

The Obligations of Policy Delivery

How far does an agent's duty extend beyond requesting a quote, sending in an application to the carrier and forwarding the policy to the insured once it is issued? Simply put, the agent's duty is to make sure the client gets the coverage requested, or, if such coverage is not available, advise the client of this.

Some jurisdictions impose a duty on agents to advise clients as to the coverages needed rather than simply obtaining what the customer requests; however, this article focuses on the duty imposed after the client has been fully advised and selected his coverages. Policy delivery offers an opportunity for agents to ensure they fulfill their duty.

At the outset, the agent should review the policy and compare it to the coverage requested. The most simple example occurs when, for whatever reason, the carrier issues a policy that is different from the one requested. There may be a clerical issue or the carrier may not underwrite a particular aspect of the coverage requested. The agent should immediately attempt to correct any clerical errors. If the carrier simply won't write the coverage as requested, the agent should alert the client by setting forth the discrepancy in coverage as requested versus provided, and explore other markets where the desired coverage might be available. The key to preventing errors and omissions claims is to make sure the client knows what coverages he/she has, the coverages he does not have and the cost of obtaining the missing coverage. Then the decision is up to the client and it's difficult to blame the agent for any gap.

If the carrier sends the policy directly to the client, the agency should make sure he/she gets a copy of the policy to review before placing it in the client's file. Often, carriers rely on the agent to complete the physical delivery of the policy. In that case, note any discrepancies in your cover letter for the policy, and keep a copy of the letter and policy on file.

Life-health and disability policies have whole different set of delivery issues. Most notably, the insured typically has to sign a delivery receipt that warrants no change in insurability since the application was completed. Agents must ensure that they complete the delivery, obtain the necessary signatures and forward them to the carrier. If the agent becomes aware of a change in insurability prior to policy delivery, he or she should alert the carrier and advise the client of the need to do so. Surprises in this context can lead to E&O claims.

Similarly, some property-casualty policies contain warranties that the insured must sign before the carrier can rely on the warranty as a valid coverage defense. The agent must make sure the client has signed any such warranties and that the signed copies get to the carrier. Otherwise, the agent's E&O carrier will be required to respond to a claim that the carrier had to pay a claim that otherwise would have been denied if the warranty was validly in place.

The common thread through all of these scenarios is that the agent should make sure the policy is delivered with the coverage as requested, and that the client understands the coverage along with any restrictions on the policy. If the policy is issued with coverage different than that requested, such discrepancies must be fixed if possible and explained if the desired cover is not available. Moreover, the agent must obtain all required signatures and forward them to the carrier. An agent who fulfills these duties and documents his/her file throughout the policy delivery process will be prepared to defend any claims that arise from this critical step in providing the protection his/her customer is purchasing. **IA**

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Protect Policy Delivery Through a Broker

What if the agency goes through a broker who in turn sends the application to the carrier? For example, what if after the information is sent by the agent something goes wrong in the exchange of information and the policy is issued differently than requested. The agent typically must work through the broker to resolve any discrepancies, since there is no direct relationship with the carrier. All requests to the broker must be documented so that if the broker fails to follow through in fixing the problem it's easy to establish where the blame actually lies. However, it remains the agent's duty to review the policy as issued for any problems. The intermediary may be assessed with some of the liability at the end of the day, but it remains critical for agents to document the identification of policy discrepancies and the efforts to rectify them.

—E.B.