

Dealing with Divorce—A Potential E&O Nightmare

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Has your agency ever had any of your personal lines customers get a divorce? If so, then you realize that divorce can result in some unique and difficult insurance issues to deal with. If you have not had to deal with this issue, it will probably be only a matter of time.

Coverage under the various personal lines policies (*auto, homeowners, umbrella, etc.*) is based on the named insured and the residence. As a result, changes in the living arrangement can reduce/eliminate coverage.

Take an auto policy—two vehicles with husband and wife both as named insureds. A separation/divorce occurs and one spouse contacts your agency to delete a vehicle and the other spouse from the policy. Should you do it? If you make the change without notifying the other spouse that they are now without coverage, you have left yourself wide open for an E&O claim. In these types of situations, communication to both parties is extremely important. You should look to arrange coverage for both individuals equal to what they had under one policy. Anything less than that should be explained, understood, and agreed upon.

In the homeowner's scenario, proper/equal coverage should be offered for the spouse who is no longer living in the residence.

If there is an umbrella policy in effect, this will need to be reviewed to determine whether or not coverage is still wanted.

As you can imagine, separation/divorce scenarios can cause and have caused E&O claims. Here's one which shows an additional problem that can result.

This involves a claim that was brought against the agency for failure to properly advise or to obtain coverage to protect their interests. The agency had placed homeowners coverage in the name of the client husband, as requested. The couple divorced and the husband moved from the residence. The dwelling was later destroyed by fire and the carrier denied coverage for the building on the basis the named insured was not residing in the dwelling on the date of the fire. Upon learning of the divorce, the agency asked the client about changing the policy but the ex-husband refused saying he and his ex-wife would get together again.



The case went to trial and the jury decided in favor of the claimants holding that the agent was acting as an agent of the insured and responsible for not rewriting the policy upon notice of the divorce.

Could this claim have been avoided? The agency, upon becoming aware of a divorce involving their clients, should obtain information regarding any changes in ownership interests and residency. The carrier should be informed and policies revised accordingly. Each should be treated as a separate client. Letters should be sent to each informing them of the action taken by the agency and inviting questions or further changes that may be needed.

It is also important that your agency detach yourself from the situation. This may be difficult due to the relationship you may have with one of the two parties, but it is essential. If your staff person does not think they can do this, the file should be handled by another staff person. Confidentiality is also important. I am sure that you don't want your agency to be known as the "rumor mill" in town. Your ability to handle the insurance issues dealing with separations/divorces will be somewhat impacted by the amiability of the breakup. If the issue is messy or volatile, I would suggest that you discuss the matter with the insurance companies that are on the risk for their guidance.

Everyone in your agency should be alert to formal and informal notice of changes in your client's marital status so that the proper insurance guidance can be offered to each party.