

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

### How Long Should An Agency Maintain Its Documents?

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We see this question often and, unfortunately, there is no one-size-fits-all response. An agency's archive, whether it's paper or digital, can be a risk exposure, e.g., loss or theft of personally identifiable information ("PII"); or a source of protection, e.g., a customer's signature on a rejection of umbrella coverage or election of policy limits. Therefore, the decision to maintain agency records should be considered carefully.

Some of the issues that you will need to consider when preparing a document retention policy, which every agency should have, are:

- What are the Federal, State or local laws regarding retention of the documents maintained by the agency, e.g., IRS, CMS, Department of Insurance, etc., and how long are those documents required to be maintained? (A recommended source for this information is local legal counsel.)
- What does the Insurance Agency Agreement with each carrier that the agency represents contain regarding document retention? (The agreement may not speak to this issue, but it is necessary to verify.)
- What is the complexity of the agency's book of business, e.g., commercial construction (long tail for claims) vs. personal auto (shorter tail for claims)?
- Is the agency an ongoing concern?
  - If so, how long will the agency maintain records for its current clients?
  - If not, how long of an E&O tail has the agent purchased? (e.g., If a 10-year tail was purchased, it may not make sense to destroy the documents prior to the exhaustion of the tail, in the event a claim is filed.)
- Will the documents have some benefit in the event an E&O claim is filed, e.g., declination of coverages signed by the client, communications from the client requesting specific coverages/limits, etc.?
- Is there a sufficiently secure manner in which the documents can be stored to protect any PII that the documents may contain?
- What is the cost to maintain documents vs. the benefit of maintaining them?

Keep in mind that this is not an exhaustive list of considerations, but is meant to be a starting point for thinking about the issue of document retention. While it may not be a violation of a particular regulation or contract term to properly dispose of certain documents after a prescribed amount of time, it may be more beneficial to retain those documents in certain circumstances. As the decision to retain or destroy agency documents may effect the agent's legal rights and responsibilities, the best source for advice on this is legal counsel in the state that would have jurisdiction over the agency's business.

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