

P&C RISK REVIEW

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Quality Service For Your Insurance Needs

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Handling Client Requests for Proof of Insurance

This material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, confer with a qualified professional who can provide guidance that considers your unique circumstances.

It's understandable that a client would want to make sure that anyone they hire to work on their project has adequate insurance. The typical way to try to get assurance that adequate insurance is in place is to ask for written proof in the form of a Certificate of Insurance.

Today, the industry recognized Certificate of Insurance is known as the ACORD 25 Certificate of Liability Insurance form. Essentially, the ACORD 25 Certificate of Insurance provides evidence that an entity, whether an individual or business, has insurance coverage at the particular point of time the certificate is issued. That's it!

Of course, the client is rarely satisfied just having this limited piece of evidence. They want to know that the parties they hire will have insurance in place throughout the life of the project and hopefully beyond.

Unfortunately for them, that is an unrealistic expectation; an impossibility really. No one can guarantee that they will maintain continuous insurance coverage beyond the current policy that is in force. The design firm may be hit with claims that deplete its current policy limits. It may experience an economic downturn that forces it to go out of business and/or not renew its insurance coverage. Or, the insurance company itself may cancel or non-renew coverage due to unpaid premiums or a poor claims history.

A design firm cannot and should not guarantee a client via a contractual agreement that it will maintain continuous insurance coverage. Again, that is a promise you might not be able to keep.

So what do you do when a client asks for a guarantee of continuous insurance or at least prior notice that an insurance policy is about to be cancelled? The best approach is to educate them as to what a Certificate of Insurance can -- and can't -- do.

The "New" ACORD 25

The most recent version of the ACORD 25 was published in October of 2009. This version had a significant change from the previous version regarding policy cancellation provisions -- changes your client will not necessarily like.

Specifically, the current ACORD 25 has revised language that weakens already weak language regarding an insurance company's responsibility to notify a client that your insurance is about to be or has been cancelled. The old language read as follows:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail ___ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

The new ACORD 25 replaces this language with the following:

Should any of the above described policies be cancelled before the expiration date thereof, notices will be delivered in accordance with the policy provisions.

Unfortunately for the client, unless the insurer includes language in the policy obligating itself to provide prior notice of cancellation to anyone beyond the first named insured, they are not obligated to even "endeavor" to do so. What's more, even if an insurer obligates itself in its policy to give prior notice of cancellation, that would only apply to policies cancelled by the insurance company. If the insured cancels coverage, that cancellation is immediate and giving prior notice would be impossible.

Handling Common Client Requests

Clients who are aware of this change in the ACORD 25 language may ask an insured to keep sending the old ACORD form as evidence of insurance. Unfortunately, that is impossible. Once a new ACORD form is issued, the old form can only be used up to one year after the introduction of the new form. Thus, that window closed back in September, 2010.

Clients may also ask that you amend the language of the new ACORD 25 form to include a requirement to provide notice of cancellation. Tell these clients that changing the language of the ACORD 25 form would be a violation of copyright and licensing laws. Furthermore, the insurance company would not be obligated to comply with the revisions. They are only obligated to comply with their own policy provisions.

A client may even ask you to provide your own Certificate of Insurance form. Tell the client that such a form would be virtually worthless. Again, the insurance company would be under no obligation to comply with any of its provisions.

So what's the best course of action when a client asks for proof of insurance?

- Have your agent or broker provide your client with a copy of the latest ACORD 25 Certificate of insurance. If necessary, explain to your client why old ACORD forms, revised forms, or self-written forms are invalid. You or your client should never ask your agent to include certificate wording that extends coverage broader than that provided in the policy -- that could be asking your agent to break the law.
- If the client asks for notice of the cancellation, reduction or other material change in coverage,

explain that the insurer is only obligated to provide such notification if they are required to do so in their policy language. You might offer to review relevant policy language to determine whether such a requirement exists. (Chances are it doesn't.)

- If necessary, you can personally agree to endeavor to notify the client if your insurance is going to be or has been cancelled, reduced, or otherwise materially changed.
- Offer to provide a Certificate of Insurance on an annual basis for the life of the project. This may provide an added degree of comfort to a client.
- Strike any contract language that obligates you to maintain continuous insurance coverage. That is a promise you might not be able to keep. If necessary, you might agree to language that states you will endeavor to maintain insurance coverage if it is reasonably available at commercially affordable premiums.

Let Us Be of Help

Again, each cyber liability policy will differ in terms of coverages and exclusions. We'll be happy to help you explore options and design a complete commercial, professional and cyber insurance package that meets your specific needs.

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.