

Collateral Warranties

Terms of Appointment & Collateral Warranties

We believe that Insureds should take great care when entering into letters of appointment and collateral warranties, to ensure that they fully understand the commitments that they are entering into.

It is very important from a risk management perspective to ensure that the written documentation accurately reflects the understanding between the parties and that you fully appreciate the risks and potential consequences that will flow from any breach of your obligations. In this regard we strongly recommend that Insured's seek their own independent legal advice before entering into any agreement.

Our risk management division has however produced this "guide" in which we make some general observations that we hope you will find of interest when reviewing your own documentation.

The AmTrust policy makes no specific reference to "Collateral Warranties" however you should bear in mind the following exclusions when reviewing your contract documentation:

"the giving by the Insured of any warranty or guarantee where liability arises from any or more of the following terms

- a) any express acceptance of or guarantee for fitness for purpose or similar provision
- b) any express guarantee relating to the performance or period of a project
- c) any acceptance of liability for liquidated damages

This exclusion shall not apply to liability that arises out of a failure to exercise a reasonable professional skill and care obligation that would have attached to the Insured in the absence of such express warranty or guarantee

"any fines penalties punitive or exemplary damages"

Our Civil Liability policy wording does not limit the number of assignments that can be made to a collateral warranty, however it is good internal risk management to ensure that any collateral warranty you sign does contain a restriction on the number of assignments.

The RICS policy wording does contain a clause limiting the number of assignments. Section F of the RICS policy wording refers to contractual liability and limits the number of assignments to one except where passed to a financier or funding party where two assignments are permissible. This clause does also contain exceptions to this restriction.

Please do remember that as professional indemnity policies are written on a "claims made" basis the relevant policy exclusions will be the ones in your policy that is applicable at the time the claim is notified and may therefore be different to the one stated above.

You should appreciate that this should not be seen as a substitute for independent legal advice and it is only intended to consider the contractual liabilities within the context of professional indemnity cover.

[Please click here to download our guide to Collateral Warranties & Letters of Appointment](#)