared and adjusted based on the actual receipts or payroll at the end of the policy term.

Misunderstandings sometimes arise when the insured receives a substantial additional premium at audit and is upset about the amount they owe. This is especially true for an insured who has never been on an auditable policy in the past, or the premium basis in previous policy terms did not substantially increase, causing an additional premium at audit.

The best way to avoid surprises is to ensure that the insured understands that the premium at the time of policy issuance is only an *estimate* of the final premium based on numbers the insured provides when applying for coverage or at renewal. The carrier will determine the final premium by the audit figures. It is best to have this explanation in writing along with the new or renewal policy when delivered.

If a commercial customer is growing substantially during the policy period, then the premium basis (payroll or receipts) will increase as well.

Many agents lose clients over audit-related additional premiums. It's a best practice to reach out to your insureds with auditable policies at least at six-month intervals to remind them to provide updated payroll or receipt figures so they avoid an additional premium at audit.

Is your agency following that best practice? If not, it's as simple as setting a diary to send an email. Insureds can get very upset when carriers charge additional premiums. If that happens, you can gently remind them of the email you sent mid-year reminding them to update their figures.

Also update your procedures manual to reflect this best practice.

Verify the accuracy of each audit. Confirm that rates, classifications and any additions or extensions correctly reflect the policy. If you note any discrepancies, contact the carrier and advise that they should not enforce the audit response deadline until the insured responds to the audit and they issue a corrected audit.

When there is an additional premium due, send the audit to the insured with the additional premium invoice within three business days of receipt, whenever possible. Instruct the insured in writing that they must remit payment or dispute the audit within a certain time. Most carriers allow 30 days for the return of disputed audits.

Cancellations

Policies can be canceled for a variety of reasons including non-payment of premium, carrier underwriting appetite or reasons, or at the customer's request. Never interfere with the carrier's right to cancel a policy and never make statements that could be misunderstood as overriding or superseding the carrier's cancellation notice.

Cancellations for Underwriting Reasons

Carriers may elect to non-renew a policy or cancel a policy mid-term due to underwriting concerns. First, verify the reason. Determine if the agency wishes to retain the account. If not, notify the customer that you have no other options for coverage. If you decide to remarket the account, be sure that you address the cancellation reason with the insured and the new quoting carrier. Avoid over-promising the replacement coverage, since it may not be available through a standard market or may only be available with significant coverage differences.

Cancellations for Non-Payment of Direct-Billed Premium

Non-payment of premium is one of the most common reasons for policy cancellation, and it presents a significant E&O exposure if the agency sends payment reminders. When the agency assumes the ill-advised responsibility of reminding customers to pay premiums, the insured may rely on those reminders, increasing the agency's standard of care. This reminder issue applies to all accounts, whether relatives or high-value clients. Ultimately, while we recommend against late-payment contact, agencies must choose whether to contact or not. If the agency decides to contact any clients, they must contact every client that is a late payer, not contact only the accounts they wish to retain.

If management decides to discontinue contacting customers to remind them to pay, then the agency must notify the customer in writing of the new practice. One suggestion is to use a **"**last-time reminder**"** letter. Additionally, you may decide to email the customer when you receive the next late payment notice. Contact the customer in the usual manner but also explain that due to changes in agency internal procedures, it is the last notice they will receive. Follow up with a letter or email, documenting the customer file so that no one in the agency provides future reminders.

Another concern is when customers pay a direct-bill premium after the final due date. Before accepting the premium, contact the carrier to determine if they will reinstate the policy without a coverage gap. Depending on the customer's payment history, the carrier may decide not to accept the premium and may not be willing to reinstate or rewrite the policy. Ensure that the customer record in the agency management system reflects the carrier's decision. If the carrier plans to reinstate the policy, keep a suspense open until you receive the reinstatement.

Key Steps in Cancellations

- **Clarify payment responsibilities**: Ensure that customers understand that **payment must reach the carrier by the due date**. While the carrier may send reminders, they should not be seen as guarantees of coverage or substitutes for the customer's responsibility.
- **Change in reminder policy**: If the agency has been reminding customers about premium payments but intends to stop the practice, notify customers in advance with a "last-time reminder" letter. This letter should explain that the agency will no longer provide payment reminders in the future.
- **Use a systematic approach**: If the agency continues to remind customers, there must be a **consistent system** in place to handle *all* late payments uniformly. Ensure that reminders are sent promptly and consistently.
- **Post-cancellation communication**: Once the agency receives a final cancellation notice from the carrier, send a **letter to the customer** clarifying that the policy is no longer in force. This should leave the door open for future business relationships.

