E&O Loss Prevention Tips for Life & Health Agents

Loss Prevention Tip #1:

Avoid Simple Mistakes That Can Lead to Liability

Insurance industry studies indicate that approximately 5% of E&O claims involve the administration of life insurance. While they are relatively rare, when those claims occur they can be significant. The majority of claims filed involve common errors that are easy to avoid with proper attention to detail and documentation.

The most common mistake made by financial representatives is the failure to administer the application process diligently. They often fail to exercise due care in assisting their clients to answer the questions on the application – i.e. they fail to make sure that each question is answered correctly and accurately. Failure to do so may result in an E&O claim by the intended beneficiary if payment is denied by the carrier.

Financial representatives also often fail to recognize answers that do not correctly represent a client's health status. Questions such as "Have you ever been diagnosed with an eye, ear, nose or throat disorder?" are often answered in the negative by ordinarily healthy applicants. A long list of "no" answers should raise an alarm if the financial representative is paying attention. Often, both the representative and the client fail to consider that simple issues such as a prescription for glasses or allergy treatment may be relevant from the carrier's perspective.

Another common mistake is the failure to maintain documentation of all communication with the client. For every meeting with a client, a record should be made of who said what and what the parties agreed to do. Having the client acknowledge the records makes this documentation more credible. Financial representatives are often targeted in lawsuits by beneficiaries whose claims are denied and must be prepared to defend themselves with proper documentation.

While you can be sued by anyone, you can make it harder for them to prevail in a case against you by attention to detail and proper documentation.

Loss Prevention Tip #2:

Error Prevention

Below is a quick review of error prevention tips that help prevent loss.

- Explain in detail and document your conversations with clients regarding terms, conditions and costs of insurance products at the time of a sale.
- Promptly document your conversation with the client regarding change requests or updates.
- Check your work! Ensure paperwork for all transactions is complete, accurate and submitted timely.
- Take extra care in explaining and documenting conversations with elderly clients or those with communication issues (e.g., limited English language skills). Watch for signs or “red flags” that may indicate that a senior client may have diminished capacity or a reduced ability to make coverage decisions.
- Be consistent in documenting your files. Documentation is your best defense should an E&O claim arise.
- Don’t make assumptions or generalizations. Avoid using vague language and be specific when discussing coverage with clients.
- Be certain that you fully understand the product before discussing it with the client.
- Think defensively. Maintain a defensive, professional attitude at all times.

Loss Prevention Tip #3:

Are You A Better E&O Risk Today Than You Were A Year Ago?

As a financial representative, you are likely to have a set of business goals you are working towards achieving. Why not incorporate E&O risk reduction into your list of goals? After all, by reducing E&O exposures, you can avoid costs associated with potential E&O claims which impacts your bottom line.

By assessing your E&O risk reduction practices on a regular basis, you can gauge how well you are reducing your exposures. Below is a checklist to help assess your E&O risk:

Set an Example

Do I consistently follow E&O prevention procedures? Am I setting a good example of E&O prevention for my colleague(s)?

Complete the Checklist

Do I have a set of procedures or checklists readily available for myself and my staff to follow? A checklist can assist not only in procuring E&O coverage for your agency but can also be a tool to check the status of pending client requests.

Maintain Quality Documentation

Would I be comfortable with the quality of my documentation if a jury, judge or adjuster were to read it? Would a colleague referring to my documentation be able to easily understand it?

Communicate with Clients

Am I checking in with current clients about their coverage needs on an annual basis? Remember to treat long-term clients with the same level of care as new clients. You can't predict when a client's coverage needs may change and it's up to you to ensure any new coverage needs are identified and addressed.

Loss Prevention Tip #4:

E&O Impacts on Your Business

Up to now we have often focused on how to prevent Errors & Omissions. However, in addition to providing more E&O prevention tips, we'd like to take a moment to discuss why E&O prevention is so important to your business. Read below to learn more about how E&O prevention can affect aspects of your business.

Reputation

As a financial representative, your reputation is everything. Errors & Omissions can erode your reputation and affect your ability to grow your business.

Loss Prevention Tip

Be honest with yourself and your clients. Ask yourself how confident you are that the product or service you are providing best meets the client's needs. Take a moment to be sure you are thoroughly answering the client's questions and addressing any concerns he or she may have. You should be 100% confident in the products and services you are providing at all times.

Education

Education is one of the best ways to prevent Errors & Omissions and build a client's trust. As a financial representative, others look to you for knowledge and guidance in your field.

Loss Prevention Tip

You and any employees who work on your behalf should be knowledgeable about the products and services clients may ask about. While most financial representatives remain educated through continuing education and reading, researching and staying abreast of industry news, other employees or support staff may not have access to or be aware of the educational tools available. Financial representatives should ensure that anyone working for them or acting on their behalf either has the information needed to answer a client question or knows the protocol for responding to clients when they don't have the answer.

Professionalism

Professionalism affects every aspect of your business, from client interaction and career growth to reputation and E&O prevention. Your level of professionalism directly affects your client's experience.

Loss Prevention Tip

Always be the consummate professional when interacting with clients and colleagues to reduce E&O exposures. When discussing products with clients, use correct terms and language and explain any language the client is unfamiliar with. Do not be vague or assume the client understands technical terms or industry specific terms. As a Financial Representative, it is your responsibility to exercise professionalism at all times to ensure both you and the client fully understand the transaction.

