# Independent Insurance Agents and Brokers of Arizona, Inc.

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**Bulletin #34** 

## **2009 BULLETINS**

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DATE: December 2009

TO: IIAB of Arizona Members

FROM: Joni R. Fairbrother, CIC, RPLU

Assistant Vice President

RE: Revised ACORD Certificates of Insurance — ACORD 24 and 25

ACORD swiftly completed the working group process following the 13th edition of the ACORD 25 certificate of insurance in January 2009. The group has produced a new September 2009 14th edition that incorporates what may be the most significant changes since the ACORD 25 was introduced in November 1977.

In all, 39 changes were made to the two certificate forms. A few of the changes include: the form being reduced to one page; all disclaimer language consolidated into one section at the top of the page; columns are now provided to indicate additional insured status and waivers of subrogation; the "special provisions" section has been revised and perhaps most importantly, the forms no longer provide a notice of cancellation.

The Big "I" Virtual University has published an article written by Bill Wilson detailing the above changes and outlining all 39 changes to the forms. We have duplicated an abridged version of the article for you below. The Big "I" strongly encourages all agency personnel to read about the changes as soon as possible.

The certificates of insurance resource section at http://www.iiaba.net/VU/NonMember/Certificates.htm of the VU website also provides general information on certificate of insurance issues, including an archived webinar.

This is an abridged version of the article, for the unabridged version along with links to other articles pertaining to certificates of insurance, go to: <a href="http://www.iiaba.net/iseprise/EpriseFilterExt.dll/main/VU/Lib/Bus/AM/Procedures/Wilson2009ACORD2425.htm?">http://www.iiaba.net/iseprise/EpriseFilterExt.dll/main/VU/Lib/Bus/AM/Procedures/Wilson2009ACORD2425.htm?</a> You must log in to view this information on the Virtual University website. Please contact Terri Edwards at <a href="maintenance">terri@iiabaz.com</a> if you need your log in information.

## New September 2009 ACORD 24 and 25 Forms



#### **Abstract**

Largely in response to regulatory pressure from several states, ACORD has expedited the publication of new versions of its ACORD 24 and ACORD 25 certificates of insurance forms. The changes to these forms could comprise the single most dramatic revision in over 30 years. This article outlines all 39 changes and details five of the more significant ones.

Bill Wilson

In September, ACORD revised both the ACORD 24 Certificate of Property Insurance and ACORD 25 Certificate of Liability Insurance certificates of insurance which are now the approved forms that all agents should start using as soon as possible for the reasons outlined below. If you manually produce certificates, you should use the new forms now if licensed to do so by ACORD. If your certificates of insurance are prepared on your agency management systems, it is important to check with your vendors to see when they will start using the new forms. (Samples enclosed.)

Recognizing the high frequency usage of these forms, this revision offers an opportunity for agency leaders and staff to look at how these changes affect continuing certificate of insurance issues. As discussed below, the Special Provisions and Notice of Cancellation changes should offer greater E&O claims protection as long as they are used in accordance with ACORD guidelines. Although these two changes should simplify the process, there is the potential for certificate holder pushback. Another change simplifies the verification of waiver of subrogation clauses which is similar to the current additional insured verification by a Yes or No answer.

Finally, below is a detailed listing of all of the nineteen changes to the ACORD 25 and the twenty changes to the ACORD 24, as provided by ACORD. However, the bulk of this article will examine five of the more substantive changes to the ACORD 25 in more detail as follows....

#### Top 5 ACORD 25 Changes

#### Form Reduced from 2 Pages to 1 Page

Everyone will be thrilled to learn that, thanks to the creative wizardry of the ACORD staff and desktop publishing, the ACORD 25 has been reduced from two pages to one page. Aside from the trees we'll save, this will lessen the potential E&O impact on agencies if the important information and disclaimers on Page 2 have been left off a transmittal. This information has been moved to Page 1 of the form.

#### Disclaimers and Related Information Moved to the Top of Page 1

The disclaimers from both of the former pages have been relocated and consolidated into two segments near the very top of the new form to make them more visible, reduce redundancy, and eliminate Page 2. This is the new wording near the top of the form:

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.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

#### Columns Expanded for Additional Insureds and Subrogation Waivers

In the Coverages section of the form, the "ADD'L INSRD" column has been moved to the right of the "TYPE OF INSURANCE" column and renamed "ADDL INSR." Check boxes have been replaced with fields to capture "Y" for a "YES" response and "N" for a "NO" response. Since it is such a common request, waivers of subrogation can now be indicated in the new column labeled "SUBR WVD" to the right of the "ADDL INSR" column. Column contains fields to capture "Y" for a "YES" response and "N" for a "NO" response.

