



# **E&O Loss Prevention Guide for Property & Casualty Agents**

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## **Executive Overview**

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Errors & Omissions (E&O) claims continue to represent one of the most significant and controllable operational risks facing Property & Casualty agencies. Most E&O claims do not arise from intentional wrongdoing or lack of professionalism. Instead, they arise from a series of common breakdowns in communication, documentation, follow-up, or assumption-making that compound over time.

Errors and Omissions can occur when an agent acts informally, delays paperwork until later, or assumes that minor issues will resolve themselves. Unfortunately, when a loss occurs, hindsight sharpens memories, documentation becomes critical, and informal practices are viewed far less favorably.

This guide exists to help agencies understand:

- How E&O claims develop
- Why certain mistakes occur across agencies and generations
- How disciplined processes and documentation reduce exposure

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# Introduction to Errors & Omissions (E&O)

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## What Is Errors & Omissions (E&O) Insurance?

Errors & Omissions Insurance—also referred to as Professional Liability Insurance—provides protection to insurance professionals when a claim is made alleging that the agent or agency caused financial harm through an act, error, or omission while providing professional services.

For insurance agents, E&O coverage applies broadly to activities such as:

- Soliciting insurance
- Explaining or advising on coverage
- Binding or servicing policies
- Processing changes or cancellations

It is important to understand that an agent does not need to make a mistake for an E&O claim to arise. Many claims stem from misunderstandings, miscommunication, or a client's belief that coverage existed when it did not.

In those cases, the E&O policy responds not only to proven errors, but also to alleged errors. The policy provides a legal defense and, where appropriate, pays covered damages.

The practical takeaway is simple but critical: the E&O policy exists because even well-intentioned, competent professionals can be accused of causing harm.

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## Claims-Made and Reported Coverage

Unlike many liability policies that agents sell to clients, most insurance agent E&O policies are written on a claims-made and reported basis. This distinction is one of the most important—and most frequently misunderstood—aspects of E&O coverage.

Under a claims-made and reported policy, coverage applies only if:

1. The wrongful act occurred on or after the retroactive date
2. The claim is made against the insured during the policy period, and
3. The claim (or potential claim) is reported to the E&O carrier in accordance with the policy's reporting requirements

An agent who delays reporting a claim—believing it to be minor, premature, or likely to resolve—may unintentionally jeopardize coverage. If you or your staff becomes aware of a summons, complaint, or a situation that could reasonably turn into a claim, it should be tendered to your E&O carrier immediately.

### Example:

An agent received a customer complaint regarding an alleged coverage failure and chose not to notify the E&O carrier, believing the issue would resolve through discussion. When the matter later escalated

into formal litigation, the E&O carrier questioned coverage because the initial incident was not reported when first known.

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### **Retroactive Dates and Prior Acts Coverage**

A retroactive date (sometimes referred to as a "prior acts" date) establishes the earliest date on which an act, error, or omission can occur and still be eligible for coverage under the current E&O policy.

If an act occurred prior to the retroactive date, no coverage will apply—regardless of when the claim is made.

Retroactive dates are especially important to consider when:

- Changing E&O carriers
- Allowing coverage to lapse, even briefly
- Starting and stopping coverage over time

#### **Example:**

Agents who moved their E&O coverage to a new carrier accepted a policy with a later retroactive date, unknowingly eliminating coverage for years of prior business. When claims later arose from older transactions, coverage was denied—even though the agents had continuously operated their agencies.

The retroactive date should remain consistent from year to year and should reflect the agent's true history in the business. If a retroactive date is changed at any point and a gap in coverage is created, an agent should consider purchasing an Extended Reporting Period to cover their activities that occurred prior to the new retroactive date.

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### **Extended Reporting Periods (ERP / Tail Coverage)**

An Extended Reporting Period (ERP), often called "tail coverage" allows an agent to report claims after the expiration of a claims-made policy, provided that the underlying act occurred while coverage was in force and after the retroactive date.

ERP coverage is commonly purchased when an agent:

- Retires
- Sells or closes an agency
- Leaves the insurance profession

The ERP does not provide coverage for future acts, nor does it increase policy limits. Its sole purpose is to allow additional time for claims—often delayed claims—to be reported.

