

BULLETIN 27

WHEN IS IT APPROPRIATE TO LAPSE THE “BROAD FORM” PROPERTY INSURANCE POLICY?

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When is the appropriate time for the “Broad form” property insurance policy (also known as Builders’ Risk) to lapse? To answer this question, we will review two relevant sections in the CCDC 2 – 2020 ‘Stipulated Price Contract’.

Part 11 INSURANCE, GC 11.1 which sets out that the policy shall remain in place until the earliest of three events. Below is GC 11.1.1.4:

- 11.1.1.4 "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The “Broad form” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
- (1) 10 calendar days after the date of *Ready-for-Takeover*;
 - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; and
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.

This sets out that the policy must be maintained from commencement of construction until 10 days after the date of Ready-for-Takeover, which is defined in GC 12.1 READY-FOR TAKEOVER. Below is GC 12.1.1 and 12.1.2:

- 12.1.1 The prerequisites to attaining *Ready-for-Takeover* of the *Work* are limited to the following:
- .1 The *Consultant* has certified or verified the *Substantial Performance of the Work*.
 - .2 Evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction.
 - .3 Final cleaning and waste removal at the time of applying for *Ready-for-Takeover*, as required by the *Contract Documents*.
 - .4 The delivery to the *Owner* of such operations and maintenance documents reasonably necessary for immediate operation and maintenance, as required by the *Contract Documents*.
 - .5 Make available a copy of the as-built drawings completed to date on site.
 - .6 Startup, testing required for immediate occupancy, as required by the *Contract Documents*.
 - .7 Ability to secure access to the *Work* has been provided to the *Owner*, if required by the *Contract Documents*.
 - .8 Demonstration and training, as required by the *Contract Documents*, is scheduled by the *Contractor* acting reasonably.

12.1.2 If any prerequisites set forth in paragraphs 12.1.1.3 to 12.1.1.6 must be deferred because of conditions reasonably beyond the control of the *Contractor*, or by agreement between the *Owner* and the *Contractor* to do so, *Ready-for-Takeover* shall not be delayed.

The intent of the “Broad form” property policy is to insure direct physical loss or damage to all permanent construction and temporary works necessary to facilitate construction while in the “course of construction”. As such, in GC 11.1.1.4 once Ready-for-Takeover has been attained, or once the owner uses or occupies part of the building, or if the project is left unattended or construction activity has ceased for thirty days, whichever is the earliest, the building is no longer in the “course of construction”. With any one of these events, it is appropriate that the owner insures the building.

In looking at GC12.1.1, the clause is quite specific insofar as Substantial Performance of the Work had to have been reached in order to attain Ready-for-Takeover. Once Ready-for-Takeover has been attained, the policy may be lapsed ten calendar days after this date regardless of outstanding warranty work and non-critical deficiency list items. The ten calendar days provides time for the owner to place their property insurance.

Insurers are willing to provide coverage to owners even if there are deficiency items outstanding, so long as those items are not material to the operations of the building. That said, if there were material items outstanding, the project would not have achieved Ready-for-Takeover. However, owners may be concerned that while the contractor is completing the deficiency items, the contractor may cause damages to the building and for this reason their expectation is that the “Broad form” property policy should remain in place longer than as set out in the contract. It should put the owner’s mind at ease that, in the event the contractor causes damages while the contractor is completing the deficiency items, there would still be recourse against the contractor’s general liability insurance.

In light of the above, owners and contractors should proceed carefully when modifying GC 11.1.1.4 by supplementary conditions. Changing the requirement for the “Broad form” property policy to be maintained until total performance of the work or until the project has been formally accepted by the owner may not be permitted by the insurer. While it has often been possible to comply with such requirements, insurers are increasingly questioning the appropriateness of insuring an otherwise occupied risk under a “Broad form” property policy. “Broad form” property policies generally allow for occupancy for an office or habitational risk. Beyond this, the insurers must be asked for permission, a permission that is not always granted.

An owner should not unreasonably delay accepting responsibility for insuring a project. Requiring a “Broad form” property policy to be maintained until total performance can impose unnecessary costs and possibly give rise to contract compliance issues when the insurer refuses to extend beyond the Ready-for-Takeover date.

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