

# Named Insured

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## Who should be an Insured?

Underwriters often consider the *legal interests* of insurance applicants in determining whether to provide insurance coverage. Usually, the applicant has an insurable interest that is easy to identify and evaluate. In other cases, however, the insurance applicant or another party seeking insured status has a less defined legal interest that must be considered carefully.

Insureds have rights – and sometimes responsibilities – under the insurance policy. **Named insureds** are individuals and organizations to which insurance coverage is expressly provided. Named insureds are listed on the declarations page of the insurance policy. In addition, insurance policies often extend insured status to others as part of the insurance coverage (e.g., employees, real estate managers, legal representatives, & newly acquired organizations).

The **first named insured** is the named insured whose name appears *first* on the declarations page. Some policy forms obligate the insurer to notify only the first named insured of cancellation and nonrenewal. These policy forms also specify that some of the insured's duties, such as requesting policy cancellation, apply *only* to the first named insured. The first named insured is entitled to receive any premium refund and to make changes to the policy. In the case of multiple named insured entities, it is important that the organization *best capable of handling the above responsibilities* as first named insured be listed first in the policy declarations.

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## What to Ask/Elements to Consider

- What are all the entities (such as corporations, partnerships, joint ventures) in which the insured has an interest?
  - What jurisdiction is each based in?
- Does the insured use any trade names?
- Does the insured use any DBAs in a sole proprietorship situation?
- Are individuals for whom named insured status is being requested (sometimes by endorsement midterm) *already* members, partners, or officers of any of the entities listed as a named insured?
  - Once answered, refer to SECTION II – WHO IS AN INSURED part 1 of the CG 00 01 form to see who the form already considers to be “an insured” under each type listed.

## Ownership or Controlling Interest :

Asking “*Are the entities combinable?*” – means:

- Does one entity or individual have the *majority* ownership or controlling interest in the entity requesting named insured status? (*50% or more is considered a majority*).
- Examples of multiple ownership interest by one entity or individual include:
  - One person might own a majority interest in several firms. The firms might include more than one form of organization. The sole proprietor of one business might be a majority owner of a partnership or *joint venture*, or could own all or most of the stock of a *corporation*.
  - One business might own all or a majority of other businesses. This practice is common among corporations. A partnership or joint venture might also own another firm.
  - One business might operate another *under contract with its owners*. This is common practice in *real estate management*. A real estate agent might undertake the management of a number of properties. A separate corporation might own each building, and the real estate manager controls those properties as part of the package.
- If there is NOT common ownership:

- o Sometimes businesses that do not have common owners need insurance for a joint operation such as a joint venture. [A similar need exists when one business contracts with another to perform certain operations and wants to add the other party to its policy as an *additional* insured.]
  - Is less often an issue with Property policies, since the property to which coverage applies is specifically described.
  - Liability forms give *complete protection to each party named as an insured*, which could provide duplicate coverage in the above instance.
- o Need to inquire about operations the insured handles *jointly with others* and those it *handles alone*
- o Often the best solution is to insure joint operations under a joint policy that is *separate from each party's individual policy*.

## Types of Ownership Interests

### Sole proprietorships

- There is no legal distinction between a sole proprietorship and its owner.
- This type accounts for over 70% of all business entities in the U.S.
- The name of the business owner can be listed alone.
- *Most commonly*, however, the name of the owner and that of the business are listed *together* on the declarations page of the insurance policy.

Examples of three commonly practiced methods to list a sole proprietor and his or her business:

- “John Jones d/b/a Westtown Plumbing” The letters **d/b/a** means “doing business as.” This abbreviation identifies a business that appears to be separate from its owner.
- “John Jones t/a Westtown Plumbing.” The abbreviation **t/a** means “trading as.” The original purpose for this abbreviation was to identify a trade name an individual had adopted.
- “John Jones a/k/a Westtown Plumbing.” The abbreviation **a/k/a** (“also known as”) allows a person to include in the policy a *fictitious name*\*\* that has been registered with the state. This is a legitimate practice that might mean nothing more than that the insured’s real name does not suit the business. For example, Thomas Paine might want to conduct his business under another name if he is a dentist.

Benefits insurers may derive from including the name of the *owner along with the business name*:

- The sole proprietor-insured might be the owner of other businesses in addition to the one being insured. Having both names listed on the declarations page makes it clear to whom the insurer is providing coverage.
- Alerts the business owner to the need to contact his or her insurer when new properties, new construction, and new ventures are added so that the extension of coverage provisions of the policy regarding new acquisitions is not tested by a claim.

