

# Business

## Insuring the Remodeling Site

by Tom Messier

**M**ost contractors know that if they fail to carry general liability or worker's compensation insurance, they are just one lawsuit or accident away from being broke and out of business. Far fewer seem to realize that it is equally risky to remodel homes that are inadequately insured by the owner. The vast majority of remodeling projects are completed with no loss of property, but when there is a loss, the problems can be huge.

For example, let's say the Smiths own a home that is worth \$500,000 and is insured for that amount. They hire a contractor to remodel the home for \$250,000. If the project work is nearly complete and a fire destroys most of the home, the Smiths may not have enough money — even with the insurance settlement — to

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repair the house or redo the remodeling work. There also may not be enough money to pay the contractor for work that's already done or for the materials that were on site but destroyed before being installed.

### How Protected Are You?

A general liability policy will not cover the contractor for this claim. Most standard construction contracts make the owner responsible for all materials as soon as they are delivered to the site. It's a good idea to make sure that your contract spells this out, too. Just because the customer has a homeowner's policy doesn't mean it's large enough to protect both of you. If the homeowner does collect on the policy, there's no guarantee he will use the money to pay you.

### Make Sure You Can Collect

The place to start is with your contract — and I'd advise

you to discuss this with a lawyer. Your contract should make it clear that the homeowner is financially responsible for building materials as soon as they arrive on site. It should also state that the owner owes you for the amount of work, including profit and overhead, that has been completed to date.

Make sure the client discusses this with an insurance agent and increases the value of the policy to reflect the value of the home once the work is complete. You may be legally entitled to payment, but you will have a hard time collecting if the property was underinsured.

If the coverage falls short, don't expect the courts to resolve the issue in a way that is necessarily fair to you. It has been my experience that the courts will normally allow the underinsured homeowner to rebuild the house, and only then, if there is money left, will the homeowner have to pay the contractor what is due him.

**Become a loss payee.** On large projects where you have a lot at risk, you may want to include a clause in your contract that requires the client to name you as a "loss payee" on the homeowner's policy. If you are listed as a loss payee and there is a claim, your name will appear on the check from the insurance company. The owner will need your signature to cash it. This prevents the owner from cashing the check and spending the money on whatever he wants.

Some of my clients have actually gone to the bank with the owner to make sure they got their share of the check. In some cases — although it's rare — the insurance company will adjust losses with each loss payee and issue them individual checks.

**Get proof of insurance.** Your contract could require clients to provide you with a property binder or a certificate of property insurance. These standard forms can be issued by an insurance agent to show that a property is insured for a stated amount. A binder is for a finite period of time, usually 30 days. The certificate is supposed to last until the next renewal; the certificate holder — the remodeler — is notified if the insurance is cancelled.

**Get ahead on payments.** Another way to avoid being

## Protect Yourself

**ACORD. CERTIFICATE OF PROPERTY INSURANCE**

PRODUCER: Mason & Mason Insurance Agency

INSURED: John Q. Public

COMPANY A: Liberty Mutual

COMPANY B: National Flood Insurance

COMPANY C:

COMPANY D:

**COVERAGES:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO- LINE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMIT
A	PROPERTY	H123-456789	3/1/05	3/1/06	BUILDING	\$800,00
	COULD OF LOSS				PERSONAL PROPERTY	\$250,00
	BASIC				BURIED ACRES	
	BROAD				BOTH BIPHAS	\$100,00
	SPECIAL				BLIND BUILDING	
B	EARTHQUAKE	F123-98765	3/1/05	3/1/06	BLIND BUILDING	
	FLOOD				BLIND BUILDING	
	INLAND MARINE				BLIND BUILDING	
	TYPE OF LOSS				BLIND BUILDING	
	OWNERS OF LOSS				BLIND BUILDING	
	NAVES/PERILS				BLIND BUILDING	
	OTHER				BLIND BUILDING	
	TYPE OF LOSS				BLIND BUILDING	
	BUILDER'S RISK				BLIND BUILDING	
	OTHER				BLIND BUILDING	

LOCATION OF PROPERTY/DESCRIPTION OF PROPERTY: 1711 Greenwood Lane, Wakefield, MA 01880

SPECIAL CONDITIONS/OTHER COVERAGES:

**CERTIFICATE HOLDER:** A-1 Remodeling Company, Inc.

**CANCELLATION:** SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL endeavor TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ON THE LEFT. NOT FAILURE TO MAIL SUCH NOTICE SHALL IMPROVE NO OBLIGATION OR LIABILITY OF ANY KIND SPEC TO THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE:

Make sure the homeowner's policy provides coverage for the value of the completed project — not the value of the home when the remodel begins. The increased coverage should take effect when the job starts and run until its completion.

