

PITFALLS OF BUILDERS RISK COVERAGE

Builders Risk is one of any project's most valuable coverages. The policy terms and conditions can make a difference in getting a project back on track after a loss. However, the complex, non-standard nature of these policies requires as much careful construction as the project itself.

Policies can cover all stakeholders on the job as “first party” coverage (meaning that they respond to the property damages without the necessity of a legal action), and they can respond quickly, but that must be negotiated from carrier to carrier to get the best coverage. This *Blueprint* highlights some of the pitfalls you may encounter when buying this coverage.

THE CURRENT MARKETPLACE

The marketplace remains soft due to a significant overcapitalization in the industry. Builders Risk is tied into the construction economy; consequently, with declining construction volume, significant capacity (the supply of coverage available) is chasing a reduced demand (the need to buy coverage on new construction). The result is a continued soft Builders Risk market well into 2010.

This window of opportunity is advantageous for buyers in negotiating competitive pricing, broad coverage and favorable terms and conditions, a circumstance that applies to master builders risk and/or project specific builders risk policies.

An inability or failure to focus on certain coverage areas when negotiating terms, even in a soft market, can result in pitfalls or gaps.

- Inability and/or failure to identify the builders risk contract specifications and loan documents.
 - Understand the lenders' requirements and make sure the policy adequately addresses them.
 - Review the construction documents to make sure the policy complies with all terms.



- Failure to accurately identify and address the interests of the named insureds and additional insureds as well as the subrogation waivers.
 - These are common areas of misunderstanding and can lead to confusion when claims occur.
- Failure to identify differences in so-called “all risk” insuring agreements.
 - This term is used routinely in both project documents and policies; it can lead to confusion about the breadth of the coverage.
- Failure to identify anti-concurrent causation language in policy exclusions.
 - These clauses often serve to exclude coverage unintentionally and need to be negotiated very carefully.
 - Example: After the Katrina disaster, storm surge (considered flood by most underwriters and either excluded or limited by many policies) exclusions were used to then exclude wind damage, which is typically insured.

CONTRACT

- Failure to declare project values in the format and detail required by the builders risk policy language.
 - This comes into play with things like adequate sublimits on transit, soft costs and the like.
 - Inadequate reporting can also affect coverage for excavation costs and land improvements.
 - Another consideration is proper reporting of overhead and profit values whose recovery after a loss might be impacted by the values reported.

- Failure to identify ambiguous policy language related to deductibles.
 - Carriers have used the highest applicable deductible for losses when it is possible to negotiate a narrower view of how they apply.
 - It is critical to understand how delayed waiting periods operate.

- Failure to understand the impact of builders risk markets' use of reinsurance on projects with multiyear terms and/or significant CAT exposures.
 - This is particularly true on major projects which exceed 36 months in duration. Reinsurance can limit the ability of carriers to provide term limits for these long-term jobs. It can also be used in some states to legally cancel coverage due to loss of reinsurance.

- Failure to adequately review soft costs limits specific to the job.
 - This common challenge has caused significant disputes over the years and is often misunderstood. In the current lending environment this coverage is being scrutinized by lenders.

- Failure to understand intent and application of exclusionary wordings.
 - Faulty materials, workmanship, design exclusions can have major impact on claim recovery.

Willis professionals in our Construction, Property and Strategic Outcomes Practices (claims) can work with you to meet these challenges. We encourage you to engage us on this critical line of coverage in advance of placement to achieve the best outcomes.

CONTACTS

For additional information, please contact any of the following:

Frank Armstrong
813 490 6813
frank.armstrong@willis.com

Tim McGinnis
972 715 6263
tim.mcginnis@willis.com

Jim Costner
615 872 3421
james.costner@willis.com

Dave Passman
212 915 8330
david.passman@willis.com

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