



How are you handling completion of the app?

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The application for new or renewal business is obviously one of the more significant items that an agent deals with. For this reason, it's also one of the more significant items that can play a key role should a problem develop. As a result, agencies should have various procedures in place to ensure that at the time of a problem, how the app was handled works for the agency, not against it.

Here are some essential items to keep in mind to help minimize the potential for a problem developing:

- **Use the right application.** This becomes much more of an issue when submitting business to a wholesaler for the excess and surplus lines (E&S) marketplace. While many wholesalers will probably be willing to provide a proposal based on a general-industry-accepted application, there is the potential that to bind coverage they will want their own application completed.

To avoid a frantic situation at the 11th hour, identify as early as possible if a specific carrier app will be needed to bind coverage. The best scenario is to contact the wholesaler before submitting the account to determine which app the carrier wants completed.

- **Chances are good that some questions on the application you, as the producer, aren't able to answer correctly.** *Do not guess at what you think the right answer is.* The carriers/wholesalers are expecting that when you complete and submit an application that the information on the application is correct. Sounds logical, doesn't it?

The carrier will be making their underwriting and pricing decisions heavily based on the information on the application, so they are expecting the information to be accurate. When it is not and a problem develops, you can count on the carrier reviewing the application to determine whether there were any material misrepresentations on the app that would have resulted in them declining the account as opposed to quoting and subsequently writing it. If they believe they would have reached a different underwriting decision with the right information, you can count on them either voiding the policy or paying the claim and then following up with a lawsuit against your agency. And carriers are winning these cases! There have been situations where when the carrier found out that the agency misrepresented information on the application to get the account written, the carrier issued immediate notice of termination of the agency agreement. Try explaining that to the staff!

- **When possible, meet with the client to get the application completed – do not sign the application for the client.** When you meet with the client, the questions can be asked and the client's answers can be recorded accurately. This applies to all lines, but especially on lines of business such as D&O, E&O, Cyber, etc. Once the application is completed, the client's signature must be secured. When asking the client to sign the app, you should require them to review the app for accuracy. After making any corrections to the app, the client is required to sign it. If the agency is completing the application in the office, there are numerous electronic signature programs the agency can use to send the client the app, ask them to review it and then sign it. Do not sign the application on behalf of the client.

Some producers may be wondering what difference this makes and whether it's really necessary. The signature on the application has tremendous power and could play a significant role in the agency's defense. The defenses that are potentially available to the agency include the following:

- the plaintiff failed to give accurate information to the agent;
- the plaintiff misrepresented certain facts to the agent; or
- the plaintiff signed a policy application containing incorrect information.

It is never appropriate under any circumstances to sign for a client. It is forgery, and removes the ability to argue that the client made the misrepresentations. Forgery can lead to the loss of your license, at the least.

For the reasons indicated above, it is extremely important to secure a client's signature on an application. In virtually every state, the client is held responsible for the contents of the application once he or she has signed it. If the client misled you in the completion of the application, his or her signature on the document could play a significant role if a problem develops. Conversely, it will be difficult for the client to be held responsible for the contents of an application if they did not personally sign it.

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