Your company should appear as a certificate holder. This means the insurer will provide you with written notice of any changes the owner makes to the policy during its effective period. In the event the owner cancels the policy, the insurer should notify you, though the fine print makes clear that the insurance company bears no legal responsibility for its failure to inform you.

owed money when a client suffers a loss is to use an aggressive payment schedule. You won't need to collect anything if you are ahead on payments. In fact, if you're far enough ahead, the client may be entitled to collect something from you. Still, that's no reason to avoid talking to the client about insurance coverage. A lot can happen when clients are desperate and unhappy — they could blame the contractor for a loss he didn't cause, for instance. It's much easier to smooth

things over if there's enough insurance money to rebuild the house.

My company wrote the policy for an \$800,000 custom home that was hit by lightning and burned to the ground a week before the owners were supposed to move in. Fortunately, the project was adequately insured, so the contractor got paid for the work he had done, including overhead and profit. Later, the contractor made money a second time when the owner hired him to

rebuild the house.

**What's not covered.** Although the homeowner's policy will cover completed work that's damaged or destroyed, it won't normally cover materials that are on site but not yet installed. These materials can be covered, but only if the homeowner adds a builder's risk endorsement to his homeowner's policy. It's in his interest to purchase this endorsement, because if the contract makes him responsible for uninstalled

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material, he needs to make sure there's a way to pay for it. It's up to the contractor to insure his own tools and equipment, which can be done with a tool floater.

## Don't Count on the Bank

Many owners carry insurance because the mortgage lender requires them to. Don't assume, however, that just because a bank is involved the home is adequately insured. The insurance may have been adequate when the owners first bought the house, but if real estate values have increased since then, there may be a lot of unprotected equity.

This is not a problem for the bank — but on a major remodeling project it could be a problem for you. The bank is worried about protecting its interest in the property, which is equal to the mortgage amount. The lender is usually one of the loss payees on the homeowner's policy, and if there is a claim, the lender always gets its share first. The lender doesn't care whether there is enough money left to pay the remodeler.

## Settling the Claim

Some claims can be settled in a week, but others go on forever. It's all about

determining the value of what was damaged. It's easy to settle on new parts of the building, because their value is spelled out in the contract. If the work isn't complete, the adjuster can determine its value by reviewing the progress payments and job inspections. It's a lot easier to settle when the contractor keeps good records.

*Tom Messier is vice president of Mason & Mason Insurance Agency's Construction Industry Services in Whitman, Mass.*

# Staying in Touch With Clients

by Dave Holbrook

A periodic newsletter is a great way to keep your company on the radar screen of both previous and prospective clients. Builders David and Michele West, owners of Meadowview Construction in Topsfield, Mass., have recently replaced their company's mailed newsletter with a one-page electronic version. It goes to a rapidly growing list of e-mail recipients in the company's electronic database.

Now that paper and postage are no longer needed, the Wests measure the cost of producing the newsletter in time spent. It takes about 15 hours to gather and format the contents. Michele uses PageMaker software to create the document and sends it as a regular e-mail attachment to some 700-plus recipients. Since she has to send in small batches to avoid overloading her e-mail program, this operation has

proved to be somewhat cumbersome, so she plans to switch to an html (hypertext markup language) format. That will allow her to skip the attachment step and send the newsletter as a Web-based link. Not only will this speed transmission; it

should also eliminate recipient concerns about opening an attachment and downloading a computer virus.

Within two weeks of sending "Volume 1, Summer 2005," the Wests received a dozen responses and picked up a couple of small jobs. Their long-term goal is to keep adding names to the list and to send the letter at least once a month.



Builders David and Michele West recently switched over to an electronic version of their company newsletter. They're still working out some kinks in the transmittal process, but the response thus far has been promising.