


Beware of the Warranty

The word warranty generally brings to mind the purchase of a new product such as a car or a computer. In the insurance industry, a warranty can have a much different meaning, and a warranty attached to an insurance policy is not nearly as friendly to the policyholder. But agents need to know about them and their effects in order to avoid potential errors and omissions issues.

A warranty on a policy means that the policy holder is warranting that something will occur in a particular manner. If the policyholder does not follow through on that promise, the carrier can deny coverage when a loss occurs. A warranty can be included in the main policy form or it can be issued as an endorsement. Some warranties also require that the policyholder sign off on them upon delivery of the policy.

Builders risk policies, for example, often contain three main warranties: fire watch for welding, adequate extinguishers on site and daily jobsite inspections. The fire watch warranty would require that any time welding is being done on the jobsite that another employee is standing by watching for any signs that nearby combustibles had been ignited. The implications of not complying with this are obvious given the hazardous nature of welding. A second common warranty is a requirement for an adequate number of well-located fire extinguishers on the job. Finally, many builders risk policies require that daily inspections are completed after the workers have left for the day, including checking to make sure there are no hazards left behind such as signs of a smoldering fire. Other types of policies can also include warranties, such as maintaining an active fire suppression system, utilizing a central alarm and proper cleaning and maintaining of certain equipment.

If the policyholder fails to meet any of these warranties and a loss occurs, the carrier can rely on the warranty to deny coverage. A denial of coverage to the policyholder can quickly lead to an errors and omissions claim against the agent. Where do the issues arise? Probably the most common error is failing to recognize that there is a warranty on the policy. Although time consuming, nothing short of a complete review of the policy and any endorsements is acceptable in order for the agent or agency to be aware of all warranties on a policy. Many times an agent or CSR reviews the declarations page or the policy but stops short of reviewing any endorsements—this is not an adequate review. Agents must be aware of all the warranties so that they can provide this information to the policyholder, especially if there are warranties on a replacement policy that were not on the previous policy. If the agent is aware of the warranties at the time of the quote, the warranties should be clearly stated in the proposal.

The impact that a warranty can have on the policy and the coverage it provides is enormous. The warranty can change the policy by limiting coverage or excluding it entirely. The agent has to know what is being attached to a policy and more importantly, make sure the policyholder is aware of any warranties by delivering the policy and explaining its main points. 

Edward Barbosa, J.D., is an assistant vice president, claims and liabilities with Swiss Re Corporate Solutions and handles claims against insurance professionals.



Agents in the Hot Seat

Another common agent error related to warranties is not advising the policyholder of the warranty prior to a loss. After a carrier has denied coverage for a loss, insureds can argue that they had no knowledge of the requirements and may point a finger at the agency for not making them aware of such requirements. In addition to just not advising your customer of a warranty, this can come about through a failure to deliver a policy to the insured in a timely manner. Failing to deliver a warranty in a timely manner can put an agent in a bad position when a loss occurs. If the carrier is unable to enforce a warranty to make a coverage denial, it will likely have to pay the claim and then pursue the agent. If the carrier does deny coverage, the policyholder will be able to argue that it was not aware of the warranty and did not know that it had to be in compliance with it. Either way, the agent is in the hot seat.

—E.B.

