Two of the biggest decisions of your insurance career are the following:

1. Decide to sell the agency you've worked hard to create.
2. Decide to buy an agency that someone else worked hard to create.

You've met with the owners of the agency. You're looking at the book of business and agreed on a price. Hopefully, you've contacted your attorney to help you draft the buy/sell agreement. Then, just a few short days away from closing the deal, someone asks, "What about the E&O coverage? Who's doing what? Are you going to pick up the prior acts or am I? Can we just transfer the E&O policy to the new owner? What kind of losses have you had?"

All of these questions should be asked at the beginning of the talks regarding the sale/purchase, but unfortunately, they usually aren't discussed until the last minute and they can have a big impact on the deal.

Think about this: when you buy a new car or are selling your current one, one of the first things you should do is contact your insurance provider. It's no different when you are buying or selling an insurance agency. It is advisable to apply when you are only buying or selling a book of business. In most, if not all cases, your E&O policy states that you must notify your E&O provider within 90 days of a merger or acquisition (check your policy for verification of the time limits). Failure to do so may result in a gap in coverage.

Buying An Agency

You've been talking with a fellow agent about buying his or her agency for some time and now you've both decided that the time is right.

There are many details to consider. First, do your due diligence and review the other agency's operations, book of business, finances, and E&O policy. At this point it is advisable to retain an attorney to help you through the process. Remember, an attorney can only represent one party, not both. You and the seller should each seek separate counsel.

It is a good idea to have a confidentiality agreement with the seller so that you can review all of the documents necessary to begin the change of ownership.

After you have completed your due diligence and you and the seller are comfortable with all aspects of the agency, have an attorney draft the buy/sell agreement. Included will be such things as the timing of the sale, the assets to be transferred, the price, and of particular importance, who is responsible for the liabilities of the selling agency.

The cleanest way to do this is for each party to retain their own liabilities. In the regard to the seller's E&O policy, they will purchase tail coverage and the buyer will add the new agency's book of business to their current E&O policy.

The reason this is the cleanest way to make the change is because the seller will have the peace of mind of knowing that, should a claim arise after the sale for acts while they owned the agency, the E&O policy will provide coverage for them.

For the buyer, they know that they will not be responsible for any acts that may have occurred prior to the purchase of the agency. This is true whether or not the selling agency will continue as a separate entity or location for the buying agency. In most cases, even if the buyer maintains the agency as a separate entity or location, it can be included on their current E&O policy for errors and omissions that are made after the sale.

Another option, while not the best way to transfer ownership is for the purchasing agency to agree to accept responsibility for prior acts. This is accomplished by adding the selling agency to the buying agency's E&O policy. However, please remember that the E&O carrier must approve this before the sale is completed. It is imperative that you contact your E&O agent as soon as you begin the buy/sell process. You will be required to provide a loss history of the seller, and the carrier may require an application providing a complete history of the book of business, gross annual premium, commissions, staff, etc. In some cases, the carrier may not agree to provide prior acts due to claims history, nature of the book of business, etc. In that case, the seller should purchase tail coverage from their current E&O carrier.

One thing to keep in mind is that the cost of tail coverage or additional premium expense, if the buyer provides the prior acts, can and should be considered in determining the sale price of the agency.

Selling An Agency

As a seller of an agency, you may feel that it's important to maintain your agency's legacy. If this is important to you, be sure to discuss this with your attorney so that it is properly addressed in the agreement.

If you have valued employees that you wish to provide for, you should include how they will be taken care of in the agreement. This may be a source of negotiation if the buyer may not wish to add any permanent staff, so make sure this is brought up in your discussions with the buyer.

An important aspect that was previously mentioned is protection for you if a claim should arise after the sale. As stated before, the best way to ensure this is to purchase tail coverage from your current E&O carrier. While you may not want to add the expense of tail coverage and you believe you are protected because of your agreement with the buyer that they will provide coverage for prior acts and will maintain an E&O policy, you have no guarantees that it will be done. It is not unheard of after an agency sale for the buying agency to either go out of business, sell their agency to another party that will not agree to provide prior acts, or have their E&O policy terminate either voluntarily or involuntarily. In each of these cases you could be left without coverage.

Another thing to consider should your agency be added as an additional insured on the buyer's policy is that any claims, whether they are for your agency or the buyer's agency, will be subject to the policy limits of the buyer's policy regardless of whether there are multiple claims as a result of either agency. In other words, are you comfortable that the policy limits of the buyer's E&O policy are sufficient to cover both parties' claims? Also, it should be made clear who is responsible for any deductible payment.

Mergers

If you are merging with another agency to either form a new agency or be a continuation of one of the two, there are a couple of different ways to handle this in regard to your E&O coverage.

One way is to have a new E&O policy for the newly created entity. This cleans up the need to confirm a clean state for all involved. If a new policy is created, each of the former agencies can purchase tail coverage or they can be added as additional insureds on the new entity policy. Again, keep in mind that any claims will be subject to the limits of the remaining policy and remember that this must be approved by the E&O provider prior to the completion of the agreement to ensure that the carrier can comply with your wishes. Another way to handle a merger is to terminate one policy and have that agency added as an additional insured to the policy of the “surviving” agency. The agency that is terminating their policy can either purchase tail coverage or be added as an additional insured upon approval by the E&O provider.

Internal Sale

Many times an owner has a key agency employee who they believe is qualified to take over the agency. Everything that has been stated before applies just the same in these situations. There should due diligence by both parties, attorneys should be retained, agreements drafted and entered into, and all other aspects of the change of ownership should be carefully contemplated and resolved.

Transferring A Book Of Business

Remember, if you are buying a new agency, you are buying a new book of business. Everything that has been stated before is protection for you if a claim should arise after the sale for acts while you owned the agency.

Another important factor that was mentioned previously is protection for you if a claim should arise after the sale. As stated before, the best way to ensure this is to purchase tail coverage from your current E&O carrier. While you may not want to add the expense of tail coverage and you believe you are protected because of your agreement with the buyer that they will provide coverage for prior acts and will maintain an E&O policy, you have no guarantees that it will be done. It is unheard of after an agency sale for the buying agency to either go out of business, sell their agency to another party that will not agree to provide prior acts, or have their E&O policy terminate either voluntarily or involuntarily. In each of these cases you could be left without coverage.

It is advisable to retain an attorney to help you through the process.