Project Insurance: Traditional vs. Wrap

TRADITIONAL:

In a traditional scenario you will have the following parties involved in the construction of a project: owner/developer, the general contractor (GC) and the subcontractors. The owner hires or contracts with a GC to build the project, who in turn, will hire the various subcontractors. In the contract the owner will require several insurance related items from the GC which are as follows:

a) Hold harmless agreement
b) Indemnification clauses
c) Specified limits of insurance per line of coverage
d) Additional Insured status (GC names the owner as an additional insured on his policy)
e) Waiver of Subrogation, Primary & Non-contributory, Per Project Aggregates, etc.

The GC will cover the construction of the project through their annual renewable primary insurance program. The subs will sign contracts with the GC, referred to as a sub agreement, requiring basically the same items listed above in favor of the GC.

In order to properly protect the owner, the coverage provided by the GC's policy and items listed above aren't enough. The owner will need to purchase an owner's interest policy. This is a general liability policy that protects the owner/developer in the event the GC is negligent resulting in the owner being sued. This policy also protects the owner if liabilities occur outside the construction zone related to the project. This policy will pick up the owner's liabilities when the items listed above fail to adequately cover a claim.

An owner's interest policy is preferred over an Owners & Contractor Protective Liability (OCP). Both provide similar coverage and many feel they are interchangeable; however, the owner's interest policy is written on a general liability coverage form. Owner's interest policies will cover the owner if the claim occurred outside the defined construction area (an OCP will not) and products completed operations is also part of the coverage. The products completed operations can be extended to cover the Statute of Repose in the state where the project is located. An owner's interest policy is the most comprehensive coverage an owner can buy when the project is covered by a traditional program.

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WRAP UPS:

Wraps ups are commonly known as owner controlled insurance program (OCIP) or a contractor controlled insurance program (CCIP). The only difference is who buys the insurance program, the owner or the contractor. When a person thinks of wraps or CIP's, they typically think coverages provided are general liability (GL), workers compensation and excess liability. Within the last 10 years, GL only wraps have surfaced and are used in States where workers compensation is readily available, like Texas. The GL only wraps can be used on residential homes and subdivisions, condos, town homes, office buildings and virtually anything in between. GL only wraps can be used with projects of all sizes.

A GL only wrap will cover the owner/developer, GC and subs under one policy. All parties are enrolled in this insurance program and they are protected just as if they were all the first named insured's. The wrap up will provide up to 10 extended completed operations or to the Statute of Re-pose, whichever is less.

Many GC and subcontractors policies have exclusionary language as it relates to "for sale" single family residential. This can be anything from a single family home to a high-rise condo tower. If you rely on the traditional program to cover "for sale" residential, there is great possibility most contractors involved in the project will not have the proper coverage to protect the owner in the event of a construction defect claim. Under the GL only wrap, you can be sure of the type of coverage you are buying to cover your project.

The typical wording in all insurance policies prohibits a named insured from suing another named insured within the same policy. In a wrap, technically all parties, including the owner/developer, GC, subs, are named insureds. This wording prevents the owner of a project from suing a GC and triggering the coverage. The correct approach is either delete this wording completely or modify it, allowing the owner the ability to sue the GC under the policy for construction defect issues.

The goal of a GL only wrap is to get a true "construction defect" policy. In order to do this you must delete or modify GL exclusions j,k & l. If these exclusions stay intact, it can become very problematic if a property damage claim arises. With these 3 exclusions deleted in their entirety, you basically rid the policy of exclusions dealing with property damage.

There are several additional costs that might be associated with a wrap up. A wrap administrator will need to be used in order to properly enroll subs in the program. If the project is "for sale" residential, typically insurance carriers will require Quality Assurance/Quality Control (QA/QC). This will cost $300-$500 per unit and around 50% of the units will need to be inspected. Photographs are taken of the units at various points during construction. This provides a strong defense in the event of a class action lawsuit stemming from construction defect issues. The overall cost savings of the wrap up makes these costs easier to absorb.

The wrap up is the cleanest and most concise way to insure a project. This type of program does away with the need for the GC's annual renewable primary insurance program and the need for an owner's interest policy as it relates to this project.

Benefits of a Wrap Program

- All parties are insured under the same policy; therefore, you know all contractors on the job-site have adequate coverage for the project being constructed.
- The project will have coverage for the construction phase (premises) and the completed operations phase for a period of up to 10 years after the project is completed.
- Insurance costs for the construction phase and through the Statute of Repose are known prior to the project's start date. This is beneficial when budgeting or financing a project.
- Using "deducts", the owner might be able to recoup a portion of the insurance costs.
- The owner will have dedicated limits just for the project, as opposed to the traditional program.
- In the event of a claim, you don't have multiple carriers sorting through various insurance policies looking for coverage from the GC or the sub. Everyone is on the same policy, dealing with one carrier, with the goal of resolving the claim.
- The owner/developer can move on to their next project after receiving a certificate of occupancy knowing they have coverage in place for issues that might arise after completion.