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Keep risk far from (work) site: Keep Maine growing - by Doug Willett

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If you take one drive through Commercial Street in Portland or visit downtown Biddeford, it will not take long to notice that Maine is growing and revitalizing its communities.

With this revitalization comes several construction projects from condos to office buildings – often several at one time – looking to attract and retain residents who can enjoy living and working in Maine. The logistics and planning that goes into developing Southern Maine communities for contractors, building owners and real estate developers requires a lot of moving pieces, especially when dealing with multiple worksites and projects at one time. Contractors come and go from each development project, leaving the builders managing people, challenges and important deliverables on multiple worksites.

One key piece in the process that can get left behind is a risk transfer agreement, or a subcontractor agreement. No matter the size of the construction project or business, a risk transfer agreement benefits all parties involved. Without one, the responsible party is at risk of being liable if an accident or problem occurs on the worksite, even if they are not at fault.

A risk transfer agreement is a non-insurance contract between two parties whereby one agrees to indemnify and hold another party harmless for specified actions, inactions, injuries or damages.

It is intended to transfer the risk away from the owner or general contractor to the vendor and/or subcontractor completing the service.

There are several fields where a risk transfer agreement applies, including developers, building owners, contractors, small business owners and restaurant owners. Many tend to ignore putting an agreement like this together because of the cost, and time. However, it is always worth the extra protection to ensure that the liability falls to the responsible parties no matter the size of the business or project.

For example, if a slip and fall occurs in a parking lot that is the responsibility of the property maintenance contractor. Without a risk transfer in place, the building owner becomes responsible for

the bodily injuries and consequences of the claim. However, with a risk transfer agreement in place, the responsibilities of the maintenance contractor are clearly defined and transferred back to this contractor. This agreement provides greater detail than the standard work performance contract.

A risk transfer agreement has important components that are crucial to maintaining proper distribution of responsibility including additional insured endorsements, alternate employer endorsements, waiver of subrogation, and the vendors insurance listed as primary and noncontributory. Distinguishing vendors as primary or non-contributory makes it clear who is responsible for handling unexpected costs. The other essential elements in a risk transfer agreement protect the owner, builder or contractor from having to pay for costs that they are not responsible for.

In my role at P&C Insurance, I work with large or small contractors and small business owners who come across the same risk, but still find themselves hesitant to use a risk transfer agreement. It is crucial to take the extra precaution and invest in a risk transfer agreement if it means protecting yourself from accidents or incidentals that can happen on the job site every day.

If a small business is looking for more insight into risk transfer agreements and what exact protection one can provide, an insurance agent is the best resource. It is the insurance agent's role to ensure the client knows the benefits of having a risk transfer agreement in place. More importantly, the agent can walk through the process with the client and make sure all areas of construction from start to finish are protected. From there, the insurance agent works with an attorney to finalize the document and make sure all elements are stated properly to protect the client.

In the end, a risk transfer agreement will help you do just as it sounds, mitigate the risk, keep the financial responsibility with the appropriate party and ultimately save you money and ensure the success of your project.

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