#### **Example:**

An agent retired and discontinued all professional services. Four years later, a client alleged an error relating to a policy sold years earlier. Because the agent had purchased a ten-year ERP at retirement and reported the claim to the carrier properly, the claim was covered. Without the ERP, the agent would have faced personal liability for the claim.

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## **Who is covered**

A typical E&O policy provides coverage to the Named Insured (the person or entity named on the policy Declarations) as well as others specifically identified as Insureds or Additional Insureds. This usually includes officers, directors and employees but generally does not include independent contractors. Policyholders should review the definitions section of the E&O policy to make sure that anyone acting on your behalf will be included.

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## **Professional Services**

E&O insurance covers claims that arise out of the rendering of Professional Services. Each E&O policy defines the type of professional services that are included for coverage. Generally, the definition will be limited to one type of business. An insurance agents E&O policy will typically define professional services as those services related to the insurance business of the Named Insured. If you are also a real estate agent, for example, not only will the definition of professional services not extend to the real estate profession, but the policy will contain an exclusion relating to claims arising out of services rendered as a real estate agent. Agents should review the definition of Professional Services to ensure that all of the services they provide are properly covered.

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# What Is an E&O Claim?

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## Elements of an E&O Claim

An E&O claim typically contains three essential elements:

1. An allegation that an agent made a mistake or failed to perform a professional duty
2. A demand for money, services, or corrective action
3. An uncovered loss (damages) suffered by the customer due to the agent's error or omission

Claims do not require formal litigation to exist. A verbal or written demand for compensation related to a perceived error may be sufficient to trigger coverage.

### Example:

A customer requested that a vehicle be added to an auto policy during a phone call. The vehicle was not added. When an accident occurred, the uncovered loss led to a demand against the agent—even though no formal lawsuit had yet been filed.

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## Potential Claims and Why They Matter

A potential claim is any known incident or circumstance that could reasonably develop into a claim in the future. Most E&O policies contain an awareness provision that allow potential claims to be reported to preserve coverage if the matter later escalates.

Reporting potential claims is crucial—especially when changing carriers—since failing to report known incidents may result in a denial of coverage due to "prior knowledge" exclusions under future policies.

Examples of potential claims include:

- Complaint letters from customers
  - Regulatory inquiries from Departments of Insurance
  - Written or verbal disputes involving coverage or advice
  - Dissatisfaction expressed by the customer
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## Do's and Don'ts when dealing with an E&O claim or potential E&O claim

- Report all claims and potential claims promptly while events and facts are fresh in your mind.
- When in doubt, report the claim to your E&O carrier and discuss with the assigned adjuster.
- Be factual and honest (don't call to discuss a "hypothetical" situation).
- Call the claim handler assigned to your claim or potential claim after any subsequent communication with the customer.
- Don't admit liability or wrongdoing to any party. This could jeopardize your coverage under the E&O policy or create a claim that is not your responsibility.

- Don't call a customer regarding a complaint letter without first reporting a potential claim to the E&O carrier and obtaining advice on how to proceed. Matters could be made worse.
- Don't try to handle a "small" claim because the amount of damages is within your deductible. "Small" items have a tendency to ignite larger issues and by handling the matter yourself you could prejudice the E&O carrier's position and jeopardize your coverage.
- Don't delay the reporting of a potential claim or claim because you think the customer will "go away." Dissatisfied customers don't go away, and your E&O policy has conditions which require you to report claims promptly.
- Don't retain the services of an attorney on your own.
- Remember, a quick response to customer complaints and potential claims is good for your customer and you. Over 50% of all claims are closed with no payment of damages.

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## Auto E&O Claims

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Auto insurance related transactions account for a significant proportion of E&O claims for personal lines agents due to their frequency and the volume of policy changes handled by phone.

Common causes include:

- Incomplete change requests
- Failure to follow up on missing information
- Errors during vehicle additions or deletions
- Misrepresentations or misunderstandings during unusual transactions
- Improper execution of binding procedures by agents or staff

In many auto E&O disputes, the underlying carrier denies coverage because the requested coverage was never placed or the policy wasn't properly bound. When that happens, the dispute often turns into a documentation contest—what the customer believes they requested versus what the agency can prove was discussed. Consistent documentation of phone calls with clients is an important part of defending these types of claims.

**Example:**

A customer requested that a vehicle be added to an existing policy but did not yet have the VIN number. The agent failed to follow up. Months later, the vehicle was involved in an accident and had never been added to the policy.

