

E&O UPDATE



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Keeping Control of Policy Documents

At the 2011 Annual Convention, IBAO warned members of the potential pitfalls of brokers leaving their policy documents on insurers' systems as opposed to downloading them into their own systems.

They promoted the adoption of the CSIO standards that facilitate the transfer of PDF policy between broker and insurer and believe this solution to be an affordable and viable solution for the industry.

After considering both sides of the argument, I have my own opinion as to whether or not brokers should opt to leave copies of policies on insurer systems as opposed to downloading them into their own office. In short, from an E&O perspective, my response to brokers is "If you don't have to, then DON'T."

Those of you who have attended a loss control seminar, or perhaps heard me speak elsewhere, have likely witnessed my use of some standard phrases. For example, the most important date for document retrieval is Court Date! Or, if I have to prove I did my job properly, I want to be confident I have my full file under my arm!

Use of modern technology is changing how we do things in the process of being a broker, and often we are too ready to accept those changes for speed of transaction without considering best practice. The latest example of this has brokers opting to store electronic copies of policy documents on insurer systems, leaving them for the broker to access when needed. The alternative involves brokers downloading these electronic documents and storing them on their own systems. The key difference between the two

scenarios is that in the latter, the broker has control of the documents, and in the former, the insurer retains control.

Concern is that there may be too many times where access may be impeded and out of the control of the broker. Further concern has been expressed by brokers who experience too many errors in the download of files. Information is wrong or misplaced.

Think about how often someone in your office wants to actually look at a copy of the client documents in a day, week and month or the number of times you want to discuss with a client coverage issues or changes. I always recommend that when you discuss those issues with clients and want to give them advice, have a copy of their particulars in front of you.

With the current atmosphere of mergers and acquisitions, it would certainly be possible that one of your markets will be acquired. With this, there is a possibility that during the rollover, there may be issues migrating the data or access may be disrupted.

What consideration has been given to continued access if the broker contract is cancelled? I am told some insurers have made provisions in their contract for this, but for how long and what dictates how long the system will continue to have the documents stored on it?

This whole concept goes to the more than significant exposures that face a broker who cannot get access to documentation as required.

It isn't that we can't change how we deliver and even store our broker documentation; it is all about how we choose to do it.

When your regulator comes in to audit your files, they will ask for copies of policy documents to make sure they are available and properly arranged and maintained.

If you should ever have the unfortunate occasion arise where someone is questioning your work or maybe even presenting a lawsuit against you, the first thing you will want is to have that full file in front of you.

For those depending on access to another system to get their documents, will that system be cooperating?

While not exactly the same, it does remind me of getting money from my

bank account or ordering a movie any time I wish — as long as the bank machine is working and the cable isn't disrupted!

It isn't like we haven't seen data loss before, or have a system go down for extended periods of time. I wonder just how many disruptions to a broker's access to their documents on the insurer system there might be. The point is that when it comes to managing your clients' policy documents, I strongly advise brokers do what they can to retain control of their clients' policy documentation.

Not being a lawyer, I took the liberty of speaking with David Dorsch, Partner, with Hughes, Dorsch, Garland & Coles LLP, to gain his perspective on the issue. He advised: "The bottom line is that the broker is responsible for their own files. Deferring the duty of file storage to an insurer does not defer any of the legal responsibility should a file not be available, get misplaced or deleted by an insurer; that responsibility ultimately rests with the broker."

There are good options available to brokers, for example the CSIO standard for the transfer of electronic documents between insurers and brokers. This standard that is being adopted by many insurers' download addresses issues of speed, cost and accuracy. In my view, if you can make use of a system that will allow you to accurately, efficiently and with reasonable cost maintain your documents on your BMS, then do so.

The point is that when it comes to managing your clients' policy documents, I strongly advise brokers do what they can to retain control of their clients' policy documents.