



Design Firm Transition Planning: *Professional Exposures and Risk Transfer*

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Questions related to specific materials, methods and services will be addressed at the conclusion of this presentation.

LEARNING OBJECTIVES



- ▶ Identify personal liability exposures of professional practices
- ▶ How to risk transfer personal liability through insurance and contracts
- ▶ Professional Liability insurance for business transition and cessation
- ▶ Transition exposures relative to other insurances

AGENDA



- ▶ Practice Exposures and Personal Liability
- ▶ Risk Transfer through Professional Liability and Contracts
- ▶ Professional Liability for Business Transition and Cessation
- ▶ Transition Exposures with Others Insurances

PERSONAL PRACTICE EXPOSURES



- ▶ Licensed Design Professionals face Personal Liability:
 - ▶ Failure to meet the standard of care
 - ▶ Exists whether or not Licensed Designer Stamped/Signed
- ▶ ‘Corporate Veil’ does not shield own professional negligence
- ▶ Statutes vary widely by Jurisdiction:
 - ▶ Repose: *Time for Discovery*
 - ▶ Limitations: *Time to File a Claim after Discovery*
 - ▶ Other Issues:
 - ▶ Negligence vs Breach of Contract, Written vs Oral Agreements, Latent Defects

RISK TRANSFER: INDIVIDUAL EMPLOYEE



- ▶ Corporate Indemnity:
 - ▶ Employer to indemnify the Employee in direct consequence of discharge of duties (e.g. CA Labor Code 2802)
- ▶ Jurisdictions may exclude Sole Proprietorships or Partnerships
- ▶ Employees excluded for *known* unlawful acts
- ▶ Indemnity only as good as financial wherewithal
- ▶ Transfer of risk through Corporate Insurance
 - ▶ Insurance programs are largely out of the employees control!

RISK TRANSFER: ENTITY AND CONTRACTS



- ▶ Corporation vs Sole Proprietor & General/Limited Partnership
 - ▶ Limits Non-Professional Claims
 - ▶ Avoid the Joint & Several Liability of other Owners
 - ▶ Licensed Individuals exposed for their own negligence
 - ▶ Corporations Indemnify Employee for discharge of duties

- ▶ Contract Clauses
 - ▶ Limitation of Liability
 - ▶ Time Bar to Legal Action
 - ▶ Corporate Protection
 - ▶ Uncontracted Third Parties still pose risk outside of contract

