

RISK TRANSFER: TIPS FOR LANDLORDS AND PROPERTY OWNERS

ALLIANZ RISK CONSULTING



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As a commercial property owner or manager, you enter into contracts with tenants and contractors who provide essential services to your business. But working with these companies also poses significant liability exposures to you.

A good risk transfer program can help protect your business and your property. Absent such a program, you could be liable for losses caused by others, such as in the following scenarios:

- The owner of a strip mall leased space to a beauty salon. The lease contained the appropriate hold harmless and indemnity clause, as well as a provision requiring the property owner be named as an additional insured on the tenant's general liability policy. The lease also stated that the tenant was responsible for removing ice and snow from the sidewalks adjacent to the rental space.

One day, an elderly customer slipped and fell on an icy patch on the sidewalk as she entered the salon, fracturing her hip. The customer sued the beauty salon and the property owner.

Unfortunately, the strip mall owner had not verified the renewal of the tenant's insurance. The tenant was experiencing financial difficulty and had let the general liability policy lapse. In the end, the property owner was held responsible for the payment of legal costs and the settlement to the customer.

- A landlord of a commercial property hired a small painting contractor to paint the exterior of the building. The landlord had used this contractor several times without incident and did not require a written contract prior to beginning the project.

The contractor proceeded to paint on a windy day in order to complete the project on time. The wind carried the wet paint particles, which landed on vehicles parked in the adjacent parking lot and on a tenant's property.

Since there was no written contract with the appropriate risk transfer language, and the landlord had not requested the painter's certificate of insurance to confirm insurance coverage, the landlord's insurance carrier was responsible for the cost of repairs to the vehicles and the tenant's property.

GET IT IN WRITING

There are two primary methods to transfer risk to your tenant or contractor. You can require them to provide an insurance policy endorsement that names your organization as an additional insured; or you can establish additional insured status through a contract.

It's best to work with your legal counsel to develop standard contracts that you can require tenants and contractors to sign. This will enhance your ability to control your potential liability for claims that may arise.

An effective contract, besides complying with contract law requirements, should also include some key components:

- **Clear Scope of work**
- Hold Harmless and Indemnification statement.
- Additional insured status.
- **Specified minimum liability insurance limits**

Contract wording can help you shift the financial risk of claims to the negligent party. The contract should include specific language to protect your rights to recover damages from the contractor or tenant that you may incur from their business operations.

WHAT SHOULD INSURANCE PROVISIONS INCLUDE?

Whether you use your own contract or sign someone else's, the contract language should address:

- Naming you as an additional insured on their insurance policy – This means that you're added to their general liability insurance policy that protects you from liability caused by their negligence.
- Appropriate liability limits – The limits of the contractor's or tenant's insurance policy should be equal to your own, generally a minimum of \$1 million per occurrence or accident, and \$2 million in the aggregate (for the policy term). Higher limits may be needed for contractors performing jobs that pose more serious risks to your business, such as crane operations or major building renovations.
- Primacy – The contractor's or tenant's policy should be primary to your business insurance policy, with your policy as excess only.

- Certificates of insurance – Require the contractor or tenant to provide you with a certificate of insurance that shows coverages and policy limits. At a minimum, certificates of insurance should be updated annually. Be aware that regardless of what the certificate of insurance states, additional insured status is not confirmed based on a certificate of insurance and must be established either with a policy endorsement or through specific contract wording.

It's a good idea to designate a person for proper record keeping and monitoring of all contracts and certificates of insurance.



WHAT SHOULD I LOOK FOR IN LEASE AGREEMENTS?

Lease agreements should clearly identify the responsibilities of the tenant and the landlord. Avoid language that would make you liable for acts of the tenant. Some often overlooked areas that could cause a problem if a claim arises include:

- Common areas
- Sidewalk and parking lot maintenance
- Exterior lighting
- Snow removal
- Premise security
- Building and equipment maintenance



HIRING CONTRACTORS

Contractors doing service or other work on your premises can present liability exposures to your employees, tenants and their customers, your property, and the property of others. Typical property services include:

- Custodial
- Floor cleaning
- General building and equipment maintenance and repair
- Pest control
- Painting
- Snow removal
- Ground and parking lot maintenance
- Security

To protect your business from liability for negligent acts of contractors, establish your own contract for contractors to sign that **has a clear scope of work**, holds your organization harmless, indemnifies you and names your organization as additional insured **and specifies liability limits appropriate for the exposure**. Have your legal counsel review all contracts and lease agreements before you sign anything or approve the start of any work to assure that the contracts protect your interests.

It's also a good idea to select contractors in advance for emergency services or repairs. Once these contractors have met all of the requirements of your risk transfer program and signed contracts with you, they can be called on to perform their services in the event of an emergency.

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