CERTIFICATES OF INSURANCE
101...THE DO'S AND DON'TS

SPONSORED BY

NUMBER ONE INSURANCE AGENCY, INC.
Certificates of Insurance

To Say
Or
Not
To say

This program is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

With special thanks to the Insurance Services Office, Inc. for advance information, continued support, and permission to use their forms and information. April 2013

What IS ... a certificate ....
What is a certificate of insurance?

• Informational snapshot only

• It is for general informational purposes only and confers no rights
ACORD states in certificate compilation instructions:

Field and/or Section Description

The title of the form, ACORD 25, Certificate of Liability Insurance, is "issued as a matter of information only, and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend, or alter the coverage afforded by policies".

The beginning of the Certificate of Liability ACORD # 25 states

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.
In the ACORD instructions for compilation of ACORD 25:

The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:

* To waive rights
* To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Vehicle or Equipment Certificate of Insurance, should be used for this)
* To quote wording from a contract
* To attach to an endorsement
* To quote any wording which amends a policy unless the policy itself has been amended

What is a certificate of insurance?

What IS ... a certificate ....

• It is subject to all of the terms and conditions of the various policies shown

The middles of the ACORD certificates states:
A CERTIFICATE does NOT
• extend any contractual rights to the holder not provided by the policy

The ACORD certificate states:

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Should not ISSUE certificate until AI endorsement is received

A CERTIFICATE does NOT
• represent compliance with any contracts entered into by the insured with others

ACORD compilation instructions tell us NOT to quote contract wording on certificate
What causes EO issues with Certificates of insurance
Potential certificate holder wants the OLDER certificate ....where the cancellation time period can be shown

Should this be done? 😕

Probably the BESTEST certificate change in 2009 (PS there is a April 2013 version now ...)

is the final disclaimer ....

Short and sweet ...

If policy is cancelled ...

it will be per policy provisions ...
Since cancellation notice is based on policy language ....

certificate holder and additional insureds ain’t gettin’ nothin’ ...

they are NOT part of the cancellation food chain ...

unless company writes OWN endorsement stating differently.
No more “endeavor” …

no more typing in the number of days …
many times incorrectly …

no increasing your EO potential ….HURRAH!!

Some of the entities that my client needs to provide certificates for … will NOT accept the new and improved certificate …

They want me to use the old “endeavor” section … cross it out and guarantee 30 days

what do I do?
On June 28, 2010, ACORD wrote:

ACORD is receiving numerous inquiries regarding the need to use only the most recent version of our forms, including the ACORD 25—Certificate of Liability.

As explained in more detail in the FAQ on U.S. ACORD certificates published on our website earlier this year (http://www.acord.org/standards/forms/Documents/ACORDCertificatesFAQ_201004.pdf), any editions of our forms that have been withdrawn from the forms library are not kept up-to-date as to regulatory requirements, and therefore should not be distributed for use. **It is imperative that all ACORD forms users use the most current versions of our forms.**

On June 28, 2010, ACORD wrote:

The new language is compliant with state insurance regulatory requirements in all states, and specifically responsive to bulletins issued last year by the South Dakota Insurance Department. Since the form is national, not state-specific and is filed where required, only the version of the form containing the new language should be used in all states.

A Certificate of Insurance/Evidence of Insurance Additional Remarks Section, as well as the ACORD 101 Additional Remarks Form may be used to copy verbatim information in the policy such as the specific number of days of written notice. **Be aware that using a certificate or other form in an attempt to vary policy terms presents legal risks, including violation of insurance regulatory requirements, and should not be engaged in without prior consultation with insurance carriers, policies and legal counsel.**
In 2012, ACORD wrote:

<table>
<thead>
<tr>
<th>Form Modification Warning</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNDER THE ADVANTAGE PROGRAM, ACORD PROVIDES TO YOU COPYRIGHTED AND OTHER PROPRIETARY MATERIAL OF ACORD CORPORATION INCLUDING, WITHOUT LIMITATION, LICENSED FORMS, WARNINGS AND SPECIAL USER INSTRUCTIONS RELATED TO FILED LIFE INSURANCE FORMS, AND FORMS INSTRUCTION GUIDES (HEREINAFTER COLLECTIVELY REFERRED TO AS &quot;ACORD MATERIALS&quot;).</td>
</tr>
<tr>
<td>IN GENERAL, USING OUTDATED MATERIALS MAY BE PROHIBITED IN CERTAIN CASES BY GOVERNMENT REGULATORS AND INCREASES THE RISK OF LEGAL ACTION BY INSUREDS AND OTHER THIRD PARTIES.</td>
</tr>
<tr>
<td>ACORD MATERIALS ARE MODIFIED PERIODICALLY TO REFLECT CHANGING LEGAL, INDUSTRY AND OTHER REQUIREMENTS.</td>
</tr>
<tr>
<td>IT IS SOLELY YOUR RESPONSIBILITY TO CONFIRM THAT YOU ARE USING ONLY THE MOST CURRENT MATERIALS THAT ACORD PUBLISHES. YOU MAY DETERMINE THE CURRENCY OR NON-CURRENCY OF FORMS, WARNINGS AND INSTRUCTIONS BY CONSULTING THE FORMS INFORMATION SECTION OF ACORD'S WEB SITE (<a href="http://WWW.ACORD.ORG">WWW.ACORD.ORG</a>).</td>
</tr>
</tbody>
</table>