#### "Special Provisions" Block Revised

Often, agents are asked to add all kinds of information in the section of the prior ACORD 25 that was labeled as follows:

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS This box descriptor has been revised to say the following:

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

This space on the ACORD 25 has often been misused to add all kinds of information requested by the certificate holder, often in violation of the ACORD Forms Instruction Guide (FIG). For example, the FIG says the following:

ACORD recommends that the Certificate NOT be used in the following situations:

- · To waive rights
- To provide information to the owner of a leased motor vehicle or the lender about both liability and physical damage coverages applying to the vehicle (ACORD 23, Automobile Certificate of Insurance, should be used for this)
- · To quote wording from a contract
- · To attach to an endorsement
- To quote any wording which amends a policy unless the policy itself has been amended

Despite this caveat, all too often agencies would in fact add information about waiving subrogation rights or include specific statements from the contract the insured has signed with regard to additional insured listings, attesting that the policies complied with indemnity agreements or insurance requirements, etc. The certificate has NEVER been intended to be used in this manner.

This section of the form is designed to be used exclusively for any necessary and warranted description of operations, locations or vehicles. If additional space is required or other information is needed, the ACORD 101 should be attached.

#### **Notice of Cancellation Revised**

The following is the cancellation provision of the former ACORD 25:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL \_\_\_ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

This is the cancellation provision of the **new** ACORD 25:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

The obvious change is that the ACORD 25 no longer includes a blank line to show how many days cancellation notice the certificate holder MIGHT receive. The new wording simply refers the certificate holder to what cancellation notice is provided by the policy. There are several reasons for this change.

The first and foremost reason for the change and the need to expedite it with a September date is that at least three state insurance departments required a change in the language. Those states include South Dakota, New Hampshire, and New York. At the recent Mid-America Technical Conference (MATC) in St. Louis, ACORD representative Joel Volker advised that the prior ACORD certificate forms were out of compliance with the insurance laws in those (and perhaps other less vocal) states.

While a few states have been very specific and vocal on the issue of certificates providing a notice of cancellation, it is our opinion that providing such notice may often be in violation of insurance laws in most states. We are not attorneys and we certainly do not speak for state regulators, but we have reached this conclusion based on the rationale expressed in the discussion below.

In addition, this is what the ACORD Forms Instruction Guide (FIG) says:

Virtually every other state will not allow any change in a certificate of insurance that would attempt to modify a policy unless the revised certificate is filed and approved. In these states, this form can only be changed to reflect the terms and conditions of the policy on which it is reporting. Such change(s) must be approved in advance by the insurance carrier that issued such policy.

Notice of cancellation is a POLICY right, not a voluntary service. The policy, often following state law, determines who gets notice of cancellation for what reason(s), and with how much advance notice. Rarely is a certificate holder entitled to notice of cancellation by a policy form, even if the certificate holder is an additional insured. NONE of the ISO additional insured endorsements provide for any notice of cancellation to the Al. In fact, under most ISO commercial forms, the right to notice of cancellation is not even granted to any insured other than the "First Named Insured" unless otherwise indicated by statutory or case law.

The insurance policy is a contract between the named insured(s) and the insurance company. Typically, agencies do not provide notice of cancellation to insureds, much less third parties who are entitled to no policy rights. Despite this, we know that many agencies voluntarily provide notice to certificate holders that have no such rights under the policy as a service to their customers, often as a competitive advantage. Aside from the fact that this is expressly illegal in some states and may be, by inference, in others, there are reasons why this practice should be reconsidered.

For example, insureds often sign contracts where they agree that the other party will be provided 30 days (or more) notice of cancellation. The insurer will not provide this notice, but the agency voluntarily agrees to do it. What if the insurer cancels the policy for nonpayment with 10 days notice? The agency has issued a certificate indicating that the certificate holder will receive 30 days notice. Does the agency plan on paying the premium for extending the policy period another 20+ days (and will the insurer actually do this)?

Most contracts the insured enters into that require notice of cancellation do not specify whether that applies to cancellation by the insurer or the insured. Many or most policies permit the insured to cancel immediately with written notice or by surrendering the policy. Again, how does the agency plan on providing 30 days notice if the policy has been terminated by the insured? The agent most likely has no legal standing to extend the policy period.