**Claim Prevention Guidance:**

Document all telephone requests and changes immediately in your agency management system. Confirm your conversation via email with the client and document any additional items needed to process the request. Set diaries and follow up to be sure the transaction was completed.

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## Homeowners E&O Claims

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E&O claims resulting from the sale or servicing of Homeowner’s policies account for a meaningful portion of personal lines E&O activity as well.

Homeowners claims are particularly sensitive because small changes in exposure can materially change coverage. A customer request that seems minor—“we’re remodeling,” “we’re renting it out,” “we bought jewelry,” “we upgraded”—often requires a much broader coverage conversation than the customer realizes.

In addition, customers are not always accurate or complete in describing what has changed. If agency staff do not ask the right follow-up questions or do not process the requested change quickly and correctly, the agency can be held responsible when loss occurs.

### **Claim Example: Change in Occupancy (Owner-Occupied to Rental)**

**Description of claim:** An agent wrote a Homeowner’s policy for a customer. The customer later called to advise that the property was now being rented out, which required a policy change. The agent did not rewrite the policy. A liability loss occurred involving the tenant. There was no coverage under the Homeowner’s policy, but coverage would have existed under an appropriate Landlord policy.

**Prevention guidance:** When advised of a change in exposure, rewrite or replace the policy immediately with the proper form and document the change. Explain to the customer—clearly and in writing—any limitations that result from moving to a different policy form.

### **Claim Example: Replacement Cost Not Properly Requested/Marked**

**Description of claim:** In 2022 the agent wrote a Homeowners policy including replacement cost. In 2025, due to financial reasons, the customer requested a less expensive form without replacement cost. In 2026 the customer called to upgrade their coverage because their financial situation had improved. The agent completed the application but failed to mark the replacement cost option. After a major water loss to the structure and contents, the claim was paid on an Actual Cash Value basis.

**Prevention guidance:** Review completed applications with the customer before submitting them. Do not assume that “upgrade” means the correct coverage selections were made—confirm every key checkbox and endorsement.

### **Claim Example: Failure to Explain Coverage Differences When Switching Carriers**

**Description of claim:** A long-term auto customer was solicited for Homeowners coverage. The customer’s prior policy was a “Deluxe” form. The agent emphasized savings through a multi-line discount. The agent contends the customer was advised there would be no water damage coverage, but the customer later sustained a water damage loss and alleged that the difference in coverage was not explained.

**Prevention guidance:** Confirm in writing any reduction in coverage and retain that confirmation in the file. When customers switch forms or carriers, a written acknowledgment is a strong defensive measure.

### **Claim Example: Scheduled Jewelry Values Not Updated**

**Description of claim:** An agent wrote a Homeowners policy with scheduled jewelry coverage based on an expiring policy. A ring was insured for \$4,500. Years later the ring was stolen from a suitcase; its value had increased to \$8,000. The loss exceeded the scheduled value

**Prevention guidance:** Regularly remind customers with scheduled personal property to review values and obtain current appraisals. Document those reminders.

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## Commercial/Specialty Insurance E&O Claims

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E&O claims in commercial and specialty lines occur for many of the same reasons discussed in personal lines, but with additional complexity. Commercial customers often have multiple policies, layered coverages, evolving operations, and higher limits. Problems frequently arise when agents expand their areas of expertise by selling products they do not normally sell, do not fully understand, or do not dedicate adequate time to learning.

Being viewed as an “expert” can be both an advantage and a liability. While an agent may attract more prospects, they rely more heavily on perceived experts, and the standard of care can be higher. It becomes difficult for a success-driven salesperson to say, “I don’t know,” but customers remember incorrect advice—especially when a loss reveals the gap in coverage.

### **Claim Example: Commercial Auto Without General Liability**

**Description of claim:** A customer started a moving/delivery company and obtained a Commercial Auto Policy from the agent. This was the only policy purchased. During a delivery to an elderly customer, the customer assisted in carrying the item, injured her wrist, and fell down a set of stairs. A claim was submitted under the Commercial Auto Policy but was denied because the business lacked General Liability coverage.

**Prevention guidance:** When coverage is not provided elsewhere, make recommendations for needed coverage. Document those recommendations and obtain customer sign-off on recommended coverages that were declined.