How does your agency handle late payment notices for customers? Do you have a "do not contact" standard in your written procedures?

Is your agency's standard procedure followed consistently by all employees, including producers?

Cancellations for Non-Payment of Agency-Billed Premium

Although most agencies have a limited amount of agency-billed policies, it is still necessary on occasion to request cancellation of the policy for non-payment of premium. This requires the agency to pay close attention to when the agency invoiced the premiums to determine which point in time warrants a cancellation.

Instruct customers to pay agency invoices by the due date. For a renewal, this is usually the effective date of the renewal. For endorsements, the insured should make payment within a reasonable time, usually 30 days or less. It is perfectly acceptable to send reminders stating that the carrier will cancel the policy if you do not receive payment by the designated date.

If you do not receive payment in a timely manner, request the carrier to cancel the policy for non-payment of premium. Allow the carrier to send the notice of cancellation to the insured. In some situations, carriers may allow the agency to issue the direct notice of cancellation to the insured. From an E&O standpoint and to preserve goodwill, it is best left for the carrier to issue the notice.

Additional premium audits are even more critical to track since the audited policy is no longer in force. The threat of cancellation may not be feasible if the policy is no longer in force. Instead, request payment immediately and monitor the account for receipt of the premium. When insureds fail to respond to audit request, carriers will enact a non-compliance surcharge which can be as high as 25 to 50 percent of the original premium. Carriers usually stipulate a limited time in which an agency can turn the audit over to them for collection. Remind the insured that failure to comply with the audit can decrease their chances of finding new coverage.

Cancellations at the Insured's Request

There are situations where the insured requests cancellation of a policy. This could be because they sold a particular property, closed their business, or are moving their insurance to another agency.

Key Steps in Cancellations

- **Obtain signed cancellation request**: **Request a signed ACORD notice of cancellation** (also known as a Lost Policy Release) from the insured. This form serves as proof that the insured requested the cancellation, which helps avoid future disputes. If working with a personal lines policy with both spouses listed as named insureds, both should sign the form. For commercial policies, the **first named insured** or an authorized representative of the business should sign.
- **Follow up**: Once you receive the signed form, forward it to the carrier and track the cancellation though a suspense item. Follow up with the carrier until the carrier processes the cancellation. If the carrier's system integrates with the agency's, the system will automatically update the cancellation status. Otherwise, you must manually update the status in the agency's system.

- **Prevent further issuances**: Once you receive confirmation of a cancellation, make sure to immediately update the policy's status in the agency's system. This prevents any inadvertent issuance of **certificates of insurance** or **evidence of coverage** when the policy is no longer in force.

Risk Management Tips On Cancellations

- **Late payment notices:** Do not provide continued reminders to direct-bill customers for late payment notices. Doing so creates an expectation from the customer and raises the standard of care for the agency.
- **Reinstatements:** If you receive a premium payment after the final due date, avoid giving the customer the idea that the carrier will reinstate the policy unless confirmed with the carrier.
- **Replacement coverage:** When replacing coverage through another carrier, be careful to compare limits, options, etc., and point out any differences to the customer.
- **Claims-made policies:** If you cancel a claims-made policy, always offer tail coverage to the customer. If the insured declines, always obtain a written declination.
- **Discontinued business:** If the carrier cancels a policy due the discontinuation of the business, always offer coverage for "Discontinued Operations." If not wanted, obtain a written declination.

Conclusion - Cancellations

Cancellations are a part of the insurance process, but they come with significant errors & omissions risks when handled improperly. Whether the cancellation is due to non-payment, underwriting reasons, or a customer request, it's essential to understand the proper procedures and maintain clear communication with the insured and carrier to avoid misunderstandings and potential liability.

Evidence of Insurance

Customers can be involved in a variety of transactions involving the need for a third party to receive evidence that a particular coverage is in place. Renewing auto license plates, purchasing a home, renting an apartment, or entering into a contract typically involves demonstrating that the adequate insurance exists for the customer. Agencies use a variety of forms to satisfy third-party requests.

Auto ID Cards or Auto Certificates

When purchasing a new vehicle or when renewing the license on an existing vehicle, the customer must show evidence of auto insurance that meets state financial responsibility requirements. Auto IDs are usually included with each renewal policy. Many carriers allow the insured to download them from their website. Encourage your customers to log into the carrier portal and use its services whenever possible. This can free your time for more important tasks and can help avoid E&O possibilities.