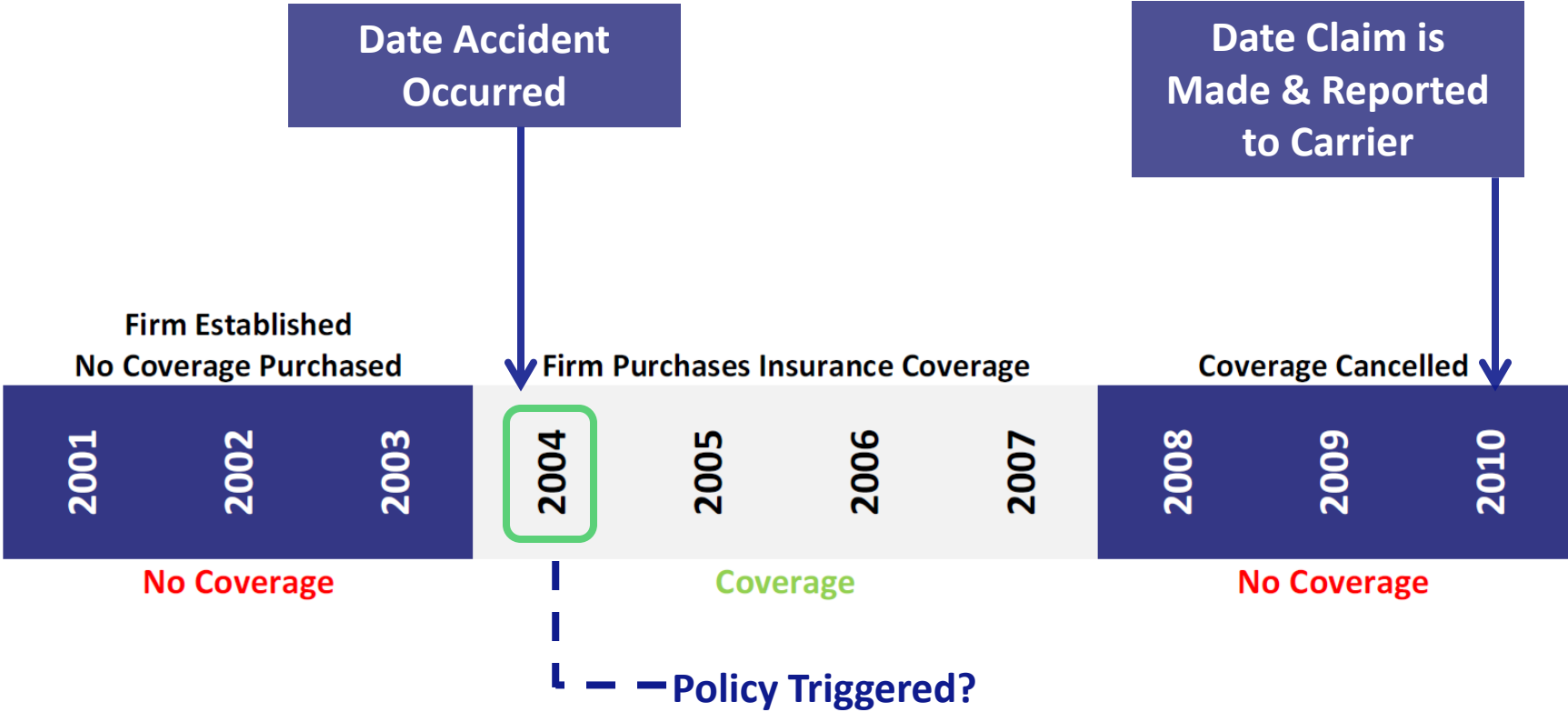
RISK TRANSFER: INSURANCE



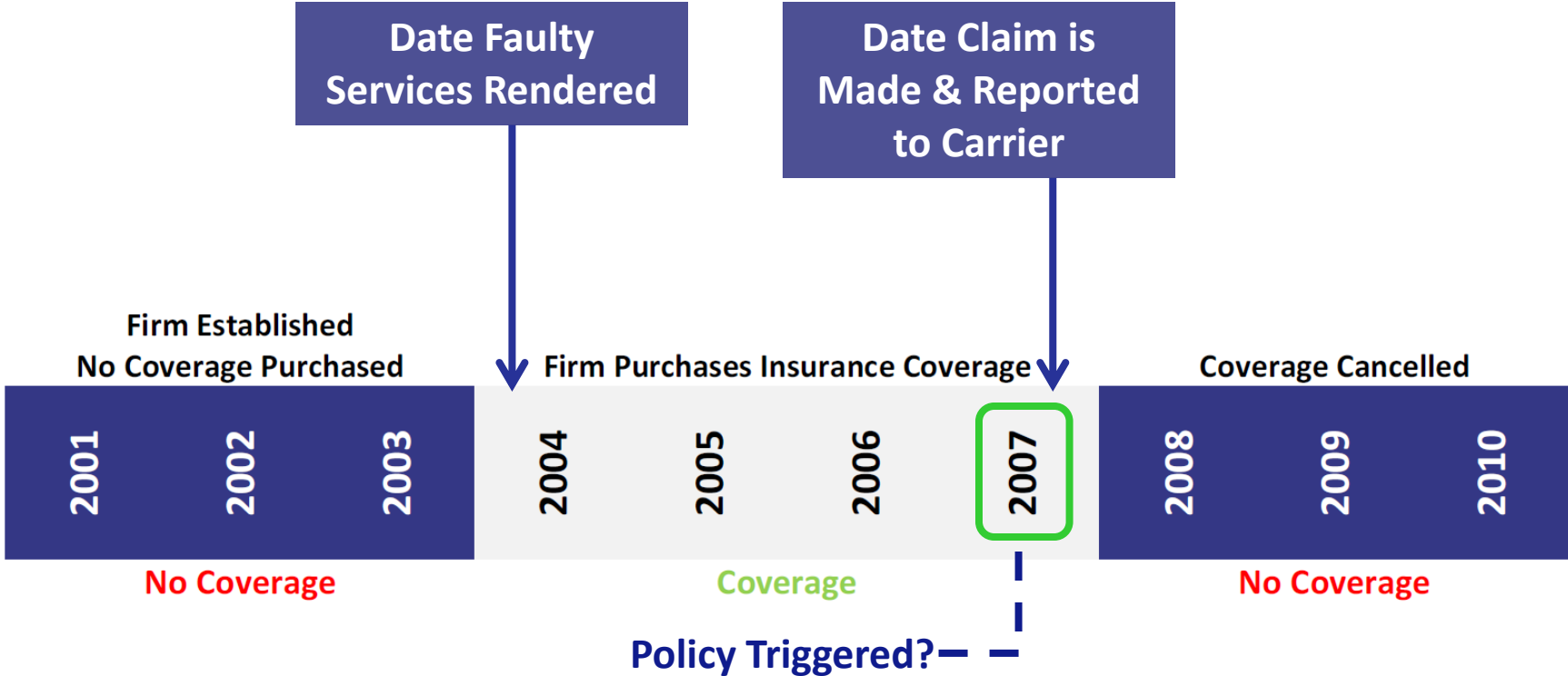
- ▶ Professional Liability Insurance
 - ▶ Safety Net for Professional Negligence Liabilities
 - ▶ Claims-Made & Reported Insurance
 - ▶ Subject to Retroactive Dates
 - ▶ Must be maintained to ensure coverage

