|  |
| --- |
| **6**  **Insurance and Fidelity Coverage** |

**Maintain appropriate insurance and fidelity coverage.**

# Purpose

Appropriate levels of professional liability insurance or E&O insurance, cyber liability insurance, and crime coverage help ensure Company maintains the financial capacity to stand behind their professional services. Specific types of insurance or coverage may be required by law, regulation, or contractual obligations.

# Considerations

(Note: The language in *italics* are questions FNF has created to help you develop your Best Practices. These questions are not exhaustive, and you should develop your own questions to fit your title agency’s needs.)

* Company maintains appropriate professional liability insurance or E&O insurance, cyber liability insurance, and crime coverage, according to Company size and Settlement volume.
  + *Have you detailed the types of business you are conducting? Is your coverage sufficient for the type of business you are conducting?*
  + *Has your volume increased or decreased? Is your coverage level appropriate to your volume of business?*
  + *Do your policies cover directors, officers and additional employees?*
  + *Are the following third-party vendors covered (if you utilize their services)?*
    - *Independent Contractors*
    - *Title Agents*
    - *Title Abstractors*
    - *Searcher*
    - *Escrow Agent*
    - *Closing Agent*
    - *Public Records Searcher*
    - *Corporate Document Searcher*
    - *Remote Online Notary*
    - *Mobile Notary*

*See Resources – Samples - Professional Liability and Fidelity Coverage: Policies*

*See Resources – Samples – Insurance Policies – Guide*

*See Resources – Samples – Insurance Policies Log*

* Company complies with requirements for professional liability insurance, E&O insurance, fidelity coverage or surety bonds, as required by state law or Title Insurer agreements.
  + *What coverages does your state require?*
  + *What coverages do your Title Insurer require per your agency contract?*
  + *Have you confirmed your E&O insurance is acceptable to your underwriters and it meets your contractual obligations?*
  + *Are you required to resubmit your insurance renewals to your Title Insurer? If so, who is tasked with this responsibility at your title agency?*

*See Resources - Samples – Professional Liability and Fidelity Coverage: Policies*

* Insurance coverage limits and exceptions, particularly cyber, crime and E&O, change frequently and should be thoroughly reviewed with the Company’s insurance broker/agent at least on an annual basis.
  + *What are your coverage dates?*
  + *What does your fidelity coverage/escrow security bond/surety bond include?*
  + *What does your policy define as a title claim?*
  + *When is a claim triggered under your different insurance policies?*
  + *Do you have coverage for future claims related to mistakes made prior to your current policy?*
  + *Who is monitoring your expiration dates and ensuring timely renewal of the various policies?*
  + *Does your E&O policy cover claims brought against you as a result of using digital closing technologies used in your title agency?*
  + *Do you have any coverage for wire transfer fraud?* 
    - *What is the coverage?*
    - *If so, in which policies or bonds does the coverage exist?*
  + *Do you have cyber liability and cyber-crime insurance coverage?*
    - *Does include coverage for loss of confidential consumer information?*
    - *Does it include coverage for data breach/intrusion?*
    - *Does it include fund transfer frauds resulting from both social engineering/phishing schemes and systems compromises (“hacks”)?*
    - *Does it include 1st party coverage (for you and your company) and 3rd party coverage (for you and your company in case of lawsuit against your company)?*

*See Resources - Samples - Professional Liability and Fidelity Coverage: Policies*

# Resources

## Insurance Companies and Brokerages

Riebling Insurance Agency, LLC., Dan Riebling or Peter Riebling | [www.rieblinginsurance.com](http://www.rieblinginsurance.com)

Exclusive FNF-Pak, a comprehensive insurance package offered only to FNF Agents with additional wire fraud endorsement when agent uses CertifID (third party that allows you to securely share wire information) | For more info <https://certifid.com/fnf-pak>

## Additional Information

“Piecing Together the Business Insurance Puzzle,” ALTA, <https://www.alta.org/news/news.cfm?20190917-Piecing-Together-the-Business-Insurance-Puzzle>

“10 Things to Ask When Purchasing a Cyber Crime Policy,” ALTA, <https://www.alta.org/news/news.cfm?20190122-10-Things-to-Ask-When-Purchasing-a-Cyber-Crime-Policy>

“Back to Basics – Comparing E&O Deductible Types,” TIAC, <https://tiacrrg.com/back-to-basics-comparing-errors-and-omissions-deductible-types/>

“Back to Basics – What is a Claims-Made Policy?,” TIAC, <https://tiacrrg.com/back-to-basics-what-is-a-claims-made-policy/>

“Why Your Policy May Not Cover Third-party Losses Due to Wire Fraud,” TIAC, <https://tiacrrg.com/why-your-policy-may-not-cover-third-party-losses-due-to-wire-fraud/>