For new vehicle purchases, agents often receive requests for an ID card to facilitate plate registration. Although it is acceptable to furnish them with the ID, do not endorse the policy without first discussing in detail any changes with the insured. Verify the new vehicle's intended use and applicable coverage and confirm whether the vehicle replaces another. If the vehicle is not yet sold, recommend to the insured they maintain coverage until the insured completes its sale.

Binders

Historically, agents issued binders to show that the carrier/agent has bound coverage for a certain risk. Agency-issued binders have been the focus of litigation for many years and are a hotbed of agency liability. Unlike other forms of evidence issued by the agency, a binder **creates** coverage and stands alone, much like a policy. Therefore, take care to accurately reflect the intentions of coverage without providing too much detail.

At least one court has held that flood coverage applied to a particular property because the binder did not state that coverage excluded flood perils. We all know that it would be impossible to list every exclusion on a binder, nor should we try.

It is also difficult to track what binding authority you may have with each of the carriers you represent and whether a particular risk is within the agency's binding authority. A common practice in agencies is to license producers only with a limited number of carriers. Keeping a variety of authorities straight when working with a group of producers could be a full-time job for an account manager.

For these reasons, from an E&O standpoint, we discourage agents from issuing binders. Whenever possible use an Evidence of Property Insurance or a Certificate of Insurance to demonstrate coverage. Keep in mind that the agency does not have binding authority for business written through the wholesale marketplace. For surplus lines policies, request binders from the wholesale broker.

Does your agency still issue binders?

- If yes, how are they controlled? Do you replace them with another binder when the first expires and the customer has not yet received the policy?
- If no, what method do you use to provide evidence of coverage to a new customer? To a mortgage company?

Evidence of Property Insurance

There are two property evidence forms: Evidence of Property Insurance and Evidence of Commercial Property Insurance. Advisory agencies design these forms to disclose basic coverage information on property insured under a policy. These forms provide evidence for a mortgagee, additional insured, or loss payee under a policy.

Since the evidence forms refer to an existing policy or a policy bound in underwriting, they do not create coverage. They simply relay the information on the policy to a third party. From an E&O perspective, they are a better choice than a binder when providing evidence of coverage on property risks.

CERTIFICATE OF LIABILITY INSURANCE

How can something so simple on its face be so complicated? For years, certificates have been a hot topic in the insurance industry, and trying to meet the certificate requests from customers can create E&O exposures. If you are someone involved in a lot of certificate issuance, consider taking a more in-depth class on the subject available through ABEN or your state association.

A certificate is nothing more than a snapshot showing that a policy exists, providing coverage information at a certain point in time. It is for general information purposes only and confers no rights. The certificate is subject to all the terms and conditions of the various policies shown on the certificate. Many states have implemented regulations to govern how to handle certificates of coverage. Certificates cannot, in any state, amend, extend, or alter policy coverages or terms.

Requests for Specific Language

There has been a dramatic increase in demand from third parties for certificates, especially those asking for additional insured status. It has become more common to see requests for the completion of agent affidavits or compliance checklists. Avoid complying with these requests because they create greater E&O exposure for the agency.

While the ACORD 25 is the most commonly used certificate, there are other ACORD forms that may be better suited to a certain situation, such as the ACORD 24 Certificate of Property Insurance. Familiarize yourself with forms and always use these proper forms.

Use a certificate to provide basic information about policy forms and limits. Never use it to paraphrase policy coverages, terms and conditions. Doing so may violate state laws, regulations, and Department of Insurance directives. Allegations of misrepresentation or fraud can create E&O claims. Good certificate practices can help avoid these types of E&O claims.

Notice of Cancellation, Nonrenewal, or Material Change

Certificates no longer include language indicating that the carrier will notify a certificate holder if coverage has been canceled, nonrenewed, or if there has been a material change in the policy. Even so, certificate holders often attempt to have the certificate reflect that the agency or the carrier notifies them if one of those events occurs.

Various parties may request you make statements about cancellation notices in the *Description of Operations/Locations/Vehicles* field on the certificate. Doing so is improper, as indicated in the ACORD forms Instruction Guide. It is also a violation of your ACORD licensing agreement to use a field in a manner for which the creator did not design it. Keep in mind that you will issue certificates for commercial general liability, auto, workers compensation and umbrella policies. The cancellation provisions can and do vary significantly. Avoid making any statement on the certificate related to cancellation notices.

