

Understanding risk transfer to protect your farm or ranch

What is contractual risk transfer?

Seemingly straightforward, routine documents — such as sales invoices, bills of lading, vendor or maintenance agreements — may look like receipts or simple forms, but they often contain clauses that make your farm or ranch responsible for losses that may arise.

When done effectively, risk transfer places responsibility for a risk on the appropriate parties consistent with their ability to control the risk. Properly transferring risk can help you avoid:

- Liability for losses
- Significant legal expenses
- The potential for increased insurance premiums

How is risk transferred?

Farmers and ranchers can generally either accept or transfer risk through:

- An insurance policy; or
- A contract

It's important for farmers and ranchers to recognize when they have accepted risk through contracts or by naming other parties as additional insureds.

What are some things to watch for?

Three important clauses that can be included in contracts that often transfer or control risk:

1. Additional Insured Clause

This clause requires one party to add another as an additional insured on their insurance policy, sometimes including umbrella or excess policies. When using an Additional Insured Clause, it is important to get a Certificate of Insurance as verification that the coverage was added to the insurance policy. With multi-year contracts these should be obtained annually.

For example:

Lessee shall, at his cost and expense, obtain and maintain insurance that shall cover the risks of liability for injury or damage to persons or property, including general liability limits of at least \$1,000,000. Such insurance shall be kept in full force and effect during the term of this Agreement. Lessee shall name (XYZ Business) as an Additional Insured under its general liability policy.

2. Waiver

Defined as the surrender of a known right, waivers can be used to transfer risk. This typically requires one party to waive any rights of recovery against another so if they sustain a loss, they cannot recover against the other party.

For example:

Lessee shall name (XYZ Business) as an Additional Insured under its general liability policy. Both parties agree to waive any subrogation rights against the other.

3. Hold Harmless and Indemnification Clause

Often found in contracts, easements, service contracts, purchase order agreements, or consulting agreements and leases, this clause can shift liability for loss from one party to another and also protects another party against liability for damage or loss.

For example:

Contractor agrees to indemnify, defend, and hold (XYZ Business) harmless from any and all liabilities that (XYZ Business) may incur as a result of any acts or failures to act or negligence on the part of (Contractor).

Risk transfer opportunities

- Leases, construction projects, vendor agreements, leased or rented equipment
- Services or goods provided or installed on your property
- Transportation services provided for or by you
- Professional consultant contracts for you
- When another party, such as a contractor, is in control of and directs your employees, and injuries are possible
- Any activity that includes the potential for a severe loss

Managing risk transferred to you

- Make sure trained, authorized people read and review contracts and other documents
- Review all documents for clauses that transfer liability to your business
- Consult with your attorney to assist in the drafting or review of risk transferring clauses
- Ensure your insurance agent and insurance carrier are advised when you enter into significant contractual relationships
- Request any required coverages and endorsements

Steps for transferring risk to others

- Evaluate the risks involved and decide whether to transfer the risk
- Consult with legal counsel to select and implement the appropriate contractual clauses to support your decision
- Get it in writing and read the entire contract before you (or anyone you assign) sign, and review with a contract attorney
- Keep records of all contracts, agreements, records, purchase agreements, sales invoices, and leases for a minimum of five years

Verifying the Transfer of Risk — Certificates of Insurance (COI) are generally issued by your insurance agent or broker, but in some cases, they can be obtained directly from your insurance carrier. The COI by itself does not confer any coverage or rights to the holder but documents and verifies insurance coverage exists.

Controlling the process — Authorize one or two persons who are properly trained and authorized to sign contracts and agreements.

Educate your employees — Make sure your employees **read** every document. Documents should be provided to only authorized individuals for review and signature.

Read every document — Every document should be reviewed for contractual clauses that can transfer liability to your farm or ranch. Consult with your attorney to avoid significant expenses.

Make an informed decision

- Is the business you receive from the other party worth the potential liability you assume?
- Can you do business with this party without assuming as much liability?
- Is your business financially able to withstand a loss resulting from this transfer?

Review current contracts — Always consult your attorney when drafting and reviewing contracts. Review contracts already in place at least annually and always prior to renewal to clarify and update the intent of each party.

Always consult an attorney and agent before entering into or transferring risk. For assistance with risk management and safety resources, contact RMSolutions@nationwide.com or **1-800-260-1356**.

1-800-228-6700 • NationwideAgribusiness.com

The information included in this publication and accompanying materials was obtained from sources believed to be reliable, Nationwide Mutual Insurance Company and its employees make no guarantee of results and assume no liability in connection with any training, materials, suggestions or information provided. It is the user's responsibility to confirm compliance with any applicable local, state or federal regulations. Information obtained from or via Nationwide Mutual Insurance Company should not be used as the basis for legal advice or other advice, but should be confirmed with alternative sources. Nationwide, the N and Eagle, Nationwide is on your side and Nationwide NSight Solutions are service marks of Nationwide Mutual Insurance Company. © 2023 Nationwide GPO-0241AO.1 (11/23)

