

BOGGS RISK & INSURANCE CONSULTING

## Are You Smarter than an Underwriter? 7 Simple Underwriting Questions No One Asks

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### Today's Fun

- "Who owns the car?"
- "Who owns the building?"
- "Do any of your employees travel out of state to work?"
- "Do you have any inventory (stock) that could spoil or die if you lost power?"
- "How do your lease payments compare to the current real estate market?"
- "What year was your building built?"
- "Does your business 'depend' on any other business?"

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"Who owns the car?"

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### “Who Owns the Car” – A BAP Question

Client / Agent: “We need to add a new car to the policy.”

Agent / Underwriter: “OK, we need the make, model, VIN, etc., etc.”

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### “Who Owns the Car” – A BAP Question

Client / Agent: “We need to add a new car to the policy.”

Agent / Underwriter: “OK, we need the make, model, VIN, etc., etc.”

**Question NOT Asked:** To whom is the car titled?

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### “Who Owns the Car” – A BAP Question

Client / Agent: “We need to add a new car to the policy.”

Agent / Underwriter: “OK, we need the make, model, VIN, etc., etc.”

**Question NOT Asked:** To whom is the car titled?

**Problem:** What if titled in the business owner's personal name and NOT the company's (the named insured)?

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### “Who Owns the Car” – BAP Exclusion

**1. Who Is An Insured**  
 The following are “insureds”:  
 a. You for any covered “auto”.  
 b. Anyone else while using with your permission a covered “auto” you own, hire or borrow **except**:  
 (1) The owner or anyone else from whom you hire or borrow a covered “auto”.  
 (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered “auto” owned by him or her or a member of his or her household.

“You” is the named insured business.  
 The OWNER (if not the business) is NOT an insured!

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### “Who Owns the Car” – The Problem

**No coverage for the owner of the vehicle if it's NOT the business (named insured)!**

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### “Who Owns the Car” – The Solution(s)

- The vehicle needs to be placed on a PAP that covers the vehicle owner.

**OR**

- Attach the CA 99 47 – Employee As Lessor
  - Makes the vehicle an unquestionably insured vehicle
  - Makes the driver a specifically listed insured
  - Requires proper underwriting and a legitimate reason to be on the BAP
  - Requires the use of a proper and formal Leaseback Agreement

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### Proper Use of the CA 99 47: "Leaseback"

Use the CA 99 47 **ONLY** if the request is legitimate!!

1. Is the vehicle owned by an employee?
2. Is the vehicle owner the listed vehicle's only driver?
3. What are the employee's duties?
4. What is the percentage of personal versus commercial use?
5. Is the employee closely related to any owner or executive officer?

If a legitimate request, attach the CA 99 47 endorsement - **but first...**

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### Proper Use of the CA 99 47: "Leaseback"

A **formal** lease agreement is required

- Two or three sentences stating that the "Employee" owns the "Vehicle" and is leasing said vehicle to "Company" does not constitute a formal lease.
- Because a lease agreement is a legal document subject to contract law and creates dual ownership of the subject automobile, specific information should be addressed or provided in the agreement:

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### Proper Use of the CA 99 47: "Leaseback"

1. A description of the vehicle;
2. A description of the individual leasing the car to the company (name, position in the company, and business purpose for adding the vehicle);
3. Agreement by the business to provide insurance protection and to what extent (i.e. "full coverage" or liability only) and to indemnify the vehicle owner;
4. Non-permitted users of the vehicle;

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### Proper Use of the CA 99 47: "Leaseback"

5. The period of the lease agreement (can be indefinite);
6. The requirement that the lessor have a PAP for any other vehicles owned. If no other autos owned by the person, a named, non-owner policy is necessary to confirm the CA 99 47 is not being used to avoid a PAP. (The auto being added to the CA 99 47 would NOT be on the PAP); and
7. Properly notarized signatures. (If the contract is not notarized, it is acceptable to have the signatures attested to and dated by a third-party witness.)