Additional Insured Concerns

Certificate holders request additional insured (AI) status in large numbers. There are two ways that a carrier will consider a certificate holder as an additional insured. The first and most reliable method is to endorse them on the policy as an additional insured. Unfortunately, this often results in an additional premium charge for the insured and extra work in the agency to endorse the party onto the policy and later remove them from the policy.

The second way is to rely on one of the "blanket" additional insured endorsements that, under specified conditions, extend additional insured status to a third party.

One of the most commonly used forms is ISO's CG 20 33 *Additional Insured – Owners, Lessees or Contractors – Automatic Status Required in Construction Agreement with You.* There are conditions that must be met to trigger additional insured status in this endorsement or in any non-ISO additional insured forms. For this reason, do not attempt to explain what triggers AI status, but rather refer to the applicable endorsement and attach a copy of the endorsement to the certificate.

Here is an example of additional insured verbiage you can enter on the certificate: *The certificate holder is considered an additional insured under this policy if the parties have met all the conditions of the attached endorsement # ABC123XX*

Who issues certificates in your office? Is someone assigned to review insurance requirements in comparison to coverage provided under the policy? What safeguards are in place to ensure that certificates are correct?

Online Certificate Systems

Some entities have developed their own online certificate systems that require agents to use these platforms to issue certificates. In some cases, agents must pay entry and access fees to use these systems. When agencies utilize these third-party systems, they lose control over the information once it is entered. The vendors typically do not provide agencies with a copy of the certificate, which could be crucial for later verifying that the correct information was entered.

One system boasts that the user can customize the certificate to include over 200 questions. However, many of them are broad, vague, ambiguous, or nonsensical. Some may allow the insured to enter information in the *Description of Operations* field. Another even allows the certificate holder to add additional insured information for blanket additional insured endorsements.

Only an authorized agent has permission to issue a certificate on behalf of an insurer. The agency should *never* allow the insured to modify a certificate in any manner, and we strongly recommend you avoid using these systems.

Customer-Issued Certificates

In recent years, many agencies have been using software for customer-issued certificates, either through their agency management system or other vendor systems. In most cases, the agency first develops a "master" certificate and makes it available for the customer to issue a certificate at any time during the policy period.

The agency should set parameters for information the customer can enter into the certificate. The agency should ensure the system controls the policy number, dates and coverage information and ensure the insureds cannot edit the fields. Customers may enter the certificate holder's name and address. The agency can either pre-fill the customer's typical operation description or set up a menu of operations from which the customer can select.

Options could include using the additional insured language mentioned earlier, requiring the attachment of the additional insured endorsement to the certificate.

When the customer issues a certificate, agency employees should review the certificate, confirming that the insured has added nothing unexpected. This technology should give the agency control, allowing them to "turn off" certificate-issuing privileges for a customer if needed.

Reading Contracts or Leases

Agencies often become involved in reading contracts or leases to search for insurance requirements related to the agreement. This is a practice wrought with peril. Not everyone in the agency is well-versed in contract language, and the agency should never act as legal counsel.

Instead, whenever possible, ask only for the insurance requirements to review. However, insurance requirements can be spread throughout a contract. When the agency receives the full document, recognize the agent must review the contract in its entirety but be sure you inform the insured you are *only* reviewing the insurance requirements throughout the contract.

Assign this task only to someone who can identify the insurance requirements and understand the application of coverage from the policy and related endorsements. We are not the insureds' lawyers. *Never* make suggestions on contract language that falls outside the insurance scope of the contract.

Agencies often use administrative assistants or less experienced employees to issue certificates of insurance. That is an acceptable practice, but only as long as a more experienced person reviews the insurance requirements for the project or agreement and weighs that against the coverage the policy provides. They then can forward the request to an assistant, authorizing the issuance of the certificate. Document your agency management system to state which agency personnel checked insurance requirements and policy, creating accountability.

Sending Certificates to Carriers

The best practice is to always send issued certificate copies to the carrier, even though the carrier may have instructed the agency not to. By copying the carrier, the agency provides notice to the insurer of the coverages ordered or intended to be ordered. There is much case law to demonstrate that carriers leave the agency responsible on certificate litigation when they had not received a copy of the certificate. Include the following suggested statement with certificate transmissions to the carrier:

"Our internal procedures, our E&O carrier and our legal counsel require that a copy of all certificates be sent to our carriers."

Certificate Resources

There are many resources available that address certificate of insurance issues.

