



AIA Releases New Insurance Exhibit

The American Institute of Architects (“AIA”) released the latest revisions to its form construction contract documents at the AIA's National Conference on April 27-29, 2017. The 2017 forms include updates to the principal owner-architect agreements, owner-contractor agreements and the general conditions documents. Notably, the AIA included a specific exhibit for insurance and bonds. The new form, titled AIA Document A101 – 2017 Exhibit A: Insurance and Bonds, tackles many of the issues formerly identified in Article 11 of the A201 General Conditions, but does not replace Article 11.

The AIA’s decision to include a standalone insurance form underscores the increased reliance on insurance as a primary method of risk transfer in the construction industry. Evolving policy language and new insurance products, collectively, place an increased emphasis on insurance requirements, both to ensure that parties carefully consider their desired risk transfer outcomes, and to ensure that the risk is transferred in conformity with the parties’ agreement. For example, many additional insured endorsements only provide coverage where required by contract. If the contract requirements are not adequate to trigger the language of the endorsement, the additional insured coverage the parties thought they bargained for may not exist, or may be significantly limited.

The new insurance exhibit is designed to provide a framework for parties to contemplate the various insurance-related issues associated with a project’s construction risk, including the type of coverage required, the necessary limits, who will be responsible for purchasing the coverage, and who will be responsible for any deductibles. Designed to be user-friendly, the insurance exhibit allows the parties to default to the terms of the form for their insurance requirements, if they so choose.

The form is most specific in its requirements for builder’s risk coverage and commercial general liability insurance. For both, the form enumerates the period during which coverage must remain in place, certain exclusions that are not permitted, and certain extensions or additions to coverage that must be included. This is particularly important for builder’s risk coverage, where policy forms vary widely, and parties cannot rely on a standard form to provide the expected coverage.

For example, the new insurance form requires builder’s risk coverage to remain in place through the correction of work rather than the date of final payment. It also requires coverage for falsework, temporary structures, and "to building systems from testing and startup," as well as debris removal. The form prohibits exclusions for the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, floor or windstorm, and requires coverage for ensuing loss or resulting damage from errors, omissions or deficiencies in construction methods, design, specifications, workmanship or materials. The form also mandates coverage for existing structures where the project involves remodeling or construction of an addition.

The Right Choice for Policyholders

With respect to general liability, the new form requires that coverage remain in place throughout the period of correction of the work. Significantly, it requires that the policies include coverage for completed operations as well as the Contractor's indemnity obligations. The form specifically prohibits certain exclusions or limitations in coverage, including:

- Claims by one insured against another
- Claims for property damage to the Contractor's work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor
- Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured
- Claims related to residential, multifamily or other habitational projects, if the Work is to be performed on such a project
- Other specific claims where the work involves such hazards, such as roofing, EIFS, earth subsidence, or explosion, collapse and underground hazards

In addition to builder's risk and general liability, the form includes contract terms prompting the parties to require or consider the following types of coverage:

- Equipment Breakdown Coverage
- Cyber Insurance
- Auto Liability
- Worker's Compensation
- Employers Liability
- Railroad protective liability
- Asbestos abatement liability
- Property insurance covering the Contractor's property
- Professional Liability
- Pollution Liability
- Maritime Liability
- Manned or unmanned aircraft

Importantly, the insurance exhibit does not replace Article 11 of the General Conditions, which still governs the process for the adjustment and settlement of the insured loss, the consequence of the Contractor's failure to give notice of cancellation of insurance, and the Owner's failure to purchase property insurance. The AIA decided not to remove these terms from the General Conditions in the event that the parties inadvertently omit the Exhibit from the contract documents.

The new Exhibit is a significant development in the evolution of the AIA Form documents. By walking the parties through the various insurance options, it will hopefully lead to greater collaboration and understanding of the intended risk transfer for a given project, and allow parties to make informed decisions about the insurance applicable to a project's construction risks. As with any contract form, it should be viewed as a guide or a starting place for conversations, and not a substitute for legal advice tailored to any specific project.

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