Are you Protected?

Presented By
Joseph Stanton, Vice President
Thornburg Insurance Agency

Thornburg
Insurance Agency
Since 1881

HHEPC

HOOSIER HILLS ESTATE PLANNING COUNCIL

Are you Protected? - AGENDA

- Introduction
- Professional Risk
- Understanding Key Insurance Policies
- Common Policy Gaps & Overlooked Issues
- How to Review Your Policy with an Agent
- Questions & Answers / Open Discussion
- Closing & Takeaways

Professional Risk in Estate Planning Roles

Legal Risks

Ethical Risks

Business and Reputational Risks

External Risks for clients and planners

Thornburg Insurance Agency - where service is not a concept, but a tradition.

Understanding Key Insurance Policies and Bonds

- Professional / Errors and Omissions (E&O)
- Commercial General Liability (CGL)
- Cyber Liability
- Fiduciary Liability
- Employment Practices Liability Insurance (EPLI)
- Crime / Fidelity Liability
- Bond Requirements

Professional / Errors & Omissions (E&O) Liability

Summary

Negligence or mistakes that cause financial harm to clients or, because many errors are not discovered until after the client's death, professionals in the estate planning field often face malpractice claims from non-clients, such as heirs and beneficiaries, who were negatively impacted by alleged mistakes. The statute of limitations also becomes problematic as the clock starts when plaintiff discovers the negligent act. The statute of repose is generally 10 years from the act or omission.

Common Errors and Omissions

- Negligent Drafting
- Tax Errors
- Beneficiary issues
- Failure to advise

Administrative errors

Conflicts of Interest

Inadequate Disclosure

Professional / Errors & Omissions (E&O) Liability

Actual Professional Claims

- Negligent Drafting
  - *Failed or invalid trust: Barcelo v. Elliott (Tex. 1996)*
  - *Unsigned will: Radovich v. Locke-Paddon (Cal. Ct. App. 1995)*
- Tax Errors:
  - Estate of Saul Schneider v. Finmann (N.Y. 2010)
  - Negligent estate administration
- Failure to advise or act properly
  - Undue Influence: Blissard v. Blissard (Miss. 2012)
  - Failure to update documents
  - Elder financial abuse

Commercial General Liability (CGL)

Summary

These policies protects businesses from financial loss due to third-party claims of bodily injury, property damage, and personal and advertising injury arising from their operations. It covers costs associated with legal defense, settlements, and judgments for covered claims, such as a customer's slip-and-fall or claims of defamation. CGL do not cover intentional acts, expected damaged, damage from vehicles, pollution, and incidents related to intoxication.

Key Coverages

- Bodily Injury
- Property Damage
- Personal and advertising injury
- Medical Payments
- Legal Defense costs

Cyber Liability

Summary

This policy covers financial losses from cyberattacks like data breaches, ransomware and social engineering. It can help with costs related to the incident, such as investigation, legal fees, and customer notification, as well as direct financial losses like theft or damage to systems. Cyber insurance is a crucial risk management tool because cyber incidents are becoming more common and expensive especially in the Financial Industry.

Key Coverages	*Why it's important*	*Key Understanding*
▶ First-party losses	Financial Protection	Coverage Varies – Social Engineering
▶ Third-party losses	Risk Management	Not a Security substitute
▶ Incident Response & Recovery	Specialized	
▶ Compliance Costs		

Fiduciary Liability

Summary

Fiduciary liability insurance protects companies and their employees from claims of mismanagement related to employee benefit plans, such as 401(k)s, health, or stock ownership plans. It covers legal expenses, judgments, and settlements that arise from errors, omissions, or breaches of fiduciary duty, but does not cover fraud or criminal acts. This coverage should be secured for companies with employee benefits and individuals who act as fiduciaries, such as HR consultants, plan administrators, trustees, and executors of large estates.

Key Coverages	*What it does not cover*	*Examples*
▸ Legal Costs and Judgements	Fraud	401(k) nonfeasance
▸ Benefit plan mismanagement	External advisers	Failure to respond
▸ Government Penalties	Taxes, sanctions and fines	HIPAA violations
▸ Compliance Costs		Improper Administration Selection or monitoring

Employment Practices Liability Insurance (EPLI)

Summary

This insurance protects companies from claims made by employees alleging wrongful treatment, such as wrongful termination, discrimination, sexual harassment, and retaliation covering legal defense, settlements, and damages resulting from these claims.

