

Risk Management & Insurance Program

1. **Certificate Basics:** Certificates of Insurance and other Evidence of Insurance forms are the basic information communication tools of the insurance industry. Whenever one party requires another party to secure and maintain some form of insurance, they should also require satisfactory evidence that this has, in fact, been done. This circumstance usually arises from various forms of contracts that are related to fraternity or sorority operations and activities.

Examples include: Relationship Statements or School Recognition Requirements, Equipment Leases, Leasing Facilities owned by Others for Social Functions or Fundraising Activities, Chapter House Leases or Housing Agreements, Remodeling or New Construction Projects, and especially with any Employment or Independent Contractor Agreements.

2. **Certificates are Information Only:** The principal function of any certificate or evidence of insurance is just to provide evidence of and convey basic information about the insurance coverage carried by another party. Insurance certificates are not intended to provide insurance for the party to whom they are furnished. Certificates are not intended to amend, extend or alter the coverage afforded by the insurance policies.
3. **Additional Interest Definitions:**

Mortgagee: Added to a property insurance policy. Intended to protect the mortgagee's interest against physical loss or damage to the property.

Loss Payee: Added to a property insurance policy. Directs the insurance company to pay any loss or damage to specified property insured to a designated party other than the insured.

Additional Insured: Added to a liability insurance policy. Intended to provide limited coverage to a party other than the insured for liability arising out of the insured's premises or operations.

4. **Who Needs Certificates?** Everyone needs certificates! Certificates of insurance are the principal method used to provide evidence of your insurance coverage to the fraternity or sorority's various organizational components (Chapters, House Corporations, Alumni Groups and Volunteers). They are also used to provide evidence of your insurance to third parties such as (Schools, Lenders or Landlords).

Certificates are normally issued annually or as required. They may be copied as repeated use may be needed during the policy year. For chapters we suggest they be retained with a specific officer or with the chapter's important records. For others we suggest retention with the corporate records or other important documents.

From the fraternity or sorority's perspective, there are numerous situations in which you will want to know that the parties you are dealing with have insurance to meet their obligations to your organization. Examples include: Payment of workers' compensation benefits to injured employees, payment for any damage to your property, payment for liability assumed under contract, or proper insurance coverage for responsibilities assumed by others such as bartenders or security guards.

5. **Added Attention For Special Exposures:** We continue to recommend lead time, documentation and added attention for special fraternity or sorority exposures. Special exposures include:
 1. For "Independent Contractors", Workers' Compensation, General Liability and Automobile insurance.
 2. For Security Guards, coverage for Personal Injury exposures (False Arrest, Invasion of Privacy, etc.).
 3. For Alcohol related service providers, coverage for both Host Liquor and true Liquor Legal Liability.
 4. For Transportation Services, adequate Automobile Liability limits.
 5. Have you been protected as an Additional Insured under the other party's insurance coverage where appropriate?
6. **The "Last Stand" for Risk Management:** While likely not your first Risk Management opportunity, providing a certificate or evidence of your insurance to others or obtaining a certificate or evidence of insurance from others will almost certainly be the "Last Stand" for Risk Management. This may be the last chance you will have to apply risk management techniques to a given exposure or potential loss situation.

When providing certificates to others you should again review your exposures. More importantly, review the limitations of your own insurance. Every attempt should be made to avoid the unknowing assumption of risk, and to the greatest extent possible, contain your risks within the scope of your insurance. Not all risks that you may assume are insured.

When you obtain certificates of insurance from others we will be pleased to assist you by reviewing the insurance they maintain to support their obligations. Some frequently found errors include:

1. Incorrect Coverage or Insureds,
2. Inadequate Limits,
3. Missing Additional Insureds.

Proposed contracts or agreements should be subjected to a joint review by your legal counsel and insurance representatives. As your insurance representatives we will work with you and your legal counsel to review the

agreement's exposures and insurance obligations. This review process often reveals increased or previously overlooked exposures that can be significantly reduced or totally avoided by revising the related plans and contractual or insurance obligations.

Your legal and insurance advisors need complete information, documentation and adequate time to perform these functions well. This is particularly true if alcohol or other hazardous exposures exist. Especially if Risk Management issues have been given little prior consideration, we urge you to use the providing or obtaining of insurance certificates as the "Last Stand" for Risk Management.

