Need a Tail?

Gone are the days when an agent would open an agency, run it for 40 years, retire and pass the agency on to a son or daughter. In today's world agencies open and close, merge or get sold, and agents transfer from one agency to another. So how does an agency protect itself when it faces a merger, acquisition or goes out of business? Since most professional liability policies are written on a claims-made or claims-made and reported basis, the best answer is to purchase an extended reporting period endorsement—commonly referred to as an ERP or a "tail."

An ERP provides an extension of time for an agent to report a claim after a claims-made or claims-made and reported policy is canceled or expires. An extended reporting period covers only claims that arise out of wrongful acts that occurred prior to cancellation or expiration of the policy. It will not provide coverage for errors or omissions made after the expiration of the policy.

Most claims-made or claims-made and reported policies provide a short extended reporting period at no additional premium (usually 30 to 60 days). Additionally, an agency has the option of purchasing a longer extended reporting period for an additional premium.

There are a few things to consider when contemplating an extended reporting period. The limits of liability during the final policy period generally are not reinstated during the extended reporting period (although this can vary by state). Therefore, claims made during the extended reporting period will be subject to the limits remaining after any claims have been paid during the final policy period. The deductible applicable during the last policy period also applies during the extended reporting period, subject to the aggregate deductible.

When an agent retires from the insurance business, an unlimited extended reporting period may be available without any additional premium. This option may be subject to certain criteria: for example, the agent must be the sole owner and producer of the agency, of a specific age and insured by the same carrier for 10 consecutive years prior to policy cancellation or termination. Further, the retirement cannot be due to a suspension, revocation or surrender of the agent's insurance license. A similar option may be available for an agent who dies or becomes totally and permanently disabled. Various extended reporting periods are also available in the event an agency merges with, consolidates with or is sold to a second agency.

An employee leaving an agency usually does not have the option of purchasing an individual extended reporting period; however, he or she will likely be covered as a former employee under the agency policy as long as the agency maintains continuous coverage or subsequently purchases an extended reporting period. It may also be worthwhile to continue monitoring the professional liability coverage of the former employer.

A claim against an agency or agent when there is no professional liability coverage could financially devastate the agency or the agent. An agency must ensure that it has protected itself by not only securing a professional liability policy, but in also securing coverage after the policy has expired or been cancelled. IA

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Timing Your Tail Purchase

The option to purchase an extended reporting period is generally available only at the time the policy is expiring or being cancelled, so making the decision to purchase one and for how long is important. The simple advice is to purchase as long a tail period as possible. Since many of the underlying policies that an agency sells are written on an occurrence basis, errors & omissions claims can easily arise years after the alleged error, not to mention that the statute of limitations for a professional liability claim itself can be rather lengthy in some states. Absent fraud, the carrier generally can't terminate the extended reporting endorsement once it has been purchased.

—C.G.