In our recent webinar on certificates of insurance, we provided a slide (included in the handout) that listed over a dozen court cases where the agent was found liable under a certificate of insurance. Most recently, the greatest success of plaintiff's lawyers has been in the area of applying fraud statutes or a legal concept known as detrimental reliance. While the plaintiff must prove fraud, is it possible that an agent who indicates that the agency will provide 30 days notice of cancellation (outside any policy provision to that effect) KNOWING that this would be impossible in some situations, could be found guilty of fraud?

Most lawsuits against agents involving certificates of insurance have been unsuccessful because the courts have generally found that unmodified ACORD forms with disclaimers intact are not contracts and actionable against the agent. However, some courts have applied the concept of detrimental reliance or promissory estoppel to hold agents liable for statements on certificates that are not true and on which the other party relied to their detriment.

We anticipate push-back from certificate holders on the new ACORD forms and we are considering various responses based on what may occur in the coming months. We will continue to use the VU newsletter as the vehicle to keep you informed on developments and Big "I" members are always welcome to log in and use our "Ask an Expert" service when they have certificate or other questions. In addition, please reference the extensive documentation, including FAQs, in this special area of the VU: Certificates of Insurance Resource Section at http://www.iiaba.net/eprise/main/VU/NonMember/Certificates.htm

If you are looking for a more comprehensive treatment of certificates and related issues, we have archived our recent 2-hour nationwide webinar: Certificates of Insurance Webinar at

http://www.iiaba.net/na/03\_Education/07\_InHousePrograms/NA20090423110018?ContentPreference=NA&ActiveState=0&ContentLevel1=EDUCTN&ContentLevel2=EDUHOUSE&ContentLevel3=&ActiveTab=NA&StartRow=0#Certificate

As a final note, two anticipated questions are, when will my agency management system have the new form and what should I do if someone demands the old ACORD forms? At MATC, Mr. Volker advised, with regard to implementing the new forms and using the old forms that ACORD's licensing agreement prohibits modifying the forms in any way and requires replacement of superseded forms as quickly as possible, but not longer than one year. We suggest using the new ACORD forms immediately but, according to ACORD's licensing agreement as we were advised, the older editions cannot be used beyond a year from the time they were replaced. This should also apply to requests from lenders for the 2003 editions of the ACORD 27 and 28.

#### All ACORD 24 and 25 Changes

#### Explanation of Changes 10-30-2009 © 2009 ACORD Corporation ACORD 25 (2009/09) Certificate of Liability Insurance

- 1. Spread out text immediately below title of form across the entire page and revise text.
- 2. Add additional text beginning with the word IMPORTANT: immediately below first text block. (text from page 2)
- Add fields for CONTACT NAME, PHONE, FAX, E-MAIL ADDRESS and PRODUCER CUSTOMER ID immediately above INSURERS AFFORDING COVERAGE section
- 4. Revise and reformat INSURER(S) AFFORDING COVERAGE section and add field for INSURER F
- 5. COVERAGES section add fields for CERTIFICATE NUMBER: and REVISION NUMBER: to the right of the COVERAGES section title
- 6. COVERAGES section, revise text at the top of the table
- 7. COVERAGES section, move column for ADD'L INSRD to the right of the TYPE OF INSURANCE column and rename ADDL INSR. Check boxes have been replaced with fields to capture Y for a "YES" response and N for a "NO" response
- 8. COVERAGES section, add column labeled SUBR WVD to the right of the ADDL INSR column. Column contains fields to capture Y for a "YES" response and N for a "NO" response
- 9. COVERAGES section, revise POLICY EFFECTIVE DATE and POLICY EXPIRATION DATE columns labels and reduce width of columns
- 10. COVERAGES section, GENERAL LIABILITY row, add a hyphen (-) to CLAIMS-MADE
- 11. COVERAGES section, AUTOMOBILE LIABILITY row, delete one blank check box and reduce the row height in the LIMITS column to gain two blank LIMITS rows
- 12. COVERAGES section, delete GARAGE LIABILITY row
- COVERAGES section, EXCESS / UMBRELLA LIABILITY row, add two check boxes labeled UMBRELLA LIAB and EXCESS LIAB and reformat remaining check boxes. Add a hyphen (-) to CLAIMS-MADE check box label. Reduce to two blank LIMITS rows.
- 14. COVERAGES section, OTHER row, delete the word OTHER and reduce height of row
- 15. COVERAGES section, revise DESCRIPTION OF OPERATIONS etc label and add (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
- 16. CANCELLATION section, revise Cancellation clause
- 17. CANCELLATION section, expand height of Signature section
- 18. Move ACORD Form number down one row (interfering with postal scanning of addresses in CERTIFICATE HOLDER box)
- 19. Delete page 2, information now contained on page 1

