

Nebraska Department of Insurance
Guidance Document
IGD - - C3

Title: Defense Within Limits Clauses

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In general, a “defense with limits” provision includes an insurer’s cost to defend its insured against liability when determining the maximum amount payable by stated policy limits.

The Nebraska Property and Casualty Rate and Form Act, specifically NEB.REV.STAT. §44- 7502 and NEB.REV.STAT. §44-7513 (9)(c), requires the department to ensure insurance contracts “reasonably provide the general coverage for policies of that type.” The Nebraska Department of Insurance “NDOI” established the following approval guidelines for “defense within limits” provisions within commercial general liability policies:

- The policy provides minimum liability coverage of three million dollars per occurrence
- The form must include provisions that require the insurer to extend the coverage limits of the form to the limit required by law for insurance policies issued to comply with statutorily required liability insurance
- The insured must sign a disclosure form as part of the application process. The disclosure must advise that, unlike most liability insurance policies in which payment of defense costs does not reduce the policy limits, this policy contains a “defense within the limits” provision. The provision includes the insurer’s costs for providing legal defense against a claim along with any claim settlement amount within the stated policy limits
- The disclosure must also include an explanation relating to the insurer’s duty to defend. It must advise that once the policy limit is reached, the insurer’s responsibility to pay any further amounts for defense costs or for any damages that may be awarded ends, except that the insurer will pay damages for statutorily required insurance to the limit required by law

Despite the three-million-dollar minimum limits, the NDOI urges insurers and insurance producers to exercise diligence in placing policies with such provisions so that applicants’ coverage needs and objectives are well met.

NDOI’s Property and Casualty Administrator can answer questions related to this guidance document at 402-471-2201.