

CHAPTER 3. PUBLIC LIABILITY INSURANCE
EXPLANATION AND REQUIREMENTS

3-1. PUBLIC LIABILITY INSURANCE.

- a. As property owners, PHAs/IHAS are subject to third party legal liability claims made by residents or the general public resulting from operations necessary and incidental to ownership.
- b. The commercial general liability policy provides the HA protection against legal liability imposed by tort violations. This insurance coverage will pay those sums that the insured becomes legally obligated to pay for bodily injury or property damage. In addition, it will also pay for investigative and defense costs and certain supplementary payments. The company has the right and duty to defend any suit, but the most that will be paid is the limit shown in the policy.
- c. The CGL policy automatically covers all locations and operations of the HA unless excluded. This is true whether the locations and operations are described in the policy or they are new locations acquired or operations entered into after inception of the policy. The insurer will ordinarily audit the insured at the end of the policy period and charge a premium based on the actual hazards or exposures covered during the policy period.

3-2. OCCURRENCE POLICY FOE VS THE CLAIMS-MADE POLICY FORM.

- a. Two CGL policy forms are available to HAs. The "Occurrence" policy form and the "Claims-Made" policy. Under the "Occurrence" form policy, a loss is covered as long as the occurrence causing the loss happens during the policy term, and it does not matter if it is reported to the insured and insurance company after the policy has expired. Although both forms provide a per-occurrence limit of liability, the claims-made policy form places strict time frames on the reporting and/or the filing of a claim against the insured and the reporting of the claim to the insurance company.

- b. The claims-made policy form has been approved for use by state insurance departments in the majority of the 50 states. The claims-made policy form is the insurance industry's answer to the "long-tail" liability claims that are covered under the occurrence policy form without a time limit on the reporting of claims. For example:

- o Policy term January 1, 1996 to January 1, 1997.
- o Date of loss March 1, 1996.
- o Five year old claimant fell down an unlit stairway with no apparent injury.

- o No claim is made by parents of injured child.

- o On August 15, 1999, parents make a claim for \$500,000, claiming that the fall in 1996 was the direct cause of their child's mental impairment.

- o If the general liability coverage had been written on an occurrence form, the insurance company that provided coverage during the January 1, 1996 to January 1, 1997 period would pay the claim. Under the claims-made form, however, the insurance company would deny coverage.

The up-front or deposit premium charged for the claims-made form often will be less than the premium charged for the occurrence form. This up-front premium may increase by 200 percent to extend the claim reporting period by 12 months for claims that occurred during the first 12 months of coverage. It is not uncommon for claims to be reported and claims made two, three years or more after the policy expires. There would be no coverage provided in this case for the delayed reporting of claims under the claims-made form without the payment of an additional premium to extend the reporting period.

- c. The Department does not recommend the purchase of the CGL claims-made policy form by any HA. Since HAs are required to competitively purchase insurance, switching insurance carriers to the lowest bidder could result in gaps in coverage unless extra premium is paid to extend an expiring policy.

5/96 3-2

3-3.

LIMIT OF LIABILITY.

- a. A limit of \$500,000 per occurrence is the recommended minimum for general liability insurance. Consideration should be given to higher per occurrence limits in the case of larger HAs (in excess of 500 dwelling units) or those located in areas prone to higher judgment amounts. The HA shall determine if the \$500,000 limit per occurrence is an adequate amount of coverage. The Department shall not be considered a source for payment of any claims in excess of the policy limit.

- b. The ACC requires the HA to purchase only commercial general liability coverage (coverage A of the CGL) However, the standard CGL policy contains two other coverages (B. Personal Injury and C. Medical payments). These coverages and their limits will be explained further in this chapter.

