


## Certificate of Insurance: Not Just a Piece of Paper

Certificates of insurance are not the simple documents they might seem. Their issuance is not a simple clerical task carrying little risk of involving an insurance agent in a potential liability claim. In fact, quite the opposite is true: A significant number of professional liability claims are asserted against insurance agencies based on certificates of insurance they have issued. This is the second article in a two-part series examining some of the evolving issues surrounding the issuance of certificates of insurance.

Among the certificates topics that you should discuss with your agency staff:

**Opinions or representations by agent regarding a certificate of insurance.** Third parties sometimes ask an agent to confirm whether a policy covers specific risks presented by a contract, particularly with respect to construction contracts. Such a request might, as a practical matter, involve an intricate legal analysis of complex issues of construction law and insurance law. That sort of analysis is clearly beyond the purview or expertise of most insurance agents. Even in the rare case where a particular agent has the legal training to perform such an analysis, he or she would be taking on additional legal duties that would otherwise not be imposed on him or her, and therefore increase his or her exposure to professional liability claims. Thus, an agent should avoid offering opinions or making representations in connection with a certificate of insurance regarding what the policy covers or whether the policy satisfies requirements of an underlying construction contract or other agreement. Rather, the agent should remind the certificate holder of the language on the certificate form: "the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies." If the certificate holder requires more specific information, the agency can offer to obtain a copy of the policy itself, perhaps certified by the carrier, and suggest that the certificate holder take the policy to its attorney to evaluate whether the policy provides the desired protections. The insurance agent should not endeavor to make such an evaluation.

**Changes to the form of the certificate of insurance.** There are several reasons why insurance agents should not make changes to the certificate of insurance forms. First, a few states require insurance companies to file certificate of insurance forms for approval by the state insurance regulatory body, and using modified forms might be deemed to violate those filing requirements (those states have generally accepted unmodified ACORD forms). Second, and most importantly, changes to the standard ACORD certificate form can change the coverage of the policy and/or create additional obligations for the carrier and agency. The most common modifications to the form involve the notification language, typically changing the number of days notice promised, and eliminating the "endeavor to" language. Essentially, these simple changes create an obligation for the carrier and/or the agency to provide mandatory notification to the certificate holder of any early cancellation of the policy. However, if the language modification is absolutely required by the certificate holder, and sometimes it is, be sure to get written confirmation from the carrier that it is willing to meet the modified notification obligation. This would be a tremendous burden for most agencies to meet, and it creates tremendous exposure to professional liability claims for failure to notify certificate holders of the cancelled policy. Thus, insurance agents should avoid changes to the certificate of insurance form whenever possible. 

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## Send Copy of Certificate of Insurance to Carrier

A carrier's failure to notify certificate holders of a cancelled policy can create liability for the carrier because the certificate holders are relying on the coverage stated on the certificate to remain in place through the stated term. Obviously, in order for a carrier to send such notification, it would have to possess a complete list of all certificate holders. Many insurance companies take the position that they do not want insurance agents to send them copies of certificates of insurance issued by the agent. Such policies can effectively shift the burden of maintaining an accurate list of certificate holders from the carrier to the agency, and concomitantly create additional professional liability risks for the agency. Despite a carrier's stated policy rejecting copies of certificates, agents should send them anyway and, if returned, send them again. Carriers are simply better equipped to send cancellation notices to certificate holders than most agencies and should retain any obligation to send such notices.

—D.H.

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