

STRENGTHMATTERS®

Insurance Coverage Considerations for Affordable Housing Developers

June 20, 2018

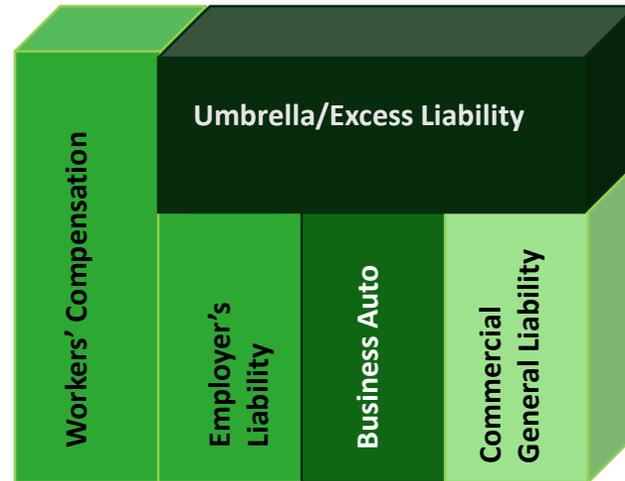
Goal of this Presentation

- To provide Strength Matters members with an overall understanding of Commercial Insurance policies...
 - That are typically purchased by their peers
 - That are purchased and/or considered by their peers to address emerging trends such as Cyber / Data Privacy, Environmental Insurance, Social Engineering and other areas of concern.

Typical Insurance Program



Property /Inland Marine Policies



Basic Liability Policies



Additional/Specialty Liability Policies

First Party Insurance Coverages

- Property Insurance
 - Covers the owner or user of property for their loss, or the loss of income from loss or damage is caused by a covered peril, such as Fire, Hail, Water Damage, Wind, or Explosion.
- Different types of Property Insurance
 - Commercial Property – for your permanent assets, (Building, Business Personal Property, Computers, Phone Systems, etc.)
 - Major Coverage Terms you want to include
 - Special Causes of Loss Coverage (“All Risk”)
 - Replacement Cost Valuation
 - No Coinsurance (Agreed Amount)
 - Ordinance & Law
 - Blanket Limits of Insurance or Loss Limit Adequate to Cover Probable Maximum Loss
 - Terrorism if desired or required by Lender
 - Named Windstorm, Flood and/or Earthquake if desired or required by Lender

First Party Insurance Coverages

- **Business Income & Extra Expense Incl. Rental Income** – for your loss of income due to a fire, water damage, etc.
 - Include Ordinary Payroll if coverage is desired
 - No Coinsurance
 - Period of Indemnity not limited by expiration date of policy
 - Request waiving any waiting period or separate deductible for Business Income
 - Minimum of 180 days Extended Period of Indemnity

First Party Insurance Coverages

- Boiler and machinery / Equipment Breakdown - loss due to mechanical or electrical breakdown. Also includes coverage for loss of income.
- **Why is it needed?**
 - **A typical commercial property policy does not cover loss or damage caused by:**
 - Electrical arcing
 - Mechanical breakdown, and
 - Explosion of boilers and pressure vessels
 - Equipment breakdown insurance covers the sudden and accidental, physical damage to equipment that requires its repair or replacement. It applies to equipment in the following categories:
 - Electrical
 - Air Conditioning and Refrigeration
 - Boiler and Pressure Vessel
 - Computer and Communications
 - Mechanical
 - Renewable and Alternative Energy
 - Production Systems

First Party Insurance Coverages

Builders Risk / Course of Construction Coverage – A property insurance policy that is designed to cover property in the course of construction. A Builders Risk policy can insure:

- An existing structure
- Building materials and related items typical to a construction site: temporary structures, scaffolding, construction forms.
- Construction materials stored off-site and in transit.
- Can include coverage for loss of income and other Soft Costs, (construction loan interest, architect fees, legal and accounting fees, etc.)

If utilizing a General Contractor's Builders Risk Policy:

- Ensure that the legal entity(s) of your organization that are entering into the construction contract are added as Named Insureds. This is a common practice in the insurance industry.
- Ensure the policy provides coverage for Loss of Income/Loss of Rents. Many GC Builders Risk policies do not include this as they have not vested interest beyond the completion of the project.

