

Q&A

UNDERSTANDING FORMS AND ENDORSEMENTS



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Liability policies often contain many endorsed exclusions and conditions. But the circumstances under which such endorsements apply are not always clear. Each state has its own line of rules governing the interpretation of policy language. Accordingly, particular forms and endorsements are often subject to different interpretations depending upon the jurisdiction.

Despite the lack of uniform judicial interpretation, we have identified several endorsements, which are commonly encountered by insurance professionals, that have received a limited degree of uniform interpretation. This newsletter addresses two of those endorsements, Real Estate Property Managed and Classification Limitation.

We have employed the question and answer format to provide a general description of those endorsements; the situations in which they might apply; and the generally prevailing interpretation that courts seem to be adopting in most reported opinions. If you have a question concerning the interpretation of these endorsements in a particular matter, please contact me or your coverage counsel in the jurisdiction.

— JEFF BOLENDER



REAL ESTATE PROPERTY MANAGED

1. What is a Real Estate Property Managed endorsement?

A Real Estate Property Managed endorsement contains provisions similar to those found in a CGL form's "other insurance" clause. If certain requirements are satisfied, the endorsement shifts the primary insurance obligation for a property manager's liability from the property manager's insurance carrier to another carrier. The endorsement provides that *"With respect to [the named insured's] liability arising out of [the named insured's] management of property for which [the named insured is] acting as real estate manager this insurance is excess over any valid and collectible insurance available to [the named insured]."*

2. What is a typical situation where a Real Estate Property Managed endorsement may be applicable?

An insurance policy's real estate property managed endorsement should be analyzed whenever there is a claim being made against a property owner and its property manager. For example, when a customer or tenant sustains an injury on a commercial or multi-unit residential property, the property owner and property manager are typically target defendants.

3. Generally speaking, what coverage is there in the typical situation outlined in response to Question 2?

The property manager will qualify as an insured under the property owner's policy, as well as its own policy, because a named insured's real estate manager automatically qualifies as an insured under a CGL policy.

Under such circumstances, the property manager's direct carrier will usually assert that its policy is excess to the property owner's policy, especially where the property management agreement contains an indemnity clause in favor of the property manager.

4. Why is the Real Estate Property Managed endorsement important?

If a property manager's insurance policy contains a real estate property managed endorsement, the property manager's direct insurance carrier possesses a much stronger argument that its policy is excess over the property owner's insurance policy with regard to the claims alleged against the property manager.

5. How is the Real Estate Property Managed endorsement generally applied?

Case law discussing the interpretation and application of this endorsement is sparse. However, courts generally find the endorsement to be unambiguous and enforceable: if the property owner's insurance policy provides coverage to the property manager for the claims alleged against it, then the real estate property managed endorsement operates to make the property manager's policy excess and the property owner's insurance primary.

6. What issues can arise when determining whether the Real Estate Property Managed endorsement applies?

Although some courts simply apply the endorsement as written, other courts include in their analysis a comparison between the Real Estate Property Managed endorsement found in the property manager's policy and the "other insurance" clause found in the property owner's CGL policy. Under this analysis, the Real Estate Property Managed endorsement will apply so long as its provisions do not conflict with the "other insurance" clause it is being compared to. ■

CLASSIFICATION LIMITATION

1. What is a Classification Limitation endorsement?

A Classification Limitation endorsement generally provides that the insurance policy does not provide coverage for liability arising from operations that are not “classified” in the policy’s declarations.

2. Where can I find a policyholder’s classified operations?

A policyholder’s classified operations may be found on the Commercial General Liability Coverage Part Declarations page and on endorsements or supplements scheduled in and affixed to the policy. Each classification describes a particular category of business operations, such as “residential construction,” “window manufacture,” or “masonry.”

3. How are a policyholder’s classified operations determined?

In issuing policies, underwriters choose the classification or category most closely akin to the policyholder’s business operations. These classifications are used by the insurance company to calculate premiums.

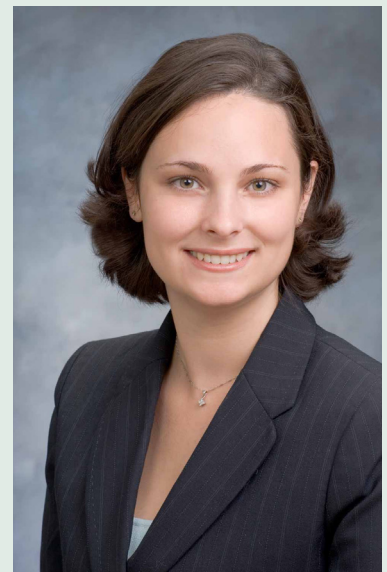
4. How do courts interpret and apply Classification Limitation endorsements?

Although few courts have addressed issues presented by Classification Limitation endorsements, courts have generally interpreted these endorsements broadly, to include activities that are supportive of or incidental to a policyholder’s classified operations.

5. Why do courts generally use the “incidental to or supportive of” standard?

As one court noted, “[b]usinesses necessarily engage in much conduct that it is incidental to and supportive of revenue-earning operations.” Great Divide Insurance Company v. Carpenter, 79 P.3d 599, 606 (Alaska 2003)

For example, although a policyholder’s business classification may be “drywall,” its operations may include other activities such as acquiring supplies, materials, equipment and fuel; paying bills; etc. So long as the injury-producing activity is supportive or incidental to the classified operation and is not being done as a separate revenue-earning activity, courts will generally find that the activity is part of the policyholder’s classified operations.



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6. What problems can arise when determining whether to apply a Classification Limitation endorsement?

There are a number of issues that can arise when determining the scope of a policyholder's classified operations. For example, there are cases where a policyholder's business operations expanded (like a delivery services added to a restaurant), but the policyholder did not inform or seek coverage from its insurance carrier for its expanded operations. Additionally, because classifications are oftentimes a one to five word description, problems can arise as to what the classified operation means or includes.

7. Under what circumstances has the Classification Limitation endorsement not been applied to exclude coverage?

- Tree-cutting operations done for the purpose of heating the policyholder's flooring business
- Management of a dump site could fall within the scope of the policyholder's "debris removal" operations
- Construction of heavy-duty ramps could be incidental to or supportive of policyholder's "dry wall/wallboard installation" operations

8. Under what circumstances has the Classification Limitation endorsement been applied to exclude coverage?

- Delivery service was not an inherent part of policyholder's restaurant operations
- Installation of skylights in a hospital was not incidental to or supportive of the policyholder's operations described as "dry wall or wallboard installation" in residential dwellings
- HVAC installation and electrical work did not fall within the scope of the policyholder's classifications for land excavation and grading

9. What implications can the Classification Limitation endorsement have in the duty to defend context?

Because it is not always clear as to whether the injury-producing activity falls within the scope of a policyholder's classified operations, a Classification Limitation endorsement may not operate to relieve an insurance carrier of its duty to defend. If there is a factual issue as to whether the injury-producing activity is incidental to or supportive of the policyholder's classified operations, courts will oftentimes find that a carrier owes the policyholder the duty to defend. ■




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