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### Proper Use of the CA 99 47: "Leaseback"

8. Non-permitted use of the vehicle (remember, the BAP carrier is providing 24/7 coverage on the vehicle);
9. Responsibility for loan payments (if any);
10. Clarification regarding who is responsible for maintenance and upkeep;
11. Responsibility for paying the property taxes;
12. Whether financial consideration is required during the lessee (mileage, fuel, monthly fee, etc.); and
13. Who is responsible for paying traffic fines

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### Proper Use of the CA 99 47: "Leaseback"

Once the formal lease agreement is in place, attach the CA 99 47

Three (3) pieces of information required:

- The Named Insured (not the employee's name)
- The Effective Date of the Endorsement
- A Description of the "Auto"

Coverage Parts:

- Part A of the CA 99 47 eliminates any question of or claim denial related to ownership or "title" of the vehicle.
- Part B states that the "employee" who leases the scheduled auto (scheduled on the endorsement) to the named insured is included as a specific (not named) insured within the BAC's "Who Is An Insured" definition.

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## Proper Use of the CA 99 47: "Leaseback"

Once the formal lease agreement is in place, attach the CA 99 47

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- The Named Insured (not the employee's name)
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Coverage Parts:

- Part A of the CA 99 47 eliminates any question of or claim denial related to ownership or "title" of the vehicle.
- Part B states that the "employee" who leases the scheduled auto (scheduled on the endorsement) to the named insured is included as a specific (not named) insured within the BAC's "Who Is An Insured" definition.

**Last note:** Can also be used if the vehicle is co-titled in the business' and business owner's name

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## "Who owns the building?"

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## "Who Owns the Building"



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## “Who Owns the Building”



**Property Tax Collections Bill Detail**

	Property Tax	Real Property
Description:	THE BONES COMP	UNPAID
Location:	2112 THREE F RD CHARLOTTE NC 28208	UNPAID
Mailing Address:	1120 EAST BLVD CHARLOTTE NC 28203	000101047-2024-2024-0000-00
Parcel #:	07104109	Old Bill #:
Lender:		Old Account #:
		Due Date:
		Interest Begins:

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## “Who Owns the Building”



**Property Tax Collections Bill Detail**

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Parcel #:	07104109	Old Bill #:
Lender:		Old Account #:
		Due Date:
		Interest Begins:

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## “Who Owns the Building”

- A common problem with small, closely-held corporations
- Often the building is owned by one or several individuals (or other entities)
- The operations are conducted by a different legal entity
- Insureds may not understand the differences in “person” types
- Review tax records

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### Who Owns the Building – The Problem

- If the building owner or a party with “insurable interest” is not listed – there may be no coverage
- Insurable interest is created by:
  - Ownership
  - Bailment
  - Contract

Do **NOT** depend on the carrier’s willingness to reform coverage after the loss

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### Two Possible Solutions

- Have the actual owner purchase its own property policy
- Have the operating entity insure the building (as may be mistakenly done presently)
  - Develop a lease agreement between the building owner(s) and the named insured requiring the named insured to insure the buildings.
  - Attach the CP 12 19: Additional Insured – Building Owner or the carrier’s proprietary endorsement

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“Do any of your employees travel out of state to work?”

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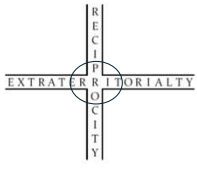
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### When Employees Travel Out of State to Work

- Statutes related to jurisdictional authority potentially create a major problem:



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### Which State Has Jurisdiction?

- Coverage and limit gaps can be created if we don't know where employees work.
- Based on the particular facts surrounding the extraterritorial exposure, out-of-state employees are covered by one of three methods:
  - Extraterritorial coverage from the sending state;
  - As an additional "Primary" state - also known as a "3.A." state; or
  - As an "Other State;" also known as a "3.C." state or secondary state.
- Each state regulates the out-of-state employee exposure differently.

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### Which State Has Jurisdiction?

- Employees may have the opportunity to choose the highest available benefits from one of four jurisdictions:
  - Benefits available from the employee's state of residence;
  - Benefits extended from the state in which they primarily work;
  - Benefits available in the state in which the injury occurred; or
  - Benefits prescribed by the state in which the employer's workers' compensation coverage is provided.
- Statute or common law may limit the availability of jurisdictional benefits:
  - The "Significant Contact" Test; or
  - The "Contract of Hire" Test

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## Which State Has Jurisdiction?

