

The Right Way to Write Builders Risk Insurance

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A construction project involves a complex array of inter-relationship among various parties. An effective construction insurance program requires the dovetailing of several different insurance policies in order to protect the various stakeholders on the project. General liability and workers compensation are necessary and critical elements of insuring a construction project, but the keystone is builders risk coverage.

Builders risk, or “course of construction” as it is often called, is a first party property coverage designed to insure the real property under construction. The coverage is purchased by one party, but ideally the policy will extend protection to anyone involved with the project who may have an insurable interest in the real property.

Standardized builders risk policies are the exception; most insurance companies have chosen to create their own manuscripted forms and coverage can vary greatly. Because no two construction projects are the same, it is important to first analyze exposures (what could go wrong) and then tailor the builders risk coverage to match those exposures.

The Construction Contract

The key to an effective builders risk policy is an understanding of the construction contract, particularly the insurance requirements and indemnity sections.

The insurance section, among other things, will specify who is responsible for buying the builders risk insurance and exactly what coverage is to be included. The indemnity section of the construction contract establishes which of the parties will be responsible for various losses that could conceivably occur during the course of construction, and under what circumstances the parties to the contract have waived their recovery rights against one another. It is also helpful to review the project’s financing documents (lender’s requirements) to determine what coverage the lender requires.

Covered Parties

Normally, either the owner or the general contractor is responsible for buying the builders risk policy (note that we always recommend that owners buy the coverage on their buildings). Regardless of who is responsible for arranging the coverage, all stakeholders to the project, including the project owner, the general contractor, and all the subcontractors, should be included as named insureds.

The reason to include all the stakeholders is that the ownership of a construction project is much more complicated than the ownership of a completed operating facility. During the course of construction, the project owner is seldom the sole owner. The general contractor and the subcontractors often have an interest in the property until it is installed and they are paid. As owners or partial owners of the insured property or as creditors of the insured, to the extent of the labor and materials advanced, the contractors and subcontractors have a valid insurable interest.

Including all the stakeholders on the policy also helps to prevent the builders risk insurer from attempting to recover (subrogate) from the general contractor or any of the subcontractors for losses allegedly caused by their negligence. However, simply naming the stakeholders on the policy may not be enough to preclude the insurance company from subrogating in every case.

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Waiver of Subrogation

In order to make certain that the insurer cannot subrogate or recover, a waiver of subrogation provision should be included in the construction contract. Basically, each party to the contract agrees to waive their right of subrogation against the other to the extent that the damage is covered by the course of construction policy. Such an agreement can be found in either the AGC or AIA* standard form agreements. Following this article is a provision from the AIA agreement.

Covered Property

The definition of "covered property" is important. In addition to the building or structure being constructed, the description of covered property normally includes all fixtures, materials, supplies, machinery and equipment.

The definition of "building" can be expanded to include:

- Scaffolding
- Falsework
- Fences
- Temporary Structures
- Office Trailers
- Underground Works
- Sidewalks, Paving and other Hardscape
- Site Work
- Landscaping
- Boiler & Machinery

You also need to consider your "income statement" exposures, commonly referred to as "soft costs." Soft costs are those expenses necessary to rebuild the damaged structure which are not included in the definition of 'building' discussed above. These include such things as:

- Construction Loan Interest
- Real Estate and Property Taxes on the construction at the project site
- Design and Consulting Fees
- Legal and Accounting Fees
- Insurance Premiums for Builders Risk and, if appropriate, General Liability
- Advertising and Promotional Expenses
- Loss of Rental Income

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PUBLISHED BY

CAVIGNAC
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Covered Locations

Generally, the course of construction policy provides coverage for a specific location. Most policies also (they should if they don't) extend coverage to both property in transit and property temporarily at other locations. It is imperative that appropriate limits be established for these coverages.

Covered Perils

Most builders risk policies are written on an "all risk" or special peril basis. In other words, everything is covered unless it is specifically excluded. Common exclusions include:

- Wear and Tear
- Rust or Corrosion
- Inherent or Latent Defect
- Animals, Birds, Vermin and Insects
- Earthquakes
- Terrorism
- Floods
- Intentional Damage
- Ordinance or Law and Testing
- Pollutant Clean Up
- Mechanical Breakdown
- Hot Testing

Note that many of these can be deleted for a specific cost and the exposure and cost to do so should be evaluated.

Excluded Property

There is a relatively short list of property that is not covered under a builders risk form. This includes things such as:

- Automobiles
- Contractors' Tools, Equipment and Machinery
- Landscape
- Money

Termination of Coverage

Most builders risk policies include specific provisions that determine when the coverage will cease. These "triggers" will vary from form to form. Of special note is the occupancy clause which states that coverage will cease upon occupancy (in whole or in part). Care must be taken to ensure that the carrier grants a "permit to occupy" during construction if there is potential for occupancy during construction. Here are a few examples of termination clauses:

- Policy expiration or cancellation
- Occupancy (in whole or in part)
- When the building is put to its intended use
- Upon formal acceptance by the owner

Summary

Builders risk policies are all unique to the insurance company providing the coverage and they require specific attention to make certain coverage is arranged correctly. An appropriate builders risk policy will include all stakeholders as named insureds. The policy will have a broad definition of covered property and will include coverage for both temporary locations and transit. Exclusions will be deleted where appropriate. It is also imperative to cover appropriate soft costs. The construction contract should include waivers of subrogation to the extent damage is covered by the builders risk policy, and the policy itself must allow for a written waiver of subrogation.

Builders risk insurance is complex, but if structured correctly it is the backbone of a successful risk management program for a construction project.