7. **Hold Harmless & Indemnity Clauses:** Risk transfer to others is a fundamental risk management technique. This is best done under a written agreement containing Hold Harmless and Indemnity Clauses. Effective use of this Risk Management technique requires that your legal counsel drafts or reviews the legal agreement. We will assist by reviewing Risk Management considerations with your legal counsel.

A Hold Harmless clause attempts to relieve one party from claims for damages or liabilities that might arise via their relationship with the second party. An Indemnity clause usually accompanies the Hold Harmless clause. The Indemnity clause requires the party providing the indemnity to defend and pay any claims or damages the party being Held Harmless may become legally obligated to pay to a third party.

The opportunity for fraternities and sororities to apply or be faced with this basic Risk Management technique is almost endless. Some examples include:

1. Leases,
2. Social Functions or Events,
3. School Recognition or Relationship Statements, and
4. Independent Contractors.

Properly executed, this has been proven to be a very effective risk transfer and loss control technique for fraternities and sororities and we recommend its use whenever possible. Don't forget to require, ask us to review, and retain in your records the certificates or evidence of insurance materials provided by others to support agreements in your favor.

The respective bargaining positions of the parties will usually, to a large degree, determine how risks are transferred. While they remain an effective Risk Management technique for fraternities and sororities, overly broad Hold Harmless and Indemnity Clauses may be overturned and declared invalid by some courts as being unfair or contrary to public

policy. If a Hold Harmless agreement is ruled invalid by a court, the contractual liability insurance carried by the indemnitor may be worthless.

8. **Additional Insured:** Additional Insured status is another basic risk management technique. Hold Harmless and Indemnity clauses are of greatest value only when supported by insurance or significant assets. When one party transfers risk or is promised indemnity by another, evidence of insurance to support the promised indemnity should also be required.

Being added as an Additional Insured under another party's insurance, establishes for the Additional Insured a limited but valuable added measure of protection. An Additional Insured can tender suits or submit claims directly to the other party's insurer for handling. Being an Additional Insured can be an effective basic Risk Management technique to insulate your insurance program from potential losses.

Insurance companies commonly attempt to restrict coverage for an Additional Insured to claims for damage or liability that arise out of the premises or operations of their policy's Named Insured. In order to secure coverage as an Additional Insured you often must allow the insurer to choose defense counsel and control the defense. Becoming an Additional Insured is not intended to increase the limits or otherwise change the coverage that a policy affords.

Factors such as insurer solvency, legal decisions, and insurance regulatory actions can set aside even the best risk management plans. If as an Additional Insured your claims are denied or go beyond the scope of the insurance, you must rely on other sources of indemnity or face an uninsured loss. The most important source of protection for you against losses or claims remains your own insurance program.

9. **Whose Insurance is Primary?** The Additional Insured Risk Management technique can give rise to other difficulties. When two insurance policies potentially apply to the same claim, the question of which policy is primary or first to pay usually arises. Failure to anticipate and address this topic can result in unexpected losses. Your insurer may have to respond to a claim against you for risks that you thought had been transferred to others.

This can result in defense costs or claims costs ultimately being charged against your insurance program. If the potential for loss is significant, insurers attempting to determine the payment priority obligations of their policies may be reluctant to clearly confirm coverage or provide defense for claims that have been presented.

To avoid unexpected losses and potential problems in this area we

recommend that your Hold Harmless or Indemnity clauses, Additional Insured arrangements, and the related insurance coverage specifically address the following additional points:

1. If a claim is presented, the other party's insurer will be primary (Pay First). Your own insurance will be excess and non-contributory (Pay Only After the Other Party's Insurance).
2. The other party's insurer will provide and pay for your defense if a claim is presented.
3. The other party's insurer will provide and pay for separate counsel on your behalf if considered necessary by your legal counsel.

Questions and Additional Help

Our staff is always available to answer your questions, discuss your individual circumstances or needs, and assist you in establishing or making adjustments in your insurance program. Please contact us at James R. Favor & Company, 14466 East Evans Avenue, Aurora, Colorado 80014-1409. WATS (800) 344-7335 · TEL. (303) 750-1122 · FAX (303) 745-8669.

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