3.4. ANNUAL AGGREGATE.

The majority of insurance companies will limit their total liability for claims paid during an annual policy period. In the limits section of the policy applying to premises coverage, the aggregate limit may be shown as follows:

Limits of Liability Bodily Injury	
Each Occurrence	Aggregate
\$500,000	\$500,000

In this instance, the HA could have a \$500,000 claim from one occurrence at the beginning of the policy year and have no coverage remaining for additional claims occurring in the same policy year. Also, since large claims are hardly ever settled during the time when the policy covering the claim is in effect, it could be years in the future before a HA discovers there is a lack of adequate limits. When the PHA/IHA prepares the solicitation for renewal of their CGL policy, it should request bids first with no annual aggregate and then with the annual aggregate based on multiples of 2, 3, and 4 times the each occurrence limit, i.e., \$1 million, \$1.5 million, and \$2 million. The PHA/IHA may then choose the annual aggregate that is most cost effective.

3-3

5/96

3-5. DEDUCTIBLES.

It is a trend of the insurance industry to offer CGL coverage subject to a per occurrence deductible. The deductible may range from \$100 per occurrence to over \$25,000 per occurrence. Liability claims are hard to evaluate at the time of occurrence and the HA may delay reporting the claim if they feel the amount of settlement will be within their deductible. This delay could jeopardize their coverage if the claim is in fact much more expensive than originally thought. All claims must be reported to the insurance company immediately. The HA should choose the deductible that is most cost effective based on their previous claim experience. The amount of the deductible may not exceed the ability of the HA to pay the uninsured portion of the loss.

3-6. PERSONAL INJURY LIABILITY INSURANCE.

The basic CGL policy under coverage A provides protection for claims resulting from bodily injury or death to a person for which the insured is legally liable. Bodily injury includes actual physical harm to the injured person. This basic definition can be broadened to include damage done to a person which is not physical in nature such as false arrest, willful detention, libel, slander, wrongful eviction and wrongful entry. This additional protection is called Personal Injury Liability insurance and is provided under coverage B of the basic CGL contract. Since the nature of a PHA's/IHA's operations exposes it to claims for such broader exposures, it is recommended that the HA include Personal Injury Liability

insurance under its CGL insurance contract. The coverage is normally written at the same limit as coverage A.

3-7. MEDICAL PAYMENTS.

Coverage C of the CGL states the insurer's agreement to pay medical expenses for bodily injury caused by an accident occurring on the insured's premises regardless of fault if expenses are incurred and reported within one year of the accident. The medical limit is usually \$5,000 per person. The Department recommends that the HA include this coverage since there is very little premium savings for excluding it, and by voluntarily paying some small medical claims, it may serve to discourage legal action by the injured party at a later date.

5/96

3-4

G 7401.5

3-8. ENVIRONMENTAL LIABILITY.

The standard general liability policy does not provide coverage for the escape of pollutants into the environment. Pollutants include, but are not limited to, any damage or injury caused by asbestos, lead-based paint, radon gas, leakage from fuel tanks, and leakage of PCBs from transformers. If the HA finds that it is at risk for any of the pollution hazards, they should check for availability of coverage and its cost.

The ACC requires HAs undergoing lead-based paint testing and abatement to purchase separate liability insurance to protect against hazards involved in these operations. This is also required by 24 CFR 965.215. The HA may either purchase this coverage directly from an insurance company, or it may require the contractor to purchase the coverage and add the HA to the policy as an additional insured. A minimum liability limit of \$500,000 has been established. For more complete details on the requirements for this insurance, the HA should refer to 24 CFR 965.215, or 950.195.

3-9. LAW ENFORCEMENT LIABILITY.

The basic CGL policy has no specific exclusion that would negate coverage for injury caused by security personnel hired by a HA. There is an exclusion for bodily injury or property damage expected or intended from the standpoint of the insured. However, this exclusion does not apply to bodily injury resulting from the use of reasonable force to protect persons or property. The question of what constitutes "reasonable force" is open for interpretation. However, some insurance companies have begun to attach separate endorsements excluding acts of security personnel, particularly if they know the exposure exists. Each HA should be aware if any exclusion exists, and if so, it is highly recommended that separate insurance be purchased.

3-10 PARTIES INSURED.

The basic CGL policy includes as insureds, executive officers, directors, commissioners and employees of the HA, while acting within the scope of their duties. The U.S. Department of Housing and Urban Development shall not be named as a party insured.

3-5

5/96

G 7401.5

LEAVE THIS PAGE BLANK

5/96

3-6

7401.5