

the professional advisory

Information and Risk Management Ideas for Insurance Agents and Brokers

Avoiding the Litigation Minefield

A Checklist of Best Practices for Agents and Brokers

The proliferation of insurance services and the ever-increasing sophistication of insurance products have created a litigation minefield for insurance professionals," says Ivan Dolowich, a partner in the New York law firm of Kaufman, Dolowich & Voluck, LLP. "If an agent or a broker fails to obtain coverage for a client in a reasonable period of time, or secures inadequate coverage, or fails to advise his client that the coverage isn't comprehensive, he could find himself in the middle of a costly and unnerving lawsuit."

Yes, selling insurance can be lucrative—but Dolowich's point is that, like other occupations, it carries business risk. Just because you sell insurance doesn't mean you're immune from needing it. And even if you have professional liability insurance, it doesn't mean you're immune from lawsuits. But you don't have to walk a tightrope without a net if you follow some basic best practices.

Dolowich identifies nine categories of best practices for insurance agents and brokers:

- **Client Services**—From the moment you start talking to a client, it's important to be upfront about who you represent. Do you work for only one insurance company—or do you try to secure the best coverage in the marketplace at the best cost?

Client services is a big category, and it covers a lot of territory. Dolowich notes that "insurance agents and brokers need to make sure each client's instructions are

practical, clear, explicit, absolute and unqualified. If not, then advise the client and seek clarification immediately." He also recommends that you use a checklist to make sure you're getting all the information you need every time.

In addition, it's important that you review the information submitted by your client. Make sure it contains all the required information and is filled out appropriately to ensure adequate insurance coverage. It's also important to review policy materials and endorsements to confirm coverage, and to advise your clients of their rights under their policies.

- **Communication**—"It's up to agents and brokers to clarify with the insurance company any confusion about the scope of policy provisions," says Dolowich. He also notes that you should explain to your clients (1) the scope of their insurance risks, (2) the scope of the coverage they purchased, and (3) the scope of risks against which your clients either declined coverage or

cannot obtain coverage. In other words: disclose, disclose, disclose.

- **Documentation**—A reliable paper trail is key to demonstrating that you acted with due diligence and professional responsibility. Among Dolowich's recommendations: maintain an activity log that documents discussions with your client, his or her instructions, and any follow-up activities; confirm in writing the type of coverage requested by your client and the extent of the services you will provide; and make sure your client (not you) reviews and signs the policy application. Dolowich also advises that you create a tickler system to alert you to important dates (i.e., coverage option and policy expiration dates).
- **Understanding the Marketplace**—"You can't advise your client wisely if you don't know your marketplace," says Dolowich. "Agents and brokers should remain current on different insurance products and costs, published rate information, and insurance company financial ratings." In addition, Dolowich recommends that you avoid using companies that may pose an

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unreasonable risk of insolvency (including companies that don't promptly pay claims, those that fail to pay dividends to policyholders and those with considerable underwriting losses).

- **Handling Premiums**—It is important to advise your client as to how premiums should be paid. Does your firm accept payment or should the client pay a third party? It doesn't matter which option you elect, but it is critical that your client knows where to send the check.
- **Policy Changes**—"Confirm in writing all policy changes secured by or reported to you," says Dolowich, who also recommends that agents and brokers confirm in writing any policy cancellations.

- **Renewals, Non-Renewals, and Cancellations**—It is important to establish a process for renewing policies, and to act with reasonable care to make sure a policy remains effective. Dolowich advises agents and brokers to provide adequate advance notice of any impending cancellation or non-renewal. This allows the client to maintain or secure alternate coverage.
- **Handling Claims**—"Keep a separate claims folder for each file," says Dolowich, "and keep a roster of all claims personnel and their current contact information." In addition, Dolowich recommends immediately forwarding all claims to the appropriate claims personnel—and notifying your client that you have done so.

- **Professional Development**—It's not enough to know the insurance marketplace, you should also keep abreast of the legislative and regulatory landscape. What's new from your state insurance commissioner? If you don't know the answer, find out. Insurance trade associations are a great source of knowledge, so consider joining one. And, of course, don't forget to keep up with any continuing education requirements in your state.

Following this checklist doesn't guarantee you won't be sued. But following these best practices help you avoid misunderstandings with your clients. If you are sued, you have the paper trail you need to defend your actions. ♦

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