

## **Owner-Controlled Insurance Programs: How Much Protection do They Provide for a Design Professional?**

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Owner-Controlled Insurance Programs (OCIPs) or *wrap-up* programs, as they are sometimes called, have been around for many years.

Basically, an OCIP is an insurance program designed to cover the jobsite risks and completed operation exposures of the owner, contractors and occasionally the design professionals and other consultants on a construction project. The program sponsor (the entity that buys the insurance) purchases certain coverages on behalf of some or all of the parties working at the jobsite rather than having each firm supply its own insurance. OCIPs commonly include general liability and workers' compensation, and can also include builders risk, pollution liability and limited professional liability insurance coverages.

For larger projects, the main reasons for an OCIP policy are cost savings and enhanced control from both an insurance and a safety perspective. In the past 10-15 years, wrap-up policies have been used frequently on residential projects and almost exclusively on condominium projects.

The reason OCIPs are used on multi-family housing projects is because these types of projects have been fraught with litigation. Multi-family for sale housing projects are high risk. One professional liability underwriter we work with considers them 12 times more risky than the average risk they underwrite and

5 times more hazardous than an identical structure designed as an apartment.

If the decision is made to work on this type of project, it is imperative to evaluate all the risks, negotiate an equitable contract and proactively and aggressively manage the risks.

### **How Does a Wrap-Up Work?**

A wrap-up policy must be put in force prior to the start of construction. It usually continues through substantial completion of the project plus a number of years thereafter. This period is known as the Extended Reporting Period (ERP) or tail. Ideally, the tail policy extends through the applicable statute of limitations, which in California is 10 years for a latent defect.



The policy limit applies for the policy term. In other words, the limit is not reinstated annually. Minimum premiums are generally in the \$35-\$50,000 range. Typically, deductibles or self-insured retentions start at about \$25,000. On projects in which the minimum premium is not a factor, the rate averages approximately \$7.50 to \$15 per \$1,000 of sales value for the first \$1 million in coverage. We generally recommend a minimum limit equal to at least 50% of the hard construction costs.

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## What Type of Coverage Does an OCIP Provide for a Design Professional?

First of all, don't confuse an OCIP with a Project Professional Liability insurance policy--they are not the same. An OCIP policy on a residential project typically only provides commercial general liability coverage. A commercial general liability policy protects the named insured from its legal liability arising out of its negligent operations that result in tangible property damage or bodily injury. It is critical to note that **if there is no tangible property damage or bodily injury, there is no coverage.**



Project Professional Liability Insurance (PPL) on the other hand, covers the design professional's legal liability. There is no requirement that the damages manifest themselves in the form of property damage or bodily injury. As a matter of fact, the majority of claims against design professionals don't involve either. They involve economic or consequential damages, such as cost overruns, delays, and redesign arising out of designer error.

The standard ISO (Insurance Services Office) general liability policy form does not include a professional liability exclusion. In other words, if a design professional has been included on an OCIP policy and there is no specific professional liability exclusion, then the design professionals would be covered for

their professional negligence, **but only if it resulted in either tangible property damage or bodily injury.**

Even if a design professional can obtain coverage under an OCIP policy (which is rare today), it is still strongly recommended that they retain their own professional liability coverage or purchase a specific project professional liability policy for those consequential damages that are not covered under an OCIP.

The preferred way to insure design professionals on multi-family for sale residential projects (condominiums) is to purchase a Project Professional Liability policy. A PPL policy covers all the design professionals on a project through construction plus a period of years thereafter, ideally through the statute of repose (10 years in California). It is similar to an OCIP except it specifically covers the design team for errors or omissions arising out of professional services. Damages are not limited to resultant bodily injury or property damage. Unfortunately the experience on this type of policy has been horrendous. If you can even find an insurance company willing to offer coverage, the cost may be as high as 40-50% of the limits offered!

If a design professional is going to seek to be included under a wrap-up policy, it is imperative to tailor the coverage in order to provide appropriate protection. Several endorsements are necessary. Specifically, the policy must be amended to:

1. Add the design professional onto the policy as a named insured;
2. Extend coverage to the professional services of the design professional (or, alternatively, not exclude coverage);
3. Provide that the OCIP coverage is primary; and
4. Amend specific property damage type exclusions within the policy itself.

Collectively, the intent of these endorsements is to cover the design professional for his/her negligent acts, errors or omissions that result in either bodily injury or tangible property damage. Remember,

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though, that an **OCIP does not pick up consequential or economic damages**. Design professionals will still need to rely on their practice policies for these types of claims.