Copyright issues

In a Virtual University publication on certificates of insurance

ACORD (Association for Cooperative Operations Research and Development) files its forms with U.S. Copyright Office

If use copy written material outside permission …violate 17 U.S.C. section 504(c) -

Copyright holder COULD recover statutory damages in – ranging from $200 to $150,000 depending on various factors … once of which is willfulness
Copyright issues

In a Virtual University publication on certificates of insurance

Also ... reminding us that once ACORD has created a new form ... that the old form can only be used for a year after the new one was created ...

The certificate that removed the “endeavor” language was changed in 2009 .... what year is it now????

What causes EO claims with certificates

Requests for Specific Language

• Contractual insurance requirements

• Requests to paraphrase contract/policy language on certificate

• Specific information requested in Description of Operations verbiage
What to type or not to type

2

**ALWAYS state operations ...**

- Can save you from an EO claim from the third party
  - since you were specific in the remarks section

as to the operations of your insured
What to type or not ...

**ALWAYS state operations ...**

that helps YOU identify to potential certificate holder just WHAT your client is classified/insured to do...

<table>
<thead>
<tr>
<th>ACORD instructions</th>
<th>Description of Operations / Locations / Vehicles</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COVERAGE INFORMATION</strong></td>
<td>Enter text: The Certificate Of Liability Insurance general remarks. The additional comments or special conditions that may exist upon the policy. ACORD 101, Additional Remarks Schedule, may be attached if more space is required. As used here, records information necessary to identify the operations, locations and vehicles for which the certificate was issued.</td>
</tr>
</tbody>
</table>

this protects YOU should the insured misrepresent what they do on

1) original application

2) renewal application

And company denies claim for misrepresentation
Also ...

warns the certificate holder ...up front

and

if they don’t read the certificate ...
NOT YOUR FAULT

What to type or not ...

ALWAYS state operations ...

We know that the ISO CGL picks up NEW operations during the policy period...

but what if this is NOT a new operation... and the insured has lied on the application as to what he/she/it really does...

and with some companies ....the ONLY operations that they are covered for!!
Am I required to list exclusionary endorsements on certificate?

This is ANOTHER beauty of the updated ACORD certificate ...

it no longer asks us to list them ... not that you did ... anyway ...

REVIEW ACCORD Instructions

The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:

* To waive rights
* To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Automobile Certificate of insurance, should be used for this)

* To quote wording from a contract
* To attach to an endorsement
* To quote any wording which amends a policy unless the policy itself has been amended

IMPORTANT

Kansas, Kentucky, Minnesota, Missouri, North Carolina, Oklahoma and Wisconsin require the filing of certificate of insurance forms. ACORD has filed all of its certificates in these states. In these states, the text of ACORD's certificates cannot be modified, unless the modified form is filed for approval by the respective state Department of Insurance.

DON'T RECITE LANGUAGE ... DON'T ADD LANGUAGE NOT FOUND ... attach policy or endorsement
Does the potential certificate holder want the certificate to state “insurance is provided on a primary and non-contributory basis” on the certificate??

Should you state this??

Should you put … “insurance is provided on a primary basis?”

Your EO carriers do not want you to write ANYTHING else on this certificate- follow ACORD instructions …will be helpful in court!

According to ISO policy language …there is NO SUCH THING AS ….

primary and non-contributory …
Primary and non-contributory or not
What to type or not ...

There is

Primary

There is

Excess

But the word “non-contributory” does not exist in ISO-land (until 4/2013 GI filing )

How DOES the policy read…CGL

The Other insurance language …starts out discussing when it is primary

4. Other Insurance
   If other valid and collectible insurance is available to the insured for a loss we cover under
   Coverages A or B of this Coverage Part, our obligations are limited as follows:
   a. Primary Insurance
      This insurance is primary except when b. below applies. If this insurance is primary, our obliga-
      tions are not affected unless any of the other insurance is also primary. Then, we will share
      with all that other insurance by the method described in c. below.

