

CONTRACTUAL REQUIREMENTS

When I ask a new client about his contractual obligations concerning his aircraft, I often get the reply that he doesn't have any contracts. Upon further investigation, he will remember a hangar contract with the FBO, or the Airport Authority. Many times he will have an agreement with a service provider or an aircraft manager. Almost always he will have an agreement with a training facility and many times with a safety pilot. Most of these contracts include indemnification agreements holding the provider harmless from any and all liabilities arising out of the operations of the aircraft. Some even require certain limits of liability on the aircraft and ask that the contract holder be added as an additional insured and be given a waiver of subrogation on the hull. Most insurance policies require that the underwriter have an opportunity to approve all contracts. Without such approval, coverage could be jeopardized.

Unfortunately, many aircraft owners will just sign such an agreement without really reading it. This is dangerous. I would encourage you to keep all contracts involving your aircraft operations together and available for reference. In the event you and your agent decide to move your account from one insurance company to another, ALWAYS REMEMBER TO PROVIDE THE NEW UNDERWRITER WITH A FULL SET OF THESE CONTRACTS FOR REVIEW.

Contracts and insurance:

Are They in Compliance?

As a business owner, we are asked to enter into various types of contracts. Hangaring or airport lease contracts, maintenance contracts, management contracts, rental contracts, training agreements, bank loan agreements, and a multitude of other agreements are thrust upon us because of our business ownership.

For example, many fixed base operators (FBOs) require lease contracts or hangar contracts that call for minimum limits of liability for general (premises) liability as well as aircraft liability. Some contracts require that you carry workers' compensation insurance and automobile liability. Contracts may even require that you purchase coverage on your own hangar contents.

Frequently, business owners will actually sign a contract and agree to certain limits of liability before checking with their agent or reading their insurance policy. This can be a critical misstep. A thorough policy check is necessary to assure that the policy contains the required limits of liability and complies with the contract that you are signing.

If the insurance coverage that you have purchased falls short of the contract requirements, you may need to buy additional limits of liability. Then comes the "what if" game. What

if additional coverage or limits are not available? What if the additional limits you need are expensive? You have entered into an agreement and you may find it difficult if not impossible to comply with it.

Playing Ostrich

What if your underwriter will not accept the contract that you signed? You can still get a certificate of insurance issued, even if your insurance coverage does not meet the requirements of the contract, but the certificate will be only for those coverage's included in your policy.

In some cases, contract requirements can actually void certain insurance policy coverages.

Our underwriter has issued a certificate, even though there is a gap between coverage and contract requirements. Maybe the landlord won't notice that our certificate doesn't comply with the lease agreement. What he doesn't know won't hurt him or me. Right?

Wrong. You still have a problem. You have signed an indemnification agreement, assumed liability, and have no insurance to back you up. This is not self-insurance; it is no insurance.

How Can a Landlord Be So Presumptuous as to Tell a Tenant What Insurance to Buy?

Most management contracts or hangar rental agreements require the business owner to name the manager or lessor as an additional insured. Some contracts require that you (and your underwriter) waive all rights of subrogation against the landlord for any damage "even if the landlord's negligence is the cause of the loss."

That starts the "what if" game again. What if your underwriter refuses to allow a waiver of subrogation? After all, if the actions of your landlord damages your business, why shouldn't he be responsible?

The Trap

You have already signed the contract. It is too late to renegotiate, OR you must sign the contract because there is no other hangar available in your area and the FBO will not negotiate. It is a take it or leave it situation.

The underwriter will not agree to hold the FBO harmless for its negligence, and the FBO will not accept the lease without being held harmless for its liability.

To solve the problem, you could try to find a different insurance company, but almost all underwriters resist giving an FBO a waiver of subrogation holding it harmless for its own

negligence. If you are able to find a different insurance company, you may receive a short rate penalty if you cancel your policy midterm.

Maybe your area has more than one FBO. You could move to the next closest FBO, but it may require a waiver as well. The mounting trend among FBOs is to minimize potential liability by contracting it away. After all, it is cheaper than buying high limits of insurance or paying exorbitant hangarkeeper's deductibles. This growing trend is especially popular with FBOs in overcrowded areas.

It Is Not Just the Indemnification Section:

Don't forget all those other insurance coverages that the contract requires. They are coverages that you probably don't carry or can't buy.

Is there a solution? Well, there is no magic bullet. Sometimes the underwriter will agree to waive their rights to subrogation. Some will waive rights against the FBO for an additional premium, but this additional premium can be expensive. Some underwriters will not waive rights of subrogation for any price.

Because many of the additional coverages required by the contract may not be available from an aviation underwriter, your agent may need to obtain quotes from underwriters of other lines of insurance, such as automobile underwriters, workers' compensation underwriters, or environmental or pollution liability underwriters, to name just a few.

With each separate line of insurance, you are incurring additional expense.

Back to Contracts: So What?

I have already signed the contract. It is too late to do anything now to fix the situation.

Not so fast. There Is Still Damage Control.

Go back to your lessor and to your insurance agent and underwriter. Take a stab at appealing to their soft side for help. This sometimes works. If you are dealing with a coverage deficiency, have your agent negotiate as inexpensive a premium as possible to increase your limits or coverages.

Don't forget future negotiations. When negotiating your next renewal, include a copy of your contract with any underwriting submission. You may need to change to a different insurance company that will allow broader ancillary coverages, bringing you closer to contract compliance.

Always read any future contracts and review your policy before signing it. Whenever you are in doubt, send the proposed contract to your insurance agent. I believe a quick look by your attorney is worth the money. You may want your attorney and your agent to talk directly. →