### **Claim Example: “No Market Exists” Misrepresentation**

**Description of claim:** An inexperienced customer service representative told a long-term insured there was no market for unique coverage requested as an endorsement. She was incorrect—the agency had written similar coverage for other insureds around the same time. When a loss occurred, the carrier denied the claim. The carrier later provided a statement that the coverage would have been offered for a reasonable premium.

**Prevention guidance:** Do not tell a client that a market does not exist for certain coverage. You may not have a market, but do not assume another agent could not place the risk. Establish internal communication practices for producers and service staff to handle customer requests.

### **Claim Example: Inland Marine Spoilage Exclusion**

**Description of claim:** A customer purchased inland marine coverage. While transporting ice cream, the refrigeration unit broke down and spoilage occurred. The claim was denied because there was no spoilage coverage. The customer alleged the agent failed to obtain like coverage from the prior policy and filed litigation.

**Prevention guidance:** Compare proposed commercial coverage to the expiring policy. Identify differences and review them with the customer at purchase.

### **Claim Example: Policy Sublimits Misunderstood (Merchandise in Vehicle)**

**Description of claim:** A producer sold a commercial policy knowing the customer kept merchandise in a van. The van was broken into and \$30,000 of merchandise was stolen. The policy limit for merchandise in a vehicle was \$2,500. The customer alleged the producer advised full value would be covered.

**Prevention guidance:** Know policy limits and sublimits. Where limitations apply, obtain a written waiver acknowledging the limitation.

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## Financial Products E&O Claims

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Financial products claims tend to be less frequent than routine P&C servicing errors but often involve higher severity. Frequently claims involving financial products have a pattern of recurring allegations, including:

- Delay in processing transactions, causing economic loss
- Misrepresentation or perceived guarantees about performance
- Windfall investing, where inexperienced clients suddenly inherit large sums with little or no prior investing experience
- Suitability disputes, where products are later viewed as inconsistent with objectives

A broker who makes a recommendation should have a reasonable basis for believing the customer has sufficient knowledge and experience to evaluate risks and is financially able to bear those risks. Many customers do not understand that an investment can decline in value, or that liquidity may be limited.

### **Claim Example: Suitability Dispute After Market Decline**

**Description of claim:** A recently widowed woman sought advice on reinvesting a \$600,000 portfolio inherited from her late husband, who had invested conservatively in short-term government securities. The widow had no investment experience and developed strong trust in the planner, stating she would do whatever he recommended. The planner recommended growth and income mutual funds. Within a few months, market conditions caused the portfolio to decline by \$75,000. The widow panicked, liquidated, hired counsel, and filed arbitration alleging unsuitable recommendations. She was awarded the full loss.

**Prevention guidance:** Know your customer and document risk tolerance, objectives, and experience. Complete all required financial profiles and new account forms fully and truthfully. Make a financial plan that fits the investor's profile.

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## Underwriting and Binding Procedures

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E&O claims can occur when an agent is unfamiliar with or oversteps underwriting guidelines or fails to follow binding procedures. Losses arising from underwriting/binding violations are most prevalent when agents place risks with carriers where they do not place a high volume of business.

Agents who operate within the scope of express authority avoid liability in most circumstances. Preventive steps include:

- Knowing your binding authority and scope of authority by carrier
- Checking with the carrier when uncertain
- Obtaining underwriting exceptions in writing
- Fully disclosing the nature of the risk
- Binding only those risks you know the insurer will accept
- Using proper binder practices and complying with state rules

Sometimes the issue is not what is said about a risk, but what is **not** said. A carrier may pay a claim and later seek reimbursement from the agent if the risk should not have been bound.

### **Claim Example: Failure to Follow Underwriting Requirements (Photographs)**

**Description of claim:** Underwriting guidelines required submission of a photograph for all rental properties. The agent failed to obtain a photograph of a rental property and issued a binder. A fire occurred. Because a binder had been issued, the insurer paid the claim and later sought reimbursement from the agent. Had the agent inspected the property and obtained the photograph, it would have been clear the property was boarded up and vacant—an unacceptable risk.

**Prevention guidance:** Always follow underwriting requirements for binding coverage. Requirements that seem administrative often exist to prevent unacceptable risk selection.

