



July 5, 2005

## **Cost-Effective Liability Insurance Still Dulls Bright Builder Marketplace**

*by Peter Mosca*

Builders always have been a difficult class of business to insure. The proliferation of construction defect lawsuits has resulted in enormous losses for liability insurers, wrote Jeffrey D. Masters, Sandra C. Stewart and R. Jane Lynch of Cox, [Castle & Nicholson LLP](#), Los Angeles, California, in a report prepared for the NAHB. **Non-insurance risk management strategies designed to avoid, minimize and/or shift liabilities must become a core part of every builder's company philosophy and operational practices.** Effective implementation of such strategies increasingly will be a prerequisite for builders to qualify for adequate liability insurance, both in the current market and in the future.

- Hire an insurance broker with access to as many domestic and foreign markets as possible and one who has substantial experience in placing the type of wrap (specified projects) product requested.
- Hire experienced insurance coverage counsel to review and compare your policies.
- **Have in place a top notch quality assurance program that includes third party peer review and an exemplary customer service program.**
- Be willing to share the risk (and pain) in terms of high self-insured retentions/deductibles and premiums.



# General Liability

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## Risk Management Techniques

**Method #1: Avoidance** – Simply avoid the risk by prudent site preparation, effective design and construction practices, careful project supervision, and use of quality materials.

**Method #2: Minimize Liabilities** – Include protective provisions in sales contracts, written third party warranty contracts, prompt settlement of customer complaints.

**Method #3: Shift Liabilities** - Have signed contracts with all parties involved in the construction process (design, subcontractors, vendors) which include hold harmless and indemnification clauses, you and your firm named as an additional insured on their policy and mandated insurance requirements.

**Method #4: Insure Liabilities** - Keys to a effective Risk Management and Loss Control Program

### Keys to effective Risk Management and Loss Control Program

Builders Insurance Association Inc. requires that all builders participating in the general liability program establish and support a strong loss control program utilizing all four techniques listed above. The practical applications of these methods are listed below. It is crucial to institute these measures as part of your normal business procedures.

- **Maintain good documentation and records**
  - **Documentation is Critical to an effective defense against construction related claims and must include the following:**
    - Construction plans and all planning notes
    - Description and use of quality materials (implied and written warranties by the manufacturer or supplier)
    - **Written work in progress inspections including follow-up notes which document that the subcontractors made all recommended corrections**
    - **Copies of notes or videos if used during inspections**
    - **Signed** sales contracts and documentation of all conversations with homeowners (follow-up letters to homeowners)
    - **Signed** subcontractors agreements
    - Certificates of Insurance from all subcontractors and suppliers
    - **Signed** change orders
    - Lists of subcontractors and description of work performed for each production unit
- **Purchase a Third Party Warranty on each unit built**
  - A third party written warranty outlines the builder's legal warranty obligations as to coverage and length of time
  - The written warranty should include one year workmanship, two year systems and ten year structural coverage
  - A written warranty should transfer to subsequent homeowners thereby protecting the builder for a full ten years
  - A written warranty should contain a waiver of the builder's liability for non-warranty claims for construction defects.