Consider referring to the ACORD Forms Instruction Guide that advises how to complete every field in every ACORD form. This information is available online in PDF format for free. There is no cost to subscribe to gain access Go to http://www.acord.org

Tips to Decrease E&O Exposure with Certificates

- Familiarize yourself with your state regulations regarding certificates.
- Inform your customer that the agency will provide only current, accurate information on certificates.
- Have an established procedures for handling certificates.
- Always use *current* editions of the ACORD forms.
- Never issue non-ACORD forms without the permission of the carrier.
- Send all pages of the certificate.
- Do not include additional comments on the ACORD form without authorization of the carrier.
- When indicating an additional insured status, do not attempt to put endorsement or policy language in the certificate. Instead, attach the additional insured endorsement, and refer to it.
- Always send copies of certificates to the carrier, even if they do not want them.
- Before your agency issues any certificate, be sure qualified staff members review the insurance requirements in the contract against the coverage provided in policy.

Claims Handling

Agencies vary in how they manage claims. Some prefer customers to report claims directly to the carrier, believing it streamlines the process, while others direct customers to report claims through the agency to foster stronger relationships, monitoring more serious claims to reduce claim issues.

Regardless of the different business models, here are some guidelines to ensure that the agency personnel handle claims properly and consistently.

Guidelines for Proper Claims Handling

- **Timely reporting**: Submit any claim reported to the agency to the carrier on the same day. If the claim could involve multiple policies (e.g., umbrella, excess, professional liability), notify all relevant carriers simultaneously. Do not assume on excess policies that the primary carrier will submit the claim. If in doubt about the claim's severity, report the claim to the excess carrier.

- **Coverage confirmation**: Never confirm or deny coverage. That is the carrier's responsibility. Instead, inform the customer that they will hear from an adjuster and should contact the agency if they don't receive a response within one to two days. Clear and professional communication about the claims process is essential to managing the customer's expectations.
- **Managing disagreements**: If you disagree with the carrier's coverage decision, it's fine to discuss the issue with the adjuster. However, avoid putting any comments about coverage or claim handling in writing to the carrier, and refrain from involving the customer in these discussions. This protects the agency's position in case of litigation.
- **Forwarding documents**: Promptly forward any relevant documents such as invoices, receipts, or additional information to the carrier. If the agency receives suit papers, forward them immediately and confirm receipt with the carrier. Once a process server delivers a summons to the customer, there are strict timelines that the carrier must meet to avoid a default judgment. Follow up to ensure they have been processed. If your insured notifies you of legal service, ensure you obtain those papers from the insured immediately and forward them to the carrier.

How does your agency handle claims? Do specific employees provide claims oversight? Do you refer all claims to the carrier without taking information?

What are some of the pros and cons of being involved early in the claim process?

Tips for Handling Claim Reporting

- Treat *all* claims as critical. They should be reported to the carrier the same day the agency receives the report.
- Do not deny or confirm coverage. This is the carrier's role in the claim process.
- Advise the customer what the next steps are, and when they should expect the carrier to contact them.
- Advise customers of any conditions or duties they should comply with, such as protecting property from further damage or making a police report.
- Do not direct a customer whom to hire for repairs unless directed by the carrier to do so.
- Do not recommend vendors who market your office unless the carrier vets them first. It's best to allow the carrier to make all vendor referrals.
- If forwarding suit papers to the carrier, make sure to follow up in three days to ensure that the carrier received the papers and note the assigned adjuster.
- Written standards and procedures should address which claims require follow up, and when you should make management aware of a claim.
- Instruct customers to report workers' compensation claims directly to the carrier, not through the agency. Educate them to report using the directions furnished by the carrier. The faster the report, the sooner the insurer can begin to manage the medical portion of the injury claim.

Working with Excess & Surplus Lines and Residual Markets

Agencies do not place all business written through contracted carriers that offer binding authority. Working with **Excess & Surplus (E&S) Lines** and **Residual Markets** requires additional care. Many E&O claims can arise when placing coverage in the E&S market because coverage is generally not as broad as in standard lines.

Residual Markets

Residual markets such as E&S markets or FAIR plans serve as a last-resort option for individuals or businesses unable to obtain coverage from voluntary insurers. These markets often include state workers' compensation pools, assigned risk auto plans, wind pools, and the National Flood Insurance Program (NFIP). Premiums in these markets are sometimes subsidized by other insurers or through state or federal funding.

Similar to surplus lines, agencies do not have binding authority in residual markets. Coverage cannot be confirmed until it is evidenced in writing from the carrier. Always remember, when handling residual market business, no coverage is valid until the carrier provides written confirmation.

