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What's in a Name?

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When playwright William Shakespeare asked the question, “What’s in a name?” in Romeo and Juliet, he was referring to the idea that names themselves are a convention to distinguish things or people, but themselves do not have any worth or meaning. While we can certainly understand that “a rose by any other name would smell as sweet,” we do have to be careful with names and their meaning in the world of business, contracts, and construction. When it comes to builder’s risk insurance specifically, names do indeed carry great meaning.

BUILDER’S RISK INSURANCE

Builder’s risk insurance is a special type of property coverage that indemnifies against damage to buildings while under construction. Typically, the project owner or general contractor requires that these policies be purchased according to the master contract, such as the American Institute of Architects’ form. The standard AIA form and other similar contracts require that the builder’s risk policy protect the interests of the owner, contractor, and subcontractors. In many cases, there is no reference to what name these different parties should be called under the policy. Should a claim arise, this is a potentially dangerous detail to overlook.

NAMING CONVENTIONS

When referring to insurance policies, there are different types of names that a person or entity can be identified as:

- **First named insured:** the entity or person who is the policy’s primary owner and responsible for communicating with the insurance company, paying premiums, and other similar tasks. They are literally named first on the policy and are listed within the policy declaration sheet.
- **Named insureds** (sometimes called additional named insureds): any other entity or person with an insurable interest protected by the policy and is named by endorsement in the policy.

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- **Additional Insured:** a person or entity who receives protection from claims arising out of negligent acts committed by the named insureds via an endorsement to a **liability policy**.

Since builder's risk policies are property policies, they can only have first named and named insureds listed. Proper contractual wording regarding builder's risk coverages should include the requirement that all parties involved in construction, including subcontractors of every tier, be listed as named insureds in the policy. Contractors should challenge any reference to additional insureds. To not be listed as a named insured puts a contractor or subcontractor at a severe disadvantage in the event of a claim, with no right to the policy's benefits.

The owner/developer may have lenders, investors, and others that may not agree subcontractors or even general contractors should be named insureds on the policy; carriers may also take this stance. This is negotiable; however, there may be carrier restrictions or contractual language to consider.

CONTRACT WORDING TRENDS

Recent developments within certain insurance carrier forms are beginning to cause confusion, as they are using the term "additional insureds" to refer to contractors being added to the policy rather than as "named insureds." To make matters worse, carriers sometimes define the term with the limitation that additional insureds are insureds only to the extent that "their interests may appear" for specific work that the contractor or subcontractor completed.

This wording could expose contractors to insurance carrier subrogation following a loss for areas in which a contractor might be deemed to have no interest. For example, a plumbing contractor whose installed fixture leaked and caused finish work damage may be required

to pay back costs associated with cabinetry and trim work. This could become very expensive for the party deemed at fault in a larger project.

To protect against these concerns, this kind of policy wording should be rejected if possible. If not, then it is important to ensure strong waiver of subrogation wording is included both within the policy and the project contract for all parties and any damages to the structure.

Understanding these differences in names can be difficult for individuals not well versed in insurance language. Before work begins, we recommend that you consult with your Parker, Smith & Feek team when questions arise about these terms. If you have further questions, reach out to [Parker, Smith & Feek's Construction Practice Group](#).

"What's in a Name" Builder's Risk Checklist

- ☑ The owner, general contractor, and subcontractors of every tier should be included as named insureds on the policy.
- ☑ The party responsible for the placement of coverage will provide all named insureds a certificate evidencing coverage placed, along with a copy of the policy as soon as it's available.
- ☑ The main contract between the owner and general contractor should specifically state that the owner, general contractor, and subcontractors are to be included in the policy as named insureds and that a waiver of subrogation will apply to all parties.
- ☑ The policy should contain a waiver of subrogation provision.