   If I am named insured … my policy is primary for me
   If I hold you harmless … my policy is primary for YOU ...
   If I make you an additional insured … my policy is primary for you
Primary and non-contributory or not
What to type or not ...

How DOES the policy read...CGL – Other insurance

4. Other Insurance
   If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:
   a. Primary Insurance
      This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

   ACCORDING TO ISO policy language

   MY policy will be PRIMARY for you

Primary and non-contributory or not
What to type or not ...

How DOES the policy read...CGL – Other insurance

4. Other Insurance
   If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:
   a. Primary Insurance
      This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

   If YOU have a CGL
   Then YOUR policy is
   PRIMARY FOR YOU
4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

YOU don’t WANT my policy to be primary for you … because if it STAYS primary for you … we next have to read about SHARING….

Primary and non-contributory or not

What to type or not …

How DOES the policy read…CGL – Other insurance

c. Method Of Sharing

Oops …if YOUR policy is primary for you

And MY policy is primary for YOU

They both have to SHARE!!!

YOU …don’t want to share!!!
How DOES the policy read... CGL – Other insurance

Without a COMPANY SPECIFIC ENDORSEMENT ...
MY policy will ALWAYS be primary for you ....

And then YOUR policy will have to SHARE ...unless YOUR policy has additional language

Primary and non-contributory or not
What to type or not ...

How DOES the policy read...CGL Other insurance

YOUR policy can be EXCESS for YOU ...IF

b. Excess Insurance
   This insurance is excess over

   (2) Any other primary insurance available to
   you covering liability for damages arising
   out of the premises or operations, or the
   products and completed operations, for
   which you have been added as an addition-
   al insured by attachment of an endorse-
   ment.

This is ISO CGL 2004 and 2007

Your policy will be EXCESS and NOT have to share with MY policy if YOU are added to MY policy as an additional insured for prem/op and/or products co/op
Primary and non-contributory or not
What to type or not ...

**YOUR policy can be EXCESS for YOU ... IF ......**

b. Excess Insurance
   This insurance is excess over

(2) Any other primary insurance available to you, covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

Red words added in 2004

The 1998/2001 CGL only made your policy excess when you were added to my policy for premises operations ....

So if you were an AI for prod/co op ... your policy had to share

Primary and non-contributory or not
What to type or not ...

I ask you ...

How do you DARE type in primary AND non-contributory if you have a “straight” ISO policy ....

How do you KNOW what policy or edition the certificate holder has???
Primary and non-contributory or not
What to type or not ...

2013 CGL edition modifies other insurance slightly ...

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

Changed because some companies add AI status within form and not by endorsement

Primary and non-contributory or not
Even better CGL 2013 news ...endorsement to change Other Insurance clause to "primary and non-contributory"
Primary and non-contributory or not
What to type or not ...

How DOES the policy read… BAP
The BAP makes the certificate holder an insured
whether added officially or not ...

as long as legally liable for conduct of your insured

1. Who Is An Insured
   The following are "insureds":
   c. Anyone liable for the conduct of an "insured" described above but only to the
      extent of that liability.

If you are an insured …
then coverage under MY policy is
PRIMARY for YOU …

Primary and non-contributory or not
What to type or not ...

How DOES the policy read…BAP– Other insurance

So …if MY policy is primary for YOU ...
what does YOUR policy say …

5. Other Insurance
   a. For any covered "auto" you own, this Coverage Form provides
      primary insurance. For any covered "auto" you don't own, the insurance
      provided by this Coverage Form is excess over any other collectible insurance ...
      
   c. Regardless of the provisions of Paragraph a. above, this Coverage Form's
      Liability Coverage is primary for any liability assumed under an "insured contract".

   d. When this Coverage Form and any other Coverage Form or policy covers on the
      same basis, either excess or primary, we will pay only our share. Our share is the
      proportion that the Limit of Insurance of our Coverage Form bears to the total of
      the limits of all the Coverage Forms and policies covering on the same basis.

YOUR policy states it is EXCESS!!!!
So …it WON'T share with a primary ….
Primary and non-contributory or not
What to type or not …
How DOES the policy read…

The “best” that ISO does is …
   primary
   excess
Until the 2013 CGL edition

ISO does NOT use the word
“non-contributory” …

so …neither should you UNLESS you have a
COMPANY specific endorsement!