“Let’s Talk E & O: Who is an Insured?”, TIAC, <https://tiacrrg.com/lets-talk-eo-who-is-an-insured/>

“Let’s Talk E & O: Client Funds Protection Coverage”, TIAC, <https://tiacrrg.com/lets-talk-eo-client-funds-protection-coverage/>

*Samples*

Insurance Policies – Guide

Insurance Policies Log

Professional Liability and Fidelity Coverage: Policies

|  |
| --- |
| Your Steps  1. Determine what types of insurance coverage your title agency needs 2. Create a written policy for monitoring adequate coverages and renewals. 3. Research and obtain pricing for comprehensive insurance packages that include E&O insurance, cyber liability insurance and crime coverage along with fidelity/escrow/security bonds. |

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# Sample – Insurance Policies - GUIDE

In addition to a recommended minimum of $1 million E&O coverage, which may or may not exceed the contractual requirements contained in an Agency Agreement, a comprehensive fidelity policy will include the following:

* Coverage of at least a minimum of $500,000 per occurrence, $500,000 aggregate (check your Agency Contract for possible minimums).
* Protection against theft from operating or escrow accounts by either agency employees AND the agency principal and corporate officers.
* Protection against computer fraud including third party account hacking.

Ensure that coverage does not lapse. This could cause you to lose retroactive coverage.

Moreover, this coverage is affordable and is based on the agency’s number of employees. For example, the basic policy which provides $500,000 of coverage per claim in the aggregate limits of liability, subject to a $15,000/claim deductible, costs $2,000 for ten employees, $3,280 for 25 employees, etc.

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# Sample - Insurance Policies Log - TABLE

## Part 1

|  |  |  |  |
| --- | --- | --- | --- |
| STATE/UNDERWRITER | REQUIRED COVERAGE | TYPE AND AMOUNT | REQUIREMENTS MET? |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

## Part 2

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| TYPE OF POLICY  (E&O, FIDELITY, CYBER ETC.) | POLICY # | POLICY LIMIT & DEDUCTIBLE | CARRIER | EXPIRATION DATE |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

## Part 3

|  |  |  |  |
| --- | --- | --- | --- |
| TYPE OF SUPPLIER/SERVICE PROVIDER | DO WE USE THEM? | COVERED? | WHICH POLICY(IES)? |
| **Independent Contractors** |  |  |  |
| **Title Agents** |  |  |  |
| **Title Abstractors** |  |  |  |
| **Searcher** |  |  |  |
| **Escrow Agent** |  |  |  |
| **Closing Agent** |  |  |  |
| **Public Records Searcher** |  |  |  |
| **Corporate Document Searcher** |  |  |  |
| **Directors and Officers** |  |  |  |

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# Sample - Professional Liability and Fidelity Coverage: Policies

1. Professional liability or errors and omissions insurance

The company maintains professional liability insurance in the amount of no less than

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This amount is appropriate given the company’s size and complexity and the nature and scope of its operations; the amount is not less than the amount agreed to in the company’s underwriting agreement(s).

The insurance carrier is nationally known and has appropriate A.M. Best ratings. See <https://web.ambest.com/home>.

Coverages / Endorsements are reviewed annually and are added or subtracted to reflect current changes in the practices of the industry and to reflect new threats to our business as they arise, such as cybercrime.

1. Fidelity bond coverage (Protection for Agent against employee dishonesty)

The company maintains a fidelity bond policy in an amount of not less than

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The company reviews both state law and our Issuing Agency Contracts to verify that our coverage meets or exceeds their respective requirements. This coverage is carried even if State law or our Issuing Agency Contract does not require it from time-to-time as conditions or laws change.

1. Surety coverage, Closing Protection Letters (Protection for consumers against closing disbursement issues). For Example:

(Alternate A) In some states, state law requires companies to offer closing protection coverage to buyers, sellers, and lenders. We encourage buyers, sellers, and lenders to purchase these products and maintain a signed disclosure form in files evidencing compliance with state law in connection to these.

(Alternate B) In other states, state law requires companies to add and charge for closing protection coverage to buyers, sellers, and lenders. There is no opt-out provision for these products since coverage is mandatory.

(Alternate C) Also as required by state law, the company possesses surety bond coverage for closings where title insurance is not being purchased. Coverage is in the greater of the $250,000 or state mandated amount.

(Alternate D) Alternatively, the company ensures that the Closing Protection Letter coverage, where mandated by statute, is issued in connection with the disbursement or that a statutory indemnity fund is established to cover.

Check your individual state requirements and add to your policies and procedures manual.

1. The company maintains cyber liability/cybercrime insurance.

Coverages / Endorsements are reviewed annually and are added or subtracted to reflect current changes in the practices of the industry and to reflect new threats to our business as they arise, such as potential wire transfer fraud and other digital closing threats.