

Protecting Commercial Investment Property



[*thewheeleragency.com/business-insurance*](http://thewheeleragency.com/business-insurance)

Q: Who needs to purchase liability insurance: the landlord or the tenant?

A: Both. Following the common law principal that “one should be responsible for one’s own negligence”, both the landlord and tenant should purchase liability insurance. Claims often involve shared (contributory) negligence. This means a jury could assign a percent of the fault to the tenant and assign the remaining fault to the landlord. Think of contributory negligence as ratios – 90/10, 80/20, 70/30 or any other combination. As the owner, you do not want exposure to any of these ratios.



TIP:
Purchase and
control your own
liability insurance.

Q: Suppose a tenant creates a dangerous condition on the property, a customer is injured, and landlord is named in the legal claim. How can a landlord protect himself against the negligent acts of a tenant?

A: Good liability protection is arranged in layers, like the many layers of an onion. Begin with a strong lease that details the responsibilities of the tenant with respect to use and maintenance of each part of the premises: the building, the sidewalks, the parking lot, etc. Your attorney should be involved in reviewing and drafting your lease. As another layer of protection, the lease should include a well written hold-harmless & indemnification agreement that favors you. Your lease should require your tenant to provide proof of liability insurance, and lastly, the tenant's policy should name you as an additional insured.

Layers of Protection:

- ✓ Strong lease
- ✓ Hold harmless / indemnification agreement
- ✓ Tenant provides certificate of liability
- ✓ Owner named additional insured



TIP: Ask your insurance agent to review the insurance section of the lease.

Q: How much can a landlord rely on being an additional insured on the tenant's policy? In other words, as a landlord, why do I need my own liability insurance if I am already an additional insured?

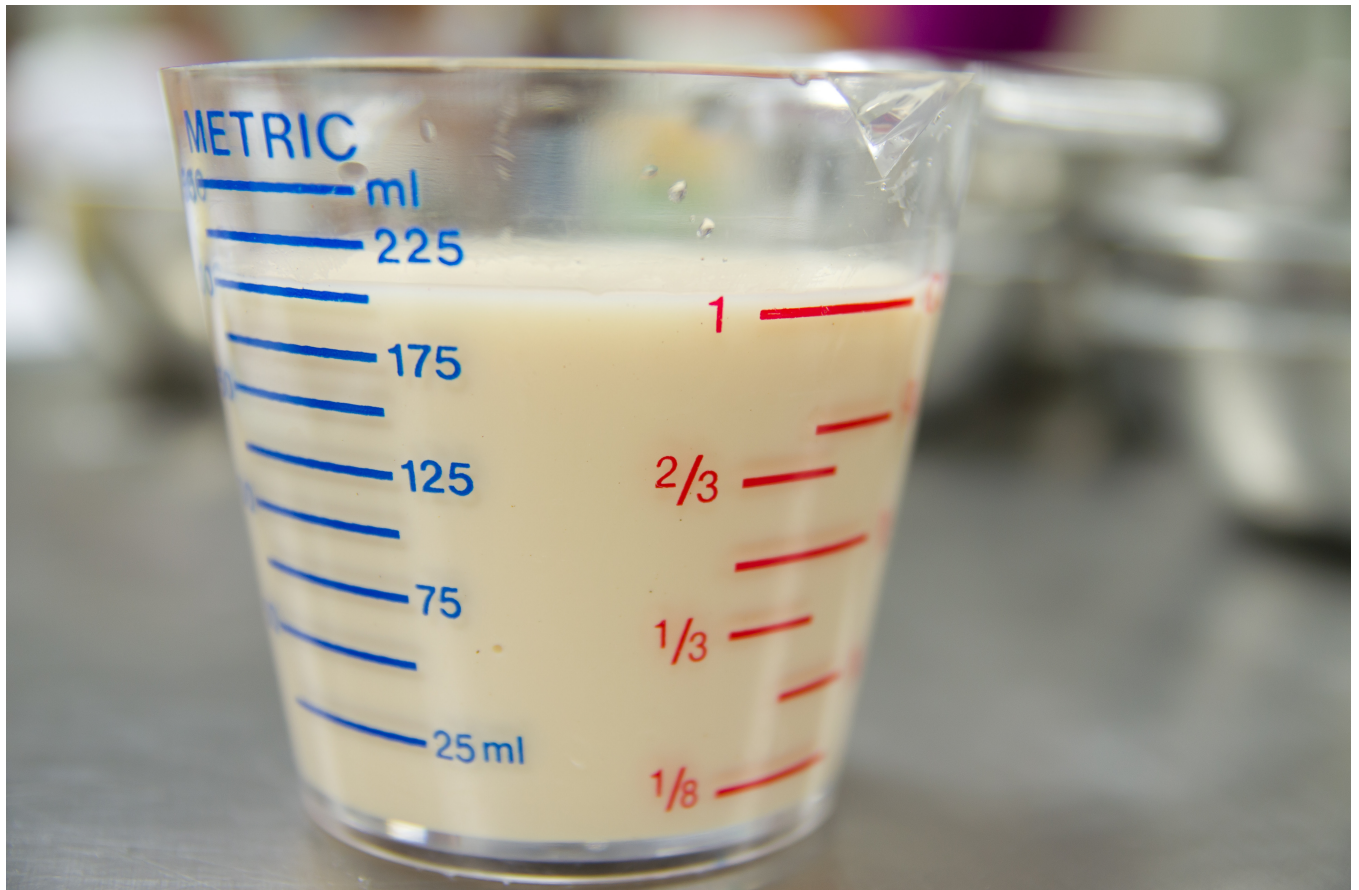
A: Additional insured status is not complete protection. While it is true, you may be protected by your tenant's liability policy as an additional insured if the legal claim involves shared negligence, you may not be protected if you are sued for sole negligence. You do not want to be entangled in the blame game with your tenant over negligence. There is also the problem of sharing the insurance limit. If the coverage limit is shared, will there be enough to protect you both?