Claim Case Studies and E&O Prevention Tips for Life Insurance Agents

Claim Case Study:

An agent sold his client a life insurance policy that was intended to replace an old life insurance policy. However, the agent surrendered the first policy before the application for the second policy was even submitted. The second insurer declined to issue the policy and the client passed away one day later when the declination letter was issued by the insurer. As a result, there was no policy in force when the client died. The client's son made a claim for the death benefits under both policies, or $250,000, plus interest and attorney's fees.

E&O Prevention Tip:

Always follow best practices guidelines and procedures. In this case, confirmation of placement of insurance should occur before the surrender of existing coverage. Coverage may not be in force until the policy is delivered and the agent may have a duty to withhold the policy if the agent believes the client's health status is not as represented. Review the underwriting guidelines of the carrier before proceeding.

Claim Case Study:

A husband and wife had invested in a joint life with last survivor annuity. The couple, who were both in their late 80's, called their agent asking if their adult children could be added as beneficiaries should either of them pass away sooner than expected. The agent explained he could designate additional beneficiaries and the couple agreed to have their son and daughter added. The agent made a note to add the children as beneficiaries when he returned to his office. The note became buried in the agent's inbox and he forgot to make the requested change to the annuity. Shortly after, both the husband and wife passed away within one month of each other. The couple's two children brought a claim against the agent upon learning they were not listed as beneficiaries.

E&O Prevention Tip:

Timely processing of policy changes is extremely important. As a busy insurance agent, it's often easy to get side-tracked and fail to complete a task. Consider using project management software to log and track pending tasks. Use a calendar and reminder notifications for important deadlines.

Claim Case Study:

An agent opened a fixed annuity account for his client. This account was to be funded with a transfer of funds from the client's existing IRA account, which was a variable annuity account. The client instructed the agent to wait until the variable account reached a certain dollar amount before transferring in order to allow it to recover from a market loss. The agent misunderstood the instructions and instead immediately transferred the funds. The client brought a claim against the agent for the market loss incurred from not waiting for a market correction before rolling over the account. The agent had no written instructions or file notes regarding the transaction. The net loss paid against the E&O policy was close to $10,000.

E&O Prevention Tip:

Listen to specific client requests. Although you may be familiar with your products and procedures, clients may have special requests that require additional action to be taken. Pay attention to detail, document conversations, and confirm with clients to ensure you don't forget or overlook any items discussed.

Additional Claim Examples & Risk Management Tips

How Far Back Can Prior Acts Reach?

An important consideration in E&O coverage is understanding how prior acts and retroactive dates work. Many insurance professionals focus primarily on policy limits and premiums but maintaining coverage for prior acts is just as important.

Consider the following actual claim scenario:

Paula Producer sold long term care insurance to her client in 2001. The policy has a clause that reduces available benefits after the age of 80. Paula had a discussion about this with the client at the time of purchase. In 2015, the client calls Paula and indicates her benefits aren't what she purchased and had no recollection of the discussion in 2001. In this scenario, the error date would be 2001. The claim was not made until 14 years later.

In this example, Paula would potentially have coverage for the claim if her policy's retroactive date extended back far enough to include the alleged wrongful act that occurred in 2001. If Paula had changed carriers and accepted a new retroactive date after 2021 or allowed coverage to lapse at some point, coverage for this claim may no longer have existed.

This is why maintaining continuity of coverage and preserving your retroactive date is extremely important when renewing or replacing an E&O policy.

In the subject scenario, the policy sale and discussion could just as easily have occurred 20 or 30 years ago. Paula's retroactive date stretched back to cover the alleged error in 2001. Does your retroactive date go back to the initial date you started providing professional services?

Risk Management Tip:

So how far back does your exposure go? Arguably it's when you had your first interaction with your first client. Maintaining your initial retroactive date and not accepting a change in retroactive date when you renew your policy is very important.

Considering Retirement? Consider This Before Retiring Your E&O Policy.

We frequently speak to agents who are considering retirement.

One of the most frequently asked question is "do I need to keep purchasing errors & omissions coverage after I retire?"

The easy answer is no, you should purchase an extended reporting period endorsement, which requires a one-time payment and extends the length of time a claim can be made under your last policy.

The tougher question is whether or not you are actually retiring.

Your E&O policy typically covers you for errors in selling and servicing covered products after your retroactive date.

We frequently learn that the agent is "retiring" from selling new business, but intends to service current clients, answer questions about their policies, and assist with policy updates or amendments.

These activities still present the possibility you commit an error, so errors and omissions insurance should continue to be purchased until you completely cease rendering professional services – including servicing existing clients

Risk Management Tip:

If retirement is in your immediate future, consider what activities you will continue to perform. Active engagement with clients or carriers in servicing your renewal book still exposes you to errors or omissions for which you could be sued and your E&O coverage should be maintained.

Can You Spot the Mistake?

Our insured agent received an inquiry about the availability of assisted living care under the terms of a Long Term Care policy.

The agent called the insurance carrier and was advised it was covered and relayed the message back to the client.

After some time elapsed, the client made a claim under the Long Term Care policy for assisted living care and it was denied, exposing the agent to an E&O claim for misrepresentation.

In this actual claim scenario, the damages are currently in excess of $10,000 and climbing.

The agent has nothing in writing from the carrier confirming the conversation about assisted living.

Risk Management Tip:

It is always important that you review the terms of the proposed or issued policy for yourself. A call to the carrier is a nice shortcut, but an error by the carrier can quickly become a claim against the agent. If you are relying on the representations of the carrier, get it in writing.

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