Possible Employee Options

Significant Contact Test

Contract of Hire Test

Reciprocity Problems

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## Which State Has Jurisdiction?

- Every state provides Extraterritoriality
- States differ on the length of Extraterritoriality coverage
- State Reciprocity provisions differ greatly:
  - No Reciprocity
  - Full Reciprocity
  - Limited/Conditional Reciprocity
    - The class of business
    - The number of employees
    - The length of time in the state

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## Problem and Solution

- Problem: **NO COVERAGE**
- Solution
  - Know provisions of each applicable state
  - Confirm that the state with jurisdiction is listed as a 3.A. state

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“Do you have any inventory (stock) that could spoil or die if you lost power?”

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### Spoilage or Death Question

- This exposure is not limited to food-related operations
- Any operation that works with “perishable” inventory:
  - Restaurants
  - Bakeries
  - Ice cream shops
  - Fruit and vegetable operations
  - Cheese stores
  - Grocery stores
  - Convenience stores
  - Specialty shops (like butchers)
  - Florists or greenhouses
  - Pharmaceutical operations
  - Food processing plants
  - Cigar stores
  - Tropical fish stores (or pet shops that sell them)
  - Blood banks and similar operations
  - Laboratories
  - Cold storage warehouses

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### The Problem / Solution

- The Commercial property policy specifically excludes loss resulting from the loss of power – however caused and wherever it occurs (on or off premises)
- Spoilage Coverage endorsement (CP 04 40):
  - Does not require a covered cause of loss to result in a power loss
  - If the power goes off (outside of the insured’s control), there is coverage for loss due to spoilage or death

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### CP 04 40 – Spoilage Coverage

Covered Causes of Loss:

- **Breakdown or contamination** means: 1) change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises and 2) contamination by the refrigerant.
- **Power outage** means change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

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“How do your lease payments compare to the current real estate market?”

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### “Favorable” Leases and Financial Losses

- If the insured tenant’s lease payments are somewhat lower than surrounding market conditions, the tenant has what is referred to as a “favorable lease”
- Losing a favorable lease can result in an unplanned increase in operational expenses for YEARS following the event that resulted in the loss of the lease
- Provisions in most lease agreements allow the landlord to cancel a lease following a major property loss

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### "Favorable" Lease

"Favorable" Lease	Market Conditions at Time of Loss	Monthly Additional Cost to Insured
10 Year Lease Lease Canceled 5 years into Lease "Favorable" Rate: \$15 per square foot 10,000 square feet Monthly rent: \$12,500	Current Market: \$33 per square foot  Current Rent: \$27,500	Monthly Difference: \$15,000  Total <b>additional costs</b> over remaining 5 years: <b>\$900,000</b>

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### CP 04 60 – Leasehold Interest Coverage

- **Tenants Lease Interest:** This is the difference between the amount actually paid by the tenant and the market value of the property
- **Bonus Payments:** This is nonrefundable money paid by the tenant to "purchase" the favorable lease
- **Tenant's Improvements and Betterments:** These are additions and upgrades made by the tenant to the real property that cannot be removed and thus become the property of the building owner
- **Prepaid Rent:** This is rent the tenant paid in advance that is not returned

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"What year was your building built?"

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### A Building Code Issue (Ordinance or Law)

- **Commercial Property** Exclusion "B.1.a." in all three Cause of Loss forms specifically excludes any loss caused by the enforcement of any ordinance or law
  - A small amount of coverage given back for the increased cost of construction in the property form - Lesser of:
    - 10% of Building Value
    - \$10,000
- Commercial Property only pays to repair the damaged property
- No coverage in unendorsed CP for undamaged part
- Insured must pay for removal of undamaged part and/or the increased cost to bring the building into compliance with current building code

