What Insurance Liability Options Does A Real Estate Developer Have?

Real Estate Developers will frequently hire a General Contractor (GC) to build their Real Estate Development project, believing they have transferred their liability to the GC. The developer, however, is the ultimate GC. Just as the GC should hire subcontractors (subs) with liability— commercial auto and workers' compensation insurance—and be listed as an additional insured to make subs' coverage the first line of defense.; the GC is expected to have the same casualty coverages in place and name the developer as an additional insured.

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There are three levels of protection a real estate developer can obtain to mitigate risk exposure: Premises Only Liability, Owner's Interest (premises and products, with completed operations) and Wrap-Up Insurance (Developer con-trolled coverage).

1. **Premises Liability** – Typically a GC's coverage will provide coverage for "construction activities", therefore a developer is still exposed for the areas that are not included in the construction activities, which could include vacant land around the project.

Insurance Liability Options

Example: If a pedestrian comes on site and is injured in a slip and fall incident that is not part of the construction area, it is very likely the GC's policy would not respond. Having a policy for premises liability in the developer's name, however, would provide this protection.

This coverage is relatively limited and inexpensive.

2. **Owner's Interest Liability** – This is coverage for a developer that provides both premises liability and products with completed operations coverage. This is essentially similar coverage that the GC would have for themselves providing coverage for premises and construction activities. The policy can be written with an extended period for when a project is completed, that would extend through the statute of limitations (usually 10 years with a 2-year reporting period at the end).

This is relevant because the GC typically lists the developer as an additional insured on their coverage for the term of the project, but the developer's liability exposure extends until the statute of limitations expires.

Therefore, if claims are filed after completion then there would be no products and completed operations coverage. The other challenge is finding the GC 7 or 8 years later when a claim is filed. Larger ones may be around, but others may have sold, merged or closed.

Having an owners interest policy written through the statute of limitations would provide the developer with protection. The cost of this is less than what a GC would pay, but still higher than a premise only policy.

3. **Wrap Up** –also known as Owner Controlled Insurance Policy. Previously, this type of policy was only for very large projects but this has changed in recent years. This is essentially an Owners Interest policy that includes the GC and the Subcontractors insurance. The developer buys the liability for all involved on the project, then after you receive the bids from the GC and the subs, you have them exclude the insurance cost for the project.

Many times, due to economies of scale, your costs are less, and the savings on the bids offsets most, if not all policy cost. It is possible to come out ahead on certain deals, depending on the size of the contractors, as smaller contractors have higher cost.

The advantage of this option is that the developer knows what the coverages and exclusions are, selects the limits, and does not have to be concerned with a GC or sub having a coverage lapse.

You also purchase the time frame that includes the statute of limitations. There is some administration that is required, but part of the plan is selecting a consultant to manage this process. Carriers will provide a list of approved consultants.

The cost can be less in the end than purchasing an Owner's Interest policy once you reduce the price of the bids for the project by eliminating the insurance cost.