

Safety Zone - Risk Transfer and Certificates of Insurance

What is Risk Transfer?

Risk transfer is a risk control plan of action or strategy that contractually shifts the risk of doing business from one party to another. An example of this would be a property owner who hires a contractor to provide services for his building rather than hiring his own staff of repair personnel. By doing this, the property owner transfers the risk of potential claims or losses onto the contracting firm hired.

The question now is – what should this property owner request from the contractor hired to ensure that the risk is properly transferred to the contractor? At a minimum, a written agreement that the property owner be included as an Additional Insured on the contractor's own insurance policy and that a Certificate of Insurance (COI) be provided from the contractor's insurer or insurance agent. It should also include that the contractor's insurance for the owner is primary and non-contributory. It is strongly recommended the written contract between the two parties include an indemnification clause that specifies the contractor agrees to hold the property owner harmless, thereby eliminating the risk of the owner's liability for the contractor's operations. When permitted, such terms should also be included within the Additional Insured endorsement.

What is a Certificate of Insurance?

A Certificate of Insurance is a document used to provide information regarding specific insurance coverage held by an individual organization. This COI provides verification of the individual organization's insurance coverage, lines of coverage and limits of coverage. It provides the name of the insurance company, the policy number(s), the named insured and the policies' effective dates. As a caution, this document is merely a "snapshot in time" – a representation of a single point in time that is issued by the other party.

Though uncommon, a Certificate of Insurance may be potentially fraudulent. The COI should come directly from the other party's agent or insurance carrier rather than from the subcontractor or vendor. The party hiring the vendor or subcontractor should ensure that the name of the insured on the COI exactly matches the name of the vendor or subcontractor hired.

Certificates of Insurance are not enough to protect the assets of a company. To ensure they are properly covered, property owners should have a contract developed between themselves and the vendor or subcontractor hired.

Contractual Risk Transfer – Redefined

A contractual risk transfer is a non-insurance *contract and/or agreement* between the two parties whereby one agrees to hold another party harmless for specified actions, inactions, injuries or damages and indemnify the owner. A well-drafted risk transfer agreement is one of the most effective ways to ensure risk of loss is properly allocated to the party that both creates the risk and has the ability to control that risk.

All contracts and/or agreements should be formalized as a written contract developed by legal counsel, as the use of the property owner's legal counsel is key to ensuring that liability is adequately controlled. The contract wording should include:

- **Hold Harmless Agreement:** A clause in the contract that releases one party from consequences or liabilities due to the act of the other party. It is important to note that hold harmless agreements work both ways – and you need to ensure that this agreement is in your favor.
- **Indemnification:** An indemnity agreement ensuring that proper compensation is available for losses or damage.
- **Waiver of Subrogation:** An endorsement that prohibits an insurance carrier from recovering the money they paid on a claim from a third party that may be negligent.
- **Primary and Noncontributory Requirement:** An inclusive contractual requirement that requires the vendor's or subcontractor's policy to pay before other applicable primary policies and without seeking contribution from other available insurance.
- **Additional Insured Status:** The vendor or subcontractor is required to endorse the property owner onto its general liability policy as an "Additional Insured."

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