RISK TRANSFER SEMINAR SERIES
Facility Use

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WE'RE ALL IN THIS TOGETHER.

Risk Transfers - Why Bother?

ADVANTAGES	CHALLENGES
➢ Reduce the cost of claims ➢ Stabilize premiums ➢ Forces the controlling party to bear the cost of claims ➢ Follow overall industry practice	➢ Time consuming ➢ Learning curve ➢ Administrative costs ➢ Disruption if third-parties don't comply ➢ Political Risk

What is a Risk Transfer?

Transfers the responsibility to pay for claims to another entity

- The facility user pays for claims arising from facility use – not the district or the district's insurer
- Without a risk transfer, the district or its insurer would be responsible

How are risk transfers completed?

- Through indemnification/hold harmless agreements and certificates of insurance

Requirements for a Successful Risk Transfer

- Completed and Signed Facility Use Form
- Insurance procurement requirements
- Indemnification Language
- Properly completed certificate of insurance
    - Accurate information
    - Correct Terms/Conditions
    - Additional Insured Language
    - Policy effective and expiration dates

Sample Indemnification Agreement

USE OF FACILITIES

(NAME OF FACILITY USER) does covenant and agree to defend, indemnify and hold harmless the (NAME OF DISTRICT/BOCES) from and against any and all liability, loss, damages, claims or actions (including costs and attorney's fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in any way connected with the actual or proposed use of (NAME OF DISTRICT/BOCES) property, facilities and/or services, including but not limited to bodily injury to any employee, invitee, guest, spectator, contractor or subcontractor of (FACILITY USER).

(FACILITY USER) understands and agrees that its use of (NAME OF DISTRICT's/BOCES) property and facilities includes, but is not limited to, all areas identified in the application and/or permit, and sidewalks, walkways, parking lots, entrances, stairs, and all other areas incidental to and/or connected with the use of the premises (hereinafter referred to as "incidental areas"). (FACILITY USER) agrees that its indemnity and insurance obligations extend to the areas identified in the application and/or permit and any and all incidental areas.

Certificate of Insurance

What They Do	What they Don't Do
➢ Document Coverage ➢ Document Limits ➢ Determine Compliance with Insurance Requirements ➢ Indicate Additional Insurance Status ➢ Indicate other Conditions and Terms	➢ Prove Coverage is in Effect ➢ Prove the District/ BOCES has Additional Insured Status ➢ Guarantee Coverage ➢ Amend Policy Terms

Insurance Certificates

What You Need to Protect Your District or BOCES – Common Deficiencies

Problem	Reason
Required coverages are missing; insufficient limits	Contractor/vendor/user may not be able to obtain coverages or limits; broker forgot to include coverages
Insurers are not licensed in NY	Hard market conditions - Contractor/vendor/user may not be able to renew with existing insurer
No additional insured status	Broker forgot to include
Wrong or missing endorsement	Broker error or insurer unwilling to provide required endorsement

Insurance Certificates

What You Need to Protect Your District or BOCES – Common Deficiencies

Problem	Reason
Wrong certificate holder (building named instead of the district/ BOCES)	Typo or misunderstanding
Expired policies	Renewal policies not received
Unacceptable exclusions or conditions listed on the certificate	Contractor/vendor/user has restricted or unacceptable coverage
Certificate is unsigned	Mistake

Use of Facilities Form

Purpose - Managing Use of Your Facilities	What it Should Contain
➢ States <u>your</u> rules and regulations ➢ It is a written agreement – helps with enforcement ➢ Vets prospective users ➢ Restricts use by outside groups ➢ Helps with risk transfer ➢ Provides uniformity ➢ Tracks usage ➢ Complies with Board Policy	➢ Rules and Regulations - Damage to property, no alcohol or smoking, supervision, access, etc. ➢ Indemnification Language ➢ Insurance Requirements ➢ Accident Reporting ➢ Signatures or acknowledgements

Insurance Requirements for Facility Use

Commercial General Liability Insurance

- $1,000,000 per occurrence/$2,000,000 aggregate, with no exclusions for athletic participants.

Automobile Liability (When an organization's vehicle is brought onsite)

- $1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.

Insurance Requirements for Facility Use

Workers' Compensation and NYS Disability Insurance (For Organizations With Employees)

Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking an exemption must file a CE-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

Insurance Requirements for Facility Use

Umbrella/Excess Insurance

General Use

- $1 million each Occurrence and Aggregate. Umbrella/Excess coverage shall be on a follow-form basis over the required General Liability coverage.

Athletic and Recreational Camps

- $5 million each Occurrence and Aggregate. Umbrella/Excess coverage shall be on a follow-form basis over the required General Liability coverage.

Insurance Requirements for Facility Use

Umbrella/Excess Insurance

Carnivals and Firework Displays, etc.

- $10 million each Occurrence and Aggregate. Umbrella/Excess coverage shall be on a follow-form basis over the required General Liability coverage.

NYSIR'S ROLE

- Review Use of Facility Form for correct and complete information
- Review District's/BOCES certificates of insurance for proper coverages and endorsements
- Contact carriers and/or insureds to get corrections made
- Return corrected certificates to District/BOCES and advise that they meet the District requirements.

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