

# Information Alert

Consultants & Professional Organizations

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## Certificates of Insurance: Evidencing Coverage While Avoiding Issues

**By: Dan Knise, President and CEO  
Ames & Gough**

Certificates of insurance are a common component of everyday business for a wide range of consultants, professional service firms and associations. Thousands of certificates are issued daily in response to contract requirements and client requests.

While the requirement to provide a certificate of insurance is standard in almost every contract for consulting and professional services, these requirements and the impact they have on those issuing the certificates are often still little understood.

This *InfoAlert* reviews the basics of certificates of insurance – what they are and how they are utilized – as well as issues that may arise. We describe some recent changes in the standard ACORD certificate of insurance format that will require changes in handling contract provisions and certificate of insurance requests. We also discuss options available and steps to satisfy your clients' requirements and requests.

### **What is a certificate of insurance?**

A certificate of insurance ("certificate") is used to provide certain information about insurance policies that a company or organization may carry. Certificates are issued to third parties, such as landlords, lessors, clients, and others with whom an organization/firm does business.

The certificate typically lists the name of the insured, the insurance coverages carried by that insured, the limits of insurance, the effective and expiration dates of the policies, and the name(s) of the insurer(s) providing the coverage.

### **Why are certificates of insurance issued?**

Certificates of insurance are typically issued in response to contractual requirements that a party

to the contract must "evidence" certain insurance coverages. Certificates are used in lieu of having to send a copy of the entire insurance policy, as a way to confirm that the insurance does, in fact, exist. Typical uses include:

- Tenant provides a certificate to their landlord to evidence liability and personal property insurance;
- Mortgagee issues a certificate to a mortgagor to evidence property coverage that would pay to re-construct the building if it were to burn down;
- Business that leases a copier or other equipment issues a certificate to the lessor to provide proof that property insurance

covers the copier if damaged by a covered peril (e.g., fire, building collapse, etc.); and

- Consultant provides evidence of professional liability, workers' compensation and employer's liability, general liability, automobile liability and umbrella liability insurance to client.

### **When are certificates of insurance issued?**

Certificates of insurance are often issued as part of a business transaction – such as when a new contract is signed, a new lease executed, etc. In addition, because most business insurances are procured on an annual basis, certificates are issued each year at the time of insurance renewals to confirm that the expiring coverage has, indeed, been replaced with a new policy.

This process of issuing renewal certificates can be complicated when an insured has different renewal dates for key coverages and is one reason why many firms seek common expiration dates for all of their key business insurance coverages.

### **What is the difference between a certificate of insurance and an insurance policy?**

A certificate of insurance is a document that confirms what insurance is carried by an organization. It DOES NOT, in any way, extend, modify, endorse or alter coverage. Only the policy, itself, or an authorized endorsement or rider to the policy can do that. The certificate does not take the place of the policy wording; it merely confirms that the required insurance policies are in place. The policy language, itself, must be consulted in order to determine the full extent of coverage being provided.

Again, the key is to understand that the coverages listed on any certificate of insurance are only provided in keeping with the terms of the policy

itself, and those terms cannot be altered by a certificate of insurance.

### **Who decides the format/content of certificates of insurance?**

This is a complicated question, as multiple parties are involved. The first, and most important, is the insurance company issuing the coverage. The insurer determines what coverages can be "certificated" and establishes the authority of the insurance broker or agent to provide a certificate of insurance on their behalf.

In practice, most insurers have chosen to join an industry-wide group known as ACORD, which promulgates standard approaches to certificates and other insurance documents. As part of this standardization, ACORD actually publishes standard insurance certificates that must be utilized by the industry.

A third party involved with establishing how certificates are utilized and what they say, is the state insurance commissioners. Many state insurance departments actively monitor and manage the use of certificates, including the language and form that may be used. They do so to prevent consumer misunderstanding and fraud. Many states actually approve the ACORD certificates and consider them to be the only approved certificates available for use.

Finally, there is the certificate requestor, which, in the case of consultants and professional services firms may be a landlord, equipment leasing firm, bank or financial lending institution, joint venture partner, or, in some cases, the client. Sometimes, these parties will include specific certificate requirements (often related to notice of cancellation, additional insured requirements, etc.) in their contracts. Some may even have their own certificate form they want utilized. Problems can arise when these client-specific requirements or forms don't match the insurance policy language or the ACORD language that has been approved by the state insurance departments.

State insurance departments have provided clear guidance to insurance brokers and agents that they cannot issue certificates “containing provisions other than those found in ‘the actual contract of insurance in existence.’” This is particularly problematic with regard to contractually-required notification of cancellation provisions that do not match what the insurance policy states. Simply stated, an insurance certificate cannot show a different cancellation notice than that contained in the actual policy.

### What “standard” certificates of insurance are offered by ACORD?

ACORD offers a variety of standard certificates of insurance for use by insurers and brokers/agents. The most commonly used forms by consultants, professional service firms and associations are:

- ACORD 25, Certificate of Liability Insurance – This certificate provides evidence of liability insurances carried by the insured including workers’ compensation and employer’s liability, general liability, automobile liability, umbrella/excess liability, and professional liability (typically listed under other or in blank space near the bottom of the certificate).
- ACORD 28, Evidence of Commercial Property Insurance – This certificate (or ACORD 24-Certificate of Property Insurance) is utilized in situations, such as mortgagee-mortgagor, to evidence property insurance.

