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Quote of the Day

"The true measure of a man is how he treats someone who can do him absolutely no good." -- Samuel Johnson (1709-1784)

Points to Ponder

Discipline, not desire, determines destiny.

Looking Ahead

ACORD (or Discord)--Do I Really Have Coverage?

No matter what type of business you may be involved in, there is a high probability that at some point you have engaged in a business transaction where insurance coverage (property and liability) for the parties is critical. In many commercial business deals (lease agreements, construction contracts, supplier agreements, to name a few) one party becomes contractually obligated to obtain insurance coverage (at his or her expense) for both parties. When these situations occur, it is customary for the party responsible for procuring the insurance coverage to deliver to the other party written proof that such coverage has in fact been put in force with the insurance carrier. It is at this point that many parties (and even their lawyers) can frequently be lulled into a false sense of security.

With respect to providing the written proof of insurance coverage, the most common method of doing so is for an insurance broker to "certify" the procurement of the required coverage by completion and delivery of a completed ACORD form certificate of insurance (e.g. these were forms established by representatives of the insurance industry) to both parties. ACORD FORM 25 is frequently used as evidence of liability coverage, and ACORD Form 28 is used to evidence property insurance. Some agencies have their own non-ACORD certificate forms, but due to their wide acceptance, the ACORD forms can be viewed as "industry standard." Regardless of their general acceptance and bona fide appearance, ACORD forms cannot, and should not, be relied on by any party as being accurate, or as properly defining coverage, exclusions from coverage, or deductibles. In point of fact, Texas courts have repeatedly held that the ACORD forms do not in and of themselves (without substantial modification by counsel) provide any enforceable rights to the parties to whom they are addressed and issued.

The most common disputes that arise out of misguided reliance on the ACORD form certificates of insurance are due to: (i) the failure of the certificate holder or additional insured party to receive notice of the cancelation of one or more of the insurance policies that were believed (albeit mistakenly) to be in force, or (ii) a discrepancy between the coverage shown on the ACORD form and the actual coverage put in force (e.g. no additional insurance protection). The net result to the above is that a person receiving an ACORD certificate of insurance is not able to blindly rely upon these certificates of insurance which give

Did you know that where a trustee lives may determine whether a trust is subject to state income tax? More on that topic in future articles.

every appearance of being bona fide, and offer every indication that the required insurance coverage is in place. When there are discrepancies between the insurance coverage described on the ACORD certificate of insurance and the insurance coverage described in the actual policy, the insurance carriers are quick to rely on one of several disclaimers that are found on the front and back of each of the ACORD form certificates. Among other things, the disclaimers specifically state that the ACORD certificate of insurance: (1) confers no legal rights to the holder of the certificate and that they are for informational purposes only; (2) do not amend, extend, or alter the coverage afforded by the policies, and (3) if the certificate holder is an additional insured, the policies must be endorsed as such in order to confer additional insurance status.

If you are involved in a transaction where liability and/or property insurance coverage is critical to you and/or your business, please contact one of the attorneys at Dismuke, Waters & Sweet, P.C. for assistance in making certain that you are adequately protected.

Client Link

Laws are constantly changing which often result in the need for estate plan documents to be updated. If you would like to have the satisfaction of knowing that an attorney will review your current estate plan each year in light of changes in the law, go to our website at www.dws-law.com and learn more.

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