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### Building Code Solution

CP 04 05 Ordinance or Law Coverage

- Made up of three coverage parts:
  - Coverage A - Coverage for Loss to Undamaged Portion of the Building
  - Coverage B - Demolition Cost Coverage
  - Coverage C - Increased Cost of Construction

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### Which Policy Pays What Part




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## Which Policy Pays What Part

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## Which Policy Pays What Part

<p>CPP: Cost to remove DAMAGED portion of building</p>
<p>CPP: Cost to rebuild DAMAGED portion of building to its pre-loss condition</p>

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## Which Policy Pays What Part

<p>Coverage Part B: Cost to tear down and remove the UNDAMAGED portion of the building</p>	<p>CPP: Cost to remove DAMAGED portion of building</p>
<p>Coverage A: Value of the UNDAMAGED portion of the building</p>	<p>CPP: Cost to rebuild DAMAGED portion of building to its pre-loss condition</p>

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### Which Policy Pays What Part

Coverage C: Increased Cost of Construction	
Coverage Part B: Cost to tear down and remove the UNDAMAGED portion of the building	CFP: Cost to remove DAMAGED portion of building
Coverage A: Value of the UNDAMAGED portion of the building	CFP: Cost to rebuild DAMAGED portion of building to its pre-loss condition

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### Which Policy Pays What Part



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### Which Policy Pays What Part



CFP: Cost to remove DAMAGED portion of building

CFP: Cost to rebuild DAMAGED portion of building to its pre-loss condition

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### Which Policy Pays What Part



Coverage Part B: Cost to tear down and remove the UNDAMAGED portion of the building.

Coverage A: Value of the UNDAMAGED portion of the building.

COI: Cost to remove DAMAGED portion of building.

COI: Cost to rebuild DAMAGED portion of building to its pre-loss condition.

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### Which Policy Pays What Part

Coverage C: Increased Cost of Construction



Coverage Part B: Cost to tear down and remove the UNDAMAGED portion of the building.

Coverage A: Value of the UNDAMAGED portion of the building.

COI: Cost to remove DAMAGED portion of building.

COI: Cost to rebuild DAMAGED portion of building to its pre-loss condition.

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“Does your business ‘depend’ on any other business?”

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### Dependent Property – We All Depend on Someone

- **Dependent property exposures**
  - The unendorsed Business Income policy responds only when a covered cause of loss damages an insured location
  - Damage to another location upon which the insured depends is not covered by the unendorsed Business Income Coverage Form
- There is **NO coverage** in the unendorsed policy if a dependent property is damaged or destroyed

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### Where to Find Dependent Properties

1. “Suppliers” (Contributing Location)
2. “Buyers” (Recipient Location)
3. “Providers” (Manufacturing Location)
4. “Drivers” (Leader Location)

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### “Suppliers”

- Contributing Location per ISO
- Supply the insured with parts, raw materials or services
- May be sole or major source of material
- If this source cannot supply the necessary material, what happens to the insured?
- Water, power and communication service providers are not within the definition of a “supplier” (This exposure requires a separate endorsement – “Utility Services-Time Element CP 15 45)

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### “Buyers”

- Recipient Location per ISO
- Buys or accepts the products or goods of the insured
- How much of the manufactured product is bought by a particular “buyer?”
- Contracts can play a part

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### “Providers”

- Manufacturing Location per ISO
- Not a location owned by the insured
- Acts as the manufacturer FOR the insured

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### “Drivers”

- Leader Locations per ISO
- Exclusively beneficial to the insured
- Anchor stores
- Sporting events
- Major attractions (convention centers, casinos, etc.)
- Essentially, what drives customers to the insured's location

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## Dependent Property Solutions

- The insured can cover the potential loss of Business Income resulting from the damage to or destruction of a dependent property by endorsement:
  - Business Income from Dependent Properties - Limited International Coverage (CP 15 01) - Only for "Suppliers" and "Providers"
  - Business Income from Dependent Properties - Broad Form (CP 15 08) - Entire Business Income limit available to cover the Business Income loss resulting from loss to the dependent property
  - Business Income from Dependent Properties - Limited Form (CP 15 09) - Requires a specific limit be chosen for the Dependent Property exposure

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