\*\* Fictitious Name Notes:

- *States have fictitious names acts that require individuals, partnerships, corporations conducting business under an assumed of fictitious names to register that name with the state*
- *Definition: Any assumed name of designation other than the proper name of the entity using such name.*
- *The surname (“last name”), standing alone or coupled with words describing the business, is NOT a fictitious business name.*
- *Inclusion of words suggesting additional owners such as “& Company”, “& Associates” makes the name assumed or fictitious.*
- *For partnerships, the last name of all partners must be listed, or the fictitious name rule applies.*

### Partnerships

- Partnerships are unincorporated businesses of two or more persons, each of which has a financial interest in the business.
- At one time partnerships were not considered to be a legal entity separate from its owners - but *no longer*.
- Partnerships are now considered to be *separate legal entities* for many activities, including purchasing of insurance.

Example:

John Jones and Harry Smith form a partnership named “Smith and Jones General Merchandise”.

The named insured might be listed as follows:

- “John Jones and Harry Smith d/b/a Smith and Jones General Merchandise”
- “Smith and Jones General Merchandise, a partnership consisting of John Jones and Harry Smith”
- “Smith and Jones General Merchandise, John Jones and Harry Smith as partners”

Although identifying *individual* partners on the declarations page is *optional*, specifying the partnership is essential. (An individual partner, for example, should not be able to access liability coverage from one enterprise to protect himself or herself for a negligent act associated with another owned business.)

## Corporations

- Corporations are artificial beings, invisible, intangible, and existing only in the contemplation of the law.
- They are *a legally separate entity from their owners*, usually with an unlimited life span not tied to owners’ lifetimes.
- Types:
  - o Public: owned by general public, with stock sold on large public exchanges
  - o Private: owned by only a few stockholders, not publicly traded
- Controlled by a Board of Directors elected by stockholder owners

Because a corporation has an identity that is separate from that of its owners, the *name of the corporation* should appear on the declarations page. Corporations should identify all of their subsidiaries on the policy declarations page unless they are otherwise insured. Underwriters should *specify the entities being insured in such a way that coverage will not be extended to subsidiaries that are insured elsewhere*, since the parent corporation can be included in a lawsuit aimed at a subsidiary.

## Alternative Forms of Ownership

### Limited Liability Companies (LLCs)

- Relatively new organizational form that combines features of partnerships and corporations:
  - o Owners/members have limited personal liability for the LLC’s obligations and debts – analogous to the limited liability granted to shareholders of corporations.
  - o Same tax advantages of partnerships – members only pay taxes on profits
  - o Appealing to those who would otherwise form a *partnership*

### Unincorporated Associations

- Examples include: trade associations, labor unions, limited partnership associations (sports team franchises, real estate LPs), clubs, and condominium associations.
- **Joint Ventures**.
  - o Unincorporated associations of two or more entities that undertake a specific transaction or activity – of usually *limited duration*.

Unincorporated Associations are often listed on the declarations *in their name alone*.

If the association *has subsidiaries*, then the declarations will likely specify that *all entities* are named insureds.

### Examples (Joint Venture):

- "Jones Concrete Corp. and Smith Construction, Inc., d/b/a Main Street Development Associates"
- "Main Street Development Associates, a joint venture of Jones Concrete Corp. and Smith Construction, Inc."
- "Main Street Development Associates, Jones Concrete Corp. and Smith Construction, Inc. as joint adventurers"

In most cases, the members of a joint venture are a *more important underwriting factor* than are the members of a partnership. The viability of the joint project depends on their combined expertise and financial resources; substituting one member for another usually has less effect on a partnership, however.

### **Trusts**

- A trust is a legal arrangement in which one person agrees to hold and manage the property of another person for the benefit of someone else.
- It is a legal agreement among three parties:
  - the trustor (or settlor or grantor)
  - the trustee
  - the beneficiary

A trustor, or settlor, transfers legal title to some property to a trust, then a trustee manages the property for a beneficiary. A trust can have more than one beneficiary, trustee or trustor. Moreover, *one individual may assume two or even three of the roles as trustor, trustee and beneficiary*. Usually, in this case, the trust will provide for at least one contingent beneficiary, who will become an active beneficiary upon the death of the trustor.

A trust is primarily used as a tool for real estate or financial planning involving money or property, and form CG 00 01 specifically outlines who is considered to be an insured under a trust. The name of the trust should be listed in the declarations just as any other entity once insurable interest has been established.

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### FOR INFORMATIONAL PURPOSES ONLY

#### Sources:

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G. Barry Klein, CPCU, CLU, ***Named Insured Wording: Doing it right*** - article from Rough Notes ([www.roughnotes.com](http://www.roughnotes.com))

***The Nature of a Trust*** - article from [www.toolkit.com/small\\_business\\_guide](http://www.toolkit.com/small_business_guide).