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USING THE OTHER PARTY'S LIABILITY INSURANCE

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USING THE OTHER PARTY'S LIABILITY INSURANCE

I. INSURANCE POLICY FORMS

[A] ISO Forms

[1] ISO

Insurance Services Office, Inc., commonly known in the insurance industry as *ISO*, drafts insurance policy forms that are used either verbatim or with some modification in all 50 states. In the property and liability insurance industry ISO forms serve as the standards against which non-ISO forms are compared, much in the same way as AIA (American Institute of Architects) forms serve as the benchmarks in the construction industry. Many real estate documents incorrectly reference the National Board of Fire Underwriters, an entity created by fire insurance companies in 1866 to reduce the risk of fire in buildings. In 1965 the National Board of Fire Underwriters was merged into a predecessor of American Insurance Services Group, Inc. ISO acquired American Insurance Services Group, Inc. in 1997.

[2] Editions

Numerous editions of insurance policy forms have been published by ISO, each edition providing a different level of coverage. Edition identifiers are found in the lower left corner of each insurance form and generally contain a pair of capital letters followed by four pairs of numbers, *e.g.*, CG 00 01 12 07. The letters indicate a line of insurance products such as "CG" for commercial general liability insurance and "CP" for commercial property insurance. The first pair of numbers denote an ISO "category" within the product line. Twenty categories currently exist under CG, including 00 - General Liability Coverage Forms, 01 - Condominium Endorsements, 20 - Additional Insured Endorsements and 21 - Exclusion Endorsements. The second pair of numbers denotes a specific form within the category, *e.g.*, CG 00 01 is a commercial general coverage form written on an occurrence basis while CG 00 02 is a commercial general coverage form written on a claims-made basis. The third and fourth pairs of numbers are an edition date. Hence, a December 2007 edition is shown as 12 07. If the policy form is an unmodified ISO form, the phrase "Copyright, ISO [date]" should appear at the bottom of the page. If modifications have been made, a reference should appear to the effect that the form contains provisions from the copyrighted ISO form.

For reasons to be discussed below, the author recommends the use of ISO form identifiers in the insurance provisions of real estate documents, but a drafting problem may arise because edition dates change, often more than once during the term of a lease or mortgage. The insurance industry tends to use the most recent edition of a particular policy form and clients are generally more interested in establishing a benchmark for the type of policy rather than a specific edition of the policy. Hence, the author generally omits the edition date from the ISO form identifier and instead use a phrase such as "the most recent edition of ISO form CG 00 01, or its equivalent" and a catch-all provision to the effect that if the forms of policies, endorsements, certificates or evidence of insurance required by the contract are superseded or discontinued, the client will have the right to require other equivalent forms.

[B] Insurance Coverages in General

Three general categories of commercial insurance are relevant to real estate attorneys: property insurance, liability insurance and package coverage insurance.

[1] Property Insurance

Property insurance is "*first party*" insurance that compensates the insured for property that has been lost, damaged, or destroyed. To real estate attorneys, the "property" in question will usually be buildings, leasehold improvements, fixtures and equipment located in buildings, and the income derived therefrom.

[2] Liability Insurance

Liability insurance is *third party* insurance that compensates a party injured by the actions or omissions of an insured. Examples of liability insurance are commercial general, business auto, workers compensation, employers liability, environmental, umbrella, excess liability, and professional liability (errors and omissions) insurance policies.

[3] Package Coverage Insurance

Package coverage policies cover both property risks and liability risks. An example of a package coverage insurance policy is a home owners insurance policy.

II. LIABILITY INSURANCE

Liability insurance is "third party" insurance that compensates a party injured by the actions or omissions of an insured. The core of a commercial liability insurance policy is contained in Commercial General Liability Coverage Form, ISO form CG 00 01 (occurrence basis) or CG 00 02 (claims-made basis). To this form are added:

1. declarations;
2. common policy conditions (ISO form IL 0017);
3. broad form nuclear energy liability exclusion endorsement (ISO form ILO 00 21);
and
4. any necessary endorsements.

[A] Types of Liability Policies Based on Timing

[1] Occurrence Basis

Occurrence basis liability policies cover injuries or damages caused by an "occurrence" that takes place within the "coverage territory", but only if the injuries or damages occur during the policy period, regardless of when the claims are actually made. ISO defines an "*occurrence*" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Defense is usually provided as an additional benefit under an occurrence basis policy and does not reduce the limits available to pay for a loss.

[2] Claims-Made Basis

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Title search: Using the Other Party's Liability Insurance

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[Lease Provisions: Functional Maintenance, Repair, Casualty and Insurance Provisions; plus Using the Other Party's Liability Insurance](#)

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"Using the Other Party's Liability Insurance: Additional Insured Endorsements, Contractual Liability Provisions and Insurance Certificates"