- ▶ Who is an Insured? (*Check Your Policy*)
 - ▶ Employees: Past and Present
 - ▶ Predecessor Firms
 - ▶ Spouses, Estates and Legal Heirs
 - ▶ Innocent Insureds

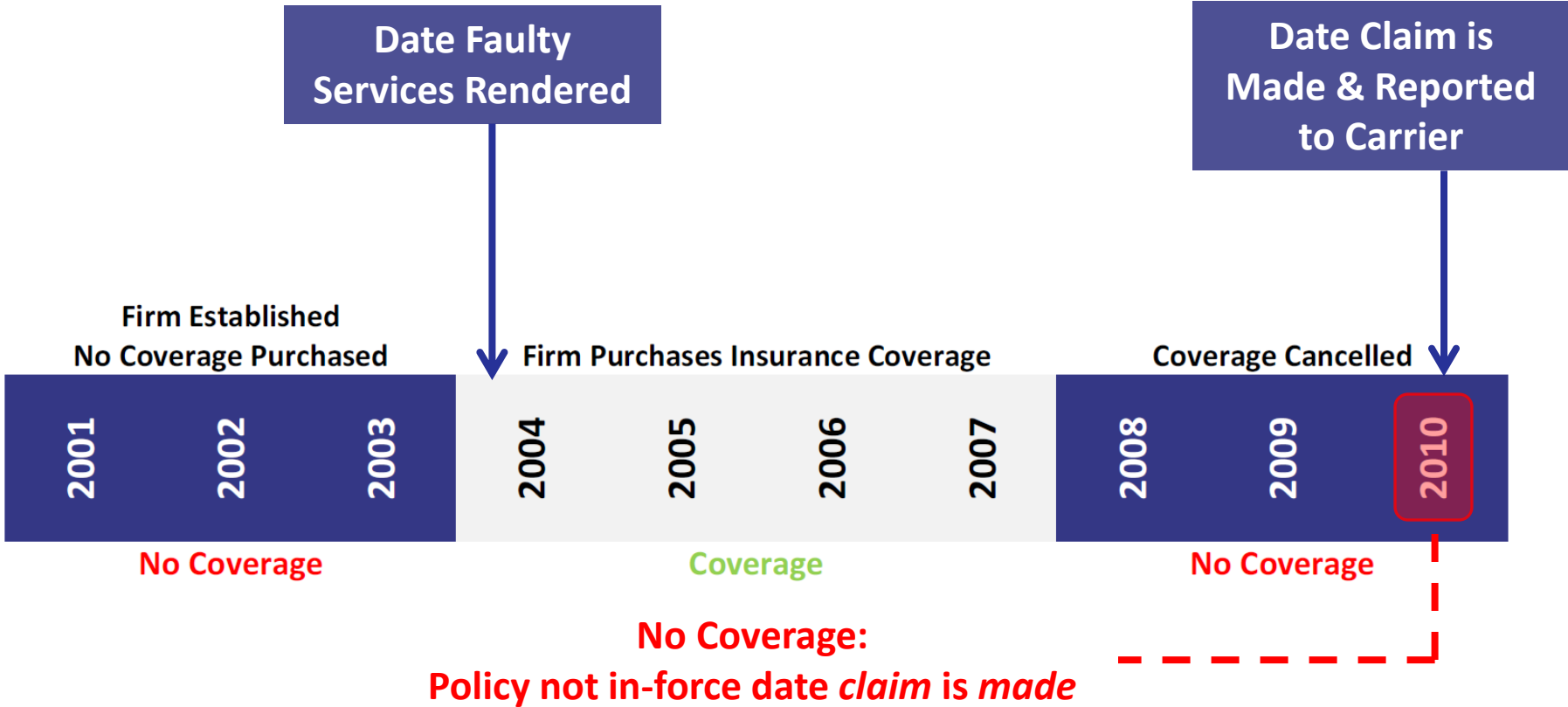
OCCURRENCE INSURANCE



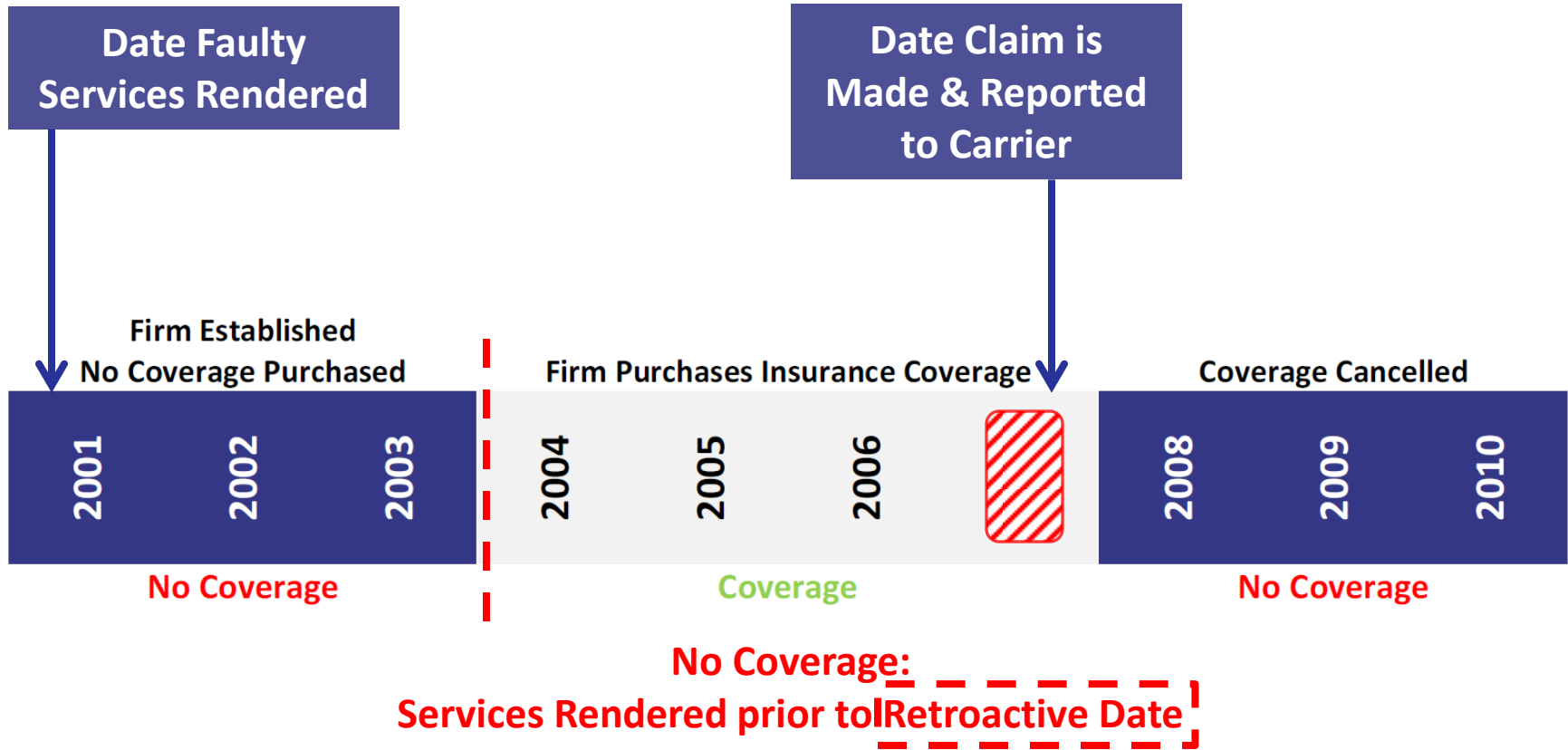
CLAIMS MADE INSURANCE



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OWNERSHIP TRANSITION OPTIONS (SELLER)



- ▶ Fold-up Tent and 'Go Bare' - Cancel Insurances
 - ▶ Liquidate Assets and Move Away or Shelter Assets

- ▶ Internal Transition: Sell or Give Company to Employees

- ▶ External Transition: Sell or Merge Company
 - ▶ Asset Sale vs Stock Sale (Liabilities)
 - ▶ Extended Reporting Period (ERP) vs Prior Acts Endorsement
 - ▶ Active Operating Subsidiary – Maintain Existing Program

INSURANCE - EXTENDED REPORTING PERIODS



- ▶ Extended Reporting Period (ERP, Tail, Run-Off, Sunset Policy)
 - ▶ Provides time to report claims for services provided under original policy.
 - ▶ Time: One to Five Years
 - ▶ Claims: No Circumstance Reporting Allowed
 - ▶ Services: No New Services are Covered
 - ▶ Premium Fully Earned Up-Front:
 - ▶ One Year 100% up to Five Years 250% on expiring premium
 - ▶ Firm Pays \$25,000/YR for Professional Liability
 - ▶ Five Year ERP at 250% = \$62,500

INSURANCE - EXTENDED REPORTING PERIODS



- ▶ Endorsement to expiring policy, limits not refreshed
- ▶ Does not coordinate with Statutes
- ▶ Sunset of Circumstances?
- ▶ Cannot name acquiring entity onto policy
- ▶ Plan ahead, years in advance if possible

- ▶ Availability varies by Carrier:
 - ▶ Options are different or non-existent
 - ▶ May offer different Run-Off Policies
 - ▶ Refresh Limits, ability to renew once