Key Coverages	*How it works*	*Key Consideration*
▶ Wrongful Termination	Duty to defend	**Third-Party Coverage**
▶ Discrimination	Financial Protection	Wage and Hour
▶ Sexual Harassment	Policy variations	
▶ Retaliation	Claims-made basis	
▶ Other claims	Policy Limits	
▶ Legal costs	Retention	
▶ Settlements and damages		

Crime / Fidelity

Summary

Crime and fidelity insurance protects businesses from financial losses caused by dishonest or fraudulent acts. While often sold together, fidelity and crime coverage have distinct differences in what they protect against and who is covered. You should validate that your coverage includes Third Party.

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Fidelity Insurance / Employee Dishonesty	*Crime Insurance*
▶ Primary Focus Internal threats from employees and fiduciaries	Broader Range of internal and external criminal acts
▶ Theft of money or securities by an employee	Employee Theft
▶ Fraud and embezzlement by an employee	Third-Party Fraud
▶ Forgery or alteration by an employee	Third-Party Forgery
▶ Employee retirement Income Security Act (ERISA)	Inside and outside theft

Bond Requirements

Summary

In Indiana, an executor is generally required to secure a probate bond, also known as an **“executor bond”** or **“personal representative bond”**, but this requirement can be waived if the will specifically states so. The bond is a form of insurance that protects the estate and its beneficiaries from mismanagement or fraud by the executor, and the court determines the amount based on the estate's value. The bond is required unless the will explicitly waives the requirement, and the court ultimately decides if one is needed.

Common Claims

- Mismanagement and negligence
- Misconduct and fraud
- Administrative failures

Common Policy Gaps & Overlooked Issues

Summary

Estate planners face several professional liability policy gaps that can leave them financially vulnerable to lawsuits. These gaps include common policy exclusions, the unique nature of estate planning practice, specific liabilities not addressed by a typical Errors and Omissions (E&O) policy and the structure of the policy.

Exclusions and Limitations	*Gaps related to services*	*Policy Structure*
▶ Intentional, fraudulent or criminal acts	Coverage for non-client third parties	Inadequate Coverage Limits
▶ Dishonesty	Failure to complete documents	Hammer Clause
▶ Bodily injury and property damage	Outdated Information	Legal Defense Inside vs. Outside Limits
▶ Past acts (for new policies)	Specialized Services	Self-Insured Retention (SIR)
▶ Fee Disputes	Financial advice vs. Legal advice	