### What are the Recent Changes in the Standard Certificates of Insurance?

In 2009, ACORD made modifications to the format of the ACORD certificate forms to improve their usefulness and minimize areas of confusion.

Among the changes were: consolidating the certificate to one page from two; moving the

disclaimer language from the bottom of the certificate form to the top and other changes to improve the usefulness and look of the certificate.

A key change was to revise the cancellation language as noted below:

OLD TEXT	NEW TEXT
<p>Should any of the above described Policies be cancelled before the Expiration date thereof, the issuing Insurer will endeavor to mail __ Days written notice to the certificate Holder named to the left, but failure To do so shall impose no obligation Or liability of any kind upon the insurer, Its agents or representatives.</p>	<p>Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.</p>

This is a significant change, especially in light of typical contract language that “requires 30 days’ notice of cancellation.” For example the AIA-201-2007, General Conditions of the Contract for Construction, states in pertinent part:

**“§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. **These certificates** and the insurance policies required by this Section 11.1 **shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner** [Emphasis Added].”**

While this language is intended for contractors, similar language appears in contracts applicable to consultants and professional service firms and associations. For many years now, agents and brokers have utilized the ACORD form language noted above (Old Text) to insert “30 days” in the blank and comply with such requirements. Simply stated, this will no longer be possible. The certificate changes noted above have pointed out the inappropriateness of the historic handling of the “notice of cancellation” requirements as further described below.

## Understanding the Notice of Cancellation Provisions in Insurance Policies.

The changes in the ACORD certificate have prompted the insurance industry to re-evaluate how certificates are utilized. With regard to the notice of cancellation, this has led to a realization that certificates were being misused in the past and, thus, provided inaccurate information.

In fact, almost no insurance policy has a straightforward “30 day notice of cancellation” provision. Instead, insurance policies typically have a three-part cancellation provision as follows:

- The Insured can cancel the policy at any time (with no notice required);
- The Insurer (depending on state requirements) can cancel the policy for any reason other than non-payment with 30 (or on occasion, 45) days’ notice; and
- The Insurer can cancel the policy due to non-payment of premium with 10 days’ notice.

In addition, the cancellation provisions require only that notice be sent to the Named Insured and the Certificate of Insurance language provides only for such notice to be sent to the Certificate Holder and no other parties (versus many contractual requirements that require the certificate issuer to “notify all additional insureds”).

For many years now, insurers, agents and brokers, insureds, certificate holders and others in the industry have allowed an approach to insurance certificate issuance to continue that has, in reality, misrepresented the coverage provided by the underlying insurance policies. With the increased scrutiny brought on by the change to the certificate language this has now become a major issue that all must address.

## What Can You Agree To In A Contract with Regard to Insurance Policy Notice of Cancellation?

Now that the new certificates of insurance are in wide use, consulting and professional service

firms, associations, and their brokers/agents will need to re-think both what they can agree to in a contract and what they can state on a certificate of insurance. Simply stated, the options are:

- **The new ACORD certificate of insurance must be issued in every instance.** Therefore, it is impossible to agree to “show 30 days’ notice for cancellation, non-renewal or reduction in limits” on a certificate of insurance. All brokers are technically required to utilize the new certificate at all times. Thus, the certificate will confirm only that notice of cancellation shall be provided in accordance with the policy provisions.
- **You can agree to provide your client notice of cancellation; however this commitment is not the responsibility of the insurer or your insurance broker/agent.** For example, you might agree to notify your client immediately if you receive any notice from any insurer that any of the required policies is being canceled. You might even agree to a “30 day notice” requirement, however, this will be your responsibility. This would be your “contractual” commitment as opposed to reflecting a modification of the insurance policy. In any event, this commitment cannot be reflected on the certificate of insurance.

In limited circumstances, some insurers are providing a mechanism to add an endorsement to your insurance policies that would provide 30 days’ notice to a specific client. Even in this relatively rare circumstance, no modification can be made to the certificate of insurance and the evidence of this commitment would typically be confirmed by providing a copy of the insurer’s endorsement to your client. There is usually a fee charged by the insurer for issuing this special endorsement for your client.

## What Should a Consulting, Professional Service Firm, or Association Do Now?

Among the steps consultants, professional services firm and associations should undertake now are:

1. **Review your own standard contract documents** to ensure that they reflect this

revised approach and don't commit your firm or organization to provide a certificate with 30 days' notice of cancellation.

2. **Educate your clients** about this change and ask them to amend their standard documents. It may even be appropriate for your professional organization or association to get engaged and make this an industry issue.
3. **Evaluate any new contracts** you are considering entering into to see if their certificate/cancellation language presents problems.
4. **Discuss this issue with your insurance broker** to be sure you fully understand what can and can't be done and how to change the

certificate request/issuance process going forward, if need be.

## Conclusion

Seldom does a topic considered so administrative and routine garner this much attention from industry leaders. This reinforces, however, the fact that a certificate of insurance is much more than a simple piece of paper. It represents your insurance program to others with whom you do business and assures them that you have the required coverage in place. We stand ready to assist you through what is sure to be a transition process in the months ahead.

Certain information included in this article was provided by ACORD in a "Certificates FAQs" they published last year.

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For additional information, please call the Ames & Gough office nearest you:

**WASHINGTON, D.C.**

Phone: (703) 827-2277

**PHILADELPHIA**

Phone: (610) 547-0663

**BOSTON**

Phone: (617) 328-6555

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