

## ***Certificates of Insurance, Binders and Evidences of Insurance: What's the Difference?***

By Chris Burand

I visit a lot of agencies and have interviewed hundreds of customer service representatives, account managers, account executives and processors every year. I find that 50 percent or more today have a serious lack of basic knowledge about certificates of insurance, binders and evidences of insurance. The lack of knowledge is more obvious at the staff level because these are the people who process these forms. However, a huge percentage of producers also don't know the difference, which contributes greatly to the problem. These producers tell clients certain things can be done because they don't know enough and then they tell the CSR to do it anyway when she or he advises it can't be done. This greatly increases errors and omissions (E&O) exposure. It also detracts greatly from the agency's professionalism.

### **Binders**

I often ask agency personnel the question, "What is the basic difference between a binder and a certificate of insurance?" Far less than half seem to know that the key difference is a binder is a contract of insurance and a certificate of insurance is a form of proof of insurance. They do not understand that when they "bind" coverage, they are creating an insurance contract, whereas when they issue a certificate of insurance, they are simply warranting certain coverages exist at a given moment.

This is why many agency personnel use binders and certificates and evidences of insurance almost interchangeably, which is a huge mistake. Because binders are contracts, the people writing the contracts absolutely must know whether they have the authority to do so. This is why binding guidelines are provided to every agency that has binding authority with a particular carrier. Some carriers have made it more difficult to find these guidelines in recent years, but the guidelines still exist.

I often find that less than 25 percent of an agency's staff ever has a copy of the agency's binding authority. In some cases, agency management does not want the staff to know and simply allows them to write binders anyway. This is just plain stupid. If staff and producers have agency management's authority to write binders, and assuming management wants the job done correctly, they must know the agency's binding authority! ("Guidelines" is a misnomer as it is really a list of the agency's contractual binding authority by line.)

Some agency managers do not want staff to write binders, but they fail to communicate this to the staff. At the same time, so few staff really understand binders, half the time they are

binding risks and they do not even know that's what they are doing. None of these situations are in the best interest of the agency.

Here are a few key points:

1. If the agency says it will or is binding coverage, it has issued a binder. Whether the agency has authority, whether an actual binder is created (which is an entirely different issue), and whether a binder is even necessary does not matter once an agency has stated coverage is bound.
2. Just because a carrier states it will write a risk does not automatically mean the company is binding the risk. Writing and binding are not necessarily the same thing.
3. An agency *never, ever* has binding authority with excess and surplus (E&S) markets. Thus, when an E&S broker states it will bind a risk, the agency should never tell the client that the agency is binding the risk because it is not -- the broker is binding the risk. The semantics are important. Furthermore, an agency should not tell the client the broker is binding the risk based on a conversation. The agency should get what the E&S broker promised in writing.

Also, simply because a client demands a binder does not mean the agency has to give the client a binder unless the client really does need a temporary contract of insurance. If the client really just needs proof of insurance, then the agency should issue the proper proof — not a binder. Very few clients possess insurance licenses, so rarely do they really know what form they need. The agency is the entity with the license and should do what is right.

Many times binders are issued because the insurance policy has not been delivered. I am amazed at how Detroit can manufacture an automobile faster than some insurance companies can print a boilerplate insurance policy. But be that as it is, agencies should rarely write a temporary contract on top of an insurance policy that already exists. Just because the paper policy has not arrived, does not necessarily mean coverage does not exist.

### **Evidences of Insurance**

In personal lines, most insureds, banks and real estate agents need evidences of insurance, not binders. The policy is in effect but has not arrived. So why not provide evidence of insurance rather than a binder?

### **Certificates of Insurance**

First, let's call this area what it is — a mess. We have a mishmash of laws or lack of laws and regulations among the states such that what works in one state does not always have relevance in another state. This has become incredibly apparent with the new ACORD certificate form.

Second, when an agency is trying to go the extra mile for its insureds by providing certificates that fit their needs, they should not overstep their authority. Agents do not have authority to change language, unless maybe a carrier gives the agency explicit written authority to do so. If an agency changes the language, the agency could be violating copyright law and changing the insurance company's filing with the insurance department. Everyone knows what happens when there is a claim involving an agency changing its insurance company's filing, right? The agency loses the E&O claim!

Third, a certificate is proof of certain coverage at a certain time. It is not an insurance contract, it is not a binder, and it is not supposed to be used to increase coverage. If any agents reading this have not had everyone in their agency take the Virtual University's Certificate of Insurance class from the Independent Insurance Agents and Brokers of America (IIABA), they are making a grim mistake. Bill Wilson did a great Job building this program. This should be a mandatory class for every agency.

### **Good Practices**

Because binders are contracts, there is more E&O exposure involved with binders than with certificates of insurance, assuming certificates are processed correctly. Given the statistics on the rising number of E&O claims related to certificates, it is clear that many certificates are not processed correctly. But assuming an agency takes the VU's certificate class and begins processing them correctly, certificates should be safer than binders. The need for binders today is also limited versus 20 years ago and many agencies are doing their best to not issue binders. Moreover, when certificates are processed correctly and binders are not issued except in rare situations, agencies spend less time and money servicing accounts, which is important today.

Most important though, knowledge of the differences among these forms, of which I've only touched lightly, is critical. Everyone in every agency needs to have a strong, basic knowledge of these differences.

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