

Misrepresentation

Claims arising from misrepresentation can result from a misunderstanding by the policyholder concerning coverage, reporting requirements, perception issues, or their misinterpretation about what is written in a proposal or letter or verbally communicated to them.

Common claim causes are:

- “You told me something different than what actually happened”
- Customer alleges that what they asked you to cover was not covered when the loss occurred
- Customer surprise that their policy is auditable or has the potential for an additional premium from the audit or reporting form
- Customer alleges was not properly instructed on what is covered by the policy or endorsement
- Customer alleges erroneously told by the agent what is required in the event of certain occurrences such as claims, payroll reporting, audits, and other procedural issues.

Therefore, what can an agency do to assist in the prevention of policyholder misunderstandings and allegations after the fact that do not fit the facts as the agency sees them?

DOCUMENT, DOCUMENT, DOCUMENT!!!

Can you as an agent PROVE what was said, done or proposed to a customer months or even years after the fact when a customer suffers a financial loss and alleges it was due to an agency error or omission or misrepresentation? Memories grow hazy over time combined with the temptation by a customer to make allegations against an agent when the prospect of financial loss threatens the future of their business or personal wellbeing. Consider the following:

- ❑ Don’t oversell your agency or services on your website, in your proposals or in your marketing materials. Avoid vague or all-encompassing promises. Do not lead the customer to expect a level of expertise that holds the agency to a higher standard than an agent normally would be held.
- ❑ Use checklists and applications to bring coverage needs to a customer’s attention.
- ❑ Use form letters to document all phases of the insurance process from instructions in handling to documentation of both positive and negative topics.
- ❑ Use written proposals and quotes to clearly document and describe the transaction.
- ❑ Use standardized language in proposals and quotes. If you provide highlights of coverage and exclusions include a statement to clarify your intent such as something similar to the following:
This proposal contains a brief outline of coverages to be included in the policy that may be issued in the future. This is only a summary, and the terms and conditions of any policy will take precedence over the proposal. You must read your policy.
- ❑ Insist the customer read their policy if you do not review it with them
- ❑ Utilize carrier provided coverage summaries and explanations of coverage or procedures rather than developing your own if such are available

- Spend the time needed to explain complicated coverage forms or reporting procedures
- Document all phone conversations immediately, keeping a phone log of all business calls received INCLUDING all offsite cellular phone conversations. Use a standardized telephone memo or call sheet
- Retain fax transmission verifications with original documents AND maintain records of fax transmissions
- Time and date stamp all incoming mail and have it reviewed by senior staff immediately
- Train staff on phone contacts, what to say and how to say it including after hours voicemail. Use language similar to: "Please be aware that coverage cannot be bound or altered via this voicemail."
- If a message is taken for another, ensure the caller does not assume the request or issue has been resolved.
- Respond in writing to customer queries whenever possible to confirm what is said verbally
- Do not represent yourself to be capable of giving legal, engineering, human resources, tax, accounting or other professional advice
- Save all business related emails and correspondence in the customer file
- Implement a procedures manual that addresses at least all basic procedures so as to ensure consistency in the handling of work items. Update it at least annually with your staff
- Audit files on a regular schedule to confirm that proper procedures are being followed by all staff
- Conduct regular training sessions with your staff

Finally, BE CONSISTENT in the use of any or all of the above procedures. If you do it for one customer do it for all of them!

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