Excess & Surplus Lines

Agencies use surplus lines carriers to place coverage for a variety of reasons.

- Businesses with higher risk operations
- Properties in high-risk locations
- Unusual or high-value properties
- Risks that traditional carriers are unwilling or unable to cover
- Risks with a poor loss record

In hard market situations, agencies rely more on surplus lines solutions since carriers are more reluctant to insure higher-risk exposures. If the carrier is "non-admitted," the customer loses the protection of the state's guarantee fund in the event of insolvency. Always clearly communicate this fact to the insured, either through a letter or a prominent stamp on the policy's declarations page.

Before placing coverage with a non-admitted carrier, state laws typically require a diligent search of standard markets. Since surplus lines policies often have non-standard forms, never assume coverage or exclusions; always request specimen copies and review them carefully. Look for exclusions that may not have been in the customer's previous policy. If the policy provides liability sub-limits in any area, compare those to requirements under the customer's excess or umbrella policy. Review quotes or proposals for any conditions or subjectivities and ensure that the customer is aware of any actions they may need to take.

Ensure on any excess or umbrella policy that the liability limits on the underlying policy meet the requirements in the excess or umbrella policy. Any gaps in coverage create a *significant* E&O exposure.

Here are some key points to remember when servicing surplus lines accounts.

- **No binding authority**: The agency cannot bind coverage for surplus lines; any policy change request requires confirmation through a binder issued by the wholesale broker or carrier.
- **Certificates of Insurance**: Always obtain written permission from the broker or carrier to issue a certificate and send them a copy when issued.
- **Careful review of quotes**: Surplus lines underwriting and policy conditions can affect the coverage available. Review quotes for any conditions or subjectivities you should explain to the customer.
- **Non-standard coverage forms:** Request specimen policy forms from the broker when receiving quotes, reviewing the forms carefully. Any unexpected or concerning coverage limitations or exclusions should be documented with the customer.

L/O 7. DOCUMENTATION

Documentation – The Agency's Best Defense

When the agency faces an E&O claim, it is the documentation in the customer's file that can save the day. Proper documentation can effectively defend the agency's actions and often leads to claims being dismissed after defense counsel presents the documentation.

Without good documentation, E&O claims involving a lack of coverage or insufficient limits often come down to "he said/she said" scenarios. Documentation of each insurance transaction and any interaction with customers are the most important factors when defending against allegations of agency errors. But attorneys must tie documentation to consistent internal procedures and practices to strengthen the defense of a claim.

Documentation can only verify what actually took place. How do you defend against allegations of failing to follow through on a request when you have no record of any contact between the agency and another party? The agency's defense is that a conversation never took place. Attorneys can demonstrate this by showing the agency's internal procedures manual and state that agency personnel consistently comply with the rule to document all interactions.

When an agency is confident that *"everyone does it the same way, all the time,"* they can be confident that when the file lacks documentation, the conversation never took place.

What Qualifies as Documentation?

While it's important to have plenty of documentation, the quality of the records is even more crucial. The test for good documentation is whether it can effectively eliminate a claim if evaluated years later. It's important to imagine that any of your documentation can eventually appear as an exhibit court. Ensure it is clear enough to make the events understandable to others, including jurors who may have little insurance knowledge.

Never make any judgmental statements in the file regarding anyone you deal with, whether the insured, a claimant, or any vendor.

Proper documentation also ensures continuity in customer service, enabling another employee to step in and assist the customer seamlessly if needed.

Let the File Tell the Story

A well-documented customer file will include the following.

- Carrier downloads
- Copies of policies and endorsements
- Emails and correspondence
- Text messages
- Phone recordings
- Forms such as applications, certificates of insurance and evidence of property
- Exposure checklists, proposals, acknowledgments, or coverage rejection forms
- Supporting underwriting information, such as photos, loss runs and inspection reports
- Documentation of verbal conversations, either with the insured or related to the insured

When an E&O claim arises, the agency's E&O adjuster, attorney and often expert witnesses will review the file. The plaintiff's attorney may subpoena the file, seeking any gaps in the agency's procedures. If the case goes to trial, a jury will also review the documentation. All documentation must be clear, specific, accurate and thorough.

Key Documents

The **application** is a key document in the insurance process. Always request the insured sign the application, even if not required by the carrier. If the application is completed online, capture a digital signature or obtain a physical signature where necessary. Ensure that *all* fields are complete before obtaining a signature.

