How Do Agents Advise Clients Who Become Consultants?

As seen in *Independent Agent*

As more professionals are opting to provide consulting services, the accompanying insurance exposure may not be top of mind.

By Tom Rea | August 22, 2022

Given the ripples of the coronavirus pandemic over the past two years, more professionals may be hanging out their shingles and opting to provide consulting services. In making such a career change, however, the accompanying insurance exposure may not be top of mind.

After the Great Recession of 2008, the real estate market was drying up, leading some agents to try property management, home inspection and appraisal work. Unfortunately, some did not have the requisite expertise and, consequently, professional liability issues arose.

Any consultant needs to realize that as an independent contractor they no longer have an employer as a buffer between themselves and a client, and therefore need to make sure they are careful not to overstate or misrepresent their expertise.

Also, some consultants may find themselves returning to an industry where they are no longer up to date on compliance and statutory requirements. In other words, if someone has general knowledge but not specific industry knowledge, they may be opening themselves up to claims of negligence.

Agents should check in with their professional liability clients to reconfirm what services they are providing. They should explain the risks to clients who are now providing consulting services so that they truly understand the environment they are operating in and advise the client to communicate any changes in the initial scope of their consulting activities on an ongoing basis. The agent can then discuss what types of activities the policy does and doesn't cover. And of course, the agent can then offer to cover any additional exposures.

One misconception consultants may have is that they can use language in their service agreement to limit the amount of any potential damages for negligence to the level of the professional fees in the engagement. For example, the consultant charges a client $20,000 and believes that because their consulting agreement includes damage-limiting language, their total exposure is limited to $20,000. However, agents know this is not the case. Instead, the facts and circumstances will govern how a dispute is litigated.

Exposing this misconception provides a great opportunity for agents to explain that professional liability insurance typically covers defense costs. Rather than trying to contractually limit liability, a professional liability policy is the most effective way to handle these types of risks.

An agent should also urge clients considering consulting to secure professional liability insurance from the start. From its onset, a consulting practice engages in activities that involve exposure—whether creating a website, marketing materials or drafting service agreements.

Meanwhile, if the consultant delays purchase of professional liability insurance, they may find it challenging to procure coverage for services that were provided before the policy's effective date. The longer they go without insurance, the harder it will be to get prior acts covered, meaning they could have considerable exposure.

Professional liability insurance is a specialty type of insurance that is different from homeowners and auto coverages. Having a relationship with an agent who specializes in this type of coverage is the right approach to dealing with the risks incumbent with providing professional consulting services.

About the Author

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