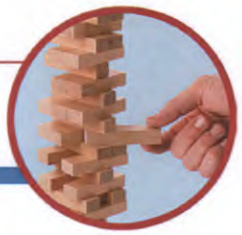
Utica National Insurance Group®

ERRORS & OMISSIONS



Errors & Omissions Program Capabilities Kit

Overview of Our E&O Program

Since 1928, we've been proud to work with independent insurance agents around the country to sell our products.

We understand the value independent agents bring to their clients by providing them with valuable insights and resources. We work to help protect agents as the second-largest insurer of Agents' Errors and Omissions (E&O) business in the United States.

Our E&O program has been in existence since 1966 and is the longest standing Agents' E&O provider in the country. We distribute our products and services through 26 independent trade associations, providing E&O professional liability insurance as an admitted carrier nationally.

How We Can Help You

We are here for our policyholders in all ways from managing loss prevention to providing risk management services to our policyholders.

Our program supports your agency's service to your clients. Our risk management services are designed to enhance your customer relationships. Should you have a question, you always have direct access to your E&O Underwriter or Risk Management Specialist.

We have a commitment to handling E&O claims in a supportive and professional manner. Our dedicated claims team assists with early intervention, legal help, and timely claims resolution. Anytime you have a subpoena, claim or a dissatisfied customer where you're concerned it could turn into a claim, you can speak with one of our E&O claims specialists for insight and guidance on how to handle it.

Advantages

Customized Coverage

We offer choices based on your operation and risk appetite. Our customized coverage is tailored to meet the needs of growing networks and insurance affiliates.

Leading-Edge Risk Management

We offer resources on contemporary topics such as social media, cyber liability, and autonomous vehicle exposures so you can understand the hazards involved and take steps to prevent problems. In coordination with our state associations, our insureds get access to E&O education, webinars, learning events, articles, and more.

We focus our risk management efforts on E&O claim trends and industry dynamics and offer our insureds a dedicated Risk Management Specialist. Our risk management programs and services help improve your performance through reduced losses.

Flexible Payment Options

We offer flexible payment options with direct bill and electronic fund transfer (EFT) with no interest or fees. We can also customize payment and billing options to meet the needs of agency networks through either consolidated or individual billing.

Direct Access to E&O Team

You will have direct access to your Underwriter, Claim Specialist, and Risk Management Specialist. This personalized attention allows you real-time access and information, without having to go through a third party.

Claims Expertise

Our E&O claims team is 100% dedicated to E&O and includes experienced attorneys when needed. We engage the top litigators with proven track records of successful results.

We appreciate how hard you have worked to build your business and reputation.

Our approach is personalized. If you are faced with a potential claim situation or accusation, our E&O claims team will guide you through the process. Our team acts quickly through early intervention and to navigate the best solution.

Continued

Coverage Comparison

Your E&O	Our E&O	
		Policy Holder Benefits
☐	✓	Direct access to underwriting & claims specialists who are devoted exclusively to the E&O program
☐	✓	Contemporary risk management resources including a self-assessment & online courses at no additional charge
☐	✓	Up to a 10% loss control credit available
☐	✓	Dedicated Risk Management Specialist at your fingertips
☐	✓	Interest-free payment options including a 12-payment option[1]
		Type of Operations Covered
☐	✓	Property and casualty products
☐	✓	Life, accident, and health products
☐	✓	Risk Management services
☐	✓	Property appraisals for your policyholders
☐	✓	Notary services
☐	✓	Third party administrators who adjust claims
		Optional Coverages Available
☐	✓	Human Resource Consulting
☐	✓	Financial Products (Series 7): available limits up to $2 million
☐	✓	Mutual Funds and Variable Annuities
☐	✓	Real Estate Agents' E&O
☐	✓	Professional Employer Organization Marketing Services
☐	✓	Loan Origination
☐	✓	Cybersurance: available limits up to $1 million
☐	✓	Employment Related Practices Liability Insurance: available limits up to $1 million
		Coverage Features
☐	✓	Full Prior Acts coverage for the named insured at no extra charge
☐	✓	Consent to Settle clause prevents claims settlement without your approval
☐	✓	Broad definition of insured includes former insureds & licensed agents/brokers who are independent contractors
☐	✓	Defense costs in addition to Limits of Liability
☐	✓	First Dollar Defense Coverage; Optional Loss and Litigation Deductible available
☐	✓	Aggregate Deductible caps your annual deductible exposure
☐	✓	Diminishing Deductible available on most accounts
☐	✓	Contractual Liability covered
☐	✓	Dishonesty Coverage provided, subject to exclusion
☐	✓	Punitive and exemplary damages covered under the Definition of Loss (where permitted by law)
☐	✓	Advertising and Personal Injury Coverage for professional activities
☐	✓	Optional extended reporting period reinstates aggregate and options up to 10 years is available
☐	✓	Worldwide coverage
☐	✓	Policy limits available up to $20 million per loss, $21 million aggregate
☐	✓	Coverage for reasonable expenses incurred by you at our request to assist in claim defense or investigation
☐	✓	The company is rated A- (Excellent) by A.M. Best.
☐	✓	No surplus lines taxes or paperwork