For larger accounts, agents often use **proposals** to communicate pricing and coverage to a prospect or customer. While proposals confirm the agency's recommendations, they do not replace a signed application. The signed application remains the more significant document, especially in legal matters.

Always use a coverage or exposure **checklist** to gather important information before writing a new policy. Having a thoroughly completed checklist attached to the customer record should be a requirement for all new business.

When the agency quotes or offers coverage yet the customer refuses the offer, the best documentation is a signed **rejection**, or something in writing from the customer stating their refusal. In many cases, an email from the customer is sufficient.

Email as Documentation

Attach each item of email correspondence between the customer and the agency to the customer record in the agency management system or document management system. Attach any correspondence with other parties related to a particular customer or policy.

Here is an example.

Imagine a producer returns from a meeting with one of the agency's large commercial accounts. After the producer verbally updates the account manager about what they discussed at the meeting, the account manager documents the conversation in the management system. Later, courts could consider this "hearsay" since the account manager was not a party to the conversation.

Instead, the producer should send an email to the account manager reporting the meeting substance. The account manager then attaches that email to the customer file. This not only brings the account manager up to date but creates strong first-party documentation for future records. Taking this one step further, just think how much better a defense would be if the producer emailed the customer to recap the meeting, with a copy to the account manager. That is an example of even better documentation.

Email Retention

Discourage all employees from leaving emails in their inbox and instead delete them after attaching them to the agency management system. Leaving emails in an inbox creates an unmanageable volume, increasing the chance of missing an important email or other errors occurring. Maintain only one uniform record of correspondence in the customer file in the agency management system. Duplicate files can lead to problems when defending an E&O claim.

What about email "threads" or "strings?" If you are going back and forth with a customer or underwriter, is it okay to attach that thread at the end of the conversation?

The short answer is no. If you complete a short thread in the same day, that is probably acceptable. But we know that many threads can go on for days or even weeks. The risk is that the text is editable every time it is sent in a reply. From an E&O standpoint, each individual email should be attached, even if the same thread is attached again later. That is the best practice.

Documenting Verbal Conversations

A well-documented customer file includes copies of everything that has transpired. One of the biggest challenges in creating a complete file is the documentation of verbal conversations. This includes phone conversations or face-to-face conversations, whether in the office or elsewhere.

Agency management systems assign different areas to record verbal conversations. Most systems label this area "activities" or "notes." Address in the agency's written procedures the specific areas or fields in which to enter documentation.

Documentation should be entered as soon as possible after a conversation takes place by the person in the agency who had the conversation. Asking someone else to enter documentation about a conversation you had only creates "hearsay" evidence in an E&O situation.

Documentation should include the **Who** (specific names, not just "insured" or "agent"), **What, When, Why, Where, and How** of the conversation, ensuring that others can easily understand what transpired.

Who	• Who the conversation was with (the name, not just the "insured")
What	• Specifically what was being requested or communicated. • What happens next; what was communicated.
When	• Date and time of conversation • Your agency management system should provide datea and time automatically.
Why	• Details of request. Answers to important questions you asked to support what is being done.
Where	• In your management system. When the task is complete, close the task.
How	• What method was used to communicate? Phone? Was the customer in the office?

Always document the name of the person spoken with and avoid the habit of simply saying it was "the insured." Next, indicate whether the party was in the office, or if it was a telephone conversation. Indicate whether the party contacted you, or whether you had reached out to them. If you have a conversation with a customer when you are out of the office, document that conversation as soon as possible after you can access the management system. The more detailed the notes, the easier it will be to jog the writer's memory should litigation arise.

Include enough detail so that any reader can understand the discussion substance. Never be afraid to ask for more details and include that information in the documentation. If the customer asks questions, include your answers to their questions.

If you had given the customer a premium quotation, or a "ballpark" estimate for making a change to their policy, include that information in the documentation. Then, if the customer later speaks to another agency employee, the documentation should be clear and easy to follow. It should be clear to the customer that the agency has great service, since everyone they speak with can help, without having to start over again with another explanation.

Some people tend to use abbreviations when entering documentation. Abbreviations are fine, but only as long as everyone understands what each abbreviation stands for. Otherwise, they should be kept to a minimum and never used when communicating with your insured. The documentation may lose some of its strength in court if no one can be sure what it means.

Here's an example. The abbreviation "BI" can refer to business income insurance or to a bodily injury. If there can be multiple meanings, write out the whole phrase.

Are there some individuals in your office who are "documentation challenged?" Do they only enter minimal information, or fail to document conversations?