Common Policy Gaps & Overlooked Issues

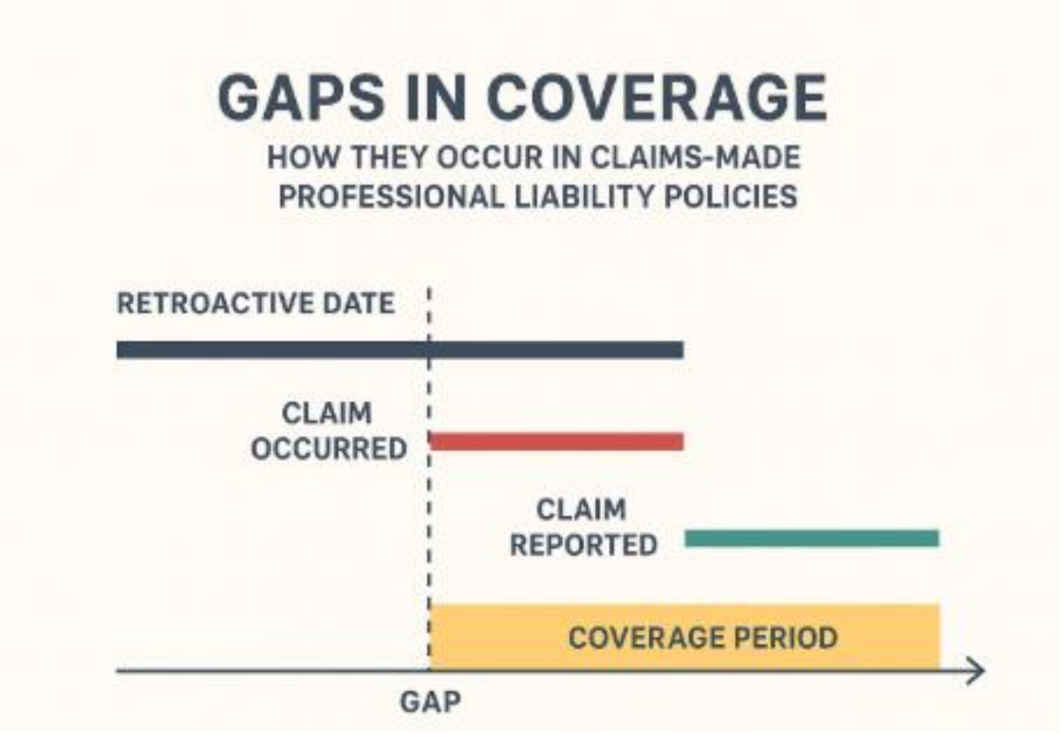
Claims-made vs. Occurrence basis

Feature	*Claims-Made Policy*	*Occurrence Policy*
Trigger for Coverage	The **claim must be made and reported** while the policy is active.	The **incident must occur** during the policy period (even if the claim is made years later).
Key Dates	- Claim made date - Retroactive date	- Date the incident occurred
Coverage After Policy Ends	Not covered unless you have **tail coverage (ERP)**.	Covered **forever** for incidents during the policy term.
Retroactive Date	Critical — defines how far back coverage goes.	Not applicable.
Main Risk	Missing coverage if claim is made **after policy ends** or before the **retroactive date**.	Coverage for past incidents is **permanent** even after a policy is cancelled.

Common Policy Gaps & Overlooked Issues

Claims-made vs. Occurrence basis

Claims-made = when it's reported matters.
Occurrence = when it happened matters.



Common Policy Gaps & Overlooked Issues

Claims-made Example 1: Retroactive Date Gap

Standard Coverage Timeline (No Gap)

Retroactive Date (2010)--------► Policy Period (2025)——► Claim Reported (2025)
(Acts on or after this date) (Coverage active) (During policy)

✅ Claim is covered because:

- Act occurred after the retro date
- Claim was made and reported during active policy

Retroactive Date Gap

Work Performed (2021) ——► Retroactive Date (2022) ——► Claim Made (2025)

❌ Not covered:

Work before the 2022 retro date is excluded, even though the claim was made later or in the current policy period.

Common Policy Gaps & Overlooked Issues

Claims-made Example 2: Lapsed Coverage / No Tail Coverage

Standard Coverage Timeline (No Gap)

Retroactive Date (2010)--------► Policy Period (2025)——► Claim Reported (2025)
(Acts on or after this date) (Coverage active) (During policy)

✅ Claim is covered because:

• Act occurred after the retro date
• Claim was made and reported during active policy

Lapsed Coverage / No Tail Coverage

Policy Ends (2024) ——X——► No Renewal / No Tail ——► Claim Reported (2025)

❌ Not covered:
Claim reported after expiration without tail coverage.

Common Policy Gaps & Overlooked Issues

Claims-made Example 3: Switching Carriers Without Prior Acts

Standard Coverage Timeline (No Gap)

Retroactive Date (2010)--------▶ Policy Period (2025)——▶ Claim Reported (2025)
(Acts on or after this date) (Coverage active) (During policy)

✅ Claim is covered because:

- Act occurred after the retro date
- Claim was made and reported during active policy

Switching Carriers Without Prior Acts Coverage

Old Policy: 2018–2024 (Retro Date: 2018)

New Policy: 2024–2025 (Retro Date: 2024)

Claim for 2020 Work → Reported 2024

❌ Not covered:

New insurer excludes acts before 2024; old policy expired.

Common Policy Gaps & Overlooked Issues

Claims-made Example 4: Late Reporting Gap

Standard Coverage Timeline (No Gap)

Retroactive Date (2010)--------► Policy Period (2025)——► Claim Reported (2025)
(Acts on or after this date) (Coverage active) (During policy)

✅ Claim is covered because:

- Act occurred after the retro date
- Claim was made and reported during active policy

Late Reporting Gap

Retroactive Date (2010)---► Claim Made: December 15, 2024 ——► Reported: January 10, 2025 (after renewal which was January 1, 2025).

❌ Not covered:

Late reporting outside the required window voids coverage.

