

RISK COMMUNIQUÉ

Certificates of Insurance as a Risk Management Tool

One of the most important ways public entities manage the risk of loss is by transferring that risk to others. This can and should be done whenever feasible. The opportunity presents itself most frequently when others occupy entity premises as independent users such as renters, recreation leagues, performing groups, and similar non-employee related activities.

The public entity has two powerful tools available to use in transferring risks of loss associated with activities which it does not directly control: Hold Harmless and Waiver of Subrogation Clauses in the contract with the users and Certificates of Insurance.

While it is not always possible or even desirable to require every user group to provide evidence of financial responsibility for losses which may occur as a result of their activities, it is prudent to do so when the user group is not providing a program or service which directly benefits the public entity and/or recognizable hazards are evident.

In many instances, you can exercise more control than you might otherwise think possible with the execution of a premises use agreement with the group conducting the activity. For example, an agreement with a scout troop should include the name of the responsible adult, the number of adults who must be present for a given number of youngsters, the spaces and equipment permitted to be used and the days and hours of use. Use should only be permitted when an employee is present in the building. Activities not permitted should also be carefully spelled out.

If this minimum level of control cannot be exercised and the activity of the user group presents an inordinate hazard, then you should look to the user group for security against loss by the public entity, or consider withholding use permission.

Certificates of insurance should be obtained by the user group, and presented to the public entity far enough in advance to verify its conditions and validity. A certificate of insurance will state the policyholder's name, the coverages afforded, the limits of coverage, when applicable, and the inception and expiration dates of the coverage, as well as the date of issue and other related information.

When requesting a certificate of insurance from others, you should establish the conditions and coverage you wish to be included. Listed below are the significant elements and concerns regarding such certificates.

First, make an assessment of the exposures presented by the proposed activity. Determine whether general liability, auto liability, and/or workers' compensation liability are involved, and require the user to satisfy these insurance requirements.

The public entity should be named as an additional insured on the certificate, without reservation, covering the scheduled activity to be conducted. Coverage should be primary. Without this language and in the event of a loss, you may have to sue the user group or contractor to indemnify the public entity for such a loss since the public entity will certainly be the primary target of any claim brought by someone as a result of an injury or recover for a direct loss from fire caused by the user, for example. If the using group has employees, it should be required to provide a certificate of insurance for workers' compensation, with a waiver of subrogation in favor of the public

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entity. The using group should also be required to provide a certificate of auto liability insurance, covering owned, non-owned and hired autos.

1. If the policy has aggregate limits, require a statement of existing claims against the aggregate limits. Otherwise you will have no way of learning if and to what extent the aggregate is impaired by prior claims and payments.
2. Require evidence of the financial strength of the insurance carrier (A.M. Best rating or Standard & Poor rating, or both). Ask your insurance agent to advise you on this as well as the admitted or non-admitted status of the carrier.
3. Require a 30-day written notification prior to cancellation of the policy.
4. Carefully check the certificate for claims made coverage, especially if the event or work will take place close to the expiration date of the policy. A claims made policy will only respond to occurrences which happen during the policy life, and if the resulting claim is made during the same time and prior to expiration.
5. "Tail" coverage can be purchased by the insured to cover claims presented after the policy expiration date for a specific period of time.
6. If an agent rather than the carrier issues the certificate obtain a letter from the agent stating explicitly that the agent has the authority to issue such a certificate and bind the company providing the coverage. The signature on the certificate may not clearly indicate whom the signer represents. Ask. There have been many unauthorized certificates issued.
7. Keep track of all certificates of insurance you receive and file them in a way, which will permit a fast, accurate, periodic review for current status. This can be done by placing a copy in a chronological file which is reviewed automatically to be sure there have been no expirations without notice or a succeeding certificate. This is especially important when user activity occurs over an extended time and past the expiration date of coverage on the certificate you have in your file. You cannot depend on the user group or their agent to do this for you.

Relationships with contractors demand a more specific review of insurance requirements. Keep in mind that it may be possible to obtain coverage limits which apply on a per job or per location basis reducing your cost.

Finally, be aware that you cannot transfer risks associated with the physical safety of your facilities to users of your buildings. Plan to control physical hazards such as slippery floors, lighting, and sidewalks closely when setting up a premises use agreement.

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