

# Additional Insured

## Introduction

Many community associations hire outside contractors for services like pool maintenance, landscaping or snow removal. Whenever an association contracts for these services, there is a potential exposure to third party litigation resulting from work performed by the contractor.

Risk management professionals usually recommend that community associations require their outside contractors to add the association as an “additional insured” under the contractor’s comprehensive general liability (CGL) insurance policy.

The intent is for the association to obtain both defense and indemnity coverage under the contractor’s CGL policy for potential liability related to the acts or omissions of the contractor.



## What CAU Recommends

- > Use only qualified and insured contractors.
- > Require a Certificate of Insurance with a minimum limit of \$1,000,000 from each contractor, including your property manager.
- > Retain legal counsel to develop a standard service contract for your association.
- > Do not sign a contract provided by a contractor without a review by the association’s legal counsel.
- > Do not assume that your contractors have adequate insurance. Specify minimum limits in your service contract.
- > Verify that your snow removal contractor actually has liability coverage for snowplowing operations.

## Need More Information?

Consult with your legal counsel to review business contracts, assess exposures and to offer advice as to the type and level of insurance protection required.

Associations may request additional information on this topic by contacting CAU’s Loss Control Department.

## What is an Additional Insured?

A CGL policy defines various categories of “Insured.” They include:

- *Named insured* – the entity described in the policy declarations and referred to throughout the policy as “you” or “your.”
- *Additional insured* – an entity to which insured status is extended subject to the terms and conditions of the insurance policy issued to the named insured.

Insurance carriers often add the association to the contractor’s CGL policy as an additional insured by endorsement. This endorsement amends the “*Who is an Insured*” section that defines “*Insured*” status in the policy. It also responds to the liability related to the operations or activities performed by the contractor on behalf of the association. A Certificate of Insurance stating that the association is an “additional insured” is not proof of such status.

## Impact of the Contract

When an association contracts for services there is often a contract executed between the contractor and the association. This contract requires careful analysis since there may be language within the document that is subject to legal interpretation. The contract should spell out the specific operations, activities, products, or business arrangements between the contractor and the association and the contractual indemnity provisions. Additional information pertaining to contracts is available in CAU Publication *GL-3 Managing Contractors*.

Both the contract and the insurance policy should contain consistent language regarding indemnification. Both documents are legal agreements requiring specific terms and conditions. In the event of a claim, a review of both documents will occur. If the language in the documents is contradictory, the association may face an uncovered loss exposure.

## The Contractor’s CGL Policy

The contractor’s CGL policy will have policy conditions that can affect the additional insured status. The “Other

Insurance” condition will define how the contractor’s CGL policy will respond in the event of a claim when other insurance is available to the association. The contractor’s policy can respond either on a primary, excess or contingent basis but will usually attempt to respond on an excess basis.

The policy might contain an “Excess Liability” condition that may limit the indemnification available to the association. This condition can exclude coverage from certain causes of loss such as pollution. It may also limit or exclude defense costs available to the association. If defense costs are covered but included within the limits of insurance, less money will be available to pay for damages.

When an association requests additional insured status, legal counsel should ensure that there is specific language in the contract that requires the contractor’s CGL policy to respond on a primary basis. He or she should also require that evidence be presented to document that, in fact, the contractor’s policy will be primary.

## The Additional Insured Endorsement

In recent years, insurance carriers have intentionally limited the coverage available to additional insureds on their insurance policies. Obtaining additional insured status does not mean that you have complete liability coverage under the policy of the contractor. The additional insured is entitled only to specific rights or protection as identified within the endorsement, which may also contain certain restrictions or limitations.

Policy limitations and restrictions that apply to the contractor will also apply to an association with additional insured status.

## Conclusion

A careful review of the written contract, the contractor’s CGL policy and the AI endorsement is required to confirm that the association has obtained the coverage it is seeking. A failure to review these documents could result in the association’s policy being primary. As primary, the association’s policy would extend coverage for potential liability related to the contractor’s negligent actions or omissions.