Common Policy Gaps & Overlooked Issues

Claims-made Example 5: Proper Continuous Coverage

Standard Coverage Timeline (No Gap)

Retroactive Date (2010)--------▶ Policy Period (2025)──▶ Claim Reported (2025)
(Acts on or after this date) (Coverage active) (During policy)

✅ Claim is covered because:

- Act occurred after the retro date
- Claim was made and reported during active policy

Proper Continuous Coverage

Retroactive Date (2018)────────────────────▶
Continuous Renewal Each Year (No Lapse)

Claim Made & Reported (2025)

✅ Covered:

Continuous coverage and consistent retro date protect prior work.

Common Policy Gaps & Overlooked Issues

Potential Gaps in Claims-made

- Retroactive Date Gaps
- Lapsed or Cancelled Coverage
- Switching Carriers without Matching Reto Date
- Late Reporting of Claims
- Awareness of Circumstances
- Gaps Between Continuous Policies
- Tail Coverage (Extended Reporting Period) Not Purchased
- Prior knowledge / Known Claims Exclusions

Common Policy Gaps & Overlooked Issues

How to Protect Against Gaps

- **Maintain continuous coverage** with no lapse.
- **Keep the same retroactive date** when switching carriers.
- **Report all potential incidents immediately** (even if no claim yet).
- **Buy tail coverage** when retiring or cancelling.
- **Verify your policy wording** (especially “claims first made and reported” clauses).

How to Review Your Policy with an Agent

Step 1: Establish a Written Service Timeline

WRITTEN SERVICE TIMELINE

2025

Trusted Choice

Thornburg Insurance Agency Since 1881

Our Strategic Plan includes a written service timeline to maximize your time providing organization and structure to deliver the solutions most beneficial to your success. Our plan includes assessing your needs, analyzing your risk and implementing solutions. The timeline below is suggested so we can accommodate our services around your schedule.

PARTNER PROJECT PHASE	START DATE	END DATE
Initial Meeting – Resource Review		
Policy Inventory, Needs Assessment, Risk Coverage Analysis & MSA/Contract Matrix Review		
Mod Analysis & Production Date / Claims Review		
RFP Strategy & Market Approach		
Risk Engineer Assessment / Loss Control		
Online Portal Setup, OSHA Reporting, Subcontractor Management Plan, Certificate Management Plan - ISN/BROWZ/AVETTA		
Provide Certificates of Insurance, Evidence of Property Insurance and Auto Fleet ID		
Policy Delivery, Review and Checklist		
Policy Reviews (Payroll, Sales, Claims, MOD)		
Safety Programs, Material, Loss Control Meetings		
Compliance Resources and Preparing for Audit		

January

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November

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December

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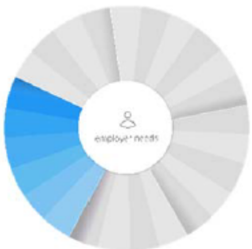
How to Review Your Policy with an Agent

Step 2: Interview and Inquire about Value Added Services



Typical Services from Brokers

Break away from the mold of the traditional broker. The average broker meets your basic needs when it comes to claims, plans and renewal negotiation. What about new exposures like cyber attacks? New legislation?

From compliance to communication, let us provide a full spectrum of solutions for you and your company. We understand the challenges today's employers face, and we know you're asked to take on more than ever before. Expect more from a broker—expect our full spectrum of solutions.

Risk Management Resources from Agent

Summary

When reviewing your insurance program with your agent, you should also evaluate your risk management practices and common errors typically found within Estate planning industry.

Common Errors

- Due diligence and documentation
- Clear communication
- Ongoing Training
- Quality Control
- Avoid conflicts of interest
- Engagement Letters

Risk Management Resources from Agent

SOP: Before, During and After Engagement

Your engagement with clients is ongoing and you should have a standard protocol for before during and after.