Additional insured requests
What to type or not …

I know …

If you don’t type what the insured wants …

They
   won’t get the job
   will go elsewhere
   won’t get paid
Perhaps ...

you need to

move the account to an insurance company who has a policy with the language that is necessary

let the insured go to an agent who will knowingly type incorrect information on a certificate

Additional insured requests
What to type or not ...

Perhaps ...

Clients should be cautioned at the get go

1) to read what they sign and ... make sure they understand it

2) have their attorneys read contract before they sign and then negotiate a “doable” contract
Truly ....
the clients failure to plan
does NOT constitute an emergency on
YOUR PART
you are their insurance agent not their
psychologist

Putting language on a certificate that YOU
know is NOT found in policy language is
is ... unethical
and ...

could be considered a potential civil or
criminal offense...

and .....
Might NOT be covered under your EO policy if the EO policy contains an

intentional acts exclusion ..... or

knowingly violating a law

Remember EO is for “negligence”

If Additional insured status is REQUESTED

And PROVIDED

CAN you show endorsement number on certificate ....

I’d also show expiration date …give ALL the information.
Additional insured requests
What to type or not ...

Certificate holder wants you to list
*All the additional insureds requested*
in contract on the certificate …

Should you do that …

Where would you do that???

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Again …NOT A GOOD IDEA …

ANYTIME you type something …more than once (AI endorsement request to company) and on certificate for certificate holder …

One runs the risk of making a mistake
Additional insured requests
What to type or not ...

First ...
you should not provide
Certificate UNTIL the AI endorsement
request has been fulfilled by insurance
company ...and you have it in your hot little
mitt ...so you know what it says

Sometimes ...
does the company decline to provide AI status
for the COMPLETE listing that was
requested????

The suggestion is to send the endorsement
under separate cover ...along WITH certificate

Then the certholder has exact endorsement
language and wording
Additional insured endorsements
What to type or not ...

Speaking of additional insureds ...

Certificates....

Endorsements ...

What should be said and what should be shown

---

Additional Insured status and certificate

*Most additional insured requests are for ALL BI/PD ...*

*To extent allowed by law*

*which means ...premises operations and products completed operations ....*

*Which means TWO endorsements ....and NO exclusions ....which is impossible*
Additional Insured status and certificate

Can you state:
“Additional insured per written contract”

On the certificate???

Not a good idea

1) if you don’t have AI endorsement …
   again …did all the names desired
   get on the endorsement?

2) WHAT does “per written contract”
   mean???

Additional Insured status and certificate

Does written contract want AI status on direct
(not vicarious) basis?

Does contract require certain endorsements
and certain edition dates???

Does written contract want AI status on
primary and non-contributory basis

Does written contract require cancellation
notice for entities listed on AI endorsement
Additional Insured status and certificate

Do you just "assume" that "per written contract" is all about ... the limits requested

Operations only – used to say "your work" – years ago

No more Sole fault – used to say "arising out of" ...

As of 2004 says caused by YOU ...
10/28/2013

**2013 changes**

Restrict AI coverage to that allowed by law

Restrict AI coverage limit to that required in contract

### 2013 changes

Limit of insurance provision also modified with these changes

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**Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization**

This endorsement modifies insurance provided under the following:

**Commercial General Liability Coverage Part**

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
<th>Location(s) Of Covered Operations</th>
</tr>
</thead>
</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section 6 – Who Is An Insured**

is amended to include an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury,” “property damage,” or “personal and advertising injury” occurring after, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf.

in the performance of your ongoing operations for the additional insured(s) at the location(s) shown in the Schedule.

**B. Limit of Insurance Provision Also Modified With These Changes**

This endorsement does not apply to “bodily injury” or “property damage” occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repair) to be performed by or on behalf of the additional insured(s) at the location(s) shown in the Schedule.

2. That portion of “your work” out of which the injury or damage arises has been put to the intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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**CG 20 10 04 13**

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2013 changes to CG 20 33 Blanket Additional insured endorsement same as CG 20 10

1. Restrict Al coverage to that allowed by law

2. Restrict Al coverage limit to that required in contract

3. Limit of insurance provision also modified with these changes
2013 changes to CG 20 37 Owners, Lessees, Contractors – Completed Operations same as CG 20 10

1. Restrict AI coverage to that allowed by law

2. Restrict AI coverage limit to that required in contract

3. Limit of insurance provision also modified with these changes
Additional Insured status and certificate

BEWARE of what YOU state on certificate regarding AI status ….

just make CHECK MARK 🚩

No statements regarding extent or type of coverage …offer to send a copy

Also….

