

Management of Risk And Loss Control Program

Why the Need for Risk Management and Loss Control Programs?

1. Profits and assets of the builder are greatly exposed
2. Builders are subject to state "Implied Warranty" and "Strict Liability" laws
3. Increased demands from homeowners resulting in an increase in defect claims and related litigation.
4. Courts are ruling that "Faulty Workmanship" not resulting in damage to property or bodily injury is excluded under the builders General Liability policy thus leaving the builder exposed to claims and litigation
5. Shortage of skilled subcontractors
6. General liability insurance excludes certain critical coverage to repair property and defend the builder

Risk Management Techniques

Method #1: Avoidance – Simply avoid the risk by prudent site preparation, effective design and construction practices, careful project supervision, and use of quality materials.

Method #2: Minimize Liabilities – Include protective provisions in sales contracts, written third party warranty contracts, prompt settlement of customer complaints.

Method #3: Shift Liabilities - Have signed contracts with all parties involved in the construction process (design, subcontractors, vendors) which include hold harmless and indemnification clauses, you and your firm named as an additional insured on their policy and mandated insurance requirements.

Method #4: Insure Liabilities - Keys to an effective Risk Management and Loss Control Program

Keys to effective Risk Management and Loss Control Program

Builders Insurance Association Inc. requires that all builders participating in the general liability program establish and support a strong loss control program utilizing all four techniques listed above. The practical applications of these methods are listed below. It is crucial to institute these measures as part of your normal business procedures.

- **Maintain good documentation and records**
 - Documentation is Critical to an effective defense against construction related claims and must include the following:
 - Construction plans and all planning notes
 - Description and use of quality materials (implied and written warranties by the manufacturer or supplier)
 - **Written** work in progress inspections including follow-up notes which document that the subcontractors made all recommended corrections
 - Copies of notes or videos if used during inspections
 - **Signed** sales contracts and documentation of all conversations with homeowners (follow-up letters to homeowners)
 - **Signed** subcontractors agreements
 - Certificates of Insurance from all subcontractors and suppliers
 - **Signed** change orders

- Lists of subcontractors and description of work performed for each production unit
- **Use a comprehensive Sales Contract with each homeowner**
 - Have a local attorney review your sales contract to ensure you are fully protected
 - Make sure the Sales Contract has strong waiver and arbitration provisions
 - Any changes to the original Sales Contract must be in writing and signed by both the builder and homeowner
 - The sales contract must be maintained in the Project Manual
- **Be careful in the selection of Subcontractors**
 - Select subcontractor's who agree to:
 - Sign a **written** Subcontractor agreement, which contains hold harmless/indemnity provisions, insurance requirements, a waiver of subrogation and an arbitration agreement. (See the forms section for sample language)
 - Provide valid certificates of insurance on each home
 - Implement OSHA safety programs
 - Follow all contract specifications using quality construction techniques and materials
 - Fully implement all recommendations of the builder
- **Purchase a Third Party Warranty on each unit built**
 - A third party written warranty outlines the builder's legal warranty obligations as to coverage and length of time
 - The written warranty should include one year workmanship, two year systems and ten year structural coverage
 - A written warranty should transfer to subsequent homeowners thereby protecting the builder for a full ten years
 - A written warranty should contain a waiver of the builder's liability for non-warranty claims for construction defects.
- **Contractually transfer risk to subcontractors**
 - Obtain a signed Subcontract Agreement from all subcontractors which contains the following:
 - Hold harmless/indemnity agreement
 - Insurance requirements which provide financial backing to indemnity agreements
 - Waiver of Subrogation
 - Arbitration Agreement
 - Obtain Certificates of Insurance before work is begun on each home
 - Require that subcontractors carry minimum general liability insurance limits of \$500,000. Preferable limits would be \$1 million
- **Site conditions and site preparation**
 - Most general liability policies **do not** provide coverage for defects related to soil movement
 - Careful pre-acquisition due diligence can reveal significant future problems such as geotechnical (expansive, collapsible, sulfites), noise (traffic, airports and other sources) and use of adjacent parcels
 - Documentation related to soil testing is invaluable in the defense of subsidence claims and litigation
 - Insured warranties may offer the only insurance against structural claims related to soil movement
- **Employee Training and job site reviews**
 - Selection, training, retaining and managing supervisors are critical to risk management and loss control
 - The overall role of the Supervisor is:
 - Oversee and manage the Builders job-site risk management program
 - Oversee construction quality in terms of material and workmanship and that both are in accordance with the original construction plans

- Conduct regular quality and loss control job-site inspections using written checklist
- **Job Site Safety and Security**
 - Builders are legally responsible for maintaining a safe and secure job-site
 - Builders have a significant exposure from claims related to visitors invited or not being injured on the job-site
 - Job-site injury claims and litigation are hard to defend
 - Inadequate use of job-site warning signage and barriers can result in claims for which the builder has no defenses
 - Daily job walks by the job Superintendents can easily include both safe work practices and quality construction
 - Implementation of the following procedures will have a positive impact on reducing the chance of job-site injuries
 - Employee tools should be removed each night
 - All traffic areas should be kept free of trash, tools and equipment and construction materials
 - All excavated areas should be properly covered and blocked from visitors or workers by barricades or temporary chain link fences at the end of each work day
 - Ground variations are often considered "hidden" by the courts, and courts impose the highest level of duty on developers and builders.
 - All stairs must have a sturdy temporary handrails until permanent handrails are constructed
 - All open areas above ground must have a sturdy temporary railing and be covered with sturdy material
 - Keep the job-site well illuminated for dusk to morning
 - Post warning signs indicating that no one is allowed on the job-site "Private Property – Unauthorized Entry is Prohibited"
 - Homebuyers should be notified in writing that access to the site is not allowed without an appointment
 - Job-site safety training for "invited guest" before they are allowed in the job area

Conclusion:

The residential builder's assets and net worth are exposed.

An aggressive risk management and loss control program is the only way to reduce the exposure present in building and selling homes.

Your General Liability insurance does not cover all your exposures so a program that avoids and controls losses is critical to the wellbeing of your business assets.

The builder will pay claims and the related legal expenses, which are not covered by insurance.

(source: <http://www.vabuildersinsurance.com/riskandlosscontrol.html>)