#### Explanation of Changes 10-30-2009 © 2009 ACORD Corporation ACORD 24 (2009/09) Certificate of Property Insurance

- 1. Delete border around title and center
- 2. Update DATE label
- 3. Replace logo
- 4. Spread out text immediately below title of form across the entire page and revise text
- Add additional text beginning with: If this certificate is being prepared, etc immediately below first text block
- Add fields for CONTACT NAME, PHONE, FAX, E-MAIL ADDRESS and PRODUCER CUSTOMER ID immediately above COMPANIES AFFORDING COVERAGE section
- Revise COMPANIES AFFORDING COVERAGE to INSURER(S) AFFORDING COVERAGE, revise COMPANY A: label to INSURER A: etc. and add field for INSURER F:. Add a column labeled NAIC #
- 8. COVERAGES section add fields for CERTIFICATE NUMBER: and REVISION NUMBER: to the right of the COVERAGES section title
- COVERAGES section, move LOCATION OF PREMISES field to the top above the text box and revise label
- 10. COVERAGES section, revise first column label from CO LTR to INSR LTR
- 11. COVERAGES section, TYPE OF INSURANCE column, PROPERTY row, add check box for WIND and add DEDUCTIBLE fields
- COVERAGES section, TYPE OF INSURANCE column, INLAND MARINE row, move TYPE OF POLICY field into POLICY NUMBER column and reformat.
   Delete the word OTHER from Causes of Loss check box. COVERED PROPERTY and LIMITS now have four blank rows.
- 13. COVERAGES section, TYPE OF INSURANCE column, add / EQUIPMENT BREAKDOWN to BOILER & MACHINERY label
- 14. COVERAGES section, OTHER row, delete the word OTHER and reduce height of row. COVERED PROPERTY and LIMITS now contains two blank check boxes and LIMITS rows
- 15. COVERAGES section, revise SPECIAL CONDITIONS / OTHER COVERAGES label and add (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
- 16. CANCELLATION section, revise Cancellation clause
- 17. CANCELLATION section, expand height of Signature section
- Move ACORD Form number down one row (interfering with postal scanning of addresses in CERTIFICATE HOLDER box)
- 19. Revise ACORD copyright using new format with the years as the first item after the copyright symbol. Revise years to 1995-2009 and add All rights reserved.
- 20. Add: The ACORD name and logo are registered marks of ACORD to footer

This publication is intended to provide accurate and authoritative information on the subject matter covered and is distributed with the understanding that neither Independent Insurance Agents and Brokers of Arizona, nor any contributing author or publisher is rendering legal, accounting, or other professional services and assume no liability whatsoever in connection with its use.



## **CERTIFICATE OF PROPERTY INSURANCE**

DATE (MM/DD/YYYY)

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.

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	f thi	s certificate i	s being prepare	ed for a party who has an insurable i		perty, do not use	this form. Use ACORD	27 or A	CORD 28.				
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					PHONE								
					E-MAIL ADDRESS:	l E-MAIL							
					PRODUCER CUSTOMER ID:	PRODUCER							
					OGOTOMEN ID.	INSURER(S) AFFORDING COVERAGE NAIC							
INSU	RED				INSURER A:	INSURER A:							
					INSURER B:	INSURER B:							
					INSURER C:	INSURER C:							
					INSURER D :	INSURER D:							
					INSURER E :								
					INSURER F:								
CO	VER	AGES		CERTIFICATE NUMBER:		REVISION NUMBER:							
TI IN C	COCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE 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,												
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### **CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

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.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRO	DUCER				CONTACT NAME:						
					PHONE   FAX   (A/C, No, Ext): (A/C, No):						
					E-MAIL						
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					CUSTOMER ID #:					NAIC #	
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					INSURER C:						
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	CLAIMS-MADE OCCUR							`	\$		
								PERSONAL & ADV INJURY	\$		
								GENERAL AGGREGATE	\$		
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	AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$		
	ANY AUTO							` '	\$		
	ALL OWNED AUTOS							` ' '	\$		
	SCHEDULED AUTOS							PROPERTY DAMAGE			
	HIRED AUTOS							(Per accident)	\$		
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	UMBRELLA LIAB OCCUR							EACH OCCURRENCE	\$		
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	RETENTION \$								\$		
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	AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE								\$		
	OFFICER/MEMBER EXCLUDED?	N/A									
	(Mandatory in NH)  If yes, describe under							E.L. DISEASE - EA EMPLOYEE			
	DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$		
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CERTIFICATE HOLDER CANCELLATION											
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