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## Technical Advisory

TA 245

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**Subject: UM Election/Rejection Forms – Records Retention Guideline**

**Background:** In the world of E&O loss control, probably the most frequent recommendation from experts is to “document, document, document.” Actually, that’s only half right. The other requirement would be “find it, find it, find it.”

While there are well-established guidelines for general records retention, there are special considerations in retaining UM election/rejection forms.

**Main Points:** There seem to be two schools of thought on records retention. One holds that the agency should “keep everything forever.” The other argues that records should be retained for the least amount of time possible, in order to prevent plaintiffs from “fishing in old files.”

Under Louisiana law, insurance agents are subject to a 1-year/3-year prescription period for E&O allegations, per **LRS 9:5606**:

*§5606. Actions for professional insurance agent liability*

*A. No action for damages against any insurance agent, broker, solicitor, or other similar licensee under this state, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide insurance services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered. However, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.*

*B. The provisions of this Section shall apply to all persons whether or not infirm or under disability of any kind and including minors and interdicts.*

*C. The preemptive period provided in Subsection A of this Section shall not apply in cases of fraud, as defined in Civil Code Article 1953.*

*D. The one-year and three-year periods of limitation provided in Subsection A of this Section are preemptive periods within the meaning of Civil Code Article 3458 and, in accordance with Civil Code Article 3461, may not be renounced, interrupted, or suspended.*

*Acts 1991, No. 764, §1; Acts 1999, No. 905, §1.*

However, retaining UM election/rejection forms presents special issues, given the provisions of Louisiana's UM statute, **LRS 22:680** (formerly LRS 22:1406.D.), as follows:

*§680. Uninsured motorist coverage*

*The following provisions shall govern the issuance of uninsured motorist coverage in this state:*

*(1)(a)(i) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle designed for use on public highways and required to be registered in this state or as provided in this Section unless coverage is provided therein or supplemental thereto, in not less than the limits of bodily injury liability provided by the policy... however, the coverage required under this Section is not applicable when any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage, in the manner provided in Item (1)(a)(ii) of this Section.*

*(1)(a)(ii) The form signed by the insured or his legal representative which initially rejects coverage, selects lower limits, or selects economic-only coverage shall remain valid for the life of the policy and shall not require the completion of a new selection form when a renewal, reinstatement, substitute, or amended policy is issued to the same named insured by the same insurer or any of its affiliates.*

The two key relevant provisions of the UM statute relevant to records retention are: (1) policies providing auto liability insurance automatically shall include UM coverage at BI limits, unless there is a rejection, selection of lower limits, or selection of economic-only coverage; and (2) such selections remain valid for the life of the policy and subsequent renewals.

The potential gap arises when a policy has been in force for many years, and the original UM election/rejection form has been disposed of as a part of the general records retention schedule of the agency, recognizing the parameters set forth in LRS 9:5606.

Another complication is that some insurers place the burden of virtually all records retention with the agent. In fact, there have been recent E&O cases against agents brought by their insurers, who have had to pay UM claims because the agent couldn't produce the UM election/rejection form.

In the context of LRS 9:5606, the allegation would probably be that it cannot be clearly established exactly when the original E&O election/rejection form was disposed of (or misplaced), thus the agency might not be able to rely on the 1-year/3-year prescription period of LRS 9:5606.

The safest recommendation would be to retain all key documents with signatures for as long as the agency writes that line of coverage. For agencies that T-file, other paperwork such as policy forms, endorsements, etc., can be sent to the T-file, while there is a permanent file for the critical documents.

**Necessary Action:** This Technical Advisory should be reviewed by all management staff.