TIP: Ask your tenant to provide you a copy of the actual policy endorsement naming you additional insured.

Q: How much coverage should I require my tenant to carry, and how do I know they are keeping the policy active?

A: Most insurance companies request landlords require tenants to maintain an amount of liability equal to the amount carried by the landlord but not usually more than \$1,000,000 per occurrence. To show that the coverage is active, your tenant should provide a Certificate of Liability (Acord 25) to you at each anniversary of the lease.



Q: What do I need to know about Certificates of Liability?

A: The Acord 25 Certificate of Liability is the insurance industry standard for proving the existence and scope of liability insurance. The certificate should be created by the tenant's insurance agent specifically for you. A certificate of liability does not provide coverage itself, it is merely a "snapshot" of the insurance policy at single point in time.

ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) Today's Date	
<small>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</small>					
<small>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed to provide coverage for the certificate holder in lieu of such endorsement(s).</small>					
PRODUCER The Wheeler Agency 622 South West Main Blvd Lake City FL 32025-5708		CONTACT NAME: John Wheeler PHONE (A.C. No. Ext.): (386) 752-8660 E-MAIL ADDRESS: john@thewheeleragency.com		FAX (A.C. No.): (386) 752-9802	
INSURED (Their Name) (Their mailing address) (Their City) FL 32025		INSURER(S) AFFORDING COVERAGE INSURER A: (Name of their insurance company) INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:		NAIC #	
COVERAGES <small>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</small>					
INSUR	TYPE OF INSURANCE	ADD. SUBR	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)
<input checked="" type="checkbox"/> A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	99-99999-99	11/06/XXX	11/06/XXX
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DED. <input type="checkbox"/> RETENTION \$				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> A <small>If "yes", describe operations below</small>				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks) CERTIFICATE HOLDER IS AN ADDITIONAL INSURED					
CERTIFICATE HOLDER (Your name) (Your mailing address) (Your city, state and zip)					
CANCELLATION <small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</small> AUTHORIZED REPRESENTATIVE (signature of their insurance agent)					

ACORD 25 (2014/01) © 1988-2014 ACORD CORPORATION. All rights reserved. The ACORD name and logo are registered marks of ACORD

TIP:
Ask your agent to help you review the certificates presented by your tenants each year.