Don’t “check” that AI exists …unless have endorsement issued ALREADY

Just check …no statements … about endorsement

Also …can’t “check” W/C as there is no AI endorsement available
What limits to show on certificate

What if the contract requires a lower limit than the insured carries …

should I only list the contract limit or the exact policy limit?

ALWAYS tell the truth …

if the insured has made the certificate holder an “insured” then

the full policy limit is available …

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What limits to show on certificate

Contract vs. Policy Limits

- Insured has a $5M policy limit and the contract only requires $1M, so he only wants the certificate to show $1M so he doesn’t reveal his full limit

ACORD instructions state

Enter limit: The general liability, each occurrence limit amount. Any questions about appropriate limits or applicable policy coverage(s) should be answered by the issuing insurer(s). As used here, the limit should be listed as a whole dollar amount, as found on the policy declarations page.
Issuing the certificate

What if the contract requires a lower limit than the insured carries ... should I only list the contract limit or the exact policy limit?

if your insured has merely held the certificate holder “harmless” then it cannot get more than contract required .... If they are an additional insured ... oh well

What limits to show on certificate

Contract vs. Policy Limits

It is misrepresentation to state otherwise

Current ISO CGL AI endorsements will allow more than contract limit

2013 CGL endorsement will do what client wants ... restrict coverage limit to what requested in contract
If the project is ongoing ... could a new certificate be required each year? What limits would you then tell?

ALWAYS the current policy limits ...

we do not have to worry about any aggregate being used..per the disclaimer

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 herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

Sending COIs to Insurers

Should we send certificates to insurance companies ...

we are told that they don’t want us to
Sending COIs to Insurers

Send them whether they are wanted or not

*Marlin v. Wetzel* (WV Sup. Ct., 2002)

*Erie v. NGM* (NY trial court, 2009)

Virtual University seminar suggested:

Scan and send/upload with statement:

“Our internal procedures and our legal counsel require that a copy of all certificates be sent to our carriers.”

And … make it a normal business procedure

Binders, evidences of insurance or certificates of insurance …
I recently received an email question regarding what to provide to a mortgagee for a closing.

The answer of course depends on the exact type of transaction but let’s look at the INTENT behind each of these ACORD forms.

Binder …what’s the point/purpose???

Funny you should ask …ACORD tells you

*A Binder is a temporary insurance contract which provides coverage in advance of the issuance of an insurance policy*

(The purpose of a binder is for use when a policy doesn’t currently exist or a renewal has not been issued as yet and proof of insurance is desired.)
ACORD also states other facts regarding the binder:

* The improper use of binders has become a **major cause of producer’s Errors and Omissions claims.** It is imperative that only authorized people prepare them. Preparation must be complete and accurate.

• At the end of the binder’s specified term, all coverage expires unless a new binder has been issued **or** the expired binder has been replaced with a policy.

• All binders must conform to the state insurance code for the state in which the subject of insurance is located.

**MA ...doesn’t say too much about binders – but you need to know what other states might require if you write business outside of MA**
Binders, evidences of insurance or certificates of insurance ...

Binder ...what's the point/purpose???

In MA our law states:

183:65 Acceptance of written memorandum as evidence of insurance Section 65.
Any mortgagee doing business in the commonwealth who makes in excess of five mortgage loans per year shall accept a written memorandum of a preliminary contract of insurance pursuant to section ninety-eight of chapter one hundred and seventy-five as evidence of insurance from any duly licensed agent, broker or insurance company; provided, however, that a contract for insurance for a term of not less than one year is issued within thirty days of said memorandum, or in the event of the cancellation of said memorandum, the mortgagee shall be provided with prior written notification thereof.

ACORD warns us that...

An agent may only issue binders which comply with the company’s underwriting instructions (per company manual, agency agreement, correspondence and/or company underwriter).

If the authority is not in writing, the agent should obtain written authority

DON’T EXCEED BINDING AUTHORITY
Binders, evidences of insurance or certificates of insurance ...

Binder ...what's the point/purpose???

ACORD warns us that...

*Most agency agreements contain stated “time frames” within which the company must be notified of any risk bound.

You can’t HOLD it forever
binding authority ... unlike diamonds
is NOT “forever”

The binder itself states:

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.
Binders, evidences of insurance or certificates of insurance ...

Binder ...what's the point/purpose???

The conditions on the back state:

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

The binder and ACORD reminds us

The form reminds us that whatever policy language applies is what the insured has and we should NOT be typing anything on the front that conflicts with policy language.

Hey the MA DOI …said the SAME thing!!
Temporary insurance....