It is also important that design professionals make certain that their practice policies do not exclude coverage if the design professionals are included in a wrap-up policy. Most don't, but you should verify this.

## Other Considerations

Even if the Architect or Engineers Professional Liability (AEPL) policy does not exclude condominium work, you should consider the ramifications of relying on the practice policy for coverage.

AEPL is written on a claims made basis which means the policy in force when the claim is made is the policy that will respond. It is not uncommon for claims to be brought on condominium type claims 8-10 years after construction is completed and there is no guarantee the policy you will have 10 years from now will include condominiums.

In addition, most underwriters have a threshold of how much condominium work they are willing to take. This ranges from 5% to 25%. If you exceed the threshold, the underwriter will either decline to quote or non-renew the program.

Finally, it is not usually a question of if you will get sued, but when. You may want to factor in the cost to fund the deductible under your professional liability program, possibly paying higher insurance premiums to account for the significant soft costs you will incur when dealing with the claim.

## Conclusion

Even if an OCIP can be endorsed to cover a design professional's services, the coverage is limited. It only extends to liability that results in bodily injury or property damage. It is not a substitute for a Professional Liability policy.

There is a reason professional liability underwriters are apprehensive about insuring the design expo-

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tures on condominium projects. The message here is clear. These projects are extremely risky and it is critical that the decision to work on such a project be a thoughtful one. The importance of an equitable contract, the right client and builder, and proactively managing the risks can't be overemphasized.

Every OCIP policy is manuscripted; in other words, no two are the same. **It is strongly recommended that, prior to entering into or becoming involved in an OCIP, you have the policy reviewed by both legal counsel and your insurance broker. ■**



## Goal Setting in 2015

Resolutions are possibly the best and worst part of beginning a new year. Who doesn't like a fresh start or a new challenge? However, New Year's resolutions can often be viewed negatively.

Part of the reason many resolutions fail is that the term is seasonal and fixed to a very specific holiday. Come February, New Year's resolutions start to look as relevant as a brown Christmas tree. On top of that, resolutions come loaded with a ton of cultural baggage and are often the setup to jokes about failure.

So, instead of making resolutions that will quickly fade, why not try setting goals for yourself? With that new attitude, here are some tips that should increase the probability of success for your 2015 goals.

1. Set specific, measurable goals. A vague goal is easily broken. If you're dieting to lose weight, set a specific number as your goal. If you're saving, decide on a precise dollar amount. Detailed goals help you focus, making it easier to determine an end point and to meet benchmarks along the way.
2. Choose goals that are meaningful to you, not to somebody else. If you're doing it for yourself, rather than to please others, you'll have much more motivation to succeed.
3. Don't do what you've always done. Try something new, especially if what you've been doing hasn't worked in the past.
4. If you have more than one goal, try varying the levels of difficulty. Completing smaller

goals will give you the momentum you need to achieve a big one, and small successes will keep you from obsessing about difficulties along the way.

4. Use other people to hold yourself accountable. It's one thing to fail privately, but nobody likes to be seen as unsuccessful by other people. Announce your goals on social media to commit yourself, or consider adding another negative consequence to failure. In his book "Drop Dead Healthy," A.J. Jacobs conquered his snacking urges by asking his wife to mail a signed contribution to a hate group if he didn't stop snacking. The thought repulsed him so much that he refused to give in to temptation.
5. Most importantly, if you mess up, do not give up. There is a world of difference between experiencing a setback and stopping. So stick with it! It's a new year and a fresh start—there's no better time to make a commitment to a positive change in your life.

**Blood donation is a simple, four-step process: registration, medical history, donation and refreshments.**

## National Blood Donor Month

While advances in medicine have lessened the demand for blood transfusions, the need for blood donors remains great. According to the American Red Cross, someone in the United States needs blood every two seconds. That comes to a total of 41,000 blood donations needed every day. January has been named National Blood Donor Month in an effort to offset a seasonal period when blood donations drop significantly.

If you've never donated blood before, it is a simple, four-step process: registration, medical history and mini-physical, donation and refreshments. The actual blood donation is a safe process that typically takes 10 to 12 minutes. A sterile needle is used only once for each donor and is then discarded. The average adult has about 10 pints of blood in his or her body. Approximately 1 pint is given during a donation.

Visit the [Red Cross website](#) to find a blood donation center in your area.