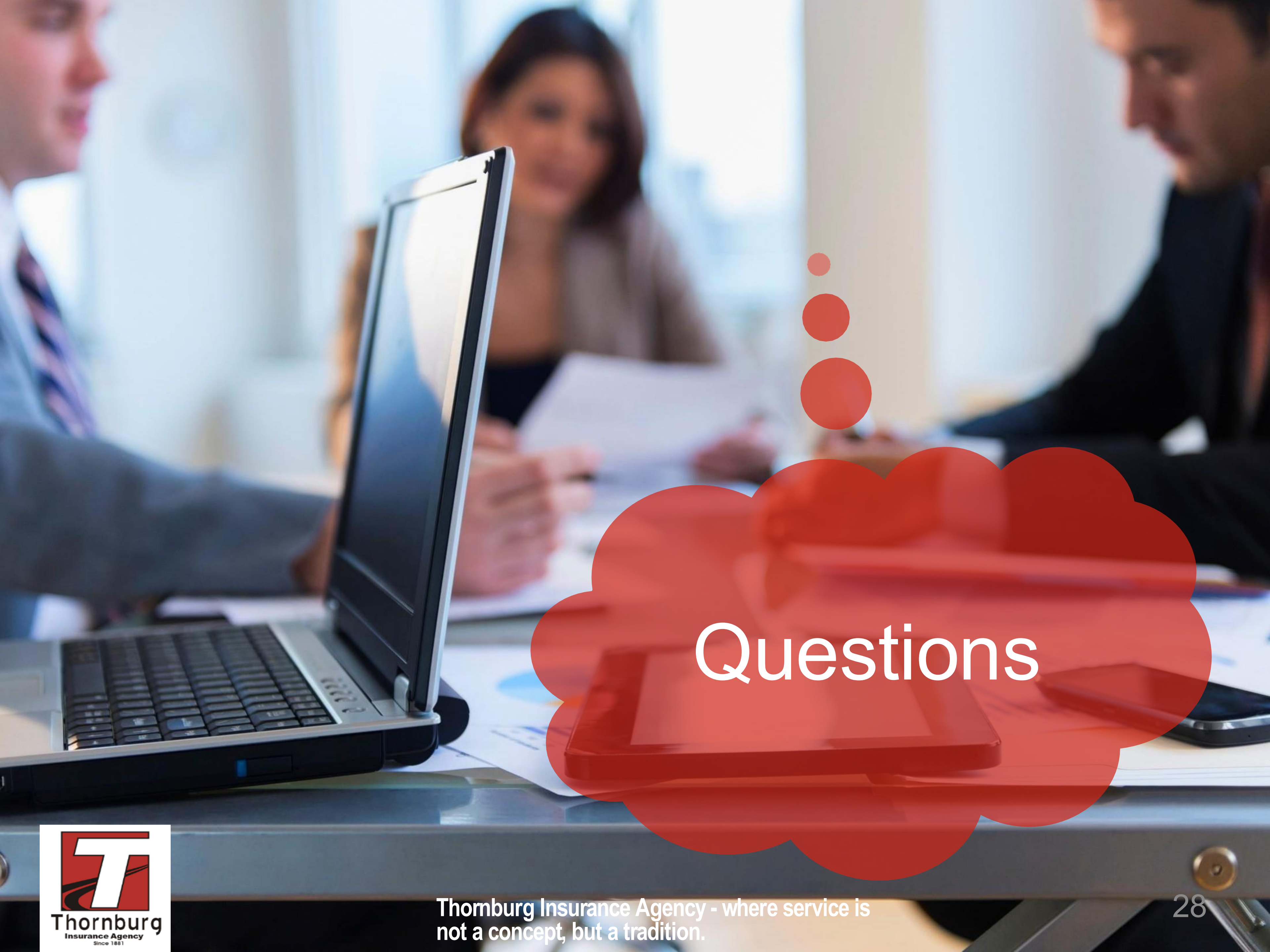
Before *Prepare and Intake*	*During* *Design and Implementation*	*After* *Maintenance and Review*
Prospect Qualification	Plan Design	Post-Implementation Review
Initial Consult / Discovery	Presentation to Client	Ongoing Monitoring
Document Request & Review	Implementation	Client Communication & Retention
Risk & Professional & Collaboration	Documentation and Recordkeeping	Continuity & Succession
	Integration with Insurance Team	
	Consider Executor Review Meeting	

Risk Management Resources from Agent

Considerations related to the Executor

Estate planners should encourage their clients to have an open conversation with the named executor and alternative executors during the client's lifetime. This practice is a critical safeguard against future legal challenges and helps ensure a smoother estate administration process. Fiduciary liability insurance, though not a decision for the estate planner alone, can be discussed as a protective option at this time.

Notification	*Discussion of Fiduciary Liability*
▶ Confirm willingness to serve	Executor Vulnerability
▶ Providing vital information	Timing of the discussion
▶ Setting Expectations	Differences from Probate Bond
▶ Assessing potential conflicts	When to acquire insurance



Questions

Closing & Takeaways