First Party Insurance Coverages

- Builders Risk Coverage Issues to bear in mind
 - Most lenders require a Completed Value builders risk form
 - On a rehab or remodel address the coverage for the existing structure. Many carriers will try to only provide Actual Cash Value for the structure. Replacement Cost coverage is available.
 - On new construction it is important to determine if you want the site preparation, excavations, underground pipes and foundations covered.
 - The scope of the Soft Costs coverage should be specifically discussed by all the insureds
 - Coverage for Weather Events if the Roof and/or the Building Envelope is compromised or not completed
 - Earthquake Coverage and/or Flood Coverage. Understand the definition of Flood – it can vary from insurer to insurer.
 - Understand when your Builders Risk coverage expires
 - The policy expires or is cancelled;
 - The project is accepted by its owner or purchaser;
 - When the property is put to its intended use.
 - Make sure this provision is aligned to your construction contract

Workers Compensation / Employers Liability

Covers workers injured on the job, whether they're hurt on the workplace premises or elsewhere, or in auto accidents while on business. It also covers work-related illnesses.

- Coverage is provided for medical expenses and lost wages while injured, and also provides payments to surviving immediate family members in the case of death
- Typically does not apply on the way to/from work
- Coverage A: Workers' Compensation- Statutory
 - Note the State in which the ongoing work and/or project is located
- Coverage B: Employers' Liability - Coverage provided by the workers compensation policy to the insured (employer) for liability to employees for work-related bodily injury or disease, other than liability imposed on the insured by a workers compensation law.

Third-Party Insurance Coverages

General Liability

- Coverage for Bodily Injury, Property Damage, Personal & Advertising injury as a result of your negligence or legal liability.
- Covers Liability assumed under contract as defined by the policy
- Types of Claims/Allegations Covered by General Liability
 - Slips & Falls
 - Wrongful Eviction or Wrongful Entry
 - Property damage to a tenant or guest's property
 - Assault & Battery*
 - Abuse & Molestation*

**The standard ISO General Liability policy provides defense and payment of damages for allegations unless excluded. The coverages with an asterisk are often excluded or only provided on a limited basis by a small sub-limit.*

- It is important that your broker review all coverage forms and endorsements to ensure you have the coverages needed for your operations.

Third-Party Insurance Coverages

Automobile

Third-Party Coverages

- Provides automobile liability and property damage coverage. Liability coverage is for property damage or bodily injury to a 3rd party caused in some way by the insured driver's negligence.
- Remember to include Hired & Non-Owned Liability

First-Party Coverages

- Auto physical damage coverage is for property damage to the insured's vehicle itself
- Hired Auto Physical Damage is readily available

Third-Party Insurance Coverages

Umbrella / Excess Liability

- A policy or set of policies designed to provide protection to your business against catastrophic losses.
- Typically written to provide additional limits to the following primary liability policies: *(Commonly referred to as Underlying Policies)*
 - General Liability – see previous page
 - Auto Liability – Owned and/or Hired & Non-Owned Liability
 - Employers Liability – this is Part B. of the Workers Compensation policy. It does not provide additional limits for Statutory Workers Compensation Benefits.
 - Employee Benefits Liability – this policy is an Errors & Omissions policy for the administration of your Employee Benefits plans.

Third-Party Insurance Coverages

- Umbrella Policies Serve Three Purposes
 - Provide additional limits to primary liability policies after they have been exhausted by the payment of a covered claim
 - Can “drop down” and act as a primary policy if the underlying policy aggregates have been exhausted
 - May provide coverage for claims not covered by the primary/underlying policies
 - These drop down coverages are becoming less and less available in the market place
 - Most insurance carriers will only provide coverage terms that are available on the primary / underlying policies.
 - An Umbrella policy that only provides coverage terms and conditions that the primary /underlying policies provide is called an Excess Liability policy.
 - These policies might also be more restrictive than the primary / underlying policies.
 - Typical additional exclusions might be a Total Pollution Exclusion, Liquor Liability Exclusion

Environmental (Pollution) Insurance

- Being purchased by more and more Affordable Housing and Market Rate Housing owner/operators
- Types of coverage arising from a Pollution Condition arising on, at or from an insured location.
 - First-Party Clean-Up, (including Loss of Income)
 - Third Party Bodily Injury and Property Damage
 - First and Third Party Transportation
 - Coverage for Non-Owned Disposal Sites
- Important as it typically covers the following items excluded by a General Liability policy
 - Mold
 - Inadvertent Disturbance of Lead-Based Paint and/or Asbestos
 - Legionella
 - Radon
- Can provide coverage for Pre-Existing Conditions Plus New Conditions or New Conditions Only
- Depending on the claim / allegation this policy might provide additional limits over and above a Property or General Liability policy

Executive Risk / Management Liability Coverages

- Directors & Officers Liability

- Written and purchased to protect your Board of Directors and Officers.
- Acts essentially as a “Management Errors & Omissions” policy
 - Covers claims for *financial* damages incurred as a result of a management decision
 - Most D&O policies are written with Defense Costs Within the Limits of Liability.
 - Written as claims-made meaning claims must be reported within the policy period they occurred.
 - Typically include a Professional Services Exclusion
 - It is preferred to have Duty to Defend policy language
- Important to obtain coverage for General Partnership Liability as a standard Non-Profit D&O form will not provide coverage to For Profit entities

