



# Contract Management

## » Help Improve Your Risk

*If you are like most business owners, you probably do not take the time to thoroughly review a contract when it comes across your desk.*

*You leave this up to your lawyer or office manager. Yet, effective contract management can help protect your business from many potential expensive lawsuits and judgments.*

*It is important that you understand how a written contract can benefit and protect your business—and it is essential for you to practice effective contract management.*

### *What a written contract does*

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Today's fast-paced and highly litigious business community requires proper contract management and knowledge. A written contract or agreement functions as a legal document and can do the following:

- Provide documentation of the work projects and services to be rendered to prevent confusion and misunderstanding;

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### *What a written contract does, cont.*

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- Provide clarification of the legal responsibilities and obligations of the parties through the use of indemnification and "hold harmless agreements";
- Provide a method of dispute resolution or waivers of legal liability to reduce and possibly eliminate costly litigation expenses; and
- In some cases, shift insurance responsibilities to another therefore increasing insurance protection without any additional cost by including Additional Insured requirements; or they may increase exposures thereby requiring the purchase of additional insurance coverage.

### *What a Indemnity Provision does*

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Does the contract have an indemnification clause that insures to your benefit or that you must provide to your indemnitee? Several types of indemnity provisions exist. Generally, you want to obtain the broadest indemnity from your subcontractors. You may also want to attempt to restrict the scope of indemnity you provide to others.

Indemnitee categories include:

- **Limited:** Indemnifies only for indemnitor's own negligence;
- **Intermediate:** Indemnifies for the joint negligence of both; and
- **Broad:** Indemnifies for joint negligence of both but also the sole negligence of the indemnitee. In some states, this type is against public policy and therefore, not enforceable.

### *Important contract questions*

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When you become party to a contractual agreement, be sure you ask yourself these questions:

- What do you need to consider before working on a project, leasing your property, or hiring a subcontractor?
- How do you assess the risk of loss before signing a contract of any type?
- How do you assess the insurance requirements in existing contracts?
- Do you require written contracts when hiring a contractor or leasing property?

### *Before hiring a subcontractor/contractor, ask questions*

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- Is there a written, enforceable and properly executed contract in place with your subcontractors/contractors?
- Are the insurance limits and coverage requirements for your subcontracted work adequate for the type of work performed?
- Are there additional insured requirements?



### *When drafting or reviewing a contract, ask questions*

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- Which state's law applies to the contract? What effect does this have on the contract?
- Does the contract include all addendums? (i.e. no side agreements or verbal statements apply)
- Is the contract enforceable? Is it a signed agreement between two or more parties? Can it function as a legal document?
- Does the contract require specific dispute resolution methods? Is there an "Arbitration Clause"?
- How does the contract compare to the other contracts that are in effect? Are they broader? Are they equal?
- What are the effective dates of the contract?

### *Always seek professional advice*

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- To fully protect your business and its assets, you should always consult experts who can properly advise you about a contract. It is important to:
  - > Always consult an attorney to work with you to draft a contract suitable for your business and insurance needs.
  - > Always contact your agent when another party requires you to provide them with insurance to make sure your current insurance program meets the needs of the contract.

### *Before a loss occurs*

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- Properly execute all contracts:
  - > Are they enforceable, properly signed and properly dated?
- Have documentation readily available
- Maintain copies of Certificates of Insurance from your subcontractors
- Verify you have proper insurance coverage for each project, location, and contract provision.

### *After a loss occurs*

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- Regardless of known fault or all the facts, report the loss immediately to your agent and insurance company.
- Gather all documents pertaining to the contract, scope of work, meeting or construction notes, and any other known loss issues.
- Be prepared to discuss the facts/loss details with your insurance adjuster.

## Before signing a contract

- What requirements does the contract impose upon you?
- What insurance requirements have been written into the contract?
  - Some examples include:
    - > Auto Liability
    - > Commercial General Liability
    - > Contractual Liability
    - > Completed Operations
    - > Builder's Risk or Installation Floater
    - > Umbrella or Excess Insurance
    - > Workers' Compensation
- What limits of insurance are required in the contract?
- Are there additional insured requirements?
- Does the contract contain waivers of subrogation? If so, which insurance policies are affected? What other entities are affected?
- What evidence of insurance must be provided to the contracting parties? Certificate of Insurance?



*Loss Control is a responsibility of your management. This document is for informational purposes only and does not attempt to deal with every possible legal obligation, code violation, loss potential, or exception to good practice. It is not intended to imply that all hazards and situations are resolved. The Hanover Insurance Group, Inc. and their affiliates and subsidiaries assume no liability in connection with the information contained herein.*

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