

## **Make Sure Contractor's Insurance Protects You by Thomas D. Czik, Esq. and David Grill, Esq.**

As an owner or manager, you probably hire contractors to do a variety of work at your community. For example, you may hire a contractor to upgrade an apartment, install new windows, or renovate a common area. But before you let a contractor do any work at your community, make sure the contractor is covered by an insurance policy that also protects you, warns New York construction attorney Tom Czik. It's not uncommon for property to be damaged or for someone to be injured during installation or renovation projects, he says. That damage or injury could result in a lawsuit against *you* and a big money award for which you're responsible.

If you're the target of a similar lawsuit, you could be left unprotected against a costly verdict unless you have your own insurance covering a contractor's negligence.

To protect yourself, make sure your contract with a contractor includes assurances by the contractor of adequate insurance. The clause should also require the contractor to give you a copy of its insurance policy or certificate of insurance before work starts so you can review it carefully to make sure that it matches the contractor's assurances. Talk to your attorney before using this clause: *Contractor represents that it will have a commercial general liability insurance policy in the amount of [insert amount] that will be in effect as of the start date of the work. Owner shall be included as an additional insured under this policy. Contractor's commercial general liability insurance policy shall apply as primary insurance with respect to any other insurance available to or maintained by Owner. Contractor shall provide all other insurance coverage required for the work to be performed under this Contract, including any work item that could result in additional liability. Upon Owner's request, Contractor agrees to provide Owner with a copy of its insurance policy before it begins work.*

### Why Contractor's Insurance is Important

It's important that your contractor's insurance covers you, not just the contractor, for liability resulting from any damage or injury caused by the contractor's work. That's because a court may hold you liable for damage or injury caused by a contractor that you hired.

*Example:* A roofing contractor's worker was injured when a liquid asphalt tanker exploded at the site of a roofing project. He sued both the contractor and the owner. The court ruled that under New York's worksite safety law, the owner was liable for the worker's injuries, even though the owner didn't directly or indirectly supervise the work [*Witt v. Liquid Asphalt Systems, Inc.*].

If you're the target of a similar lawsuit, you could be left unprotected against a costly verdict unless you have your own insurance covering a contractor's negligence. And even if you have your own insurance, you wouldn't want to use it as your primary insurance, says Czik. Your rates can go up -- even if you submit a claim that isn't your fault, says New York construction attorney David Grill.

### What the Contract Should Say

Your contract with the contractor should contain certain key points regarding insurance coverage, says Czik. Like our Model Contract Clause, your contract clause should state that:

- The contractor has a valid insurance policy (called a "commercial general liability insurance policy") that will be in effect when the work begins.
- The contractor has taken out an adequate amount of insurance coverage, which depends on the type of job that the contractor is hired to perform.
- You're listed as a "named" or "additional" insured on the policy. This means that you're directly covered by the policy and that you'll be protected if someone sues you for damage or injury caused by the contractor.

- The contractor's policy will be the primary insurance policy. This means that your insurance won't kick in until the contractor's insurance is exhausted.
- The contractor must have insurance that covers any planned work the contractor will do, including any items that could result in additional liability. This is important, Czik notes, because sometimes the contractor's policy covers only a specific type of work. If the work the contractor is doing for you is different from what the policy covers, neither you nor the contractor will be covered if something goes wrong. For example, if the policy covers only carpentry and the contractor will be doing electrical work, the policy may not cover you or the contractor for damage or injury stemming from the electrical work.
- The contractor must give you a copy of its insurance policy or a certificate of insurance before it begins work. This will allow you to check that you're getting the coverage you need.

*Professional Apartment Management*® says: If the contractor's work involves any environmental hazards (such as asbestos or lead paint abatement), require the contractor's policy to contain a specific environmental endorsement to cover these types of hazards, says Czik.

#### Check Policy for Six Items

After you sign the contract, but before your contractor starts the work, make sure the contractor gives you a certificate of insurance and a copy of its insurance policy, and that you review the policy carefully, says Czik. You should check that the policy complies with the contract requirements. Most of these items will be in the policy endorsement. Here are six items that Czik suggests you check:

1. Owner is listed as additional insured. As required by the contract, you should be listed as a "named" or "additional" insured on the policy.
2. Policy is valid. Call the insurance company listed on the policy to make sure that it has a record of the policy. That way, you can make sure the policy is valid.
3. Policy covers planned work. Your contract requires the contractor to have insurance covering the planned work. So check that it does. Typically, you can find what work is and isn't covered in the endorsements to the insurance policy, says Czik.
4. Policy is in effect when work begins. Check the effective date on the insurance policy, and don't allow work to start before that date. If damage or injury occurs before then, you won't be covered.
5. Policy is for required amount. Don't rely on the contractor's word that he's getting the required amount of insurance coverage. Make sure you check the policy yourself to see that the contractor has bought insurance with the correct amount of coverage.
6. Contractor's name on policy matches name of contractor you hired. Contractors sometimes do business under several names. Check the name used on the insurance policy. Make sure it's the same as the name the contractor you hired used in the contract. If it isn't, you won't be covered.

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