### **Claim Example: Binding a Risk Outside Agent Guidelines**

**Description of claim:** An agent issued an auto binder to a 20-year-old insured. The insured had an accident. The carrier's guidelines clearly required a minimum age of 25, and the agent was held liable.

**Prevention guidance:** Review and follow the underwriting guidelines of every carrier you place business with—especially when binding is requested urgently.

### **Claim Example: Misrepresentation of Risk (Bed and Breakfast)**

**Description of claim:** An agent bound coverage on a homeowner's policy for a large home that was actually operating as a bed and breakfast. The agent knew the true nature of the risk but did not disclose it. A fire damaged the bed and breakfast area. Losses were not covered under the homeowners policy.

**Prevention guidance:** Do not mislead an insurer regarding risk characteristics. If a risk differs materially from the application, don't move forward with binding coverage.

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# Telephone and Documentation Procedures

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Over half of E&O claims include allegations that the agent failed to provide adequate coverage. Many of those disputes involve changes to existing policies—additions, deletions, endorsements, or coverage reductions.

While documentation procedures cannot eliminate professional responsibility or guarantee that E&O claims will be settled in their favor, established documentation procedures can materially improve the agency's ability to defend itself when a claim arises. In many disputes, the question becomes less about what was intended and more about what can be proven.

## Documentation as a Defensive Practice

Documentation can take many forms. One of the most valuable is the follow-up email. When a client inquires about policy terms, limits, exclusions, premium changes, or any coverage concern, agencies should confirm the discussion in writing and retain that confirmation in the file.

Requests to reduce coverage deserve special attention. It's recommended to obtain written confirmation including customer "sign-off" acknowledging the refusal against the agent's recommendation or requested reduction in coverage terms.

This practice is not merely defensive; it often prompts customers to reconsider and purchase coverage after all.

## Email

Email has become the dominant communication channel for most agencies. Any email communication between the agent and customer should be stored in the client file or agency management system. Out-of-office messages should direct clients to another teammate, and unmonitored email boxes should disclose that status. Routine monitoring and timely response are part of risk reduction.

All emails should also have proper disclosures included that state that coverage cannot be bound, altered or cancelled without speaking to an authorized representative of the agency and the customer should not assume that coverage is bound without confirmation from an authorized representative. Agencies should also consider a confidentiality notice stating that information in the email may be privileged and/or confidential.

## Telephone Procedures

While email communication is the typical means of communication between an agent and the customer, phone calls are an essential communication method. Consistency is key: telephone communications frequently present opportunities for errors or alleged errors to occur, and the detail and consistency of historical communications often determines credibility.

Documenting a summary of every conversation—including calls initiated by the agent—is crucial. Conversations with carrier personnel (adjusters, underwriters) should also be documented and retained.

At minimum, call documentation should include:

- Date and time

- Parties involved
- Synopsis of conversation
- Action to be taken (including agreement to take no action)
- Follow-up measures (confirmation letter, return call, etc.)

Disclosures on voicemail greetings are also important. For all work voicemails, the greeting should clearly state that leaving a message does not bind, alter, or cancel coverage and the caller must speak with an authorized representative. If an employee utilizes their cell phone for work, the cell phone voicemail greeting should include the same disclosure.

### **Claim Example: Informal Call Leads to Forgotten Coverage Request**

**Description of claim:** An agent handled insurance for friends and neighbors. A friend called his cell phone to confirm a golf date and mentioned in passing that he had bought a new car for his daughter and needed to add it to his policy. The conversation shifted back to personal topics, and the agent forgot to add the vehicle. When an accident occurred, there was no coverage on the new car.

**Prevention guidance:** Always document every conversation. Ensure message-taking capability is available—even outside the office.

### **Claim Example: Policy Change Not Processed (Mobile Home Ownership)**

**Description of claim:** A father called to advise he had taken over his son's mobile home and needed the policy changed into his name. The agent took the information but failed to submit it. The son stopped paying premiums, but because the change had not been processed, the father did not receive cancellation notices. A tornado later damaged the mobile home, and the father learned the policy had been cancelled months earlier.

**Prevention guidance:** Documentation forms should include not only the message, but the action required. Diaries integrated within an agency management system can help ensure follow-through.