 - ▶ Unlimited ERP for Sole Proprietor

INSURANCE - PRIOR ACTS ACQUISITION



- ▶ Endorsement to Practice Policy of Acquiring Entity
 - ▶ Sublimit and Sub-Deductible are common, but not always used

EXAMPLE	Old Co.	New Co.
Limits	\$1,000,000	\$5,000,000
Deductible:	\$25,000	\$250,000

- ▶ Old co. added to New Co. policy fully retroactive but claims are subject to a \$25,000 deductible and the limit is capped at \$1,000,000
- ▶ Note: New Co. policy form may be different.

INSURANCE - PRIOR ACTS ACQUISITION



- ▶ Underwritten like a brand new company
- ▶ Premium charge to add based upon risk profile
- ▶ Future increases as revenues are rolled forward
- ▶ Protection through statute, if endorsement is maintained
- ▶ Control of liabilities now up to New Co.

- ▶ Prior Acts Endorsements:
 - ▶ Provides most comprehensive coverage
 - ▶ Also, the most costly when catastrophic claims are considered

QUESTIONS IMPACTING YOUR DECISION



- ▶ Have you done your due diligence (claims and culture)?
- ▶ Assets or Liabilities purchase?
- ▶ How are we reassigning Contracts, Works in Progress (WIP)?
- ▶ What name are we using? Old Co., New Co., dba?
- ▶ What are the upfront and potential long terms costs?
- ▶ How is the insurance addressed in Buy/Sell agreement?
- ▶ How will deductibles be funded post-acquisition?

OTHER INSURANCES AND EXPOSURES



- ▶ Representation & Warranties Coverage
- ▶ Directors & Officers Coverage
- ▶ Employment Practices: *Claims-Made Policy*
- ▶ Building Ownership Liabilities
- ▶ Fiduciary Liability & ERISA Bonds
- ▶ Employee Owned Companies (ESOP)

QUESTIONS



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