



January 2021

## **Property Manager Named as an Additional Insured – The Importance of Confirmation**

If you are providing property management services for a landlord or for a short-term rental client in Colorado, you need to be named as an additional insured on all of the clients' or landlords' insurance policies relating to the property you manage. Becoming a named insured is a critical part of any property manager's risk management strategy.

In Colorado, with a few exceptions, professional property managers are considered licensed professional real estate brokers. A condition of licensing is maintaining errors and omissions insurance (E&O insurance) that meets minimum requirements. See Commission Rule 3.9. Property managers can contract with their clients as part of the property management agreement to be covered under the landlord's liability insurance.

The first step in the process is drafting the property management agreement. Property managers cannot draft this agreement on their own. The property management agreement must be drafted by a Colorado-licensed attorney. Commission Position 27. Instruct the attorney to include a provision that the landlord or client is to: 1) obtain liability insurance for the leased premises; and 2) add you as an additional named insured on the landlord's liability policy.

You may want to discuss with your attorney specific terms relating to the additional insured contract requirement, such as:

- a claims-made or an occurrence-based policy;
- types of coverage, riders, or exclusions, such as exclusions related to mold or COVID-19-related claims;
- the policy period of coverage to avoid gaps or lapses in coverage;
- how much liability coverage the landlord will maintain in policy limits,
- what confirmation will be acceptable;
- who is responsible for any deductible and when the deductible is owed;
- the rating of the insurance provider (an A.M. Best rating of "A-" or better is recommended);
- the consequences if the landlord does not have the property manager named as an additional insured (e.g. – the landlord will hold harmless, defend and indemnify the property manager);
- choice of counsel;
- primacy of the landlord's liability policy while the property manager's E&O insurance will be secondary; and

- naming the property manager as an additional insured on the landlord's umbrella policy, if any.

The second step in the process is obtaining confirmation that the property manager is in fact named as an additional insured on the landlord's liability policy. The best form of confirmation is the declaration page of the insurance policy stating that both the property manager and the brokerage firm are identified as additional named insureds. Being named in the declaration page as additional insureds avoids questions, confusion, and arguments about coverage. An additional and recommended form of confirmation is a certified copy of the insurance policy itself. The property manager's attorney should review the policy for a coverage opinion to confirm that the property manager is an additional insured.

Often times, declaration pages and policies are not provided to property managers. Instead, the property manager will be provided a certificate of insurance or a letter from the landlord's insurance broker. A certificate of insurance is not a guarantee of coverage. A letter from an insurance broker is not a legal opinion. Certificates of insurance and insurance broker letters are not completely reliable in a court of law. They are subject to attack by the landlord's liability insurance carrier as non-binding. The only way to obtain certainty is by obtaining a declaration page with a certified copy of the policy to allow for a coverage opinion from an attorney.

The third step in the process is keeping current and complete records. All records confirming or relating to coverage should be maintained in an easily accessible and secure format. When a claim is made, it is critical that you be able to access this insurance information to timely submit your notice of claim, tender the defense, and request indemnity from the landlord's liability carrier.

If you start providing property management services before obtaining confirmation that you are an additional named insured on the landlord's liability policy, it could be determined that you waived your contractual right to that coverage. You do not want to engage in a coverage fight on top of fighting the underlying claim.

Taking the time to follow up and obtain the necessary confirmation can help avoid unnecessary disputes, make your life less stressful, and alleviate strain on your client relationship. It may avoid an increase in premiums, help avoid a negative claim history, and possibly limit your loss run if you have coverage under the landlord's liability policy to defend claims against you. It also is a tool to avoid cross-claims or third-party claims by the landlord or the landlord's insurer for subrogation against you. The landlord and its liability insurer may be less likely to go after or blame the property manager, including filing a license complaint, if they know that the liability insurer owes the property manager a defense and that the landlord's insurer has primary coverage for both the landlord and the property manager.

Becoming an additional insured does not happen automatically, even when it is stated as a requirement in your client agreement. Becoming an additional named insured requires perseverance and attention to detail, and it is worth your time and effort to avoid a coverage dispute while facing a claim.

**White and Steele, P.C.**

James M. Meseck

Rachel E. Ryckman

E. Catlynne Shadakofsky

John C. Matthews

*NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.*