

GREEN CONSTRUCTION AND BUILDER'S RISK – BE WARY OF “COVERAGE ENHANCEMENTS”

Green construction methods, once “the next big thing,” have now been widely adopted by owners, lenders and developers. As a result, architects, engineers, contractors and insurance professionals have had to understand how this type of construction is different and what additional risks could arise.

Insurance policies, including Professional Liability, have been amended to address the risks associated with green building. In this *Blueprint* we will touch on the approaches underwriters are taking with Builder's Risk. We will discuss later the varied ways they are addressing this, but first a quick review of *green* terms and what it is.

WHY THE INCREASE IN GREEN CONSTRUCTION?

Developers and owners understand the advantages of the many incentives associated with green construction as well as the benefits from the positive public perception of building environmentally friendly projects. Local, state and federal agencies increasingly seek to mandate consideration of and adherence to LEED-designated buildings through enactment of new building codes and incentives.

IS THERE AN INCREASE IN EXPOSURE FROM GREEN BUILDINGS?

Underwriters disagree on whether in fact green buildings create the need for different coverage approaches, but a few areas to consider include:

- The impact of a loss during construction and a change in ordinance or law or green design standards



WHAT IS GREEN CONSTRUCTION?

Green construction is the design or use of products, materials, machinery, equipment, systems or methods to achieve reduced environmental impact and improved energy efficiency. While many structures are being designed to achieve these goals generally, others are being built to strict standards with the goal of being designated as LEED (Leadership in Energy and Environmental Design) certified. These designations are often referred to as Silver, Gold or Platinum, based on criteria established by the U.S. Green Building Council.



- The additional cost of commissioning and assisting the owner in achieving LEED designation
- Increased costs of new technologies to replace those damaged during the course of construction
- Failure to meet the performance criteria for systems at the end of construction
- The potential increased costs related to business interruption as it may take longer to build or incorporate green materials
- In the event of a loss, the higher priced green-certified materials, whether or not green certification is achieved

BUILDER'S RISK MARKET RESPONSE TO GREEN CONSTRUCTION

Responses of the underwriters vary. Builder's Risk carriers that have developed green/LEED endorsements are including these on project-specific programs as well as master Builder's Risk programs. Other markets have simply continued business as usual and remained silent on the subject. The varied market approach and the different variations of green/LEED endorsements have generated confusion and questions from the construction industry.

Below are some of the responses of Builder's Risk markets regarding green/LEED construction along with examples of endorsement language used by others. As you can see, underwriters differ on their perception of the need to endorse policies:

- "We decided not to develop any Green/LEED Endorsements as it seems to have little relevance to Builder's Risk. If the project is to build a LEED Gold building, that is what the policy would pay to replace."
- "If construction values declared and underwritten include the costs associated with Green/LEED construction then our policy would cover the costs associated with Green/LEED construction."
- "For LEED design, we will follow most carrier endorsements. The coverage extension is somewhat like Difference in Conditions (DIC) coverage that addresses increased costs including delay, to conform to the LEED design be it Gold, Silver or Platinum."

As examples of carrier wordings when endorsements are available, here are two that address “green” construction:

“Green Building Additional Expense – In the event of loss of or damage to Covered Property from any of the Covered Causes of Loss, we will pay the following additional expenses you incur to comply with the certifications standards of ‘Green Authority.’

- “Building commissioning expense” for the Covered Property
- Expense to meet or restore indoor air quality standards in your indoor air quality management plan for the Covered Property or
- Expense to certify or re-certify the Covered Property to its budgeted level of “green” certification in accordance with the “Green Authority” standards that exist at the time of repair or replacement, even if the standards have changed since the original certification was budgeted or achieved
- This coverage is sub-limited – “The most we will pay under this Additional Coverage is \$100,000 in any one occurrence.”
- Limitations/sub limits on Green Roofs that are capped at a certain dollar value and also include a deductible that is greater than the existing policy”

Another carrier’s endorsement states:

- “In the event of a loss to Covered Property caused by or resulting from a Covered Cause of Loss, we will pay you the difference between replacing lost or damaged materials and processes of a kind originally installed and material and processes that are environment friendly and meet the U.S. Green Building standard for new construction and major renovations. The most we will pay for loss in any one occurrence during the term of this policy from the coverage provided by this endorsement is 5% of our Sub-limit of Insurance for new construction, not to exceed \$1,000,000.”

BUYER BEWARE

As you can see, the Builder’s Risk markets are addressing the exposures associated with green/LEED construction differently. If you are a buyer or have any insurable interest under a Builder’s Risk policy that includes specific green/LEED coverage, understanding these so-called coverage enhancements is critical.

YOU SHOULD ASK:

- **What green/LEED coverage is provided by the policy?**
- **Is green/LEED coverage limited with the various endorsements, i.e., sub-limits, exclusions, etc.?**
- **Do I understand the definitions on the endorsements, which may alter the policy form?**
- **Does the Builder’s Risk policy provide coverage certainty as respects to the contractual obligations?**

While some carriers have one endorsement to address green/LEED exposures, others have multiple endorsements. One carrier, for example, has the following endorsements: Repair Enhancement Endorsement, Conservation and Energy Efficiency Tax Credit Endorsement, Debris Removal Expense Endorsement, Enhanced LEED Endorsement and the Recertification Process Endorsement. All of the endorsements have sub-limits. Understanding the project and contractual risks is critical as only one of these endorsements might be applicable (versus having all of the endorsements included in the policy).

If there is concern about underwriting intent in the forms, the best course of action is to work with the underwriter to develop affirmative wordings which clearly point to the intent to address any issues related to these types of construction methods.

We have observed a recent trend by some developers and owners who are incorporating green components and efficiencies into the construction of the buildings but not going through the certification process. Factors driving this trend are increased expenses associated with the certification process, potential failure of the operating system performance criteria as originally specified and, finally, the associated costs/ responsibilities to adhere to LEED certification. Owners and developers are carefully weighing the risks versus rewards for LEED-certified construction.

All parties with an insurable interest should request copies of the Builder's Risk policy and any specific green/LEED endorsements. Contact your Willis broker for assistance in negotiating the appropriate coverage for you and your project. Confirm and/or clarify coverage before a claim occurs!

CONTACT

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