NO cancellation

Or

Disclaimer

On the front

On the back it talks of company policy language applicable

And that it IS cancellable
Binders, evidences of insurance or certificates of insurance …

Evidences of insurance … why???

_Evidences of property Insurance_

**Why was the evidence created?**

This “evidence” of an *existing policy* was designed for mortgagees or other loss payee situations as proof of an *existing policy*.

There are two options.

ACORD Form 27 Evidence of Insurance which is designed for personal lines or small commercial risks.

ACORD Form 28 Evidence of Commercial Property which is specifically designed for larger commercial risks when more information is desired by receiving entity.
Binders, evidences of insurance or certificates of insurance …

Evidences of insurance … why???

Evidence of Property ACORD form 27

In the Evidence of Property direction for completion ACORD states:
ACORD 27, Evidence of Property Insurance,

provides information about coverages currently in force on a policy.

Binders, evidences of insurance or certificates of insurance …

Evidences of insurance … why???

Evidence of Property ACORD form 27

For personal lines … if already HAVE a policy and are merely re-financing …

then

technically the Evidence of Property Insurance 27 is what you should use
Binders, evidences of insurance or certificates of insurance …

Evidences of insurance … why???

*Evidence of Property ACORD form 27*

But …
if you do this …
will the bank accept it???

Does the mortgage industry understand?

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The 2009 Evidence of Property ACORD 27 has a cancellation provision on the front of the form like the Certificate

**CANCELLATION**

*Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.*

This is essentially what the binder says …
Evidence of Property ACORD form 27

The 2009 ACORD 27 Evidence of Property Insurance has a disclaimer at the top (also like the certificate)

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

Evidence of Property ACORD form 27

The 2009 ACORD 27 Evidence of Property Insurance has a disclaimer in the middle (also like the certificate)

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 EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.
Binders, evidences of insurance or certificates of insurance ...

Evidences of insurance ... why???

**Evidence of Property ACORD form 27**

This form lets us identify the “interest” of the recipient

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**ACORD**

**EVIDENCE OF PROPERTY INSURANCE**

Disclaimer

Cancellation provision

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Additional Interest

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<th>Name and Address</th>
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Disclaimer

Cancellation provision
Evidence of Commercial Property ACORD form 28

Contains the same information as the ACORD 27 Evidence of Property but also... additional information to the receiver such as whether coverage exists for:

- business income
- terrorism
- ordinance or law
- flood
- coinsurance, etc.

When to use???

Commercial named insured must show proof of property insurance to an entity that has or will have an interest in insured property

- loss payee
- mortgagee
- Other type of financial interest
Binders, evidences of insurance or certificates of insurance.

**Certificate of Insurance - Property**

Why certificate instead of evidence?

ACORD states:

If the receiver of the form wants to verify that property coverage exists on a policy and has no direct interest in the policy, use ACORD 24, Certificate of Property Insurance. However, if the receiver of the form does have a verifiable insurable interest in the policy, such as a mortgagee or a lender, use ACORD 27, Evidence of Property Insurance, when the property is insured under a Personal Lines or Small Commercial policy. When the property is insured under a Commercial Lines policy with a large limit and the lender requires specific detailed coverage information, use ACORD 28, Evidence of Commercial Property Insurance.

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**Condo association agreements**

**Lessor/lessee agreements**
Why certificate instead of evidence?

A Certificate of Property ACORD 24 would not be used for a "closing" on a commercial or residential property UNLESS it is for a condominium unit-owner and the commercial agent for the master policy is showing there is a commercial policy in force for the named insured condo association.

General rule of thumb....

We DON’T add individual unit-owner mortgagees to the commercial master association policy … So a certificate of property insurance is the correct ACORD form.
Same disclaimers
As previously
Discussed under
liability certificate
Current
cancellation
language …read
policy like liability
certificate

Binders, evidences of insurance or certificates of insurance

Certificate of Insurance - Liability

Why certificate instead of evidence?

The ACORD 25 Certificate of Liability is used to show to another entity that various liability coverage(s) exist for a certain entity.
ACORD states:

The Certificate of Liability Insurance is used for most casualty situations in which the insured has requested certification to a third party of issued casualty coverages.

The uses of the Certificate can include: large and small contracting or manufacturing risks, lessor/lessee agreements, or other areas of liability certification.

