

## Waiver of Subrogation

**You may be asked for a waiver of subrogation in a contract.**

Definition of a waiver of subrogation: To waive the right of the claimant to pursue a claim against the responsible party.

Purpose of a waiver of subrogation: An insurance company has the right to subrogate (or take legal action against) the third party responsible for the loss paid to the insured. When a waiver of subrogation is present in a contract, the subrogation rights of the insurance carrier are waived and the insurance carrier is unable to take legal action and recover damages against the third party responsible for the loss.

***Ultimately a waiver of subrogation prevents an insurance carrier from collecting payment from the responsible party after the insured has been paid.***

Example: A landlord rents a building to a tenant. The lease contract includes a waiver of subrogation in favor of the tenant. The tenant causes a fire that damages the landlord's building. The landlord files a claim for property damage to his property insurance company. The property insurer pays the claim for the building damage caused by the tenant. The property insurer is unable to subrogate against the tenant that caused the fire damage due to the waiver of subrogation clause present in the lease contract.

Waiver of Subrogation Sample:

“To the extent permitted by law, the Lessee hereby releases (name of entity), its elected and appointed officials, employees and volunteers and others working on behalf of the (name of entity) from any and all liability or responsibility to the Lessee or anyone claiming through or under the Lessee by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of (name of entity), its elected or appointed officials, employees or volunteers or others working on behalf of (name of entity). This provision shall be applicable and in full force and effect only with respect to loss of damage occurring during the time of the lessee’s occupancy or use, and lessee’s policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the lessee to recover thereunder. The lessee agrees that its policies will include such a clause or endorsement.”

-Sample taken from page 20, Risk Transfer Manual, published by C.M. Althoff Co. 1999.

## Frequently asked questions:

### **Auto Liability:**

Q.) Does my *auto liability coverage* with IRFFNC include a waiver of subrogation provision to comply with this type of insurance requirement?

A.) The Auto coverage document reads as follows:

#### **5. Transfer Of Rights Of Recovery Against Others To Us,**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

**This basically says that you cannot waive subrogation after an accident or loss. It does not prevent a waiver of subrogation prior to an accident or loss.**

### **General Liability:**

Q.) Does my *general liability coverage* with IRFFNC include a waiver of subrogation provision to comply with this type of insurance requirement?

A.) The General Liability coverage document reads as follows:

#### **8. Transfer of Rights of Recovery Against Others To Us.**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help enforce them.

**This basically says that you cannot waive subrogation after a loss. It does not prevent a waiver of subrogation prior to a loss.**

**Property:**

Q.) Does my *property* coverage with IRFFNC include a waiver of subrogation provision to comply with this type of insurance requirement?

A.) The Property coverage document reads as follows:

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone covered by this Coverage Part;
  - b. Your tenant.

This will not restrict your insurance.

**This basically says that you can waive subrogation before a loss and you can waive subrogation after a loss if the third party is covered by the property coverage form or the third party is a tenant.**

### **Workers Compensation:**

Q.) Does my *workers comp* coverage with NCIRMA include a waiver of subrogation provision to comply with this type of insurance requirement?

A.) The Workers Compensation coverage document reads as follows:

### **H. Recovery from Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**This basically says that you cannot waive subrogation for workers compensation before or after a loss.**