

It All Starts With the Application

“What they don’t know won’t hurt them.” All too often, policyholders follow this popular notion when filling out an application. Sometimes it appears to work. Failing to fully disclose a risk might get the policy written or save them on premium. When the loss occurs, however, the claim will likely be denied or the policy rescinded. And as an agent, you don’t want to be caught in the middle.

When the claim is submitted, the carrier is likely to discover the discrepancies in the application and rely on the misrepresentation on the application to exclude coverage or rescind the policy. If the applicant is able to argue that he or she did not participate in the misrepresentation or that you advised him to complete the application in a certain manner, the carrier may lose its ability to deny or rescind and will instead pursue you to pay the loss.

As an agent, you should take the application process seriously. Follow these application tips:

- Have the insured complete the application. It makes it much more difficult for a claimant to argue that they didn’t know they were supposed to disclose certain information when they have answered the question in their own handwriting.
- Never advise applicants to withhold or exclude information. It’s inadvisable to substitute your judgment for the judgment of the underwriter as to what is relevant or important. If it is responsive to the question, have them disclose it.
- It’s not a good idea to pre-populate the application with information you’ve copied from an old application or out of the file. If you do so, you should make sure you’ve reviewed each piece of information with the applicant to confirm the items that might have changed. This is especially true when dealing with items that are likely to fluctuate from year to year, such as payroll, income, sales, value of certain items and number and type of vehicles.
- Don’t submit an old application. Don’t assume that because you solicited a policy for them last year or even last week that all the information that was accurate in the prior application is still true today. Complete a new application.
- Try not to complete an application over the telephone.
- If you do find yourself reading the questions to the applicant, do not paraphrase, summarize or skip questions. Read every question and input the entire response.
- Advise the applicant to read the application for accuracy before he/she signs.
- If the carrier requires uploading the application into a computer system, carefully input all the information from the application into the system.

The application process is often a hectic time as policies are about to expire or customers are in a hurry to have their risks protected. Lack of time should never be an excuse to cut corners on risk management. While it might seem like a good idea at the time in order to bring a new account in the door or keep an existing account happy, it won’t seem like a good idea when you’re faced with an errors & omissions claim. What they don’t know won’t hurt them—but it just might hurt you. **IA**

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Sign on the Dotted Line

Don’t let shortcuts in the signature process create E&O exposures. First, never have the applicant sign a blank application and then fill out the information later. This makes it too convenient for the claimant to argue that they were not aware they were supposed to disclose a piece of information.

Never sign an application for the applicant. This is true even if you have the applicant’s permission. If the carrier requires a signed application, it will be too tempting for the applicant to forget that he gave you permission. Additionally, if you sign the applicant’s name, you probably have just committed forgery.

And be careful when asking the applicant to “just sign here” or when using one of the “sign here” sticky notes. You want to be able to say that you advised the claimant to read the entire application and answers before signing.

—C.P.