

Real Estate and related Professional Liability (E & O) Application Notes

The application for errors and omissions insurance is a very important aspect of the errors and omissions process. It is designed to provide applicants with the opportunity to include many items to help provide comprehensive coverage for their office and to gain the maximum credits in the quotes they receive.

Professional liability, or errors and omissions, insurance policies for real estate and related industries are typically what are referred to as “claims made” policies. That means that the policy in effect at the time the claim is reported is the policy to provide coverage. There are some circumstances where a claim should also be reported to more than one policy if it is close to the expiration of the former policy. The current policy will include coverage for covered activities performed by the insured (per the policy) back to what is referred to as the “retro-active” or “prior acts” date. The retro-active date is vital to the policy. If coverage is not continuous and there is a gap in coverage it is likely that the applicant will lose their prior acts coverage and the quote for the new policy will have a retro-active date of “inception”, or the same as the policy date. **It is essential that the application process begin with ample time prior to the policy expiration to avoid a loss of prior acts.**

Using the standard application that Austin & Austin Insurance Services, Inc. uses to send to various markets for quotes, please note the following:

All questions must be answered completely and accurately. The underwriters depend on the information provided as being so. If answers are incomplete or inaccurate you are not fulfilling your requirements as you agree to by signing the application.

1. The applicant’s name. It is essential that the named insured includes all names and dba’s for which the applicant is interested in the policy being applied for covering. Many policies **only** cover those names and entities listed on the application. Also, include all locations for which coverage is desired.

2a. Be sure to note any changes in ownership, previous names, mergers, etc. that need to be covered. Many policies require that they be informed of any changes in ownership and there may be a problem on some policies if any changes, merger, acquisitions, etc are not included on the application. Particularly if coverage is desired for those names, entities, or time periods before the changes took place.

2b. Please list any additional insureds needed on your application. If you don’t it may be difficult to do so after the policy is issued and some carriers charge extra to add an additional insured to the policy.

3. It is essential to list the date the office was established. If the applicant asks for date established under current ownership and there have been previous changes for which coverage is needed, note date established under current ownership **and** write in that original ownership was established on _____ and the current retro-active on the policy is _____. There are policies that are issued with “full prior acts” that will use the date on that question as that is the earliest date established **unless** an earlier date as suggested above is noted.

4. Please note all directors, owners and officers.

5. It is important to note all activities and associations with control and indicate if coverage is desired for those entities and activities. Underwriters need to know how these activities and associations are related to the applicant listed on #1.

6a. Staff. List all. Some applications ask for a breakdown of full-time and part-time Associates. This is an opportunity to save some on your quote and is essential information for some programs to accurately underwrite the quotes and policy. There are also some programs that require a roster, which must be thorough to be certain all licenses are included for underwriting and coverage.

6a, 6b and 7 are opportunities for credits and are part of the underwriting process.

8a. This is a biggy. It is absolutely essential that all activities for which coverage is required, including anticipated future activities be included. If an activity is performed but not represented it is possible those activities will not be covered. There are policies that specifically include coverage for those services listed on the Declarations Page of the policy – only. If you have any questions regarding correctly entering any of the services that you provide please call our office to clarify. One of many examples would be whether to enter something as a commercial sale or a business brokerage transaction.

8b. This is also essential. If your policy includes prior acts and you have performed services in the past but do not perform them now or expect to in the next year they need to be noted here. If they are nowhere to be found on the application it is likely they will be nowhere to be found for coverage in the policy.

8c, 8d, 8e, 8f, 9, 10a, 10b, 10c, 11, 12 a-g: all need to be completely and accurately answered for the underwriter to quote and issue a policy.

No 13.

14. Prior insurance history is required to show continuous coverage and is needed for the underwriter to quote and issue a policy. A copy of the current policy Declarations Page showing the retro-active date is required by most underwriters to quote and issue a policy with prior acts coverage.

15. Per the question, this applies to all persons proposed for insurance.

16. Needs to be answered.

17 and 18, **These questions are crucial!!** Most underwriters require a 3 or 5 year loss history reports (loss runs) for all applicants with any claims. Some require loss runs on all applicants prior to binding a policy. 18 requires the utmost of attention. My experience is that the most common reason for claims being declined is for prior knowledge. I feel this is so important that our agency sends out a disclosure regarding reporting any issues, which may result in a claim to be signed by the applicant prior to binding. We also send it as part of our renewal package. There have been volumes of cases with respect to claims being declined for prior knowledge, the applicant having knowledge of what could result, may result, might result...etc in a claim. 18 also states that “This policy will not apply to circumstances which any person proposed for this insurance is aware of prior to the effective date of the policy”. Any issue that the applicant has knowledge of should be reported to the current policy before it expires or it is likely that issue will not be covered. Reporting these issues is the responsibility of the insured, not their insurance broker. Ultimately, it is the insured’s decision to report a claim, potential claim, or incident.

19, 20, and 21 need to be answered as part of the underwriting process.

Always read the verbiage of anything before signing.

The application has verbiage confirming that the applicant has thoroughly and truthfully completed the application, the underwriter and the insurance company are relying on such to provide quotes and issue a policy. There is also confirmation that 15, 16, 17 and 18 are answered completely and truthfully.

After the verbiage there is a section for a signature and date.

Sincerely,

John F. Austin, CFP
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