

Deciphering Catastrophic Insurance

by Quenda Behler Story

Builders often buy catastrophic insurance to protect themselves from unforeseeable disasters such as floods, fires, and tornados. This type of policy is also called builders' risk insurance, though in some markets builders' risk refers to a package that includes catastrophic coverage and general liability. When I refer to builders' risk policies in this article, I'm referring to catastrophic insurance alone.

Figuring out what catastrophic insurance protects you from and for what period of time may not be as straightforward as you think. First of all, it won't cover damage caused by

one type of coverage to another. You may not want your policy to start on a specific day, for example, because you don't know exactly when work will commence and there's no point in paying any sooner than you have to. And if a flood comes and washes everything away before your crew is on site, it's not your problem, right? Well, it might be, because there are multiple ways of defining when a job begins.

Some lawsuits have held that insurance coverage begins as soon as the job is ready to start. For example, even though no one has put a shovel into the ground, if your material has been delivered, the job is considered to

terminate upon owner acceptance or upon owner use or occupancy, which I'll discuss further on.

Termination Upon a Specific Date

If your insurance is scheduled to end on a specific date, then your coverage won't last beyond that date, even if you aren't done with the work. If you want to continue coverage beyond that date, you will have to pay another premium and ask your insurance carrier to extend the policy.

On the other hand, coverage that's scheduled to end on a certain date may not last even that long. Insurance companies don't want a minute's worth of extra exposure, so even though a policy is supposed to end on a specific date, the fine print will allow the company to terminate it the minute the job is finished, which the company will do.

Termination Upon Job Completion

It can be hard to figure out when coverage starts if the policy is tied to a specific event, but it's even harder to figure out when coverage ends. Your policy may say it ends upon "job completion," but completion can mean one thing in an insurance policy and another thing in your contract documents. Insurance companies define completion as "substantial completion," no matter what your contract says.

Suppose you reach substantial completion, but there are some items left on the punch list. Whose problem is it if the structure burns to the ground before that work is finished? The bad news is that your builders' risk insurance company is going to say it's not their problem. The good news is that your liability carrier will probably fight this out with the homeowner's insurance company. If your client doesn't have a policy, then you'll be

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every sudden disaster. If a storm destroys the building you're working on but poor workmanship or an incompetent design made that possible, your builders' risk policy will not kick in. (All would not necessarily be lost, however, because "catastrophes" caused by incompetence are likely to be covered by someone's comprehensive general liability policy.)

When Coverage Starts

Some catastrophic insurance policies start on specific dates and end on specific dates, but others are event specific. That kind of coverage might start when construction on a project begins and end when the job is complete.

There are reasons you might prefer

have started. In other cases, courts have determined that coverage did not actually begin until excavation began, or in one case, until the foundation was being laid. Unfortunately, if there's a dispute over the start date, the only way to absolutely pin it down is to go through a lawsuit.

When Coverage Ends

Likewise, there is more than one way for insurance to terminate, and more than one standard can be applied to a single policy. Some end upon job completion, no matter how long it takes, but the most common type of policy terminates on a specific date or upon job completion, whichever comes first. And almost all policies are written to

Legal

the one fighting it out with the insurance company. You can avoid this by including a clause in your contract that requires the homeowner to purchase insurance. That is a standard feature of American Institute of Architects (AIA) contracts.


Some policies will automatically renew until the job is done. Of course, insurance companies don't provide that service for free. Policies typically include a schedule of what it costs for additional days of coverage after a certain date.

Occupancy

Regardless of what a particular policy says, pretty much every policy ends the moment the owner moves in or starts

using the property. This is true even if the job is not complete. The only time that would not terminate a policy is on a remodeling job, when the insurance company knew in advance that the client would be occupying the building during construction.

Letting the property owner use or occupy the building will terminate your insurance coverage as of the date of usage or occupancy unless the insurance company specifically consents in advance to that use or occupancy. This means you should think twice about allowing the property owner to store possessions in or move into the building before the job is done. A few lawsuits have ruled that giving the property owner some sort

of temporary use is not the same thing as occupancy, but plenty of suits have gone the other way. There's even a case on the books that says the policy terminates even if the contractor did not know the owner was using the property. The legal idea is that the insurance company intended to insure an empty building when it issued the policy. My advice to builders: Tell the property owners to put their stuff in a storage unit and rent a motel room. 

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