### **Claim Example: Coverage Refusal Dispute (Collision Coverage)**

**Description of claim:** An agent took an application for auto coverage (assigned risk). The quote included collision. The client stated the car would just be parked and declined collision. Shortly thereafter, the client had an accident and alleged he had requested full coverage.

**Prevention guidance:** Confirm refusals in writing. A follow-up email provides strong defense, and in-person presentations should include initials/signatures and dates next to refused coverages.

### **Claim Example: Premium Handling and Record Loss (Computer Crash)**

**Description of claim:** An agent insured a prior building owner. The building was sold; paperwork was completed to transfer the policy and sent to the title company. The title company paid the premium to the agent, who deposited it but later could not confirm whether the premium had been remitted. A fire occurred, and the insurer denied the claim, stating no policy was in force. The agent's records were on a server that crashed and prior records were unavailable.

**Prevention guidance:** Establish procedures for regular backup of computer records and verify premium remittance steps.

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# Standard Office Procedures

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Insurance agents are expected to understand client needs and recommend appropriate coverages. However, agents sometimes focus on the business of insurance while overlooking the liability that can arise from how the agency runs its business.

The time to develop a consistent course of conduct—office procedures and standards—is before an E&O claim arises. Agencies are professional firms held to legal expectations, and employee actions can reflect on the firm and create exposure.

A foundational step is creating an office procedures manual that is:

- Used by everyone, consistently
- Updated regularly
- Distributed so each employee has a copy

## **Suggested Items to be addressed in the Manual:**

### **Personnel Standards**

- Scope of authority for each employee
- Attendance at regular staff meetings
- Agency philosophy on professionalism, teamwork, and ongoing professional education

### **Agency Standards**

- Documentation procedures
- Cash management and check handling
- Mail handling procedures (including date stamping incoming mail)
- Forms manual identifying when to use standard letters, memos, reports, etc.
- Complaint handling procedures

### **File Maintenance Procedures**

- Defined filing standards and consistent structure
- Record retention standards (aligned with state requirements)

### **Effective Suspense/Diary System**

- A system that facilitates follow-up and verifies completion
- Daily review of diared items, including:
  - Pending new business and renewals
  - Pending changes and status
  - Expiration dates
  - Correspondence requiring a response

The claim examples below illustrate how breakdowns in office procedures lead to E&O losses.

### **Claim Example: Delayed Action on Coverage Request**

**Description of claim:** A long-time auto customer with frequent policy changes called with two items: add a daughter and her new car, and possibly remove a pickup truck being sold. The agent made notes and told the customer to call back once the truck sale was confirmed. The agent set the file aside intending to handle both changes together. Three months later the customer reported the daughter had totaled the new car. The vehicle had never been added.

**Prevention guidance:** Act on coverage requests immediately. Use a suspense/diary system to track follow-up on incomplete items.

### **Claim Example: Binder Rescission and Missed Refund**

**Description of claim:** A new customer requested an immediate binder for a car purchase. The agent asked about a valid license; the customer said yes. The agent quoted a six-month premium, collected a cash deposit, and issued a binder. Two days later the motor vehicle report showed that the license was suspended. The agent attempted contact, then sent letters to the client and bank rescinding the binder. The agent forgot to refund the premium deposit. Months later the client reported the car was totaled. The agent reminded him there was no coverage; both bank and client denied receiving the letter.

**Prevention guidance:** Establish procedures for cancellation notices and refunds. Use a cancellation checklist and an automated diary system to ensure all steps are completed; consider certified mail.

### **Claim Example: Unverified Policy Summary Sent to Client**

**Description of claim:** An assistant printed an automated policy summary for a BOP and sent it to the client. No one verified it matched actual coverages purchased. The customer received a generic summary showing coverages not actually included and failing to mention reduced sublimits. When a claim occurred, the customer relied on the summary as evidence.

**Prevention guidance:** Establish procedures to double-check templated documents against actual quotations and in-force coverage.

### **Claim Example: Application Misfiled and Never Submitted**

**Description of claim:** A customer purchased a house and requested the agent obtain a policy. The agent accepted a \$500 down payment. The application was misfiled and never processed. The customer called several times for status and was told it had been sent to the insurer. Two months later the house was destroyed by fire. Only when the claim was reported did the agent discover the application was never submitted.

**Prevention guidance:** Do not rely on memory when responding to client inquiries. Pull the file, verify status, and call the client back if necessary.

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