How can you encourage others to establish good documentation habits?

What Type of Documentation is Best?

GOOD

An activity or note documented in the agency management system is great. This is especially true when the writer includes adequate detail, such as who the agent spoke with, what transpired, and what steps the agency took to finalize the matter. When defending an E&O allegation, the agency's attorney will be pleased to see that employees demonstrated good documentation habits.

BETTER

An even stronger defense is when the agent follows up with written documentation. Confirm conversations with the customer or other party, such as with an email or letter. A simple email to a customer confirming the discussion topic and reiterating any information or instructions you relayed in the conversation is powerful when defending an E&O claim.

BEST

The strongest documentation is anything signed by the customer or written by the customer. This could be a signed rejection of coverage. It could be an email from the customer with specific instructions. It could also be a reply email from the customer acknowledging and agreeing with the email you just sent, confirming an earlier conversation.

For example, if a customer decides not to purchase an umbrella policy, here are typical ways to handle the documentation.

- **GOOD.** Document your conversation in the agency management system, including the price you quoted for the umbrella policy, indicating that the customer did not want to purchase it.

- **BETTER.** Send the customer an email, recapping the conversation about the umbrella and the price quoted, and invite them to contact you if they are interested in the future. Be sure to attach the email as documentation to the agency management system.

- **BEST**. Have the customer sign a rejection of coverage form, outlining the umbrella policy quoted. Or you might send the customer an email, recapping the conversation, and request that they reply and acknowledge.

Documentation – the Key to the Agency's E&O Defense

At the time the agency is faced with an E&O allegation, there is no better assurance than to realize that everyone did their job as they should. This means the agent followed agency procedures during their interaction with the customer and they created quality documentation.

Invariable agency procedures work hand in hand with sufficient documentation to ensure that agency records reflect every interaction and that customers are serviced in a professional manner.

L/O 8. CONCLUSION

Errors and Omissions (E&O) insurance is an essential component to protect insurance agencies from the financial and legal risks that now commonly arise in our industry. This document outlined critical information and practical strategies to help agencies successfully manage these risks.

Here are some of the important strategies we covered in this handbook.

- **Understanding E&O Insurance**: We explored the fundamental aspects of E&O insurance and the common reasons claims are filed. Recognizing these risks empowers agencies to take proactive steps to prevent them.
- **An Agent's Duties**: Accurate knowledge of an agent's duties to customers, the standard of care and the distinction between agency practices and legal obligations can maintain trusted client relationships and avoid E&O claims.
- **Compliance with State and Federal Laws**: Navigating the legal landscape requires adherence to detailed state and federal regulations. This ensures legal compliance while protecting your agency's reputation.
- **The Role of Agency Procedures**: Consistency in operations, supported by a well-maintained procedures manual and regular audits, helps mitigate risks and ensures operational efficiency.
- **Customer Account Management**: Providing exceptional customer service in all areas—including policy changes, renewals, claims handling, and endorsements—strengthens client trust and reduces the likelihood of disputes.
- **The Power of Documentation**: Documentation is your agency's strongest defense. Properly recording communications and transactions protects your agency in the event of a claim, while reinforcing professionalism and accountability.

By understanding these principles and integrating them into daily operations, your agency can proactively minimize E&O risks. Proper compliance, consistent procedures, exceptional customer service, and comprehensive documentation are the cornerstones of an effective risk management strategy.

Use this document as a resource to refine your practices, safeguard your agency, and deliver the highest standard of service that your clients deserve.

References

For solid coverage, technical and agency management articles and charts, visit this link.

Association for Independent Agents | Virtual University

For tools to help prevent agency errors & omissions, visit this link.

https://eoguardian.com/

These tools at EOGuardian are available to all members and include the following.

- Sample Procedures Manual
- Coverage Checklists
- Coverage Declination Forms
- Records Retention Information
- Big "I" Disaster Planning Guide

These tools available to Swiss Re policyholders include the following

- Various disclaimer language templates
- Various template language for letters
- Auditing tools

Learn page

- Various articles
- Downloadable guides
- Discount for membership in the Insurance Journal Academy link
- Various Swiss Re/Big "I" webinars
- Access to ABEN, our learning provider

Reduce my premium page

- Covers the various ways your agency can lower your E&O premium with Swiss Re

Standard of care page

- Offers an on-demand webinar and book to help your agency determine its standard of care in all U.S. states

Frequently asked questions

- This page offers some frequently asked questions and their answers