



TOP COVID-19 ISSUES IMPACTING BUILDER'S RISK INSURANCE

CONTACT

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Views expressed here do not constitute legal advice. The information contained herein is for general guidance of matter only and not for the purpose of providing legal advice. Discussion of insurance policy language is descriptive only. Every policy has different policy language. Coverage afforded under any insurance policy issued is subject to individual policy terms and conditions. Please refer to your policy for the actual language.

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The COVID-19 pandemic is causing historical disruption to the construction industry. Idle job sites, supply chain disruptions, changes in financing options and delays to project starts all indicate that the construction industry is in disarray. These changes mean that risk mitigation strategies need to be implemented or revisited, policy language should be reviewed, and carriers should be apprised of all changes at the site.

We strongly recommend insureds focus on the details of the delay now and share the following items with their carriers.

- Copies of any governmental notice regarding shutdown
- Schedules and Gantt charts up to and post-delay/shutdown
- Record of any known infection onsite or nearby
- Records of all incurred expenses for administration, preparation and cleaning including scope of work
- Details regarding any slowdown due to labor or materials shortage

Currently, major areas of concern for Builder's Risk insureds that we will explore in this article revolve around government-mandated shutdowns, supply chain-driven slowdowns and policy wording that could limit coverage.

As the marketplace continuously evolves, AmWINS remains in close contact with our carrier partners regarding their current position on terms and coverage response. If you have questions on a specific account or carrier, please reach out to your local AmWINS relationship or [Harry Tucker](#), AmWINS' National Property Practice Leader.

GOVERNMENT-MANDATED SHUTDOWNS

The leading Builder's Risk concern for insureds revolves around mandatory stoppage or idling by governmental entities. Without ongoing work at these construction sites, carriers are faced with increased exposure. Beyond what is provided by the policy, waived premium for extensions, even when resulting from government mandates, is not likely to be granted and changes will need to be negotiated. These negotiations may lead to more restrictive terms and increased rates.

While it is important to keep insurers aware of the project's status, a government-mandated shutdown is clearly beyond an insured's control and their focus on documentation and risk mitigation techniques can limit the impact. Following the project shutdown preparedness checklists provided by many carriers and utilizing proper site protection practices will be key elements in negotiating the issue of policy extensions. To the extent possible, all existing protections should remain in place and any additional measures should be communicated to the carrier as soon as possible.

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It's worth noting that while some projects are only partially shut down due to supply chain issues or other various reasons, the insured still needs to communicate the change in scope to their carrier by providing a narrative around what is happening at the work-site and impacts to weekly project reports.

We highly recommend that insureds maintain all relevant records, receipts and government notifications to evidence and bolster their negotiations. It is also important to be in close contact with your underwriter as many carriers are requiring their own specific checklists and protocols to protect sites. Beyond this, key risk mitigation techniques include the following, which are all meaningful ways to protect a site while it is idle.

- Protect the site through a 24-hour surveillance service, video surveillance or locked construction fences.
- Secure all mobile equipment and consider temperature and humidity control for all stored equipment.
- Make sure the site is well lit.
- Protect the site from water and wind damage as well as maintain proper fire protection.

It's important to reiterate that carriers will want to be aware of all techniques used to secure the site. These actions will be essential in negotiating extensions if needed.

POLICY WORDING THAT COULD LIMIT COVERAGE

There are numerous clauses that are often found in Builder's Risk policies which should be reviewed and scrutinized for every insured. Each carrier has their own version and with so many different variations, it's important to review and understand the individual policy wording to ensure that what is being done during the delay does not unintentionally trigger these clauses.

Most Builder's Risk policies contain cessation of work, abandonment or increased hazard clauses. These are standard clauses used by insurers to protect their interest in the event a project is abandoned with no intent to return or if a material change/increase to the project occurs. Typical language mentions abandonment after a substantial amount of the structure is completed, however some carriers add "with no intention to complete it" wording. Many carriers are silent on cessation and others don't define the specific terms.

The following policy excerpts illustrate the various language used and the importance of reviewing your policy form when making and changes to the work-site.

Carrier A:

Term of Insurance

Coverage provided hereunder shall attach as of the date shown on the Declarations and shall continue in full force and effect until:

- the expiration date shown on the Declarations,*
- final acceptance of the INSURED PROJECT by the owner,*
- abandonment of the INSURED PROJECT by the NAMED INSURED, or*
- the expiration of the NAMED INSURED's interest in the INSURED PROJECT; whichever first occurs.*

Increased Hazard

If there is a material increased hazard in the risk, change in project scope or change in project principals, the NAMED INSURED shall give notice in writing to the Company within 30 days of the NAMED INSURED's knowledge of the same. The Company shall have the right, but not the obligation, to modify the terms of insurance in accordance with the terms and conditions that would apply to the material increased hazard.

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This policy may be cancelled by the Company for any of the following: material change of risk, Insured's conviction of a crime arising out of acts increasing the hazard of the covered property insured, Company's loss of reinsurance, Company's discovery of fraud or material misrepresentation in the obtaining of this policy, NAMED INSURED's abandonment of covered property, change in ownership or sale of the covered property (other than transfer of ownership to an affiliated entity) or failure to maintain or protect the covered property during WORK STOPPAGES, as such term is defined below.

Solely for the purposes of this cancellation provision, the term WORK STOPPAGES means:

That all work on the covered property or any part thereof insured under the Policy stops or ceases for all practical purposes, for a period of thirty (30) days or more.

Carrier B:

All coverage under this Policy shall cease from the earliest of any of the following:

- A. Upon acceptance of the Insured Property by the owner, purchaser or tenant;*
- B. Upon occupancy or use of the Insured Property; unless otherwise permitted elsewhere in this Policy;*
- C. Upon the cessation or termination of the Insured's interest in the Insured Property;*
- D. Upon cancellation of this Policy;*
- E. Upon the Expiration Date shown in Item 2. of the General Schedule of this Policy.*

Some carriers have begun to offer a **Permission to Suspend Construction endorsement**, or similar endorsements, that explicitly extend coverage while a shutdown or slowdown is in effect. The coverage is granted for a designated timeframe and, except for possible adjustments to the deductible, generally leaves coverage unchanged. This endorsement is most beneficial on long-term shutdown or slowdown situations and allows insureds to err on the side of caution when dealing with uncertainty around workforce availability, supply chain issues and government mandated shutdowns. Form wording varies by carrier and retailers should be mindful of and review the exact language used.

CONCLUSION

While there is much uncertainty surrounding the COVID-19 pandemic, there are no signs of long-term changes to capacity, rates or carrier appetite in the Builder's Risk insurance marketplace. Policy wording and carrier response will vary, but retailers that advise their insureds to communicate work-site changes proactively to carriers, advise on implementing proper risk mitigation techniques to protect the site, and thoroughly review policy wording will be well positioned to weather the storm of project delays resulting from COVID-19.

During this pandemic, AmWINS is working closely with our carrier partners to understand their changes in operations and protocols, advocate for flexible payment terms, exposure basis relief and policy extensions when possible, and ensure as little disruption as possible with regards to servicing, claims, binders, endorsements, and renewals. We will keep our clients advised of any new market changes, renewal challenges and regulatory proposals that may impact our business.

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