# Battling January Gym Crowds

For those who make it a New Year's goal to exercise more, working out in January can quickly test their resolve as throngs of people pack the gym with the same goal in mind.

But since half the country lives where it's too cold to exercise outdoors during winter, how else can wannabe fitness fanatics get their workouts in? Here's how:

**Be flexible.** Whether you like to use the gym at a specific time or go about your workout a certain way, you need to be open to altering your routine. If manageable, try going before work, during your lunch break or later at night. When at the gym, make use of the available machines and free weights while watching occupied equipment to see when it becomes available.

**“Work in” exercise between someone else's sets.** While not the most appealing option for many, allowing another member to use a machine while someone is resting between sets is considered good gym etiquette. All you need to do is ask.

**Think outside the gym.** Avoid the hassles altogether by finding another place to exercise. Rock climbing centers, dance and yoga studios and even bowling alleys can provide you with some level of exercise while you wait for the gym crowds to subside. Even the most frigid locales have some winter days that are nice enough to allow for a jog outside, provided you dress appropriately. And that snow isn't going to shovel itself!

# Calories Outside the Kitchen



Many people follow proper nutrition in the kitchen, only to fare poorly when eating outside their homes. While everyone should be allowed an occasional restaurant indulgence, the U.S. Food and Drug Administration (FDA) estimates that Americans consume a third of their total caloric intake from dining out, and the nutritional uncertainty in all that takeout can be frustrating. However, changes are coming that should make keeping track of prepared food much easier.

On Nov. 25, 2014, the FDA announced that calorie counts must be listed for a wide range of food and drinks, including alcoholic beverages shown on menus. The rules require all restaurants with 20 or more locations to display calorie counts on their menus. The rules also extend to vending machines, amusement parks and movie theaters.

Businesses have one year to comply with the new rule. Until then, dieters are advised to stick to restaurants that voluntarily publish nutritional info and to eat healthily at home whenever possible.



# Hoppin' John

Hoppin' John is a peas and rice dish from the Carolinas, traditionally served in many parts of the South on New Year's Day. Though the origin of its name is lost to history, it is thought to bring prosperity to the coming year.

- ½ cup brown rice, instant uncooked
- 1 tsp. canola oil
- 3 ounces low-fat turkey sausage ring, quartered lengthwise and cut into ¼-inch pieces
- ½ red bell pepper
- 1 jalapeno pepper
- 1 can black-eyed peas
- ½ cup water
- 1 tsp. salt

Prepare the rice using the package directions, omitting the salt and butter or margarine. Meanwhile, in a medium, nonstick skillet, heat the oil over medium-high heat, swirling to coat the bottom. Cook the sausage for 3 minutes or until richly browned, stirring frequently. Stir in the peppers and cook for an additional minute. Then, stir in peas, water and salt. Cook for 2 minutes or until the mixture is thickened slightly but some liquid remains. Remove from heat and let stand, covered, for 5 minutes to allow the flavors to blend. Finally, stir in cooked rice and serve.

Yield: 4 servings. Each serving provides 190 calories, 4.5 g of fat, 1 g of saturated fat, 10 mg of cholesterol, 340 mg of sodium, 9 g of protein, 2 g of sugar and 4 g of fiber.

Source: USDA

# SPOTLIGHT ON



**Cavnac & Associates is proud to support local and non-profit civic organizations, including Toussaint Academy.**



Toussaint Academy San Diego is a licensed group home serving homeless youth in San Diego County ages 14-18. Toussaint Academy provides support and opportunities to at-risk youth who have faced unimaginable challenges. Since 1992, the academy has delivered a comprehensive array of services to help residents with the life skills necessary to become independent, contributing members of society. By connecting youth with caring adults, Toussaint Academy emphasizes each individual's strengths while providing them with opportunities to learn healthy behaviors.

As a partner agency of Father Joe's Villages they share the mission to help neighbors in need break

the cycle of homelessness and poverty. By promoting self-sufficiency through their innovative continuum of care model, their multi-disciplinary programs, and their partnerships that come together in the spirit of their CREED, they teach, learn from, and challenge their neighbors to support themselves and one another.

Toussaint Academy also provides aftercare services to alumni ages 18-24 to help them maintain stability and success following graduation. Aftercare services include scholarships, housing assistance, job placement, and case management.

*For more information about Toussaint Academy, go to [www.toussaintacademy.org](http://www.toussaintacademy.org)*