

Builders Risk – How to Structure the Best Program



PARKER | SMITH | FEEK

March 16, 2010

By Ed Chapin, Vice President


A construction contract will almost certainly specify who will supply the Builder's Risk Insurance coverage for any construction project. This could be the project's owner, general contractor or sub-contractor.

If the Owner is providing the Builder's Risk policy, a contractor should use the "[Owner Provided Builder's Risk Insurance Coverage Checklist for Contract Negotiations](#)". The checklist provides an overview of what to look for when negotiating the terms of the Owner's coverage.

Contractors should also use the [Builder's Risk Binder request form](#) to obtain confirmation of the Owner's coverage placement. Contractors should also obtain a complete copy of the Owner's policy, unless the Owner is utilizing its existing property insurance policy to provide the coverage. If this is the case, a certificate of insurance should be requested. If the Owner's broker/agent cannot supply the policy copy before work begins, ask for a Binder or Confirmation of Coverage placement.

Regardless of who supplies the Builder's Risk policy, it should conform to the terms of the construction contract, and to the following standards:

1. The Owner, Contractor, and Subcontractors of Every Tier (generic) should be included on the policy as named insureds. Some insurers will only include the Owner as the named insured, preferring to use the terms "additional insureds" or "additional named insureds" to add parties other than the Owner to the policy. Avoid being named only as a "loss payee" as that does not provide you with any protection under the policy other than having your name included on a claims payment check.
2. The limits of liability, number of days notice of cancellation, and perils insured must conform to those specified in the construction contract.
3. Review the policy's deductible amount, especially if the contract makes the Contractor or Subcontractors responsible for payment of the deductible/ or a portion thereof.
4. The policy should be in effect before the Contractor or any Subcontractors set foot on the project site, or before any insurable values are at the risk of the Contractor or Subcontractors.
5. The policy should contain a Waiver of Subrogation conforming to the provision found in the construction contract, which allows a waiver of rights if made in writing prior to a loss, without negative effects to the policy's coverage.
6. The policy should include a provision allowing the building or structure to be partially occupied without negative effect to the policy's coverage.
7. The events terminating coverage should be clearly set forth in the policy. Acceptance by the Owner is the industry standard. The policy definition of when coverage ceases should match other contractual obligations of the parties.
8. Be careful when reviewing contracts for remodeling/renovation projects to determine the extent of the Contractor's liability for damage/destruction to the existing facilities located at, adjoining, or adjacent to the project site, and any resulting loss of use of said facilities.
9. Rather than placing a stand-alone, project specific Builder's Risk Insurance policy, many property owners will utilize their existing, very competitively priced (theoretically) Property Insurance policy to provide the Builder's Risk Insurance coverage for the project. If an existing Property Insurance policy is utilized, be very careful to make certain the policy will provide coverage that is similar in scope to what would be provided on a stand-alone, project specific



Builder's Risk policy, and meets the terms and conditions of the coverage to be placed as outlined in the construction contract.

There really is no standard Builder's Risk policy. The policy provisions vary substantially from insurer to insurer. Similarly, there is no standard construction project, and the loss exposures differ considerably from one project to another. Therefore, purchasing insurance for the exposures presented by a construction project should involve careful identification and analysis of loss exposures, and efforts to tailor coverage to insure those exposures. Failure to exercise care in the process may result in substantial uninsured exposures to loss. For all projects it is imperative that a contractor take the time to ensure that they are covered for any loss that may occur. As the recession deepens and contractors look for ways to improve their bid costs, it has become all too common for contractors to start or even complete projects without the right coverage, or cancel coverage before a project is complete.

Parker, Smith & Feek is proud to offer our clients a dedicated resource for Builder's Risk. In 20 years, we have placed more than \$3 billion in builder's risk values, while providing our clients the best options to meet their exposures. Ed Chapin, the Manager of the Department, is continually sought by project owners, architects, attorneys along West Coast and Alaska when reviewing construction contracts and bid specifications to create the best Builder's Risk solution for all involved parties.