

Property & Casualty Newsletter

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Ensuring Complete Coverage with Builders Risk Insurance

Builders risk insurance (BRI) is a key component of an insurance program on a construction project. When properly obtained, BRI allocates the risk of accidental loss to the insurer and prevents unnecessary disputes and possible litigation that could slow or stop the project. However, the stakeholders of a construction project often do not take the time to ensure that the contract documents address the parties' desires when it comes to BRI policies.

There are several important issues that should be considered when a contractor evaluates BRI coverage for an upcoming project when the project owner is responsible for the purchase of the BRI policy. Here, we will discuss some of those issues and how to address them.

What is Required by the Contract Documents?

A properly structured BRI policy will meet the insurance requirements set forth in the contract documents. The contract documents should be reviewed thoroughly, and this review should not be limited to insurance requirements, as provisions addressing damages to work, partial occupancy, warranties, consequential damages, project completions, and final payment can affect how the BRI policy should be structured. Assumptions should not be made about what is covered by a particular policy or whether that policy complies with contractual requirements. A careful review of the contract documents and the proposed BRI coverage is critical.

Project owners often use their property insurance to satisfy the BRI requirement rather than purchasing a separate, and generally more expensive, BRI policy. However, these property policies regularly do not meet the terms and conditions of the BRI coverage required by the construction contract, including naming the contractor and subcontractors as insureds. Further, this approach often results in inferior coverage for the contractor and subcontractors when compared to a standalone BRI policy.

Who is an Insured?

No matter who is purchasing the BRI policy, it should ideally protect the owner and contractors of all tiers equally as insureds. One great benefit of BRI is that it provides comprehensive insurance which can and should cover all project participants. The preferred method of protecting these stakeholders is to name them as "named insureds" or "additional insureds" (depending on how the policy is worded). The failure to name all these parties as insureds can, and in our experience does, lead to increased construction costs, increased disputes when a loss occurs, and increased litigation.

However, the naming of the appropriate parties is not always as simple as it may seem, as there is no consensus between the standardized construction contracts used in the contracts for the majority of projects. The recently-created Exhibit A to the American Institute of Architects (AIA) A101 agreement requires the BRI to "include the interests of the Owner, Contractors, Subcontractors, and Sub-subcontractors in the Project as insured." This requirement is a step forward from the previous requirement in the AIA A201 General Conditions, which required the BRI policy to include "the interests of the Owner, the Contractors, Subcontractors and Sub-subcontractors in the Project."

ConsensusDOCS 200, Standard Agreement and General Conditions Between Owner and Constructor (Lump Sum), requires the BRI policy to name "the Constructor, Subcontractors, Sub-subcontractors, Suppliers and Design Professionals as insureds." Further, the Design-Build Institute of America (DBIA) Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder requires the BRI policy to "...include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier."



Given the differences between the standardized contracts, contractors should carefully review these contracts before they're executed and strive to be included as a named insured on the BRI policy. At a minimum, contractors should seek to be named an additional insured on the BRI policy. Contractors should avoid being named only as a "loss payee" as that only provides the contractor the right to have its name included on a claims payment check.

The differences found between one policy and another underscores the need for contractors to request a copy of the BRI policy obtained by the project owner before the project has started. With a copy of the BRI policy in hand, a contractor can verify that the policy complies with all the required terms and conditions of the contract, appropriately names the stakeholders, and provides the intended coverage.

Which Coverage Forms Should be Accepted?

General contractors typically assume a majority of the risk of loss associated with a construction project. A loss covered by the BRI policy is one exception to this scenario. Accordingly, the general contractor should be keenly interested in the quality of the of BRI policy. Unfortunately, BRI policy forms vary significantly from insurer to insurer with respect to scope of coverage, terms, and provisions. These differences mean that what was covered on one project may not be covered on your next project. Further, these differences require the contractor to not only have a functional understanding of the common features of BRI, but also an understanding of the risks the policy is intended to insure on a given project.

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