Q: What do I need to know about “insured contracts”?

A: Most Commercial General Liability insurance policies provide automatic coverage for “insured contracts.” Your lease with your tenant may be considered an insured contract on your tenant’s liability policy. This means when you require your tenant to indemnify and hold you harmless, your tenant’s liability insurance company will defend and pay legal claims against you in cases where you are blamed for the negligence of your tenant. If your tenant is insured on an ISO CG 00 01 form, you get this benefit automatically.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an insured contract, provided the "bodily injury or property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

TIP: Confirm that your lease includes a hold harmless and indemnification agreement.

Q: Why did my agent put non-owned auto liability on my building policy? The entity I formed to own the investment property does not own vehicles or have employees.

A: Non-owned auto liability is an inexpensive coverage and is worth its weight in gold. While the coverage is designed to protect businesses when employees use their personal vehicles for company business, such as trips to the post office or the bank, accidents involving the personal auto of investment property owners, LLC members or corporate officers can put investment property at risk of a legal claim.

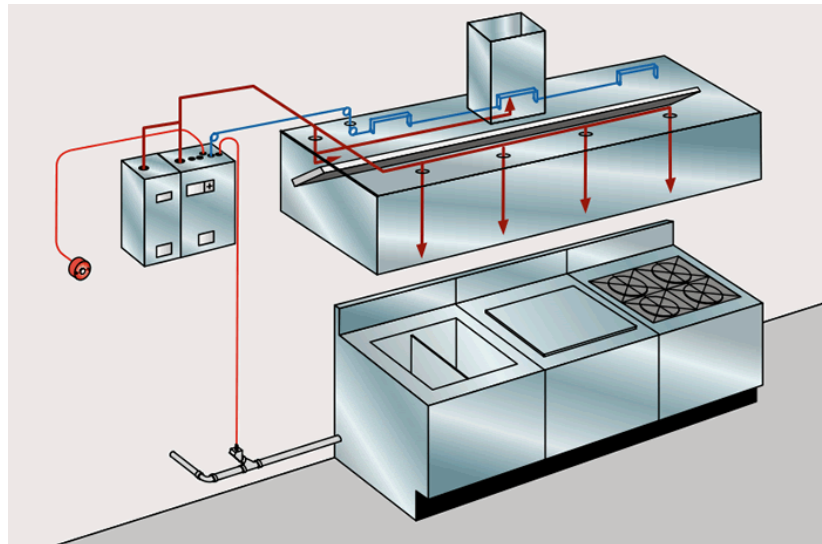


TIP: Non-owned auto often costs less than \$150 per year for \$1,000,000 in coverage.

thewheeleragency.com/business-insurance

Q: Are there any other loopholes or coverage traps that I should know about?

A: Yes. Property insurance policies insuring buildings with certain occupancies will likely include a “protective safeguards endorsement”. The most common protective safeguard is in the restaurant industry. Restaurants that utilize commercial grills and fryers that emit grease laden vapors are required to have the exhaust hood cleaned periodically and the fire suppression (ANSUL) system in the hood inspected periodically. Failure to clean and inspect may void coverage.



TIP: if you own a building that contains a commercial kitchen, a sprinkler system or a central burglar alarm, ask your tenant to show you proof that those systems are maintained by an outside firm.

*We hope you benefited from
our little book!*



*John Wheeler, CPCU
Agent/Owner*



The Wheeler Agency

Auto-Home-Business

(386) 752-8660

thewheeleragency.com/business-insurance

Copyright 2018