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Do's and don'ts of reducing chances of an E&O claim

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The duties of a producer or account executive/customer service representative in an agency present tremendous challenges and responsibilities. It's hard work and is not getting any easier. The knowledge expected would fill volumes and the workload probably seems like it never ends. These staff members deserve a tremendous amount of credit because without them, the agency would not be the same. While the degree to which these men and women perform this job professionally and ethically can greatly determine the agency's success, it can heavily determine the agency's errors-and-omissions risk, too.

Gaining knowledge

Both producers and account executives must have a strong technical knowledge of the industry. Customers and prospects rely on them for this knowledge to ensure their assets are properly protected. To meet this challenge, a commitment to knowing the various classes and lines of businesses, and the uniqueness of each, is required. Because there is so much to learn in the insurance business, there will be times when a producer and account executive does not possess the necessary knowledge. How these instances are handled and knowing where to find the information are vital. Bluffing one's way through the answer is not recommended. This might work once in a while, yet since there is a very good chance the customer or prospect is documenting the conversation, it's only a matter of time before it catches up with the agency staffer.

A great tool for producers and account executives is an exposure analysis checklist. These checklists provide tremendous detail on more than 650 classes. For a producer, this is an ideal resource for knowing the prospect or client. Before visiting a jewelry store prospect, for example, the producer should take the time to educate himself or herself on a jewelry store's exposures. For account executives, these checklists are also a solid way to improve their knowledge of various lines or classes of business.

Sales skills and more

Yet having the knowledge and knowing where to get it are only parts of the solution. The formula for success also includes the need for sales skills. Having knowledge with no sales skills – or sales skills without knowledge – can be extremely dangerous for the agency from an E&O perspective. Without a doubt, the sales process doesn't end when the sale is made. How producers and account executives conduct themselves during

the sales process – pre-sale, sale and post-sale – will likely determine whether they are successful and to what degree they are an E&O risk.

When interacting with the client, in most states, an insurance producer, including account executives, has a common-law duty to obtain the coverage the client specifically requests within a reasonable time or inform the client of the inability to do so. Thus, it is key to listen for what the customer or prospect is asking. Not providing what the customer requested has been a root cause of many E&O claims.

The words or phrases used to promote your agency and abilities are also important for avoiding an E&O claim. Telling customers and prospects you are an “expert” or that “at our agency, we make sure that you are properly covered” sound impressive. However, while the belief may be that the ability to be successful is enhanced, it can also lead to the producer and the agency being held to a greater degree of liability should a problem develop. Choose the words and phrases used verbally or in print carefully.

One word to avoid is “recommend.” It’s not as harmless as it might sound. For example, say the agency recommends that the client secures a \$1 million umbrella. If the client ultimately has a loss well in excess of the \$1 million, the agency could face an E&O claim for “recommending” a limit that was insufficient for the loss suffered. The best approach is to offer coverage options and limit options for each of those coverages, and then let the customer make the decision. Don’t make it for them!

Document and review

In all of the various interactions, whether with the prospect or the markets you are using, is the need for prompt and professional documentation. Reinforce that this need for documentation applies to producers and account executives. While the “old school” approach of documenting the discussion in the file or agency management system may be sufficient at times, there will be situations where the documentation should also involve a note to the customer or prospect detailing the essence of the conversation. The goal here is to avoid any misunderstandings before a claim occurs. If a problem develops, this documentation – or lack of – will greatly determine the direction of the E&O claim. Documentation is not an option; it is mandatory. It must also be prompt and professional.

Does the customer always buy all of the coverages noted in the proposal? No. Both producers and account executives should get the customer’s sign-off on the coverages/limits they will not be securing.

After receiving the order, it is crucial to review the policies upon receipt of them to ensure they reflect what was ordered. The producer and account executive should be involved in this process to ensure the coverage is what the customer requested. In all but a few states, the client has a duty to read his or her policy. Therefore, it is strongly suggested to include a cover letter with the policies advising the customer to review the policies and contact the agency if there are any questions or any of the policies need

correction. If the producer is delivering the policy, include the cover letter with the policies and bring the letter to the customer's attention.

In all likelihood, the marketplace has prompted accounts to be remarketed on renewal to other carriers in your office, so bring to the customer's attention any deficiencies or coverages being "given up" by moving the account to another carrier. Document these discussions. This also applies if you are moving the account from the standard marketplace to the E&S marketplace.

Oftentimes, carriers will change their guidelines. Agency staff must be aware of these guidelines and to adhere to them. Overstepping the carrier's binding guidelines is a common reason carriers are increasingly suing their agents.

Going a long way

Being a producer or account executive requires tremendous knowledge, professionalism and attention to detail. This will go a long way to ensuring success – and ensuring you are not an E&O nightmare waiting to happen.