

Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project, with limits sufficient to cover the value of the entire Project on a replacement cost basis (including existing structure in case of renovation or remodeling) (A201™–2007 §11.3.1; Exhibit A §A.2.3.1).

- The Contractor must maintain CGL insurance, Employer's Liability, and auto insurance with policy limits in amounts to be specified, as well as workers' compensation insurance (A201™–2007 §11.1.1; Exhibit A §§A.3.2.2.1, A.3.2.3–A.3.2.6).
- The parties and their insurers must waive subrogation rights against each other (A201™–2007 §11.3.7; A201™–2017 §11.3).

A comparison of these two editions of AIA Form A201 can be found in AIA Document Comparative A201–2017 Compared to A201–2007, which may be viewed on the AIA website at <http://www.aia.org>.

Owner's Coverage

A201™–2007 set forth the Contractor's insurance requirements first, followed by insurance requirements for the Owner. The 2017 Exhibit A reverses that order and expands the insurance requirements for the Owner.

Owner's Property Insurance

Both A201™–2007 and Exhibit A require that the property coverage be on a "builder's all risk" form, covering "direct physical loss or damage." This is sometimes referred to as "All Risk Builders Risk" (ARBR) or "Construction All Risk" (CAR). The purpose of "builder's risk" insurance is to compensate for loss due to physical damage or destruction caused to the construction project itself. *Southern Cal. Edison Co. v Harbor Ins. Co.* (1978) 83 CA3d 747, 758. However, "[t]he label 'all risk' is essentially a misnomer. [Citation omitted.] All risk policies are not 'all loss' policies; all risk policies ... contain express written exclusions and implied exceptions which have been developed by the courts over the years." *Standard Structural Steel Co. v Bethlehem Steel Corp.* (D Conn 1984) 597 F Supp 164, 191. Further, the terms and exclusions in builder's risk policies vary considerably from insurer to insurer.

A201™–2007 §11.3.1.1 required that property insurance insure against the perils of fire (with extended coverage) and physical loss or damage including theft, vandalism, malicious mischief, collapse, earthquake, flood, and windstorm. Exhibit A §A.2.3.1.1 states that the policy shall provide coverage for and "shall not exclude" those risks, adds the risk of explosion, and adds that the property insurance "shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, designs, specifications, workmanship, or materials."

It is not clear that an Owner can, or would want to, purchase policies that do not exclude *any* of these risks. For example, a Causes of Loss form often contains exclusions

regarding earth movement, flood, theft of building materials and supplies not attached to the building, explosion of steam boilers and pipes, collapse (unless due to specified causes), and/or faulty, inadequate, or defective design, work, or materials. Some insurers offer endorsements to modify a Builder's Risk Causes of Loss form to delete some or all of these exclusions. However, endorsements that restore coverage should be carefully reviewed, as they are often subject to express monetary sublimits or contain other restrictions. At minimum, counsel for all Project participants should review the Owner's property insurance to determine if the policy excludes some or all these risks, in conflict with Exhibit A.

Property Insurance Limits

A201™–2007 §11.3.1 required the Owner to maintain property insurance in the "amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis." Exhibit A §A.2.3.1 requires that such "total value" include not only materials and equipment, but also "labor performed" by others.

While A201™–2007 provided that the Owner's property insurance limits extend to the value of the entire Project "at the site," Exhibit A requires that the property limits cover the value of "the entire Project" (without limiting it to "the site"), thereby apparently extending to materials and equipment stored off site. Exhibit A §A.2.3.1.

A201™–2007 §11.3.1 provided that the Owner's property insurance not be subject to deductibles. Exhibit A §A.2.3.1.4 provides that if the property insurance is subject to deductibles or self-insured retentions (SIR), the Owner is responsible for any loss not covered because of deductibles/SIRs.

In addition to deciding which party should be contractually responsible for any deductibles or self-insured retentions, counsel for parties other than the Owner should review the deductible and self-insured retention provisions, as some provide that no party other than the Named Insured may pay the deductible/SIR, or that other insurance cannot be used to satisfy the deductible/SIR. See, e.g., *Forecast Homes, Inc. v Steadfast Ins. Co.* (2010) 181 CA4th 1466, 1476, reported at 33 CEB RPLR 68 (May 2010). This may become an issue if the Owner becomes bankrupt or is financially unable to satisfy the deductible/SIR.

Cancellation of Owner's Property Insurance

A201™–2017 §11.2.3 requires that when the Owner becomes aware of impending or actual cancellation or expiration of any required insurance, the Owner must give notice to the Contractor within 3 business days. Unless the lapse arises from an act or omission of the Contractor, on receipt of such notice, the Contractor then has the right to stop work until the lapse is cured; the Contract Time and Contract sum must be equitably adjusted; and the Owner waives all rights against the Contractor, Subcontractors, and Sub-