ACORD reminds us:

The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:

* To waive rights
* To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Automobile Certificate of Insurance, should be used for this)
* To quote wording from a contract
* To attach to an endorsement

* To quote any wording which amends a policy unless the policy itself has been amended

The MA DOI …tells us this too …
ACORD reminds us:

The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:

* To waive rights
* To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Automobile Certificate of Insurance, should be used for this)
* To quote wording from a contract

If you have stated the recipient is an additional insured …you MUST endorse policy

ACORD also reminds us:

IMPORTANT

Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, North Carolina, North Dakota, Oklahoma, Utah and Wisconsin require the filing of certificate of insurance forms. ACORD has filed all of its certificates in these states. In these states, the text of ACORD’s certificates cannot be modified, unless the modified form is filed for approval by the respective state Department of Insurance.

Additionally, virtually every other state will not allow any change in a certificate of insurance that would attempt to modify a policy unless the revised certificate is filed and approved. In these states, this form can only be changed to reflect the terms and conditions of the policy on which it is reporting. Such change(s) must be approved in advance by the insurance carrier that issued such policy.
The binder was designed for the situations when:

NO CURRENT POLICY EXISTS

And

the receiver is going to have an insurable interest in the property

The Evidence of Insurance was designed when

there currently IS a policy in existence

and

the receiver is going to have an insurable interest in the property.
RECAP

The Certificate of property or liability was designed as proof of insurance to another party.

Generally there is no insurable interest involved.

RECAP

In liability business situations such as general contractor/sub-contractor, etc., where the receiver WANTS to be added to the policy as additional insured,

ACORD reminds us that the certificate grants them NO interests or rights.... an endorsement to the policy is NECESSARY to provide “insured status” to the receiver.
State laws and issues regarding certificate completion

If I get the insurance company to let me state something the certificate holder wants on the certificate …that is not in the policy…

Can I do it?

When asked to put something on a certificate that CANNOT be found in the policy …

If the EO implications are NOT enough …

One might want to consider LEGAL implications of doing so
Issuing the certificate

The MA DOI bulletin

BULLETIN 2011-07

To: Insurance Companies Offering Insurance Policies in Massachusetts and Their Insurance Producers

From: Joseph C. Murphy, Commissioner of Insurance

Date: April 4, 2011

Re: Certificates of Insurance, Evidence of Coverage Forms and Binders

Certificates of insurance, evidence of coverage forms and binders (collectively hereafter referred to as “certificates of insurance”) are intended to summarize insurance policies, including liability limits, in lieu of providing the actual policies to insureds or third parties as proof of coverage. The Massachusetts Division of Insurance (“Division”) has been informed, however, that some insurance companies and insurance producers are being asked to provide certificates of insurance that purport to amend, extend or otherwise alter the terms of insurance provided by the underlying policy. The purpose of this Bulletin is to advise insurers and insurance producers that certificates of insurance are not the proper method by which to amend a policy, that amending such certificates of insurance may create an insurer and producer’s exposure, and that this activity may violate the Massachusetts insurance laws.

Issuing the certificate

The MA DOI bulletin

Certificates of insurance are not actual policies of insurance, and as certificates of insurance, they do not and cannot be used to amend, extend, or alter insurance coverage afforded by the underlying policies. Massachusetts law, specifically M.G.L. c. 175, §§ 2B and 192, requires that all insurance policy forms, as well as riders, endorsements and applications designed to be attached to such policy forms, be filed with the Division. When an insurer or insurance producer executes a certificate of insurance that attempts to do more than merely offer a synopsis or summary of the policy, the insurer or producer risks the creation of obligations that are not payable by the underlying policy. This action may violate M.G.L. c. 175, § 181 and M.G.L. c. 176D, § 3(1)(a) which prohibit the misrepresentation of the terms or benefits of any insurance policy. This action also may violate M.G.L. c. 176D, § 3(9)(a), which makes it an unfair claim settlement practice to misrepresent the “pertinent facts or insurance policy provisions relating to coverages at issue.” Moreover, should the additional terms and conditions contained in the certificate of insurance be in conflict with, or otherwise alter, the policy forms, riders, endorsements or applications the insurer has filed with the Division, the insurer and/or insurance producer may have violated M.G.L. c. 175, § 2B by issuing, delivering or otherwise using a policy form that has not been filed with the Division.
MA is a FILE ... APPROVE ... USE ... state

What about other states ... could there be laws regarding WHAT can be put on a certificate?
One agent asked ....

I am interested in your thoughts on “safe” wording to use when issuing a certificate of insurance for a master policy.

Most policies do not include “guaranteed replacement cost” but are insured on a replacement cost basis up to the stated limit. **Lenders want “all risk” and “100% replacement cost” wording.**

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One agent asked ....

Have you seen or do you have any sample wording that satisfies the lender without the agency becoming the contingent insurer of the replacement cost Guarantee?
There IS no “safe” wording....

