

LOSS PREVENTION LESSONS

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Provided by CalSurance® exclusively for Farmers Agents

Keeping You
Informed & Protected

Conditions: Avoiding the Pitfalls

When a claim arises or a customer faces a loss, they fully expect that the Insurer will honor its contractual obligation for indemnification. Your customers also expect your assistance in dealing with issues that arise. Both you and the Insurer have a valuable role to play in the claims handling process. Customers and agents alike need to be aware that Insurers expect certain things from both parties before, during, and after a loss.

The Conditions section of the insurance policy places limitations on the Insurer's duties to defend and indemnify the Insured if certain actions by the Insured violate the terms of the policy. More simply stated, the policy Conditions set forth the rules of conduct, duties, and obligations required for coverage to be triggered. If the customer violates these policy Conditions, the Insurer can deny the claim accordingly. Some common Conditions are as follows:

- Making the application a part of the policy if attached to the policy at delivery
- Cooperating with the claims investigation or defense of a lawsuit
- Forwarding claims or potential claims to the carrier in a timely fashion
- Filing a proof of loss
- Protecting property after a loss
- Submitting an Examination Under Oath (EUO)
- Avoiding concealment and/or fraud
- Reporting an increase in value to Insured property within a specified timeframe
- Advising of newly acquired property, vehicles, etc.
- Explaining how a loss will be paid and requirements for recovery of depreciation



You should always be aware of the Policy Conditions on the business that you place. Below are several claim examples that could have turned out much differently if the agent had been aware of the Conditions:

A client advised his agent during the application process that he only used his ATV for work around his property and did not use it for recreational activities. The agent completed the application accordingly. When the policy was issued, the application was attached and became part of the policy. A few months after the policy renewed, the customer notified the agent that he had an accident on a neighbor's property while racing his ATV. The carrier denied the claim as the policy did not provide for coverage for the ATV when it was away from the Insured premises. The customer sued the carrier and his agent for failure to procure insurance for the ATV because the agent knew that he used the ATV for recreational events (the agent had been a participant in many of those events). E&O investigated this claim and the agent admitted knowing this information, but not passing it onto the carrier. The agent advised that he simply forgot the scope of coverage in the underlying policy. E&O resolved the claim for \$16,000.



While the onus is clearly on the customer to comply with Conditions, agents should be aware that if they are called upon to assist the customer with a claim, they are assuming duties on behalf of their customer. In addition, all agents should be reminded that when they learn of information that is material to an insured risk, the agent should always inform the carrier. Further, if a claim is reported to an agent, the agent should immediately report it to the carrier. Consider the following claim scenarios:

A customer contacted his agent to inquire about making a claim for damages to a commercial building in what the customer described as a small fire loss. The agent visited the property and agreed that it was a small fire with damages under his deductible and advised the client that it was unnecessary to report the loss to the Insurer. Six months later, the agent was contacted by an adjuster who asked why he did not report the claim to the carrier when the customer advised him of the loss. The agent responded by explaining that he thought the loss was under the customer's deductible. He failed to realize that the fire was small in area, but it was intense, causing electrical system damage and impacting the structural soundness of a major support beam. The cost to settle the claim was about \$100,000.

In contrast, a commercial customer informed his agent that he was expanding his inventory and had plans to increase the size of his warehouse by more than 25,000 square feet. The agent advised the customer to have the building appraised and provide the value of the additional inventory for the carrier's review, however, the client failed to do so. Within a month of the renewal, the entire warehouse went up in flames. The investigation showed that the risk was still underinsured. An E&O claim was filed against the agent and was promptly investigated and denied because the agent assisted the customer and maintained documentation to show that he specified exactly what information was needed to procure higher limits on the risk.



In most of these cases, there is a very fine line that the Insurer must walk, especially when dealing with a client who is not fulfilling his or her obligations under the Conditions section of the policy. If carriers routinely paid claims wherein their Insureds did not participate in the claims handling process, the payouts could be excessive and lead to increased rates. Thus, Conditions protect both the customers and the carriers from excessive claim payouts, keeping insurance affordable and rates in line with experience.



LOSS PREVENTION TIPS

Agents should take prudent steps to remind their customers to comply with the terms of their policy, including the Conditions. Agents should not carry out the customer's responsibilities to the carrier, but should take care to assist the customer in completing their duties.

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