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Understanding Certificates of Insurance

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Evolution of Certificates



- Have been in use for approximately 40 years
- Replaced the need to provide copy of policy
- Originally issued by Insurance Companies
- Brokers assumed the role to speed up process
- The demand for certificates increased
- Issued Electronically and different versions
- The U.S. has a standard, regulated Form
- Provinces have no regulations for Certificates
- Insurance Industry recommends verbiage

Let's

Be Clear

At some point in your career you may request a Certificate of Insurance or you may be asked to provide one.

The limitation of a Certificate is that it is not a policy.

- A Certificate only confirms coverage in force the time of issuance
- Coverage can change without notice to the Certificate Holder
- The policy can be cancelled without notice to the Certificate Holder

When are Certificates Used?

Energy, construction, government, schools, sports, landlords, technology, manufacturing, lenders, leasing companies, churches, hospitals, retail, property managers ... **Most contracts contain insurance covenants to provide specific evidence of insurance.**

Party A enters into a contract with Party B

Party A specifies the coverage required → ← Party B provides a Certificate to confirm the coverage required

Party A requires Additional Insured status → ← Party B provides a Certificate confirming the status required

Examples of Requesting Parties

REQUIRES

- Landlords
- Manufacturers
- Leasing Companies
- Lenders
- Joint-Ventures
- Retail
- Government Entities
- Construction Projects

PROVIDES

- Tenants
- Suppliers
- Lessors
- Borrowers
- Participants to JV
- Manufacturers
- Service Providers
- Sub-contractors

Types of Policies Requested

LIABILITY

- CGL
- Tenant's Legal Liability
- Professional Liability
- Errors & Omissions
- Automobile
- Environmental (TP)

PROPERTY

- All Risks Property
- Business Interruption
- Boiler and Machinery
- Environmental (FP)
- Marine/Cargo
- Crime

Examples of Scope of Coverage Requested

LIABILITY

- Defense & Indemnity
- Specific Limits
- Additional Insured Status
- Additional Named Insured
- Cross Liability
- Severability of Interest
- Waiver of Subrogation

PROPERTY

- All Risks, Broad Form
- Specific Deductibles
- Replacement Cost
- Earthquake, Flood, Sewer
- No Coinsurance
- Waiver of Subrogation
- Loss Payee Status

Certificate Holders Have Differing Interests

A Certificate Holder may have **LIMITED** or **NO DIRECT FINANCIAL BENEFIT** from the insurance requested. May ask for evidence of certain coverage and to be notified if the policy is cancelled

A Certificate Holder may be a **DIRECT BENEFICIARY** of the insurance coverage. A lender asks for Loss Payee Status if the collateral is damaged.

A Certificate may be issued without a specified Certificate Holder, but is issued for **INFORMATION ONLY** to any interested parties. Often these are posted on a company website.

Certificate Disclaimers

Disclaimer 1

The Certificate is issued as a matter of information only and confers no rights to the Certificate Holder. This Certificate does not amend, extend or alter the insurance coverage afforded by the policies below.

Certificate Disclaimers

Disclaimer 2

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain the insurance afforded by the policies described is subject to all the terms, exclusions and conditions of such policies. Limits may have been reduced by paid claims.

Certificate Disclaimers

Disclaimer 3

Should any of the above policies be cancelled before the expiration date thereof, the insurer will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives or the broker issuing this certificate

Issues with Disclaimers

The reason why Certificates are accepted is that these are more convenient than receiving copies of policies and endorsements, however when a Certificate Holder requests:

- Loss Payee Status, or Mortgagee Status, or Additional Insured Status
- to protect an asset and/or exposure from the Policyholder's liability, there is an expectation that the certificate provided accurately represents coverage which is in force for the benefit and/or protection of the Certificate Holder.

Example: The Certificate should contain no information that is not actually part of the policy. Therefore, if a Certificate Holder is shown as a Loss Payee, the policy should reflect this as well. Since by Statute, a Loss Payee listed in the policy is entitled to receive notice of cancellation, the Certificate's Notice of Cancellation Disclaimer contradicts the policy.

Rights To Notice of Cancellation

ONTARIO INSURANCE ACT - FIRE INSURANCE

Mortgagees and other payees

•**147.** (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to that person. R.S.O. 1990, c. I.8, s. 147 (1).

IBC MORTGAGE CLAUSE

Termination

5) The term of the mortgage clause coincides with the term of the policy. The Insurer has the right to cancel the policy as provided by Statutory Condition (for example, non payment of premium), but the Insurer will neither terminate nor alter the policy to the prejudice of the Mortgagee without the notice stipulated by Statutory Condition

Additional Insured Status

- There is no Statutory Protection for an Additional Insured to a liability policy.
- Today, many policies contain a blanket definition for Additional Insured which includes any party the Insured has agreed to defend and indemnify in a contract. The Additional Insured is not specifically endorsed to the policy
- The only document identifying the Certificate Holder as an Additional Insured is the Certificate
- Should a new notice of claim be received several years after the occurrence, the only document showing the Certificate Holder as an Additional Insured may be the Certificate
- The Insurer may deem this to be insufficient proof to provide defence and indemnity

Eroding Policy Limits

- CGL policies issued today often have a low liability limit per occurrence, with an annual aggregate for all claims occurring within the policy period
- The Certificate shows the policy limit and adds the Disclaimer that this limit may have been reduced by paid claims, but does not disclose the amount of the reduction. Also the Disclaimer pertains only to paid claims and not claims which are reserved but not yet resolved, hence the aggregate continues to erode
- The Certificate Holder will never know that an aggregate limit is impaired until a claim is reported and the Insurer declines to defend or indemnify because there are no insurance proceeds available

Reliance on Certificates

- The majority of litigation with respect to certificates of Insurance is in the United States
- There is limited Canadian Jurisprudence for failure to issue a certificate of insurance or misrepresenting coverage
- There is some related to Insurers failing to protect Lenders or Lien Holders
- Often Insurers do not dispute Certificate Holder status, but the duties owed to them, such as Duty to Defend
- Even if the Insurer assumes the Duty to Defend, the Certificate Holders own insurance policy might also be called upon

Let's

Re-Cap

Certificates of Insurance are **NOT** Policies, but Certificate Holders have an expectation the Certificate they receive accurately represents the insurance in force

Certificates provide limited information or even misleading information, for example the available amount of primary liability insurance available may be substantially less than the policy limit shown on the certificate

The alternative to accepting a Certificate is to request a copy of the Policy and Endorsements to confirm the coverage is in force and Additional Insured or Loss Payee Status is secured

Thank You for your Participation



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