I have heard that SOME companies DO have a R/C endorsement available for commercial lines ...

perhaps the markets should be re-checked ...

but if it is coastal property ...

I wouldn’t count on the coverage offering!

The ISO BOP that can be modified with the condo endorsement states ....

we will determine the value of Covered Property as follows:

(1) At replacement cost without deduction for depreciation, subject to the following:

However ... then it goes on to discuss the “replacement cost underinsurance penalty” which is similar to co-insurance
The ISO CP 00 17 Condo Association policy states

4. Loss Payment
   a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
      (1) Pay the value of lost or damaged property;

Remember the unendorsed CP form is ACV

8. Valuation
   We will determine the value of Covered Property in the event of loss or damage as follows:
   a. At actual cash value as of the time of loss or damage, except as provided in b. and c. below.

Then you “opt” for replacement cost option…

3. Replacement Cost
   a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.

Which IS subject to “co-insurance”
Commercial Certificates and condo associations

So ..

How lucky do YOU feel today commercial lines agents .....

Commercial Certificates and condo associations

Fannie Mae requirements on mortgage brokers for condo purchases

Modified Hazard Insurance question for units in attached condominium projects, including 2-to-4 unit projects

The updated policy, as stated in Announcement 08-34, requires that the borrower obtain a “walls-in” coverage policy (commonly known as an HO-6 policy) unless the lender can document that the master policy provides the same interior unit coverage. As a result, CPM Version 3.0 will be updated with a modified Guide Eligibility question:

<table>
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<th>Modified Text</th>
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<td>“Is hazard insurance in place to cover 100% of the insurable replacement cost of the project improvements, including the individual units? (The deductible amount must not exceed 5% of the policy’s face amount)”</td>
<td>“Is hazard insurance in place to cover 100% of the insurable replacement cost of the project improvements, including the individual units? (The deductible amount must not exceed 5% of the policy’s face amount.) Also answer yes if the individual units are not fully covered by the master policy but are supplemented by a “walls-in” or HO6 policy in an amount that is not less than 20% of each unit’s appraised value.”</td>
</tr>
</tbody>
</table>
The agent also stated that the Banks want the HO-6 binder or certificate to state 100% R/C

My answer is “how does it feel to want” ....

but agent decided on the following language:

"Policy is on a replacement cost basis up to Coverage A limit”

HO binders and unit owners

Which ..is true ...if insured makes repairs under the ISO HO-6

C. Loss Settlement
Covered property losses are settled as follows:

1. Personal property and grave markers, including mausoleums, at actual cash value at the time of loss but not more than the amount required to repair or replace.

2. Coverage A – Dwelling:
   a. If the damage is repaired or replaced within a reasonable time, at the actual cost to repair or replace.
   b. If the damage is not repaired or replaced within a reasonable time, at actual cash value but not more than the amount required to repair or replace.

In this provision, the terms “repaired” or “replaced” do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in D.10. Ordinance Or Law under Section I – Property Coverages.
If the bylaws TOLD the association to cover the units as well as common property ...but the commercial agent will NOT state on the certificate:

Coverage is on a 100% replacement cost basis INCLUDING unitowner improvements and betterments

What does this mean??????

It means that personal lines agents will be selling a MORE expensive HO-6 ...

Hazard Insurance for Units in Attached Condominium Projects Including 2-4 Unit Projects

The Selling Guide, Part XII, Chapter 5, Insurance Requirements require that lenders verify that hazard insurance for all condominium projects with attached units, including two- to four- unit projects, covers fixtures, equipment, and other personal property inside individual units if they will be financed by the mortgage.

The updated policy now requires that the borrower obtain a “walls-in” coverage policy (commonly known as HO-6 policy) unless the lender can document that the master policy provides the same interior unit coverage. The master policy must include replacement of improvements and betterment coverage to cover any improvements that the borrower may have made to the unit.

The HO-6 insurance policy must provide coverage in an amount that is no less than 20 percent of the condominium unit’s appraised value. In the event such coverage can not be obtained, the lender should call the Fannie Mae Project Standards Department at the phone number listed at the end of this Announcement. The standard requirement for a 5 percent deductible applies.
The HO-6 insurance policy must provide coverage in an amount that is no less than

20 percent of the condominium unit’s appraised value.

We SHOULD NOT state

“100% replacement cost” or “guaranteed replacement cost” or any other tidbit of information that the potential bank or potential loss payee has asked you to mention.

UNLESS it is FOUND in the POLICY
Thank you for attending...

If you have any questions, please email
imorrill@massagent.com