[1]*A nominal fee per installment applies to direct bill invoiced policies. Fees vary by state.*

For more information or to obtain a quote, contact our underwriting staff at 800-274-1914 or visit our Agents' Errors & Omissions page on uticanational.com.

This summary represents an outline of coverages available from the companies of Utica National Insurance Group. No coverage is provided by this summary. All coverages are individually underwritten. Coverage availability, terms and conditions are dictated by the policy and may vary by state. In the event of a loss, the terms of the policy issued will determine the coverage provided.

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Facts to Know When Considering Assignment of Your Errors & Omissions (E&O) Policy

Agency ownership transfers are at an all-time high. Utica National is frequently asked about "assigning" their in-force policy to the buyer of the agency.

Remember, the assignment of the policy must be agreed upon by all three parties: the seller, the buyer, and the insurance carrier.

Here are some scenarios highlighting the potential downside of assignment of the policy:

- The buyer lets coverage lapse, at that point the seller has waived his or her right to purchase extended reporting, or tail coverage, and sits exposed with no coverage in place for a claim brought against them arising during the time they owned the agency.
- The buyer sells the agency and does not purchase tail coverage, then the previous owner/seller has no ability to purchase extended tail coverage. Once again, they are exposed with no coverage for a claim brought against them.
- A claim arises from an error and omission caused by the previous ownership. The new owner and his or her policy are responsible for the loss, and it will reflect in the experience.

Simplicity is probably the biggest advantage. No new application is needed and coverage continues "as is." That's the upside, but it has to be weighed against the downside scenarios noted above.

Below is the relevant policy language from our Insurance Agents and Brokers' Errors and Omissions Insurance Policy coverage form (14-P-EOA Ed 9-2012):

Section VI-Conditions

13. Sale, Transfer, or Assignment

The controlling interest of any insured under this policy shall not be assignable to any other person without our written consent. In the event of the death or incompetency of the insured, this policy shall cover the insured's legal representative as an insured as respects any liability of that insured which is covered by this policy.

Coverage under this policy ends on the date ownership of (or stock which comprises a controlling interest in) any Named Insured is sold, transferred, or assigned unless our written consent is obtained before said date.

If you have any questions, please contact your Utica National E&O Underwriter.

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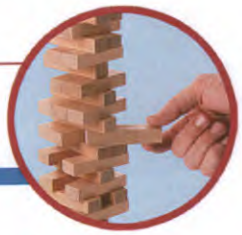
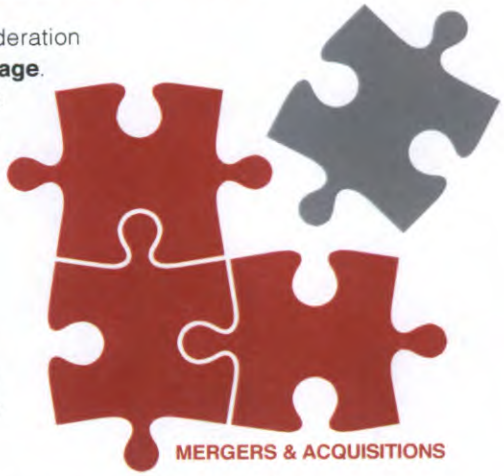


