

MIAA Bulletin  
Electronic Records  
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We have received questions from insurance agents over original documents versus electronically stored documents. A primary reason you keep documents is if you need to use them in a Court proceeding to explain or defend certain actions. The admissibility of documents in a Court proceeding is governed by the Maine Rules of Evidence. Rule 1002 deals with the requirement of an original document. It states “to prove the content of a writing, recording or photograph the original writing, recording or photograph is required except as otherwise provided by these rules or by statute.” Rule 1001 defines an original as the following “an original of a writing or recording is the writing or recording itself or any counterpart intended to have the same affect by a person executing or issuing it. An original of a photograph includes the negative or any print there from. If data are stored in a computer or similar device any printout or other output readable by sight shown to reflect the data accurately is an original.”

Rule 1004 creates some exceptions to the necessity of an original. It states as follows:

The original is not required and other evidence of the contents of a writing, recording or photograph is admissible if:

1. All originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith;
2. No original can be obtained by any available judicial process or procedure;
3. At a time when the original was under the control of the party against whom offered, the party was put on notice by the pleadings or otherwise, that the contents would be a subject of proof at the hearing and the party does not produce the original at the hearing;
4. Writing, recording or photograph is not closely related to a controlling issue.

It is important to note that Maine law is stricter than most states when it comes to the production of original documents. Data printed off of a computer is often admissible as the original but this exception is often used for payment histories. If an insurance company sends a notice to a consumer then the consumer would have the notice and the insurance company would no longer have it. The insurance company would only have a copy. The law would not, in that instance, force the insurance company to produce the original, but would allow them to produce a copy.

Maine’s insurance code expressly authorizes insurance producers to keep records in electronic form for the purposes of examination or investigation by the Bureau of Insurance 24-A MRSA 1447. If an agency is being audited by the Bureau, it is acceptable that records are in electronic form. This does not necessarily mean a Court would accept electronic records, but this statute makes it more likely a Court would accept electronic records.

Given some of the issues which have gone on with large national bank’s poor record keeping procedures, Courts are more closely scrutinizing production of the documents.

It is important that every agency have a written procedure in place for the destruction of documents.