Executive Risk / Management Liability Coverages

- Employment Practices Liability (EPL)
 - Liability insurance covering wrongful acts arising from your employment operations
 - Types of Claims Covered by EPL
 - Gender or Racial Discrimination and other protected classes such as color, religion and national origin
 - Failure to Promote
 - Sexual Harassment
 - Hostile Work Environment
 - Retaliation
 - Most EPL policies are written with Defense Costs Within the Limits of Liability.
 - Typically written as claims-made meaning claims must be reported within the policy period they occurred.
 - It is preferred to have Duty to Defend policy language
 - Recommended to include Third-Party EPL which provides you with discrimination coverage to non-employees.
 - Actual Damages as a result of a Wage & Hour Claims are typically not covered. You may receive a sub-limit to defend these types of claims.

Executive Risk / Management Liability Coverages

- **Fiduciary Liability**
 - Protects a businesses' and employers' assets against fiduciary-related claims of mismanagement of a company's employee benefit plans as defined by ERISA. An important feature is that it covers the individuals who administer the plans.
- **Crime Insurance including coverage for Guest Property & Social Engineering**
 - Coverage for employee theft of money, securities, or property.
 - Guest Property endorsement adds coverage for employee theft of a customer's property.
 - Social Engineering Coverage – provides coverage for the voluntary parting of money by an employee to a third-party as a result of that employee being tricked or fraudulently induced into the transfer of those funds.
- **ERISA Bond**
 - Insurance to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who “handle” plan funds or other property.
 - Typically not needed if a separate Crime policy is purchased.

Cyber / Data Privacy Insurance

- Truly becoming an enterprise risk management issue
- Coverages Include:
 - First Party Coverages
 - Crisis Management Event Expenses
 - Security Breach Remediation & Notification Expenses
 - Computer Program & Electronic Data Restoration Expenses
 - Computer Fraud
 - Funds Transfer Fraud
 - E-Commerce Extortion
 - Business Interruption & Additional Expenses
 - Third Party Coverages
 - Network & Information Security
 - Communication and Media
 - Regulatory Defense Expenses
- Valuable risk management tools & training are usually available to you at no additional cost

Errors & Omissions / Professional Liability Policies

- Errors & Omissions / Professional Liability policies are written to cover professional services provided to others.
- Types of Errors & Omissions policies typical to Affordable Housing Providers
 - Social Services Professional Liability - covers liability for damages arising from errors and omissions in the providing of professional services. Most often written in conjunction with a General Liability policy
 - Property Managers Professional Liability - Coverage for claims alleging negligence or error in the provision of property management services
 - Construction Management Professional Liability - The management, coordination, and supervision of the design and construction process

Errors & Omissions / Professional Liability Policies

- Asset Managers

- Maybe more appropriately called Investment Advisor Errors & Omissions
- This professional liability insurance defends and pays damages for the potential loss in the value of assets belonging to your investors.
- Written in conjunction with Directors & Officers Liability policies due to the professional services allegations often overlapping or being brought in tandem with D&O allegations.
- Activities considered to be “Asset Management”
 - Mismanagement of assets
 - Misrepresentation made in the PPM or other communication to investors or potential investors
 - Failure to provide adequate disclosure of the investment risks involved
 - Failure to properly value assets
- Adding this coverage to D&O policies typically results in an increase in premium and/or retentions.

Errors & Omissions / Professional Liability Policies

- Developers Errors & Omissions

- Provides Defense and Damages to a Developer that they become legally obligated to pay because an alleged breach of duty, error or omission of their services as a real estate developer.
- Why *might* this be needed? Many General Liability policies will include a Professional Liability Exclusion.
- Services as a real estate developer may include the following:
 - Project manager: Establishing and managing the design, construction bid packages and establishing the permits, variances, easements etc.
 - Construction manager: The management, coordination and supervision of the design and construction processes.
 - General contractor: The fabrication and build of the project, including at-risk construction management exposures.
 - Miscellaneous exposures: Miscellaneous exposures tied to the services provided by a real estate agent, title agent, notary public and property manager.
- Review of the coverages terms and conditions of these policies is critical.

Questions?



- Disclaimer and Distribution Conditions

- This presentation is intended as a summary only and does not include all of the policy terms, conditions, limitations, and exclusions. Please always refer to your insurance policies for specific coverage information.
- This presentation shall not be distributed in any manner and/or medium without the written permission of Strength Matters and IMA, Inc.