



Certificates of Insurance: Common Problems to Avoid

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Insurance is difficult to navigate, difficult to understand and of the utmost importance. Certificates of insurance are documents often used to help commercial real estate agents, landlords and tenants navigate the world of real estate a bit more easily. However, they often complicate matters. The following paper gives an overview of what a certificate of insurance is, common problems that occur with certificates of insurance and how to avoid them.

What is a Certificate of Insurance?

The term "certificate of insurance" simply refers to a document issued by an insurer that states that something is insured. In the world of commercial real estate, the certificate of insurance is a paper that is commonly required of tenants in commercial buildings. Landlords often want these tenants to provide certificates of insurance to prove that they do, indeed, have enough insurance to cover their personal property and/or the area they are renting. The reason for this is simple enough - if the individual does not have personal property and/or renters insurance, then if a disaster, theft or other damaging problem occurred, the landlord could be left owing money.

Certificates of insurance were first used in 1976. Typically, they provide basic information about the insurance policy and the insurer. Information typically on a certificate of insurance usually includes insurance agency and agent, policy type, policy limit, policy number and effective dates. To get a certificate of insurance, policyholders typically just request one from their insurance agent.

Problems with Certificates of Insurance

- The Certificate Does Not Necessarily Validate that the Type of Insurance Listed is the Type of Insurance the Individual Has

The largest problem with the certificate of insurance is that there is always the possibility the certificate does not include details of the actual policy that the tenant currently holds. This can cause a number of problems for landlords and their real estate agents.

In other words, the certificate of insurance is just a piece of paper; it does not always certify that the tenant is telling the truth. It helps to compare the certificate of insurance to the notarized document. The notary's stamp on a document certifies that the document was signed by the individual in the notary's presence. However, it does not certify that the document is the truth. Similarly, a certificate of insurance certifies that the individual obtained information about his or her insurance policy from an insurance agent, but the certificate does not necessarily prove that the information is the truth.

Although it is uncommon for a tenant to lie to a real estate agent or landlord about his or her insurance policy, it is not uncommon for both landlord and tenant to be novices at the way insurance works. Usually, landlords have specific insurance requirements that they have been advised to require on a lawyer's advice. Similarly, most commercial tenants have insurance products that have been recommended for them by an insurance agent or a lawyer. If the two policies do not match up, it is not uncommon for neither party to be

aware of this -- especially if the certificate of insurance says they do. For this reason, incorrect certificates of insurance are created all the time, and often the policyholder and/or the landlord are not aware of this until they go to court for some reason or the insurance needs to be used.

- Insurance Agents are Often Put in a Difficult Position When it Comes to Issuing Fraudulent Certificates

According to Cooper & Scully, insurance agents often issue certificates that are not valid because they are put under so much pressure to do so. Although Cooper & Scully, in their presentation to the 4th Annual Construction Symposium, discuss urgency in the construction industry, the same applies to business and real estate. In some cases, a certificate of insurance is all that is needed before the landlord gives a business the OK to lease a building. For many reasons, businesses are often under extreme pressure to move. Perhaps they are still paying rent on their previous location and want to get out soon. This may mean that they put a similarly extreme amount of pressure on their insurance agents. They may ask agents to write a certificate for a policy to the specifications that their landlord requires, and when the insurance agent says that he or she cannot produce that kind of certificate, the tenant may threaten to take his or her business elsewhere. In these sorts of situations, agents often issue fraudulent certificates of insurance -- and this can occur without the tenant even knowing that he or she is requesting a certificate that does not reflect the policy that he or she has. Sometimes, the tenant may think that the insurance agent is simply saying

that he or she cannot print the certificate because it is an inconvenience.

- Certificates of Insurance Do Not Change Insurance Policies

In most cases, if the language on an insurance policy and a certificate of insurance are different, the insurance policy trumps the certificate. In most cases, certificates of insurance do not change insurance policies. This means that if a landlord were to file a claim on a tenant's insurance policy, and it was found that the tenant did not have enough coverage to satisfy the claim, the claim could not be paid in full, even if the landlord produced a certificate of insurance that conflicted with the policy.

- If a Tenant Changes His or Her Insurance Policy after Providing the Certificate, The Insurance Company is Under No Obligation to Notify the Landlord.

If a tenant provides a landlord with a certificate of insurance and then changes his or her insurance policy, no one has to notify the landlord. In fact, the landlord might not even know until he or she needs to make a claim on the policy.

How to Avoid These Common Problems

What the above information suggests is that certificates of insurance are by no means infallible. They are just documents that state what insurance policy a tenant has, and because insurance in the commercial real

estate market is so confusing, it is very easy for these certificates of insurance to be incorrect. However, there are some methods that landlords can use to ensure that their tenants have proper insurance.

- Landlords should always verify their tenants' insurance policies with more than the certificate of insurance. They should get a copy for the entire insurance policy from their tenants and call the insurance company to verify that the policy is still current. This means that landlords need to be in constant contact with the tenant's insurance company, checking to make sure the tenant's insurance is valid several times a year. However, landlords need to be careful that their actions are within their abilities under state law. They should not be trying to obtain any personal information to which they are not authorized without their tenants' consent.

- Landlords should make it an element of their lease that tenants must have a certain amount of insurance. Landlords can ask tenants to sign a clause stating that they will be personally or corporately responsible for any damage if they do not have the requisite amount of insurance. This will encourage them to get the get the right amount of insurance and to ensure that they provide their landlords with the proper proof of insurance.

- Landlords should keep careful records of the information they obtain and the times they attempt to obtain that information. Making a good faith effort to obtain the information might prove useful to the landlord even if the tenant has deceived the

landlord regarding the type of insurance that he or she has. It is illegal to produce fraudulent insurance documents, but in most cases it is the agent -- not the tenant -- who is held responsible for this.

- Real estate agents need to ensure they speak to their landlords about these issues so that they can advise their landlords in the best way of keeping their commercial property safe.

Conclusion

In many cases, it is relatively easy for fraudulent certificates of insurance to be produced and presented to landlords and real estate agents. In fact, there are even situations in which there are fraudulent documents produced and neither landlords and agents nor tenants are even sure how the documents became fraudulent. For this reason, relying on a certificate of insurance is never enough for a landlord or his or her real estate agent. Landlords and agents need to use other documents and methods of verifying their tenants' insurance. These methods include obtaining actual policy documents and discussing with the tenant and his or her insurance agent the kind of policy that the tenant has. By being observant and keeping good records, landlords and their real estate agents can ensure that they do not have problems later on when they need to file an insurance claim.

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