

CERTIFICATES OF INSURANCE— A LOOK AT THE BASICS

*Understanding the purpose and limitations of
a certificate of insurance can prevent problems*

By Craig F. Stanovich, CPCU, CIC, AU, and William K. Austin



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Five faxes have just been placed in your in-basket. Your phone is ringing and three e-mails have suddenly appeared, all marked critical. The lead producer just asked for policies to deliver to a customer in the next 15 minutes. To top that off, the boss has just arrived at your desk with an urgent request—an important customer wants a certificate of insurance immediately!

While there is not much we can do to slow this frantic pace, maybe some straight talk about certificates of insurance will help. A little better understanding may make the process a bit easier and also head off some of the pitfalls that sometimes occur. So let's take a look at certificates of insurance.

What is a certificate of insurance?

A certificate of insurance is a document that verifies the existence of insurance. While some businesses have designed their own certificate of insurance forms, the most common certificate form is distributed by the ACORD Corporation. We will focus on the ACORD 25 Certificate of Liability Insurance form, edition (2001/08).

A certificate is usually requested by someone with whom your customer, the policyholder, has a business relationship. Why the need to verify insurance and what's the hurry?

Let's assume your customer is an electrical contractor and the person requesting the certificate is a general contractor considering your customer for a big job that is out to bid. The certificate serves as evidence to the general contractor that your customer has the correct insurance in place.

This evidence is so important to the general contractor that delivery of the certificate is urgent. Your customer may not be able to bid, work or get paid for the job unless the general contractor has received a properly issued certificate.

The purpose of certificates

The sole purpose of the certificate of insurance is to provide information to the certificate holder about the policyholder's insurance *in force at the time the certificate is issued*. By issuing a certificate, you are representing only the insurance your customer has in effect on that day.

Completing a certificate

Accurate completion of a certificate is a must. Obtaining and following the instructions published by ACORD for completing the certificate should help with the process. You should also know what instructions, if any, your insurance company has regarding certificates that may differ from ACORD's instructions.

It is worth noting that ACORD recommends in its instructions that the certificate of insurance not be used: (1) to waive rights; (2) to quote from a contract; (3) to attach an endorsement; or (4) to quote any wording that amends the policy unless the policy itself has been amended.

Let's consider your customer, the contractor, who needs a certificate of insurance from you.

Waiving rights. The certificate holder, in your case the general contractor, may demand that your customer waive or give up his or her rights against the general contractor. While your customer may agree to this, the certificate of insurance is *not* for recording this agreement.

Quoting from contract. The general contractor may also require your customer to keep the insurance in effect for three years after this job is completed. Even though this agreement is in the construction contract, the certificate is *not* intended to be used to reference a clause in a contract.

Attach an endorsement. The certificate holder may demand that the policy be endorsed—by adding the general contractor as an additional insured. The certificate of insurance is *not* intended to be used to endorse the policy; its sole purpose is to reflect accurately the insurance in effect. This doesn't mean an additional insured endorsement cannot be shown on the certificate; it does mean that the policy has to be properly endorsed *before* the certificate can list the general contractor as an additional insured.

Quoting policy amendment. The certificate holder may demand one other change: Your customer is to add the Waiver of Subrogation endorsement to the workers compensation policy and the endorsement wording is to be quoted on the certificate.

This is certainly acceptable, but only after the workers compensation insurance company has endorsed the policy to add the Waiver of Subrogation endorsement. In short, don't quote the wording of any policy change *unless and until the policy has been amended*.

Completing a certificate—exclusions added by endorsement

An often-overlooked part of the certificate is the box toward the bottom with the heading “Description of Operations/Locations/Vehicles/Exclusions Added by Endorsement/Special Provisions.” Depending on the situation, there may be no need to fill in this box.

You should, however, list in this box all *endorsements* that are attached to the policies that *exclude* coverage, such as mold or EIFS (Exterior Insulation and Finish Systems) exclusions. And yes, this does mean you have to identify and note all of the exclusionary endorsements to accurately issue the certificate.

What should you do if your customer insists that he or she needs items on the certificate that are *not* supposed to be there? Now that you know why, you might try explaining to your customer the reasons the certificate is not the place to waive rights or quote from a contract.

Limitations of a certificate of insurance

Prominently displayed at the top of the certificate is wording that reinforces the purpose of the certificate—it is for information only and does not give any rights to the certificate holder. The wording continues by explicitly stating that the certificate itself does not change the policies listed.

Specifically addressed on the second page of the ACORD 25 under the heading “Important” is the granting of additional insured status or adding waiver of subrogation. The certificate unequivocally states that, absent the proper policy endorsement, the certificate alone does not add an additional insured or a waiver of subrogation.

Also on the second page of the form under the heading “Disclaimer,” ACORD makes very clear that a certificate is not a contract between the insurance company (or agent) and the certificate holder. Courts have pointed out that the issuer of a certificate receives no consideration from the certificate holder—an element necessary for any contract.

Cancellation

Certificate holders often want to be notified if the policy or policies shown on the certificate are canceled. Under the heading “Cancellation” located at the bottom right hand corner of the certificate, the certificate notes the issuer will “endeavor” to mail notice of cancellation if the policy is canceled before the expiration date. This clause does not, however, incorporate any wording about *renewing* the policies listed, only cancellation prior to expiration.

The remainder of the cancellation wording is often problematic to both your customer and the certificate holder—failure to give the notice imposes no liability on the agent or insurance company. In other words “we’ll try, but we aren’t responsible if we don’t issue the notice.”

Some certificate holders hope to overcome this problem by requiring removal of the word “endeavor.” The effectiveness of this approach is questionable. Although the issuer now agrees to issue the notice (better than just trying), it still isn’t responsible if it doesn’t issue the notice.

Some pitfalls

It would seem that with the repeated disclaimer wording on certificates, an agent could never have liability because of the issuance of a certificate. After all, it isn’t a contract. While this is generally true, trial courts have found agents liable for failure to accurately issue a certificate. In such cases, the agent is alleged to have negligently or fraudulently misrepresented to the certificate holder the customer’s insurance.

A common error is representing changes to the policy on the certificate, such as adding the certificate holder as an additional insured, which are never requested by the agent or executed by the insurance company. This situation is further compounded by the now common practice of insurance companies refusing to accept the agent’s certificates. Instead, insurance companies require the agent to keep a log of certificates issued.

Conclusion

A better understanding of the true purpose, recommended uses and limitations of certificates of insurance is important. Not only will this help you use your time more efficiently, it may head off problems for your agency and your customers. *

The authors

Craig F. Stanovich and William K. Austin are partners in Austin & Stanovich Risk Managers, a risk management consulting and insurance advisory firm. For more information on The National Alliance, call (800) 633-2165 or go to www.TheNationalAlliance.com.

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Craig F. Stanovich and William K. Austin are partners in Austin & Stanovich Risk Managers, a risk management consulting and insurance advisory firm that sells expertise, not insurance. Both Mr. Stanovich and Mr. Austin have extensive backgrounds in all aspects of insurance and risk management, including underwriting, brokerage and consulting. Phone: 508-476-3357 Fax: 508-476-3047 Email: cstanovich@austinstanovich.com or wkaustin@austinstanovich.com

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