



Contractual Risk Transfer

What Is Risk Transfer?

Risk transfer is a risk management strategy in which the exposure to risk can be contractually shifted from one party to another. The most common example of this technique is an insurance policy. In this relationship, the insurer assumes the risk of the policyholder.

While being a Multi-Line member does provide you with a multitude of coverage documents which provide coverage for many events, it is not a complete blanket of protection against all risks of harm. Furthermore, being a member owned pool, it is even more important that we, where possible, use contractual risk transfer, to protect our pool and its members. Other ways to transfer risk include hold-harmless clauses, contractual requirements to provide insurance for another party, waivers of subrogation, or reinsurance.

Layers of Protection

The three most common layers of protection for your resources are:

- Certificates of insurance
- Additional insured status
- Indemnification provisions in contracts

Certificates of Insurance

A certificate of insurance is issued by an insurer or their agent on their behalf. It is a form which lists the kind of insurance coverage, and important details including the insurance limits, policy period, and policy number. It may also show any special endorsements, which may include additional insureds or waivers of subrogation. The primary purpose of a certificate of insurance is to provide evidence of the insurance coverages in effect on the issuance date. A certificate of insurance will not alter or modify any terms or conditions of the policy. A policy can still be cancelled after you have been given a certificate of insurance. There is no transfer of risk accomplished by requesting a certificate. When securing a certificate of insurance, you should refer to the enclosed recommended insurance requirements to confirm that the coverages and limits provided are sufficient for your needs.

By requesting a certificate of insurance, you will confirm that the party has insurance, and that the coverages provided are sufficient. If the party is uninsured or underinsured, you may be exposing yourself to risk caused by their actions.



Additional Insured Status

By requesting additional insured status on an insurance policy as opposed to just holding a certificate of insurance, you acquire rights under that policy. An additional insured endorsement can cover you for accidents arising out of the named insured's (the other party to the contract's) involvement or actions. There are multiple benefits to requesting additional insured status. If you should have to go to court over a dispute regarding your contract language, it is more likely that the other party's policy will provide coverage should you be included as an additional insured. In some instances where two parties are involved, a dispute between the two insurance carriers may ensue, with each looking to the other for paying the loss. This is again much less likely to occur if you are an additional insured on the policy. Your rights will be even better protected if you require that the policy holder's policy identify the insurance as primary and non-contributory. That means that it must defend and pay any claim before your insurance is triggered. Ultimately, you are attempting to protect yourself with numerous rights and protection offered under the other party's policy, such as tendering coverage for legal defense costs if needed.

Indemnification Provisions in Contracts and Leases

A properly worded contract can provide the most comprehensive protection if it includes clauses for insurance requirements, additional insured status, certificates of insurance, and hold-harmless language which can provide a means to further transfer risk and provide reimbursement for any claimed legal damages, attorneys' fees or other costs. An indemnification agreement, also referred to as a hold-harmless agreement, is used to transfer risk of loss from one party to another. See attachment *Sample School District Hold Harmless Agreement*. These are often found in construction contracts, lease agreements, rental contracts, and other agreements. By requiring your lessees and subcontractors to enter into a hold-harmless agreement, you make sure that you will be held harmless for any potential liability resulting, in whole or in part, from their conduct. For a contract to use with general contractors and on building projects, please refer to our AIA Replacement Contract. Ideally, the hold harmless agreement will be a supplement to your contract or formal agreement with the 3rd party. (AIA contract with contractors, facility use agreement if renting out premises, etc.)

Exercising an Effective Risk Transfer Strategy

Certificates of Insurance

Before commencing any work or signing a lease agreement, **require the other party to submit a certificate of insurance**. Refer to the *Initial Certificate Request Letter* for a template to send when requesting the certificate. You may also include the *Example Hold Harmless Agreement*. The coverages and limits listed should be reviewed to **confirm that they satisfy those listed in the Recommended Insurance Requirements**. You can enforce these requirements by not allowing services to begin until



you have received evidence of compliance, withholding payment for the work until satisfactory evidence is received, or terminating the contract. **Establish a certificate of insurance filing system**, whether electronically and/or with paper files. The filing structure should have the following capabilities:

- A project file containing a current certificate of insurance for all parties involved
- An alphabetical file for each service provider
- An expiration file based upon policy expiration dates, allowing easy follow-up for updated documents

Your business software may already have the capabilities to perform these functions. Check with your customer support representative for your software, or your IT professional to see if you have any options to do this. Otherwise, see the COI tracking file for an Excel spreadsheet that can house this data. It contains a macro which will alert you upon opening the program of any certificates due to expire in 30 days. The *Vendor/Contractor* follow up can be sent when you have notice of the upcoming expiration, in order to request a new one.

Additional Insured Status

Request additional insured status from all subcontractors, tenants, service providers, and other parties. The most important scenarios and relationships where you should make this request, are when your property is involved- i.e. trade contractors and service providers working on your premises, or a tenant or lessee of your property. Any subcontracts should reference the terms of the general contract. Any other contract requiring liability insurance should have mandatory additional insured language.

3rd Party Contracts

All agreements with 3rd parties should be done so through a written contract. If possible, include a hold-harmless clause that protects you from the other party's acts. It should also require that you be named as an additional insured, as mentioned above. The contract should outline the parties' responsibilities in regards to insurance, indemnity, safety requirements, and all other aspects of the relationship. Special attention should be given to any hold-harmless language, and whether you are being asked to waive any rights, such as subrogation or any indemnity clauses. **Contracts can be submitted to VSBIT legal counsel for review through our contract review program.**