**The AIA A201 Waiver of Subrogation provision reads as follows:*

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds if such insurance held by the Owner is fiduciary.

The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub subcontractors, agents and employees of any of them, appropriate agreements, written where legally required for validity, similar waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

The AIA A201 Property Insurance Section requires that:

Unless otherwise provided, the owner shall purchase and maintain...a builders risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum...on a replacement cost basis....This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.



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Grilling the Safe Way

Grilling is a common activity in the spring and summer months. In addition to avoiding heating up your house with your stove or oven, grilling is often a good way to get family and friends together for some outdoor fun. With this activity, however, there are dangers. Grill safety is important and should not be overlooked.

Follow these tips in order to keep your grilling experience from taking a wrong turn.

- Always read your grill's instructions prior to use.
- Never use your grill indoors, and keep it at least 10 feet away from any building or home when in use.
- Make sure the grill is off or the coals are cold when you are finished. Never leave a hot grill unattended.
- If you have a gas grill:
 - Check its tubes for blockage regularly, and clear blockage out prior to use.

- Make sure hoses are not cracking or brittle, and that there are no holes, leaks or sharp bends in them.



- Replace scratched or nicked connectors to avoid gas leakage.
- Keep gas hoses as far away from hot surfaces and hot grease as possible.
- Regularly check for gas leaks, per the grill's instruction manual.

Take extra safety precautions when grilling to ensure a fun, accident-free experience.



National Asthma and Allergy Awareness Month

May is National Asthma & Allergy Awareness Month. From dust mites to molds to cockroaches and other household pests, many things can trigger allergies. And with spring in full swing, seasonal asthma and allergies are on their way, too.

If you suspect that you are allergic to something, your doctor can perform some simple tests to pinpoint the allergy, and suggest ways to reduce your exposure. If you have a severe allergy, make sure friends, family and co-workers know and are aware of what to do in case of a serious reaction.

DID YOU KNOW

Asthma and allergies are often overlooked, but in reality, they affect one in five (60 million) Americans.



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Live Well, Work Well (continued from page 4)

Healthier Alternatives to Common Unhealthy Foods

Think you can't live without certain indulgent treats and snacks? Think again. Check out these common foods, and their healthier alternatives:

- Ice cream: sorbet, sherbet, frozen yogurt
- Donuts, sweet rolls, muffins or pastries: English muffins, bagels or scones
- Chips: popcorn (air- or microwave-popped) or baked or kettle chips
- Mayonnaise on sandwiches: avocado
- Bacon: turkey bacon
- Protein or candy bars: almonds or peanuts
- Creamy salad dressings: olive oil- or vinegar-based dressings
- Hamburgers: turkey burgers, bean burgers, veggie burgers
- Potatoes: sweet potatoes



Affordable Décor Refresh

From cleaning out closets to getting the yard ready for summer, spring is a time of change. If you've been itching to redecorate your home, check out these simple ways to save money and give your décor a lift.

Skip the interior decorator. There are many free and inexpensive ways to get ideas and learn how to take on home improvement projects. Use the internet and magazines to get an idea of what appeals to you.

Determine what you want to spend. If you go into a redecorating project with an idea of what you're willing to spend, you will be less likely to blow your budget on one item. Tell yourself you can spend a certain amount of money on each item or room, and stick to it.

Take advantage of what you already have. Realize that you can repurpose things and give them new appeal with a little do-it-yourself creativity.

Don't think big-name stores are the only option. From thrift shops to craft fairs to garage sales, there are many ways to get exactly what you want without overspending. While shopping takes time and patience, you are likely to find what you want at a lower price than if you bought from a big-name store.

Grilled Vegetable Kabobs

When you fire up the grill this spring, meat isn't the only option—grilled vegetables are delicious and good for you, too.

- 2 medium zucchini
- 2 medium yellow squash
- 2 red or green bell peppers, seeded
- 2 medium red onions
- 16 cherry tomatoes
- 8 oz. fresh mushrooms
- 2 medium ears sweet corn
- Nonstick vegetable oil spray
- ½ c. balsamic vinegar
- 2 tbsp. mustard
- 3 cloves garlic, minced
- ¼ tsp. thyme

Cut zucchini, squash and bell peppers into 2-inch chunks. Cut red onions into wedges. Combine cut vegetables with the tomatoes and mushrooms in a bowl. Cut the corn into 1-inch pieces and cook in boiling water for 10 minutes. Add cooked corn to other vegetables. Mix vinegar, mustard, garlic and thyme for the sauce. Toss vegetables in sauce then onto skewers. Spray grill with vegetable oil spray. Place skewers on the grill over medium heat. Baste occasionally with extra sauce. Grill 20 minutes, or until tender.

SPOTLIGHT ON



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The San Diego Police Foundation is a 501(c)(3) tax-exempt organization that supports efforts to improve police/community relations and awards grants to law enforcement for specialized equipment, training and collaborative community programs. It is governed by volunteer directors.

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The San Diego Police Foundation's work is the result of caring citizens like you. We help raise awareness of important unbudgeted or "discretionary" needs that will improve crime-prevention and law-enforcement efficiency. Then we put tax-deductible contributions to measurable work in local communities.

In households where domestic violence tears at the fabric of families, the Foundation has helped many relationships escape the cycle of violence

by funding a program that helps increase arrests and successful prosecutions.

In units like S.W.A.T., grants help overcome the disadvantage of criminals often being better equipped than police.

... and Don't Do

The Foundation does not fund personnel, regular police vehicles, lethal weapons, officers' uniforms or standard police equipment.

For more information about the San Diego Police Foundation, visit www.sdpolicyfoundation.org