

## SPECIAL REPORT

### INSURANCE APPLICATIONS -- BE CAREFUL WHAT YOU SIGN!

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All insurance policies in the property & casualty area are initiated by way of an application.

In Michigan, applications completed by an insurance agent are deemed to be applications completed by the insured.

Seldom do commercial clients see or approve of the applications that are submitted on their behalf, but the statements are binding on an application.

It is interesting when you look at the standard application forms, the questions that we are being asked to answer. Here are some examples:

1. Acord Form 125 – “Commercial Insurance Application”

A. “General Information”

3. Any exposure to flammables, explosives, chemicals?

Typically, the answer would be “No”; however, this cannot be correct inasmuch as every business has an exposure to flammables by way of paper, explosives by way of natural gas and chemicals which could consist of pool chlorine, cleaning supplies, or other supplies used in the business.

4. Any catastrophe exposure?

Again, the typical answer is “No”; however, every single risk in the entire world has a catastrophe exposure of some sort.

6. *Any policy or coverage declined, cancelled, or non-renewed during the prior 3 years?*

Again, the typical answer would be “No”; however, how do you really know that another insurance agent has not had an application for your client declined or their policy has been cancelled, either for non-payment or for another reason, or non-renewed?

7. *Any past losses or claims relating to sexual abuse or molestation allegations, discrimination or negligent hiring?*

This is an interesting question inasmuch as the question does not relate to anything that is covered under a commercial general liability policy. Nonetheless, note that it doesn’t limit itself to one year or three years, but “any past losses relating to sexual abuse or molestation allegations, discrimination or negligent hiring.” This language is so broad that it is impossible to answer “No” over the entire history of the company.

8. *During the last five years, has any applicant been convicted of any degree of the crime of arson?*

While this would appear to be a no-brainer in answering “No,” how do you really know that your prospect has never been convicted of the crime of arson in the past five years?

9. *Any uncorrected fire code violations?*

How in the world would we know if there are any uncorrected fire code violations? We are not qualified to know what a fire code violation is, anyway, and I would guess that almost all insureds have some sort of uncorrected fire code violations.

Furthermore, you could be in violation of whatever a “fire code” is but not required to comply unless the building has a major loss.

B. Under “Loss History” on this same application, there is a statement:

“Enter all claims or losses (regardless of fault and whether or not insured) or occurrences that may give rise to claims for the prior 5 years.”

Claims and losses are two different things.

This question doesn’t even limit the question to premises liability, but would apply to losses that have occurred (or could occur in the future) for workers’ compensation and every other area of claims. How do we know what losses could give rise to a future claim? It could be a slip and fall in the parking lot that is not reported and is unknown to the insured. Note that the question does not relate to “known” claims or losses.

2. Now let’s look at Acord Form 126 – “The Commercial General Liability Section”

1. Any medical facilities provided or medical professionals employed or contracted?

Most manufacturing facilities, as an example, will have First Aid rooms, which means that a medical “facility” is being provided even though there are no medical professionals employed or contracted.

4. Any operations sold, acquired, or discontinued in last 5 years?

Notice that this does not ask about businesses that are sold, acquired, or discontinued. It asks about “operations.”

The manufacturing plant or other businesses could have many operations that have been discontinued, so a “No” answer would be inaccurate.

7. Any parking facilities owned/rented?

Certainly, every business has parking facilities, so a “No” answer would be inaccurate.

9. *Recreation facilities provided?*

Many businesses have workout rooms or basketball hoops.

11. *Sporting or social events sponsored?*

Here at Cambridge, we have social events and we have, in the past, sponsored local amateur baseball teams.

12. *Any structural alterations contemplated?*

This doesn't say within what period of time. "Contemplated" is sort of a mental process.

It, also, doesn't say whose contemplation counts.

15. *Do you lease employees to or from other employers?*

As we found out in our recent discussions regarding temporary employees, almost all of our clients will "lease" employees from a temp agency.

18. *Have any crimes occurred or been attempted on your premises within the last three years?*

How in the world would we know whether a potential burglar has attempted to commit a crime on our premises? This crime could be attempted break-in of automobiles or attempted break-in in a building, itself. We really wouldn't know about it if it was an attempt, in most cases.

3. Acord Form 131 – "Umbrella"

This application asks you to list underlying insurance coverage information including all restrictions or extensions of coverage. I guess the only way to properly comply with this is to attach a copy of all underlying policies.

Also, in this form it asks the question, "*Previous Experience: Give details of all liability claims exceeding \$10,000 or occurrences that*"

may give rise to claims during the past 5 years, whether insured or not.

Note that the section that asks about “occurrences that may give rise to claims” is not limited to claims exceeding \$10,000. How in the world would we know about an occurrence that could give rise to a claim during the past 5 years?

Note that this has to be reported whether the claim is insured or not.

#### 4. Acord Form 127 – “Business Auto Section”

##### 8. Any hold harmless agreements?

Certainly there are hold harmless agreements in every business, many of which require that an insured hold someone else harmless for automobile-type claims.

##### 9. Any vehicles used by family members? If so, identify in remarks.

Any commercial vehicle could be used by a family member of someone.

##### 12. Are any drivers not covered by workers’ compensation?

How would we know?

##### 14. Any drivers with convictions for moving traffic violations?

Seldom would we have an account where drivers would not have convictions for moving traffic violations.

#### 5. Acord 130 – “Workers’ Compensation”

##### 10. Any employees under 16 or over 60 years of age?

I can understand the under 16 question, although really the question should be “under 18 without working papers.” However, seldom will a business not have employees who are over the age of 60 years of age.

13. Any employees with physical handicaps?

Aside from the discriminatory aspects of this question, everyone has some sort of physical handicap.

If you lost a fingertip, does this constitute a handicap?

If you have an impaired field of vision, yet your eyesight is 20-20, is this a physical handicap?

**Conclusion**

Current Acord application forms are antiquated, ambiguous, and impossible to answer.

Unfortunately, this is the application used by most insurance companies and you have to be careful not to answer any question that cannot be answered accurately. You can indicate “to be determined” or “always possible,” or some other ambiguous answer, rather than checking the box that cannot be answered accurately.

**YOUR STATEMENTS ARE YOUR CLIENTS’ STATEMENTS  
AND CAN BE USED AGAINST THE CLIENT IN THE EVENT OF A LOSS.  
  
THE INSURANCE CARRIER COULD ALLEGE MISREPRESENTATION  
AND RESCIND THE POLICY.**

**Practical Advice**

Don’t complete this application except the top portion of the Acord 125 “Applicant Information Section.” Indicate “SEE ATTACHED” and attach schedules and account information, and don’t answer any of these impossible-to-answer questions.

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