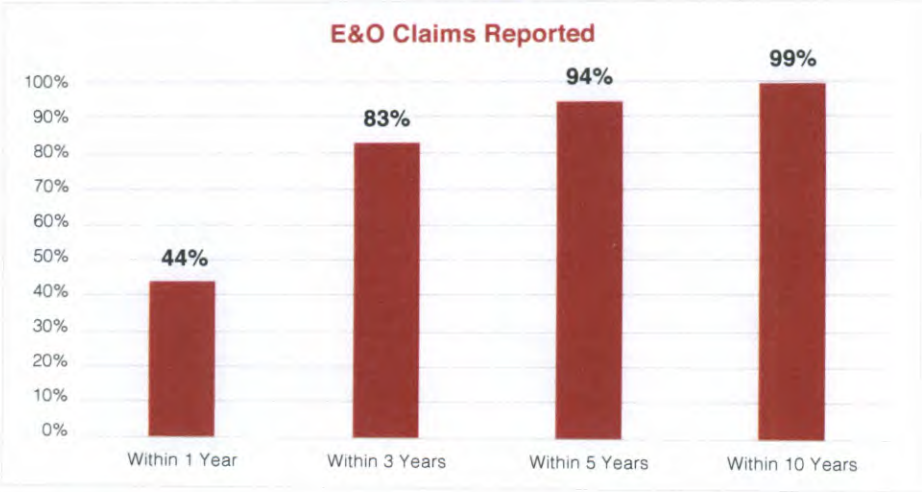
Importance of Buying Extended Reporting Period for Errors & Omissions Claims

When errors and omissions (E&O) coverage is approaching termination, careful consideration should be given regarding options for purchasing **Extended Reporting Period Coverage**. In a recent study of Utica National's Agents' E&O claims reported from 2014-2017, the analysis focused on the date of the agent's error compared to the date the E&O claim was made against the agency. Less than half (44%) of the E&O claims reported were reported within 12 months of the actual date of the loss. Stretching the time period to three years increased the percentage to 83%. However, there is still a significant number of claims (17%) reported after three years.



Typically, when a loss occurs and is reported to the carrier, there is a lag time where the carrier is evaluating the claim and determining whether there is coverage for the loss or not. If there is no coverage, the claim is subsequently denied. At that time, the client typically starts to have some discussion with the agency as to why there was no coverage. This is when attorneys may get involved.

For the agencies looking to sell, there is a key provision that needs to be extensively considered. Most claims-made policies refer to this provision as an "**Extended Reporting Period**," also known as tail coverage. This coverage allows an insured to report claims that are made against the agency after a policy has expired or been canceled with the condition that the wrongful act that gave rise to the claim took place before the policy expired or was canceled.



If you have any questions about Extended Reporting Period, please contact your Utica National Underwriter

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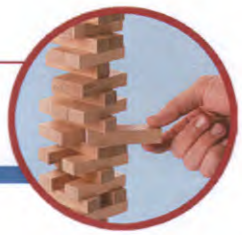


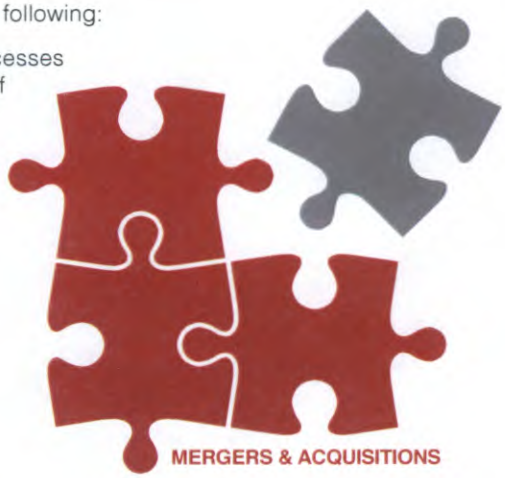
Merger and Acquisitions Errors & Omissions Checklists

Don't let your Errors & Omissions (E&O) Coverage be the last thing you think of when buying an agency, selling your agency, or merging with another agency. The following is information to consider on how these transactions affect your E&O policy.

