

# CONTRACTUAL RISK TRANSFER FOR LANDLORDS

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## INTRODUCTION

Your business may be at risk of loss due to the actions of your tenants and contractors with whom you do business. The following losses are just two examples of how landlords were held responsible when they failed to protect themselves.

1. A landlord/owner of a strip mall leased space to a beauty salon. The lease contained a Hold Harmless and Indemnity Clause, as well as a provision to name the landlord as an Additional Insured on the tenant's General Liability Policy. The lease stated the tenant was responsible for ice and snow removal from the sidewalks adjacent to his rental space. An elderly customer of the salon slipped and fell on the icy sidewalk when entering the salon which resulted in a hip fracture. The customer sued the salon and landlord. It was found that the landlord did not verify the renewal of the Certificate of Insurance or that they had
2. A landlord of a commercial building hired a small painting contractor to paint the exterior of their building. The landlord had used this contractor on multiple occasions without prior incident and did not require a written, signed contract prior to the start of the project. The contractor began the job on a windy day to ensure he would complete the project on time. Due to the wind, paint particles were carried through the parking lot and landed on numerous vehicles in the parking area for the building. Since there was no

been added as an Additional Insured on the tenant's policy. The salon was in financial hardship and let its General Liability policy lapse. In this case the landlord was held fully responsible for legal costs, medical payments, and the settlement to the claimant.

Contract, no Hold Harmless Agreement, no Indemnification Agreement, and no Additional Insured Endorsement on a Certificate of Insurance to confirm coverage, the landlord and their insurance company were held fully responsible for the repair of customer vehicles.

Transferring risk through written signed contracts is an important part of a thorough risk management program for building owners and landlords. Examples of services which should have written contracts include but are not limited to: custodians, floor cleaning, HVAC, pest control, painting, building maintenance, parking lot maintenance, security, and snow removal, etc.

Contractors completing service or other work on your premise present liability exposures to your employees, tenants, patrons, your property, and the property of others. In order to protect your business we recommend having legal counsel review all contracts, purchase orders, lease agreements, and other formal/informal documents you sign in connection with work on your property.

It is a good idea to pre-select emergency services contractors to ensure they meet all of your risk transfer program requirements. You can then use a master contract agreement which will continually be in force for the designated period of time. It is also a good idea to designate a contract administrator to monitor all contracts and certificates of insurance.

## WHAT SHOULD I LOOK FOR IN CONTRACTS I'M ASKED TO SIGN?

First and foremost all contracts should be reviewed by your legal counsel. Some important items to consider include:

- Service contracts should clearly identify the service and scope of work to be provided, along with the contractors responsibilities.
- Hold Harmless and Indemnification agreements could shift the financial burden and financial responsibility.
- Waiver of subrogation rights (these are your rights to recover from the contractor or other responsible party).

## BENEFITS OF STANDARD CONTRACTS

Working with your legal counsel to develop a standard contract which contractors must sign will enhance your

ability to control your potential liability. Your legal counsel can design a contract that can be used when hiring contractors. Having these contracts prepared ahead of time with correct wording and insurance provisions can help you shift the financial risk of claims to the negligent party.

## WHAT SHOULD INSURANCE PROVISIONS INCLUDE?

1. The other party should name you as an Additional Insured on their policy.
2. The limits of the contractor's or tenant's insurance policy should be at least equal to your own. Higher limits should be considered for more serious risks such as pest control and major building renovations.
3. The contractor's or tenant's policy should be primary to your policy.
4. A certificate of insurance should be required which shows coverages, policy limits, and confirms you as an Additional Insured by an endorsement.

## WHAT SHOULD I LOOK FOR IN LEASE AGREEMENTS?

Contract language should be written in favor of you the landlord or building owner. Avoid language that would make you liable for acts of the tenant and contractor. Seek legal counsel to guide you in the wording process.

Lease agreements should clearly state the tenant and landlord responsibilities. Areas that are often overlooked include:

- Common Areas
- Sidewalks and Parking Lots
- Exterior Lighting
- Snow Removal
- Premise Security
- Building and Equipment Maintenance

The information outlined herein is by definition general and not intended to constitute legal advice. Always consult your own legal counsel if you have questions involving legal matters.

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