Checklists* for E&O Policy Considerations

Buying an Agency

If you own an existing agency and are looking to purchase another agency, consider the following:



- ☐ Have you performed an E&O audit of their files/records to determine how their processes and documentation vary from your best practices so that your staff can be aware of work necessary to bring those accounts/records in alignment with your own E&O loss control/risk management practices?
- ☐ Does the other agency carry E&O coverage? Ask for a certificate of insurance.
- ☐ Have you asked the other agency for a five-year E&O loss run?
- ☐ Does your purchase agreement require they purchase tail coverage? It should. Be sure to ask for a copy of the tail endorsement to keep with your E&O records.
- ☐ Have you contacted your E&O carrier? Most E&O policy conditions require that you notify your E&O carrier prior to, or within a short time after, a purchase so that appropriate information about your CHANGE IN EXPOSURE can be collected and underwritten and that the appropriate endorsements are added to your policy. Without such notification or endorsements, you may not have coverage for wrongful acts you may make on the business you purchased.
- ☐ Have you contacted all the carriers you have in common to confirm that you have binding authority on the business you acquired? Have you contacted all the carriers that you do not currently have contracts with to obtain a contract or arrange for temporary binding authority until the business can be placed elsewhere?

Selling Your Agency

Read your E&O policy. Note that policies are not assignable to new owners, even if an agency is a corporation or if it is an ownership change within the agency, without the written approval of your E&O carrier.

- ☐ Is the buyer requiring that you purchase tail coverage?

If yes, consider buying the maximum allowable term for tail coverage and work the cost of that into the sale price. If you are not being required by contract to buy tail coverage, we recommend that you buy it anyway. The cost of defense alone even for an allegation of a wrongful act may prove to be a good investment.

- ☐ Chose the maximum term of tail coverage up front because you cannot purchase additional time at a later date.
- ☐ Contact your E&O carrier to discuss tail options or other details appropriate to the sale of the agency.
- ☐ Contact your carriers to advise them of the sale so they can make arrangements with the buyer to contract.

Continued

Merging with Another Agency

- ☐ Contact your E&O carrier to discuss options for endorsing your E&O policy to reflect the exposure changes from the merger. (i.e., prior acts, named entities, DBAs or new doing business, locations, etc.) There will likely be a form you will be asked to complete.
- ☐ Whose policy will survive and whose will be canceled? If your E&O carriers are not the same, remember that the overall complexion of your exposure is changing so it may be a good time to review the options for moving forward.
- ☐ Will the E&O policy that is not surviving be leveraged to purchase tail coverage for that exposure or will the prior acts exposure be picked up by the surviving E&O policy? Picking up the prior acts is typically allowable in a merger, but the E&O carrier must decide that. Also, there may be reasons why you would want to leave that portion of your prior acts behind rather than carrying them forward.
- ☐ If your E&O policy will be the surviving form, obtain a copy of the other agency's E&O policy including any endorsements so the carrier for the surviving E&O policy can determine if any special endorsements need to be added.
- ☐ Is there any special arrangement for payment of the E&O deductible depending on where the wrongful act leading to the E&O claim originated from?
- ☐ Have you contacted all the carriers you have in common to confirm that you have the binding authority or new subcodes?
- ☐ Have you contacted all the carriers that you do not currently have contracts with to obtain a contract or arrange for a temporary binding authority until the business with those carriers can be placed elsewhere?
- ☐ Have you identified individuals or established a team from each of the respective operations that will coordinate your processes, procedures, and automation with emphasis on creating consistency and best practices as well as the training of staff members for the same?

Important Terms

- **A purchase** is when the insurance assets of another agency are purchased and the former owner of that business no longer has an ownership interest in your ongoing operations.
- **A merger** is when two or more agencies combine to form one ongoing operation and the respective owners continue to have a common ownership interest.
- **An automatic extended reporting period** is the period of time granted (usually 60 days) to report claims for wrongful acts that took place after the retro date and prior to the termination of the E&O policy. (This does not "extend" the policy. It extends the period of time to report a claim.)
- **An extended reporting period, or tail,** is a period of time you can purchase to extend the reporting of an E&O claim after the E&O policy is terminated. This is actually an endorsement attached to the canceled policy.
- **The termination of coverage** is the date the E&O policy ends. Keep in mind that most E&O policies have conditions that will automatically terminate the E&O policy if the agency or the majority of assets or the majority of stock of a corporation are sold or merged with another business.

**Use this checklist as a guide only.*

Contact your Utica National E&O Underwriter to discuss your individual situation and any unique considerations.

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Tips for Mergers and Acquisitions

Selling an Agency

- Identify the name of the purchasing agency and communicate it with your Agents' Errors & Omissions (E&O) carrier. If needed, refer to our E&O program's capabilities for more information.
- Secure the name of the purchasing agency's E&O carrier and mention that you will be following your carrier's process and advice. If needed, you could share our Mergers and Acquisitions E&O Checklist.
- The option to purchase Extended Reporting Period Coverage or "tail" coverage is only offered once and should be given strong consideration. In most cases the buyer's E&O coverage will not pick up the prior acts of the seller. The buyer's E&O policy cannot be relied upon to pick up the seller's prior acts exposure. The purchase of tail may be your only option to cover this exposure. Our Claim Reporting Timeline Chart can help in this situation.
- If the buyer offers assignment of his or her E&O policy as an objection to needing to purchase tail coverage, talk about the key points of our document, "Facts to Know When Considering Assignment of your E&O Policy."
- If the agency sale is definite and has been finalized, written cancellation needs to be submitted to your carrier with the effective day of cancellation listed.
- At Utica National, there are 60 days of tail coverage provided at no extra charge per the policy form. Optional tail coverage will begin on the 61st day.
- There are several tail options available for Agents' E&O coverage. Typically, endorsements such as Employment Related Practices Liability Insurance (ERPLI) may have separate tail options.
- Payment in full is required for tail coverage to be in effect and must be mailed to your carrier with written request noting the desired tail option.

Buying an Agency

- When purchasing an agency, the buyer and seller do not have unlimited time to think about what changes need to be made to their insurance policies. Contacting your E&O carrier early on in the process is critical so the carrier can assist you in making the right decisions.
- The E&O policy provides 90 days of automatic coverage for an agency you acquire. It is very important to contact your Underwriter within that 90-day period to ensure that proper coverage is obtained.

Continued

- For the buyer of an agency, the E&O policy can be endorsed to provide for the agency being purchased through the Purchased Entity Endorsement. This will provide protection against any errors made by the purchasing agency beginning with the effective day of the purchase. There may be an additional premium for this endorsement, but in most instances, Utica National would look to address the additional exposure at renewal time. At Utica National, the Coverage for a Purchased or Merged Entity Application is necessary to write this endorsement.

- As the buyer, you do not want to pick up the prior acts of the agency that you purchased. A Prior Acts Limitation Endorsement would be added to the E&O policy if another named insured is added as a result of the purchase.

- Share our Mergers and Acquisitions E&O Checklist with the seller so you can determine a proper course of action regarding tail coverage.

- If the seller mentions assignment of the E&O policy as an objection to needing to purchase tail coverage, share with him or her the the key points of the Facts to Know When Considering Assignment of your E&O Policy.

Assignment of an E&O Policy

- E&O policies are not automatically assignable without the written consent of the carrier.

- Assignment of the E&O policy can be considered with the Buyer/Seller Agreement forms signed by both parties involved. The seller must be aware that he or she is forfeiting the right to purchase tail coverage and the buyer must be aware that he or she is assuming all liability of the prior owner and all of the potential claims made prior to the date of purchase.

For more information or to obtain a quote, contact our underwriting staff at 800-274-1914 or visit our Agents' Errors & Omissions page on uticanational.com.

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